

May 26, 2020

**An Open Credit Union Coronavirus Priority Issues Letter to the Massachusetts
Congressional Delegation**

Senator Ed Markey
Congresswoman Katherine Clark
Congressman Joseph Kennedy, III
Congressman James McGovern
Congressman Richard Neal
Congresswoman Lori Trahan

Senator Elizabeth Warren
Congressman William Keating
Congressman Stephen Lynch
Congressman Seth Moulton
Congresswoman Ayanna Pressley

BY EMAIL ONLY

Dear Members of the Massachusetts Congressional Delegation:

On behalf of Massachusetts credit unions, the Cooperative Credit Union Association, Inc. offers this letter regarding credit union legislative priorities during the ongoing COVID-19 pandemic and in looking ahead toward the time of recovery and beyond.

As you are aware, the Cooperative Credit Union Association, Inc. (“Association”) is the state credit union trade association, serving approximately 160 federally and state-chartered credit unions that are cooperatively owned by 3 million consumers as members. On average, one in three Massachusetts consumers are credit union members. Furthermore, the industry employs over 7,500 full and part-time employees. As not for profit cooperatives, nearly 2,000 volunteer directors further serve credit unions who deliver \$254.7 million in member benefits annually.

As essential services providers, Massachusetts credit unions immediately stepped up at the outset of the crisis ensuring members that they are open and accessible in a safe manner, offering drive-up services, lobby appointments, and enhanced electronic services options, often accomplished one member at a time. Credit unions remained steadfast throughout the rapid emergence and peak of the crisis by proactively offering assistance to members through forbearances, fee waivers, skip payments, hardship loans, loans under the nascent Paycheck Protection Program, and more, all the while counseling members on the financial services options that are most responsible and work best for them. To place further clarity on the collective hard work of local credit unions, the Association conducted a survey of members to account for the various ways credit unions have assisted members throughout this time, which is available [HERE](#) as a visual Member Impact Report. Results were compiled as of the beginning of May, continue to increase, and will be updated on an ongoing basis. The metrics include a measurement on the number and

total amount of mortgage loan payments extended, consumer loan payments extended, business loan payments extended, PPP loans extended, and the number of fees waived.

Credit Union Member Business Lending Relief

As the country begins to move towards economic recovery from the crisis, credit unions as financial services first responders stand ready and willing to safely deploy credit where necessary. One industry segment with particular credit vulnerability, which has been further magnified through the pandemic, is America's legion of small businesses. Businesses and communities around the country are facing economic hardships that have not been seen in generations. In order to continue to best serve these and other members both now and in the long-term, credit unions need every tool possible.

Since 1998, credit unions have been subject to a statutory cap on loans made to member businesses of 12.25% of the credit union's assets.¹ Limited exemptions exist to exclude certain loans from the cap for sound public policy reasons and credit unions remain appreciative of the earlier support of certain members of the Massachusetts delegation to recognize the need to allow more business lending through credit unions for certain non-owner occupied real estate properties.²

Credit unions before the pandemic have been managing to this cap and are restricted in their ability to fully deploy credit. This cap is arbitrary during normal economic times, but at a time when every available dollar will be crucial to reviving America's economy, this cap makes even less sense.

Credit unions have already proven themselves not only integral to pandemic recovery efforts, but also to be amongst the most direct and timely pipelines for small businesses to obtain funding. Credit unions, many of which are small businesses themselves, have been hard at work to extend access to capital, both in providing individualized support products and facilitating access to the Paycheck Protection Program ("PPP"), a program created through passage of the *Coronavirus Aid, Relief, and Economic Security Act* ("CARES Act"). In order to reflect risk weight requirements under the CARES Act, the NCUA issued an interim final rule, which clearly exempts PPP loans from the MBL cap calculation.

Given the urgent financial needs of so many small businesses because of the COVID-19 crisis, additional flexibility for credit unions in serving their business members is both appropriate and necessary. The Association therefore urges Congress to provide additional relief in the form of

¹ NCUA Chairman Rodney E. Hood delivered congressional testimony recently during a hearing on the oversight of financial regulators and requested an increase in the credit union member business lending cap to 20% of credit union's assets during the recovery period. The public policy underlying this adjustment will inject vital capital into the small businesses credit unions serve and credit unions echo and remain in support of this request.

