Credit Union National Association
CUNA

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The Honorable Mike Crapo
Chairman
Committee on Banking, Housing and Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate
Washington, DC 20510

Dear Chairman Crapo and Ranking Member Brown:

On behalf of America's credit unions, I am writing to express our views ahead of the hearing entitled, "Oversight of Financial Regulators." The Credit Union National Association (CUNA) represents America's credit unions and their more than 120 million members. We appreciate your consideration of our views.

The COVID-19 pandemic and ensuing economic crisis has impacted every aspect of society. Credit unions and their members have not been immune from the consequences, but credit unions have remained in a position to continue to serve their members through the crisis as a result of critical steps taken by Congress, the administration, and the National Credit Union Administration (NCUA).

Credit Unions Remain in a Position to Help Consumers, but Looming Stress Suggests Congress and Regulators Need to Act Now to Head Off a Deeper Economic Crisis

While the economy grew quickly in the third quarter, U.S. economic output remains roughly 3.5% lower than pre-crisis levels. For historical context, note that the peak-to-trough decline in economic output was 4.0% during the Great Recession.

The U.S. unemployment rate fell one full percentage point recently, ending October at 6.9% according to the Bureau of Labor Statistics (BLS). However, the true unemployment rate (which adjusts for misclassified unemployed workers on temporary layoff) is estimated by BLS to be 7.3%—more than double the 3.5% unemployment rate reported in February. Nearly four million consumers tell BLS they are permanently unemployed (up by 2.5 million since February).

The Census Bureau Household and Business Pulse Surveys reveals that significant additional economic assistance to consumers and small businesses is critically important:

- The most recent Census Bureau **Household Pulse Survey** shows that only 48% of those who reside in renter-occupied housing reported having "high confidence" that they would be able to pay "next month's rent." In addition, about two-thirds of those in owner-occupied housing have a mortgage payment obligation—and among those, only 70% reported "high confidence" in their ability to pay "next month's mortgage."
- The most recent Census Bureau **Small Business Pulse Survey** shows that nearly half—45%—of small business owners say they expect it will be at least six months before their business returns to normal operating levels. Overall, nearly 10% say they expect that their business will never return to "normal" pre-crisis levels.

Credit unions stand ready to continue to help:

- Collectively the nation's 5,300 credit unions have ample liquidity, reflected in a 76.2% loan-to-savings ratio and surplus funds equal to 30% of assets (with 60% of those surplus funds in liquid assets).
- Asset quality is high with the credit union delinquency ratio sitting at 0.52% in December according to CUNA survey results. That puts delinquencies at their lowest level in the 30-year history we have been tracking this data.
- The system's capital ratio has stabilized at 10.5% (well above Prompt Corrective Action's (PCA) "well capitalized" level of 7%).

But, the significant looming stress reflected in the Census Bureau Household and Small Business Pulse Surveys suggests the NCUA and Congress should act now to head off a deeper and longer lasting crisis—and to ensure that credit unions maintain their ability to effectively intervene and help members navigate through the mounting near-term risks. Therefore, as Congress contemplates further COVID-recovery legislation and exercises its oversight responsibilities over the Federal financial regulators, it is critical that policy be examined and modified to ensure credit unions remain in a position to serve their members throughout and after this crisis.

NCUA Should Take Further Steps to Ensure Credit Unions Remain in a Position to Serve Their Members During and After the Pandemic

Throughout the pandemic, NCUA, under the leadership of Chairman Rodney Hood, has been responsive to the needs of credit unions. With only a few exceptions, the agency has moved swiftly to remove barriers keeping credit unions from being able to serve their members as a result of the public health and economic crisis. However, as we have discussed with the agency in recent months, there is more that should be done. We have encouraged the NCUA to:

- refrain from any National Credit Union Share Insurance Fund (NCUSIF) premium assessments;
- temporarily exclude certain low-risk assets from net worth ratio;
- permit capitalization of interest on consumer mortgage loans; and
- remove obstacles to consumers accessing the Payday Alternative Loans I Program.

Refrain from Any National Credit Union Share Insurance Fund Premium Assessments

As a result of an influx of deposits following substantial government stimulus to consumers impacted by COVID-19, credit union deposits have swelled and the NCUSIF equity ratio temporarily declined. At its September Board meeting, NCUA reported that the NCUSIF equity ratio had dropped to 1.22% at mid-year from where it was in December at 1.35%. This is an understandable and temporary change reflecting the historically unprecedented deposit growth driven by members depositing COVID-19 economic impact payments.

NCUA announced the reasonable and appropriate step of having credit unions "top off" their deposit in the NCUSIF to account for these new deposits. This is expected to return the equity ratio to approximately 1.34%, which is above the statutory guideline for the normal operating level, 1.30%.

