July 16, 2020

The Honorable Michael Crapo
Chairman, Committee on Banking, Housing, and Urban Affairs
United State Senate
Washington, D.C. 20510

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

The Honorable Maxine Waters
Chairwoman, Committee on Financial Services
United States House of Representatives
Washington, D.C. 20515

The Honorable Patrick McHenry
Ranking Member, Committee on Financial Services
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Crapo, Ranking Member Brown, Chairwoman Waters, and Ranking Member McHenry:

On behalf of National Taxpayers Union (NTU), the nation's oldest taxpayer advocacy organization, I write to express our views regarding the statutory cap on business loans made by credit unions -- an issue that reportedly may come under consideration in your committees. As an organization that strongly advocates for the removal of government-imposed barriers that inhibit lending and access to capital, NTU can understand the support among some Committee Members for a permanent increase in the Member Business Loan (MBL) cap. Indeed, as many of you know, NTU has in the past voiced such support as well. Nonetheless, over the past several years persistent, increasingly urgent issues surrounding transparency, oversight, and unfair competition in the credit union industry have arisen. Before Congress can contemplate any increase in the MBL cap, immediate reforms must be undertaken. Until these steps are taken, NTU stands opposed to an expansion of the lending cap.

In 1998 then-President Bill Clinton signed bipartisan legislation that capped the amount of business loans credit unions may make to members to 12.25 percent of the credit unions' assets. Today, less than one percent of credit unions are on the verge of breaching the lending limit. In order to thoughtfully legislate in this area, your committees should insist on having available systematic information not only on credit unions' practices and experiences in the COVID-19 environment, but also on the experiences and challenges of other entities in this part of the financial sector.

In addition, there are pressing policy priorities that NTU has repeatedly urged Congress to tackle about the operations of many institutions in the credit union industry. In fact, in February we identified numerous examples of abuses and concluded that the operations of certain tax-exempt credit unions have begun to resemble those of financial institutions that must compete under heavier regulatory and tax burdens.

We believe that Congress has a responsibility to demand enhanced transparency from the credit union industry, examine potential abuses that run counter to an institution's tax-exempt purpose, and strengthen

membership rules. To that end, as you consider providing the credit union sector with enhanced lending powers as an avenue to address the economic crisis stemming from COVID-19, NTU recommends the following reforms:

- **IRS Form 990 filing requirement**. Excluding federal credit unions from filing Form 990 to the IRS is highly unusual for a tax-exempt organization. To better promote transparency, Congress or the IRS should lift this exemption and so that credit unions uniformly file the Form 990 (state-chartered credit unions already do so). This will ensure greater accountability by allowing both the IRS and the public to examine and scrutinize an organization's balance sheets, expenses, and executive compensation. We wish to make clear at this point that the Form 990 filing process is hardly ideal for any economic sector, and that going forward you and your colleagues should, with tax-writing committees, work to lighten the administrability and compliance burdens for all filers.

- **Unrelated Business Income Tax**. In addition to being exempt from federal and state income tax, federal credit unions are not subject to the Unrelated Business Income Tax (UBIT). This provision of the tax code was designed to ensure tax-exempt organizations are focusing on their primary missions; state-chartered credit unions are subject to UBIT but federal credit unions are not. UBIT provisions do not function optimally. However, this is all the more reason to revise and make less onerous the rules of the road for all nonprofit entities, including credit unions, rather than upholding carve-outs that lead to further complexity as well as economic distortions without apparent offsetting benefit. One starting point for the credit union space, in particular, is to examine whether business lending should be considered part of a credit union's exempt purpose. Credit unions were created with a "specified mission of meeting the credit and savings needs of consumers, especially persons of modest means, through an emphasis on consumer rather than business loans,"[1] leaving open the question whether all commercial lending should be considered "unrelated" for purposes of UBIT. Here again, your committees, working with tax writers in the House and Senate, can play a constructive role that benefits all actors in the private sector equitably while striving to maintain revenue neutrality.

- **Tax parity with other financial institutions**. The marketplace for acquisitions is steeply tilted in favor of credit unions. Credit unions purchase banks with dollars they have accumulated on a tax-free basis, allowing them to outbid tax-paying banks. This in part accounts for the recent spike in such transactions. In recent years credit unions have leveraged their tax exemption to purchase non-financial assets, including an advertising agency that serves many corporate clients. At the same time, regulatory barriers created by the National Credit Union Administration make it nearly impossible for a bank to purchase a credit union. If Congress were to adjust the MBL cap for credit unions, it would be prudent to level the playing field so that all entities face the same regulatory requirements and pay roughly the same (and in our opinion moderate) level of tax on non-credit-union asset acquisitions and MBLs, thereby reducing economic distortions created by the credit union tax exemption.

- **Address Field of Membership Concerns**. With the enactment of the Federal Credit Union Act of 1934, Congress established membership rules for credit unions eligible to be considered a tax exempt institution. Credit unions are intended to serve individuals who share a "common bond," like working for

[1] S. Rep. 105-193 § 203.

the same employer, attending the same religious institution, or living in the same community. However, many large credit unions have strayed from their limited mission and extended their services to nearly anyone. Congress should work to reestablish and clarify sensible common-bond requirements that are a condition of credit unions' unique status.

The legislative conversation over striking a reasonable balance between increasing credit union lending capacity and accountability, transparency and fairness should not begin and end with simply boosting the MBL cap. A more thorough discussion that leads off with reform will better serve taxpayers, the credit union industry, and other community financial institutions across America that constitute the financial backbone of this nation. We look forward to working with you as you consider options to help businesses recover from this unprecedented health and economic crisis.

Sincerely,

Thomas Aiello
Policy and Government Affairs Manager

CC: The Honorable Chuck Grassley, Chairman of the Senate Finance Committee
The Honorable Ron Wyden, Ranking Member of the Senate Finance Committee
The Honorable Richard Neal, Chairman of the House Ways and Means Committee
The Honorable Kevin Brady, Ranking Member of the House Ways and Means Committee