² The Association recognizes previous support from Senators Edward Markey and Elizabeth Warren, together with Congressmen Joseph Kennedy, Seth Moulton and Congresswoman Katherine Clark in successfully obtaining an exemption from the member business lending cap for 1-4 family, nonowner occupied properties.

exempting all pandemic-related credit union business loans from the member business lending cap.³ Such action will help ensure that Massachusetts credit unions are able to provide for the people and businesses that really need access to credit, without having to be concerned with constraints that arise as lending nears or exceeds the cap. Failure to do so would represent a decision to leave critical assistance on the sidelines when small businesses and the nation's economy need it the most. Allowing small businesses to not only maintain current employment levels, but also to grow employment and create new jobs is the path to economic stability and the bridge to the other side of the pandemic.

Temporary Central Liquidity Facility Changes Made Permanent

The Central Liquidity Facility (“CLF”) is a mixed-ownership government corporation created to improve the general financial stability of credit unions by serving as a liquidity lender to credit unions experiencing unusual or unexpected liquidity shortfalls.⁴ The CARES Act made four important changes to the CLF, all of which sunset or expire on December 31, 2020.⁵ These include:

- Increasing the Central Liquidity Facility's maximum legal borrowing authority;
- Permitting temporary access for corporate credit unions⁶, as agent members, to borrow for their own needs;
- Providing greater flexibility and affordability to agent members to join and serve smaller groups of credit unions than their entire memberships; and
- Providing more clarity and flexibility about the purposes for which the NCUA Board can approve loans by removing the phrase, “the Board shall not approve an application for credit the intent of which is to expand credit union portfolios.”

To implement the new legislation, NCUA also took action.⁷ In essence, these changes relate to the improved operation and accessibility of the CLF to credit unions, including allowing

³ A number of pieces of pending legislation address the current constraints of the member business lending cap and seek to provide more access to capital through credit unions for small businesses. For example, H.R.6550, *Access to Credit for Small Businesses Impacted by the COVID-19 Crisis Act*, provides a tailored 3-year exemption to the member business lending cap for loans made by credit unions to aid in COVID-19 crisis relief and recovery. H.R.6789/S.3676, *A bill to extend certain temporary credit union provisions enacted under the CARES Act, to include an exception for disaster area member business loans made by insured credit unions*, also exempts such loans for a time certain. The filings of multiple bills addressing the cap further underscores the need for some type of relief.

⁴ Member credit unions own the Central Liquidity Facility, which exists within the NCUA. The president of the Central Liquidity Facility manages the facility under the oversight of the NCUA Board.

⁵ The CARES Act made four amendments to Subchapter III of the Federal Credit Union Act.

⁶ A corporate credit union is owned by and acts as a credit union for credit unions providing access to liquidity and investments.

⁷ The NCUA Board approved an [interim final rule](#) of Part 725 of the NCUA's Rules and Regulations that provided additional enhancements to the Central Liquidity Facility, including:

- Eliminating the six-month waiting period for a new member to receive a loan;
- Eliminating the explicit waiting period for a credit union to terminate its membership; and
- Easing collateral requirements for certain assets securing loans.

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. At present, credit unions are being encouraged to join the CLF as soon as possible.⁸ In fact, in a collaborative effort reflective of the credit union mission, corporate credit unions⁹ have voluntarily agreed to cover all credit unions under \$250 million in assets regardless of membership during the period of the emergency to ensure that access to liquidity is prioritized.

The Association notes that these measures are set to sunset at the end of 2020 and Congress is urged to expand the CLF's borrowing authority to 25 times the paid in capital, to 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. Given the unprecedented nature and the depth of this pandemic and the subsequent economic crisis, Congress should take steps to ensure the long-term viability of the CLF so it can serve as a stabilizing force to help credit unions in the future as the economy slowly rebounds. By making the new, temporary changes to the CLF permanent, credit unions will be able to better prepare the credit union system and the NCUA for any additional emergencies and maintain the safety and soundness of the credit union system.

Prompt Corrective Action Flexibility

The Massachusetts credit union industry is, in the aggregate, well-capitalized at present with over a 10% net worth leverage ratio. However, based on past historic cycles, credit unions have witnessed how quickly market changes can impact this position and are concerned with prompt corrective action ("PCA") requirements contained in the Federal Credit Union Act (FCUA). These PCA requirements typically trigger and prescribe NCUA examiner intervention when certain PCA-defined net worth leverage ratio levels are reached.

