Credit Union National Association
CUNA

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The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
Washington, DC 20515

Dear Speaker Pelosi and Leader McCarthy,

On behalf of America's credit unions, I am writing regarding the updated version of the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act of 2020. The Credit Union National Association (CUNA) represents America's credit unions and their more than 120 million members.

The novel Coronavirus (COVID-19) is a global pandemic. The public health crisis created by the virus has caused a historic economic disruption and crisis which has resulted in the closure of millions of businesses and the unemployment of millions of Americans. We appreciate the swift response that Congress and the administration have undertaken to address the economic consequences of the pandemic. More needs to be done, and still more will need to be accomplished in the months and years ahead. As financial first responders, America's credit unions stand willing and able to help consumers and small businesses during the crisis and into recovery.

Overview
Since the beginning of the pandemic, credit unions have been working to ensure they remain in a position to serve their members during and after the crisis. The good news is that credit unions entered the crisis very strong, with capital, liquidity and asset quality levels at post-financial crisis highs. This puts credit unions in a good position to flex their *people helping people* muscle to help their members weather financial challenges presented by the current economic disruption.

Credit unions proudly participated in the Paycheck Protection Program (PPP) which Congress established in the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Hundreds of credit unions loaned PPP funds to tens of thousands of businesses, focusing their efforts on Main Street, not Wall Street. Credit unions were proud to offer PPP loans to help small business owners recover from the impact of the pandemic, facilitating more than 170,000 loans that averaged just $49,000.

While PPP lending has concluded, there are a number of steps that SBA should take if additional funds become available. SBA should improve their national and regional operation in order to provide more timely feedback to lenders and borrowers, including lender prioritization guidance, official guidance formalizing the use of PPP forms and guidance on the loan purchasing process. Furthermore, the SBA should issue guidance and forms to reflect that privately insured state-chartered credit unions are eligible to lend through the program.

Now that the PPP program has transitioned to the loan forgiveness phase, credit unions are concerned that the loan forgiveness process is overly complicated for most businesses. The process is so complex that most businesses may need to retain counsel to navigate the application process – an expense many of the smallest businesses cannot afford during normal times, much less in this crisis.

In order to allow America's small business owners and Main Street financial institutions to remain focused on serving their communities rather than jumping through burdensome regulatory hurdles, we urge Congress to implement policy that provides automatic loan forgiveness for PPP loans. We strongly support H.R. 7777, the Paycheck Protection Program

Small Business Forgiveness Act. This legislation would provide forgiveness for PPP loans of $150,000 or less if the borrower submits an attestation form to the lender. It also ensures that the lender will be held harmless from any enforcement action if the borrower's attestation contained falsehoods.

We also appreciate the other provisions of the CARES Act that facilitate credit union service during this crisis, including the temporary expansion of the Central Liquidity Facility (CLF), the authority conveyed to the National Credit Union Administration (NCUA) and the Federal Deposit Insurance Corporation (FDIC) to guarantee deposits in non-interest bearing accounts, and language regarding troubled debt restructuring among other provisions. These are important tools during this crisis, and we urge an extension of those provisions in the updated version of the HEROES Act.

From that perspective and in the interest of being constructive partners to economic recovery, we offer feedback on the updated version of the HEROES Act.

Appropriations

We appreciate that this legislation responds to CUNA's call for an emergency appropriation of $1 billion for the Community Development Financial Institution (CDFI) Fund. Also, this bill provides an additional $8 billion for Economic Injury Disaster Loan (EIDL) grants. However, we feel the HEROES Act misses an opportunity to provide emergency funding for the Community Development Revolving Loan Fund (CDRLF).

Administered by the NCUA, the CDRLF assists credit unions serving low-income communities to: 1) provide financial services to their communities; 2) stimulate economic activities in their communities, resulting in increased income and employment; and 3) operate more efficiently. No Congressionally appropriated funds are used to fund the CDRLF's administrative or overhead costs. These costs are paid by credit unions insured by the NCUA. Therefore, every dollar appropriated by Congress to the CDRLF is passed on directly to underserved communities and the credit unions that serve them.

This fund supports smaller credit unions that serve people and small businesses that will likely be the first to feel the real-world effects of a missed paycheck or a cancelled order or contract. These small businesses and individuals will also likely be the first Americans in this current crisis to need access to emergency credit and other assistance available from their credit unions.

Revenue Provisions

CUNA and its member credit unions appreciate that this legislation makes needed clarifications to past COVID-19 recovery laws. In line with Congressional intent, this bill exempts the Economic Impact Payments in the CARES Act from reduction or offset with respect to past-due child support or garnishment.

The HEROES Act also makes enhancements to the Employee Retention Payroll Tax Credit in the CARES Act and clarifies ambiguity that led federal credit unions to doubt that they were eligible to claim the credit. This bill further clarifies the same problem in the Families First Coronavirus Response Act by making clear that federal credit unions are eligible to participate in that law's paid sick and family leave payroll tax credits.

SAFE Banking Act

CUNA has supported the Secure and Fair Enforcement (SAFE) Banking Act since it was first introduced in the House in March of 2019 and was the first financial trade organization to testify before Congress on the matter. The SAFE Banking Act will help ensure access for state-sanctioned businesses in the mainstream financial system. Credit unions that choose to provide cannabis banking use rigorous screening and compliance protocols to appropriately monitor and maintain high-risk accounts. This legislation provides narrowly targeted federal protections for credit unions and other financial institutions accepting deposits, extending credit, or providing payment services to an individual or business engaged in cannabis-related commerce in states where such activity is legal, if they are compliant with all other applicable laws and regulations. CUNA is pleased to see the SAFE Banking Act's inclusion in the HEROES Act.