NCUA is prohibited from assessing premiums to fund the NCUSIF if the equity ratio is above 1.30%; and the agency is required to report to Congress a restoration plan if the equity ratio drops below 1.20%. In setting these parameters, Congress sent a clear message that a safe and sound equity ratio for the NCUSIF lays somewhere between 1.20% and 1.30%. Notwithstanding the unprecedented nature of the crisis, there is no reason to expect the equity ratio to drop below 1.20% in the absence of additional stimulus, in which case credit unions could be asked to top-off the fund again. We are concerned that NCUA may take the unnecessary step of assessing credit unions a premium charge if the fund drops below 1.30% during this crisis. We urge the NCUA to forebear on any assessments, consistent with the forbearance toward distressed members the agency has urged credit unions to embrace. A temporary forbearance approach to the existing NCUSIF equity ratio policy on levying insurance premiums is consistent with the stated approach of the Federal Deposit Insurance Corporation (FDIC).

Temporarily Exclude Certain Low-Risk Assets from Net Worth Ratio

As noted above, deposits in credit unions have swelled during the crisis, largely as a result of government stimulus and changes in consumer spending and savings habits. Credit unions are increasingly investing these funds in zero- and low-risk assets, such as shorter-term Treasury securities. These deposits and resulting investments, however, have caused a decrease in the net worth ratio for many credit unions. Therefore, we have asked the NCUA to follow the lead of other Federal banking regulators and exclude such investments from the net worth ratio calculation.

The NCUA has broad authority in defining "total assets," which comprises the denominator of the net worth ratio. The NCUA Board acknowledged this authority in its interim final rule earlier this year that amended section 702.2(k) to allow credit unions to exclude from "total assets" loans pledged as collateral for Paycheck Protection Program (PPP) loans. Specifically, in that rule, the Board stated:

> The Board has broad authority to define the term "total assets." While 12 U.S.C. 1790d defines "net worth"—the numerator for determining the net worth ratio—it does not define the term "total assets," which comprises the denominator of the equation. However, the Board has elected to define the term in part 702. In addition to the Board's broad authority to define the term "total assets," the Board finds that given the unique and unprecedented nature of the COVID-19 pandemic, encouraging use of the PPP Facility by excluding pledged PPP loans from total assets would further the purpose of § 1790d. Pledged covered PPP loans present less risk and would potentially facilitate resolving the problems of credit unions at the least possible long-term cost to the NCUSIF compared to non-pledged covered PPP loans.[1]

CUNA supported that NCUA interim final rule, as we think it is important to encourage credit union participation in PPP lending. After further review, we believe the NCUA can extend this treatment to all PPP loans.

We believe it is equally important to amend the definition of "total assets" to exclude certain zero- and low-risk assets. Since we continue to find ourselves in a "unique and unprecedented" situation given the ongoing pandemic, it is imperative the agency provide additional flexibility regarding credit union capital. Thus, we have asked the NCUA to explore ways to reduce the denominator of the net worth ratio—including by excluding certain assets from the calculation—given that the savings growth is a result of the current environment as opposed to something credit unions are actively encouraging. Credit unions are not in the business of turning away members or their deposits, but this is a possible though unfortunate alternative that could stem declining net worth ratios.

Permit Capitalization of Interest on Consumer Mortgage Loans

As stated in our letters to the NCUA on April 8,[2] June 29,[3] and September 16, 2020,[4] we have asked the NCUA to

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[1] 85 Fed. Reg. 23,212, 23,214 n.18 (Apr. 27, 2020).
[2] CUNA Letter to NCUA Chairman Rodney Hood (Apr. 8, 2020), *available at* https://www.cuna.org/uploadedFiles/Advocacy/Actions/Comment_Calls,_Letters_and_Testimonies/2020/Comment_Letters/Letter%20from%20CUNA%20CEO%20to%20NCUA%20Chairman%20Hood.pdf.
[3] CUNA Letter to NCUA Chairman Rodney Hood (June 29, 2020), *available at* https://www.cuna.org/uploadedFiles/Advocacy/Actions/Comment_Calls,_Letters_and_Testimonies/2020/Comment_Letters/Letter%20to%20NCUA%20Chairman%20Hood%20from%20Jim%20Nussle%206.29.2020.pdf.
[4] CUNA letter to NCUA Chairman Rodney Hood (Sept. 16, 2020), *available at* https://www.cuna.org/uploadedFiles/Letter%20from%20CUNA%20CEO%20Jim%20Nussle%20to%20NCUA%20Chairman%20Hood%209.16.2020.pdf.

permit credit unions to capitalize interest on consumer mortgage loans in connection with loan modifications made during the pandemic.