In this pandemic-driven, unprecedented economic situation, as member loans are being deferred or going into forbearance, and other factors such as influxes of savings deposits or elevated charge-offs are occurring, each of these activities can affect PCA net worth leverage ratios. Furthermore, efforts to suspend debt collections, when added to the foregoing, may result in unintended consequences impacting capital. As a result, the Association urges Congress to consider the following legislative changes to help stabilize the intersection of these legislative and economic conditions on credit unions:

- temporarily reduce the level at which credit unions are considered well capitalized, from a net-worth ratio of seven percent to six percent, and adequately capitalized, from six percent to five percent during the pandemic; and

<https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/enhancements-central-liquidity-facility-membership-and-borrowing-authority>

⁸ Membership is voluntary and open to all credit unions that purchase a prescribed amount of stock. There are two types of membership: regular members and agent members. Credit unions may borrow from the Central Liquidity Facility if they are a regular member or are covered by an agent member, such as a corporate credit union.

⁹ Eastern Corporate Federal Credit Union, Burlington, Massachusetts, and others.

- temporarily grant the NCUA Board the authority to waive, for up to 180 days, the requirement of a net-worth restoration plan for credit unions that are less than adequately capitalized during the pandemic.

These tools, if adopted, will clearly reflect bipartisan Congressional intent to move the economy and the financial system to the other side of the crisis with as little disruption as possible.

The Association also notes that the recent administrative changes made by NCUA to prompt corrective action rules do not replace the need for congressional action, and are only effective on a temporary, tailored and targeted emergency basis as a response to the COVID-19 pandemic. This week, the NCUA Board adopted an interim final rule aimed at reducing credit unions administrative burden associated with a temporary increase in shares.¹⁰ Most importantly, the interim final rule serves to strengthen and underscore the ability of credit unions to accept new shares from their members during the pandemic.

Finally, the Association also notes that the changes sought are not new or isolated to credit unions. The banking regulators have also already addressed flexibility in this area.¹¹

Credit Union Business Liability Safe Harbor

The largest area of concern for local credit unions in relation to the reopening of the economy is “exposure liability,” or the potential for lawsuits alleging that credit unions are responsible for members, employees or others becoming infected with the coronavirus or that a defalcation in operations or services during the pandemic emergency period or thereafter is a cause of action. Without comprehensive federal legislation providing a safe harbor against claims related to coronavirus, credit unions will face an unfortunately uphill battle defending future challenges arising out of the pandemic.

Congress has already provided some narrow protections limiting liability for cases related to the coronavirus. Under the CARES Act, Congress provided limited liability protection to volunteer

¹⁰ a) Amends § 702.201 to temporarily enable the Board to issue an order applicable to all credit unions to waive the earnings retention requirement for those that are adequately capitalized. In response to the pandemic and resulting economic disruption, the Board has determined that it is appropriate to amend § 702.201 to provide express regulatory authority for the Board to issue a single order waiving the earnings retention requirement for all adequately capitalized credit unions.

b) Modifies § 702.206(c) with respect to the specific documentation required for net worth restoration plans for credit unions that become undercapitalized. This change waives the net worth restoration content requirements for credit unions that become undercapitalized (those between 4% and 5.99%) predominantly as a result of share growth. In these cases, the credit union may submit a significantly simpler plan to the Regional Director noting that the credit union fell to undercapitalized because of share growth (and that such share growth is a temporary condition due to the COVID-19 pandemic).

Both of these changes will sunset on December 31, 2020.

¹¹ The Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency temporarily relaxed the supplementary leverage ratio rule to help banks do more lending during the pandemic. This recent announcement follows a similar move made by the Federal Reserve regarding bank holding companies in April.

health care professionals providing health care services during the current public health emergency. This provision preempts state or local laws that provide such volunteers with lesser protection from liability. However, the language does not currently extend liability protection to non-volunteer health care professionals, affording no wide-spread federal protection to those employed or contracted professionals treating patients during the emergency. Not only did the CARES Act not extend liability for front line workers, it also did not take the additional step of providing a safe harbor for employers facing tort claims arising out of the COVID-19 pandemic.