<u>Credit Union HEROES Act Concerns</u>

Moratorium on Debt Collection Activities: The HEROES Act would prohibit, during the pandemic (and for 120 days after the end of the presidential declaration), certain actions used in the collection of debt related to past due consumer and small business loans. While this restriction may be well-intentioned, credit unions have significant concerns about the impact this policy may have on community financial service providers and the consumers they serve. The responsible collection of debt payments from borrowers is critical to the safety and soundness of all lending institutions. A blanket suspension of the debt collection process—even for a temporary period—could disrupt creditors' ability to actively manage their loan portfolios, increase the cost of credit for all borrowers, and reduce access to credit from reputable lenders when Americans need it most.

In contrast to banks or other for-profit lenders beholden to external shareholders, credit unions' stakeholders are their member-owners. As financial cooperatives, it's the membership of the credit union that have the ultimate interest in ensuring the credit union can take appropriate steps to collect debts owed by their fellow members. In fact, as a result of their cooperative structure and member-focused mission, many credit unions are already working with financially distressed members to develop customized solutions that secure their financial well-being during this pandemic and beyond. Relying on credit unions to do what they do best is preferable to an environment where credit unions are unable to assist members because of diminished resources or rigid public policy.

Suspension of Negative Credit Reporting & Adverse Information: The HEROES Act includes several provisions affecting credit reporting during the pandemic, including suspending most negative credit reporting and requiring adverse information be excluded from consumer credit reports. The bill would also prohibit credit scoring models from treating the absence of information during a covered period on consumers' credit report as a negative factor.

Credit unions are concerned a blanket suspension of negative credit reporting could undermine the usability of credit reports and ultimately result in reduced access to credit for consumers. In addition, uniformly reducing relevant information on credit reports – negative or otherwise – could create challenges for lenders making lending or pricing decisions post-crisis which would in turn threaten safety and soundness. We also believe suspending negative credit reporting may be introducing unnecessary risk to the lending ecosystem as procedures already exist to account for delinquent or missed payments resulting from economic hardships, including pandemics or other national disasters. Credit unions are already using these proven processes and have been since the start of the crisis to guard their members' financial well-being and creditworthiness.

Extend Troubled Debt Restructuring (TDR): The Troubled Debt Restructuring (TDR) exemption, created by the CARES Act, will expire at the end of 2020, or 60 days after the end of the national emergency, whichever is earlier. We believe the current situation warrants that this deadline be extended. Under the CARES Act § 4013 and interagency guidance, if a loan was current either on December 31, 2019, or at the time of modification, COVID-related modifications to the loan are exempt from TDR treatment. However, under CARES Act § 4022, borrowers of federally-backed mortgage loans (Fannie, Freddie, VA, FHA) may request and obtain forbearance of up to 12 months during the national emergency. The TDR exemption lasts only until the end of 2020, but most forbearances will not end until 2021 (at which time credit unions will likely need to modify the loan).

As a result of the unintentional provision misalignment, lenders will need to account for many loans modified due to COVID-19 as TDRs. The financial impact on credit unions will be significant. The economic impact of the COVID-19 pandemic on borrowers and financial institutions will likely last well beyond the conclusion of this calendar year.

We encourage Congress to extend the CARES Act's temporary TDR relief for an additional year, until the end of 2021, and to continue working with the financial regulators to ensure the interagency guidance on TDRs remains in effect for the duration of the crisis and its aftershocks. Such action is necessary to provide credit unions enough time to meaningfully and effectively help financially distressed members.

Central Liquidity Facility (CLF): As discussed above, the CARES Act included a much-needed expansion of the NCUA's CLF, allowing corporate credit unions to act as agents for natural person credit unions and expanding the CLF's borrowing authority from 12 times the paid in capital to 16 times. These changes make the CLF more accessible to credit unions and expand the amount of liquidity NCUA could provide credit unions. These measures sunset at the end of 2020. Given the unprecedented nature and the depth of this pandemic and the subsequent economic crisis, expanding the CLF's borrowing authority to 25 times the paid in capital, extending the expanded borrowing authority until December 31, 2021, and making permanent the ability of corporate credit unions to act as agents for credit unions is necessary. The consequence of not having these provisions in place prior to this crisis is that NCUA has had to engage in a membership campaign for the CLF, asking credit unions to contribute capital to the facility at the very time credit unions are most reluctant to give up capital.

Prompt Correct Action Flexibility: We would like to draw your attention to the need for the NCUA to have additional authority to adjust capital requirements for credit unions impacted by crisis. Credit union capital requirements are different than bank requirements in several respects, including that only retained earnings count as Tier I capital for credit unions and thresholds for credit union capital levels are hardwired into statute. These limitations restrict NCUA in its ability to provide accommodations to otherwise healthy credit unions impacted by a natural disaster, pandemic, and other crises. As Congress considers additional pandemic recovery legislation, we encourage you to include language that provides temporary flexibility to NCUA to offer forbearance from prompt corrective action credit unions impacted by the pandemic and which were otherwise healthy prior to the onset of the crisis. While credit unions entered the crisis extremely well-capitalized, the impact of the ensuring economic crisis has and will put stress on capital and, given credit unions' limited ability to raise capital, the regulator could use additional tools.

On behalf of America's credit unions and their more than 120 million members, thank you for considering our views.

Sincerely,

Jim Nussle
President & CEO