We appreciate the recent interagency guidance on loan modifications and troubled debt restructurings (TDRs)[5] as well as the provisions of the Coronavirus Aid, Relief, and Economic Security (CARES) Act that provide for TDR accommodations. However, to further ease compliance requirements for loan modifications, the NCUA should reinterpret the capitalized interest section of Part 741, Appendix B to be consistent with the requirements of Fannie Mae and Freddie Mac, the government-sponsored enterprises (GSEs), as well as the other Federal financial regulators.

Currently, in order to make a TDR modification related to COVID-19 work for credit union members, the credit union must pursue one of the following options:

1) Collect interest current at the time of the modification: This causes additional hardship for members, especially members who may have become unemployed;
2) Forgive the interest: This harms the credit union, making it difficult to loan to other members, and creates potential tax ramifications for the members;
3) Defer the interest until the end of the loan term: This creates balloon payments for the members and could cause additional hardship; or
4) Adjust the amortization on the loan and bifurcate it to create a modified rate component and a zero-interest component: This is confusing for members and poses operational challenges for the credit union, as systems are not designed to easily incorporate such an adjustment.

It is clear another, more consumer-friendly option is needed. Thus, we urge the NCUA to permit credit unions to capitalize the interest on loans modified in connection with the pandemic. This is especially critical as it may take many months for many consumers to become financially healthy given the ongoing COVID-19 crisis.

Remove Obstacles to Consumers Accessing the Payday Alternative Loans I Program

We have also encouraged the NCUA to consider issuing an interim final rule amending section 701.21 to eliminate the requirement that a borrower "be a member of the credit union for at least one month"[6] before receiving a Payday Alternative Loan I (PAL I). This change would ensure credit unions have the flexibility necessary to meet the emergency credit needs of new credit union members.

In the current environment, economically distressed new members should not have to wait a month to be eligible for a PAL I loan. This requirement drives borrowers to more costly and potentially predatory lending sources, which produces the precise outcome policymakers sought to avoid through the PAL I program.

We have also asked the NCUA to provide additional guidance for credit unions assisting financially distressed borrowers with outstanding PALs. In some instances, members borrowed PALs at the maximum term permitted and now, as a result of a change in their financial situation, are seeking options to amend or extend their loans. We recommend the NCUA provide credit unions the flexibility to refinance these outstanding loans into other low-cost emergency credit products or to potentially extend the loan terms.

[5] Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus (Revised) (Apr. 7, 2020), *available at* https://www.ncua.gov/files/press-releases-news/interagency-statement-tdr-policy-revised.pdf.
[6] 12 CFR 701.21(c)(7)(iii)(A)(6).

Congress Should Take Legislative Action to Ensure Credit Unions Remain in a Position to Serve Their Members

Like many others, we have been eagerly anticipating additional COVID recovery legislation. As we approach the end of the year, Congressional action is necessary if only to extend expiring provisions that have proved critical in the early stages of the crisis and remain necessary to keep credit unions in a position to serve their members. But, we hope Congress will enact more ambitious legislation than simply extending expiring provisions.

As we discuss below, we ask Congress to enact legislation that:

- *extends expiring CARES Act provision related to TDR;*
- *extends expiring CARES Act provision related to the Central Liquidity Facility (CLF);*
- *provides temporary flexibility to NCUA to offer forbearance from PCA requirements;*
- *simplifies the PPP loan forgiveness process; and*
- *exempts Member Business Loans (MBL) during and for one year after the National Emergency*.

Extend Expiring CARES Act Provision Related to Troubled Debt Restructuring

Section 4013 of the CARES Act states that 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. The exemption is set to expire at the end of 2020.

Section 4022 of the CARES Act states that Federally backed mortgage (Fannie, Freddie, VA, or FHA) borrowers may request loan forbearance for up to 12 months during the national emergency.

The issue credit unions face is that the TDR exemption provided under section 4013 of the CARES Act lasts only until the end of 2020, but most forbearances will not end until 2021, at which time financial institutions will need to modify these loans. The unintentional misalignment of these two provisions of the CARES Act will result in variations in accounting treatment and operational complexities that make it more difficult for consumers to obtain loan modifications.

Credit unions want to help as many Americans as possible. Under the CARES Act, credit unions are required treat members with Federally backed loans in a certain way, and they have been doing that. But it's critically important to extend that same accommodation to other borrowers who need it. We need consistency in how consumers are treated.

We urge Congress to extend the CARES Act's temporary TDR relief for an additional year, until the end of 2021.

Extend Expiring CARES Act Provision Related to the Central Liquidity Facility

Section 4016 of the CARES Act provided 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. The expanded authority is set to expire at the end of the year.

Given the unprecedented nature and the depth of this pandemic and the subsequent economic crisis, we urge Congress to expand the CLF's borrowing authority to 25 times the paid in capital, extend the expanded borrowing authority until December 31, 2021, and to make permanent the ability of corporate credit unions to act as agents for credit unions.