Credit unions have been fastidiously checking the websites of the CDC, OSHA, the IRS, and the EEOC for guidance on ensuring a safe, legally compliant workplaces so the economy can return to some semblance of normalcy while addressing the difficult health issues of possible contagion. The Association strongly believes that credit unions, as essential service providers, who bear all the risk in heeding the guidance in order "to get back to business" should be granted some heightened degree of protection when they can demonstrate good faith compliance with the very guidance intended to achieve a safe workplace.

Payroll Tax Credit Parity

The recent House-passed *Health and Economic Recovery Omnibus Emergency Solutions Act* ("HEROES Act") helps to close an important legislative gap for credit unions as employers. It makes enhancements to the Employee Retention Payroll Tax Credit, found 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. These provisions are extended and enhanced in the HEROES Act and the Association encourages inclusion in the next stimulus effort so that federal credit unions are treated equitably with other employers and have parity with their relevant counterparts.

Regulation D Transaction Limit Removal Permanence

The Federal Reserve Board released an interim final rule, effective on April 24, 2020, to amend Regulation D (Reserve Requirements of Depository Institutions) to delete the six-per-month limit on convenient transfers from the "savings deposit" definition.

The interim final rule allows depository institutions immediately to suspend enforcement of the six transfer limit and to allow their customers to make an unlimited number of convenient transfers and withdrawals from their savings deposits at a time when financial events associated with the coronavirus pandemic have made such access more urgent.

It remains unclear, however, whether the deletion of the six-transaction limit is intended to be temporary or permanent. While the Federal Reserve Board has released a number of Frequently Asked Questions, and one specifically addressing this issue, there is still a lack of clarity. The response to the question on permanence stated that the underlying reason enabling the changes in Regulation D is the Federal Open Market Committee's choice of monetary policy framework of an ample reserve regime. In such a regime, reserve requirements are not needed. As a result, the distinction made by the transfer limit between reservable and non-reservable accounts is also not

necessary. While the response indicates that the Board does not have plans to reimpose transfer limits, it maintains the ability for the Board to make adjustments to the definition of savings accounts if conditions warrant.

Credit unions have long sought changes to the transaction limit for the convenience of members. While the pandemic has shone a light on the need for such a change, credit unions request your support in ensuring that this change remains permanent.

Community Development Financial Institution Funding

The charge of community development financial institutions (“CDFIs”) is to supply low-income, distressed communities with traditional banking services, such as savings accounts and personal loans, and to offer individuals the tools needed to become self-empowered stakeholders in their own future. The Association is pleased to report that the following Massachusetts credit unions, who collectively possess approximately \$3.2 billion in assets and serve over 200,000 members have successfully obtained this designation and are actively incorporating such goals into their mission:

Athol Credit Union, Athol
Greylock Federal Credit Union, Pittsfield
Workers Credit Union, Fitchburg

CDFI credit unions will be particularly instrumental in helping to rebuild the most vulnerable of our communities. Your support for a \$1 billion appropriation for the CDFI Fund, as contained within the House-passed HEROES Act, is sought by credit unions, the need for which has accelerated very quickly in light of flexible services offered by credit unions to members to meet their needs throughout the pandemic.¹² Support for such funding will help in particular small financial institutions that serve the individuals and small businesses that experience has shown are the first to feel the negative impacts of a missed paycheck or a cancelled order or contract. These businesses and individuals have been shown to be first to need access to emergency credit and other assistance available from their credit unions.

Conclusion

There is no doubt that we are living through an unprecedented time and as such, the Association urges Congress to look at every option to provide Americans, small businesses, and credit unions the opportunity to survive and thrive.

On behalf of Massachusetts credit unions, we look forward to working with you on these issues. If you or your staff have any questions, or require additional information, please contact me at rmclean@ccua.org.

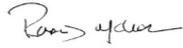
¹² The Association recognizes previous support from Congressmen Richie Neal, Jim McGovern, Stephen Lynch, and Congresswomen Lori Trahan and Ayanna Pressley in advocating for increased CDFI appropriation funding, most recently with success in 2019 budget discussions.

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Sincerely,

A handwritten signature in black ink, appearing to read "Ronald McLean".

Ronald McLean

President/CEO

Cooperative Credit Union Association, Inc.

RM/mabc/kb