Credit Union National Association
CUNA

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The Honorable Maxine Waters
Chairwoman
House Financial Services Committee
United States House of Representatives
Washington, DC 20515

The Honorable Patrick McHenry
Ranking Member
House Financial Services Committee
United States House of Representatives
Washington, DC 20515

Dear Chairwoman Waters and Ranking Member McHenry:

On behalf of America's credit unions, I am writing regarding the hearing entitled, "Oversight of the Treasury Department's and Federal Reserve's Pandemic Response." The Credit Union National Association (CUNA) represents America's credit unions and their more than 120 million members.

The COVID-19 global pandemic is an unprecedented public health crisis that has resulted in an economic crisis impacting all sectors of society. Congress anticipated the potential for widespread economic catastrophe through the enactment of the Coronavirus Air, Relief and Economic Security (CARES) Act which included a wide range of support for Americans impacted by the pandemic and our economy in general.

This hearing is focused on the work that the Department of Treasury (Treasury) and the Federal Reserve Board of Governors have done to implement the CARES Act. Certainly, the work of these bodies has played a significant role in the stabilization of the economy. Other agencies, including the Small Business Administration (SBA) and the National Credit Union Administration (NCUA), also have used CARES Act authorities to minimize the adverse impact of the crisis on individuals and small businesses alike. And, credit unions have played an important role in carrying the spirit of the CARES Act to their members by participating in the SBA's Paycheck Protection Program (PPP), modifying troubled loans and ensuring that members get the assistance they need to weather this crisis.

Our comments on the implementation of the CARES Act include our views on how SBA and Treasury have implemented the PPP, but we also call on Congress to extend essential CARES Act provisions that expire at the end of the month, including the Troubled Debt Restructuring and Central Liquidity Facility provisions.

Paycheck Protection Program

The SBA and Treasury's implementation of the Paycheck Protection Program (PPP) left much to be desired as credit unions and other lenders experienced periodic inability to access to the E-Tran system and occasional unresponsiveness to credit unions asking for assistance.

Despite these issues, 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. Through this program, credit unions helped Main Street America including businesses like non-profit organizations that are helping the minority communities in the cities of Wilmington and minority owned businesses in the lower east side of New York such as a small deli, tiny photography businesses, and the neighborhood bakery, among many others.

While PPP lending has concluded, there are several 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. The SBA did take steps to simplify the forgiveness process for smaller loans, but more needs to be done to ensure that small business can complete forgiveness paperwork without outside assistance.

We are also concerned about the impact of the SBA's loan necessity questionnaires on the good faith attestations of borrowers. We fully support the SBA's review and oversight of PPP loans but are concerned that review process could adversely impact lenders and borrowers.

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, introduced by Representatives Houlihan and Upton, and its Senate companion S. 4117. 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.

Additionally, credit unions have been concerned about PPP related liability since the onset of the program. Now, we are beginning to see lawsuits are being filed to remedy perceived issues with aspects of the PPP. The interim final rules provided little guidance on critical aspects of the program, such as the documentation required to determine eligibility, the process for submission and approval of the loans by the SBA, the collection of servicing fees, and the determination of funds to be forgiven. This lack of guidance shifts too much liability to the lender and creates too much process risk relative to the limited interest rate. Thus, we call on Congress to enact commonsense liability protections for PPP lenders.

Central Liquidity Facility (CLF)

The CARES Act included a much-needed expansion of the NCUA's Central Liquidity Facility (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 exemption is set to expire at the end of 2020.

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 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. 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.

Troubled Debt Restructuring (TDR)

Section 4013 of the CARES Act exempts COVID-related loan modifications from TDR treatment if a loan was current either on December 31, 2019 or at the time of modification. The provision is set to expire at the end of the month. Another provision of the CARES Act, Section 4022, states that federally backed mortgages (Fannie, Freddie, VA, or FHA) may request loan forbearance for up to 12 months during the national emergency. As a result of 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. Therefore, we urge Congress to extend the CARES Act's temporary TDR relief for an additional year, until the end of 2021.

Credit unions work every day to improve their members' financial well-being and advance the communities they serve. They're fulfilling that mission every day as they work to help member impacted by the pandemic and remain in a position to serve their members and communities into recovery. It is critical that Congress take action to extend the CARES Act provisions before they expire and work to improve the PPP.

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

Sincerely,

Jim Nussle
President & CEO