The consequence of not having these provisions in place prior to this crisis is that NCUA 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. Congress should take steps to ensure the long-term viability of the CLF, so that it can be prepared to help credit unions in future crises.

Provide Temporary Flexibility to NCUA to Offer Forbearance from Prompt Corrective Action Requirements

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.[7] These limitations restrict NCUA's ability to accommodate otherwise healthy credit unions impacted by natural disaster, pandemic and other crises.

While credit unions entered the crisis extremely well-capitalized, the impact of the ensuing economic crisis has and will put stress on capital and, given credit unions' limited ability to raise capital, the regulator could use additional tools. As Congress considers additional pandemic recovery legislation, we encourage you to include language that provides NCUA temporary flexibility to forbear from PCA credit unions impacted by the pandemic and which were otherwise healthy prior to the onset of the crisis.

Simplify the Paycheck Protection Program Loan Forgiveness Process

Credit unions were proud participants in the Small Business Administration's (SBA) PPP. In fact, some credit unions were so eager to help their members through this program that they participated even though they had no previous relationship with the SBA. But the quick implementation and slow bureaucracy at the SBA lead to significant and well documented problems for even the most experienced SBA lenders.

The PPP has played an important role in keeping small businesses and their employees afloat during the early stages of this crisis. Many small business owners are now applying for loan forgiveness and finding that process more cumbersome than the initial lending delays. Small businesses need to be focused on their businesses; lenders need to be focused on their borrowers. Congress should take steps to simplify the forgiveness process for small businesses and PPP lenders.

CUNA strongly supports S. 4117, introduced by Senators Cramer, Menendez, Tillis, and Sinema. This legislation would forgive PPP loans of less than $150,000 upon the borrower's completion of a simple, one-page forgiveness document. These loans account for 86% of all PPP recipients but less than 27% of PPP loan dollars. Expediting the loan forgiveness process for many of these hard-hit businesses will save more than $7 billion dollars and hours of paperwork.

Exempt Member Business Loans During and for One Year After the National Emergency

As the COVID-19 pandemic persists, small businesses across the country will continue to need capital and credit unions are able to pump billions into the economy—at no cost to the government. However, one obstacle stands in the way: the arbitrary credit union MBL cap which limits some credit union lending activity to 12.25% of assets.

Given the urgent financial needs of so many small businesses, now is the time to provide credit unions with additional flexibility to serve their business members by temporarily lifting the cap.

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[7] 12 U.S.C. § 1790d(c).

While credit union business lending has increased greatly since the Great Recession, many credit unions are now approaching the 12.25% of asset cap. We conservatively estimate that temporarily removing the MBL cap will provide over $5 billion in capital to small and informal business ventures, creating nearly 50,000 jobs over the course of the next year.[8]

Additional credit union lending will not impede bank lending activity. SBA research shows that growth in credit unions' small business lending is apparent in many respects but a majority of credit union business lending is for loans that banks will not originate—which means a majority of credit union lending does not replace lending that would otherwise be done by banks—it is lending that otherwise would not occur.[9] SBA research specifically shows that roughly 80% of credit union business loans are loans that banks would not make.

Small businesses and communities around the country are suffering and need access to relief quickly. Thus, we encourage the Committee to support S. 3676 and its House companion H.R. 6789, the Access to Credit for Small Businesses Impacted by the COVID-19 Crisis Act of 2020. These bills would lift the credit union MBL cap during the pandemic and one-year after the pandemic has been declared over for loans specific to COVID-19.

Conclusion

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

Sincerely,

Jim Nussle
President & CEO

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[8] CUNA Estimate Assumptions: 1. Grandfathered CUs, Non-Federally Insured and/or Low-Income designated do not increase lending; 2. Non-Commercial lenders lend in amount equal to 1% of assets on average under the new authority; 3. All other Commercial CUs lend in amount equal to 60% of their current use rate; 4. Estimates produced using assumptions 1-3 are further adjusted as follows: * CUs with net worth/assets <=6% are assumed to have no Commercial Loan growth. * CUs with net worth/assets between 6% and 7% remain at the current 12.25% cap. * CUs with Comm Lns/assets >= 10% are limited to a 30% increase in Commercial Loans in the 1st year. 5. First year increases: baseline estimate = 50% of new use rate; adjusted/conservative estimate = 40% of new use rate. Employment increase is based on Council of Economic Advisors 5/09 ARRA job creation estimates ($92,000 in spending creates 1 job / $109,633 in 2019 dollars).

[9] Wilcox, James A., The Increasing Importance of Credit Unions in Small Business Lending. Small Business Administration Office of Advocacy (2011).