

**Attachment 1**

**ECONOMIC GROWTH AND REGULATORY  
PAPERWORK REDUCTION ACT**

**NATIONAL CREDIT UNION ADMINISTRATION BOARD**

**REPORT TO CONGRESS**

**March 9, 2017**

Introductory statement by Acting National Credit Union  
Administration Acting Chairman J. Mark McWatters

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**Introductory Statement by National Credit Union Administration Acting Chairman  
J. Mark McWatters**

The EGRPRA review process designed by Congress provides a useful framework for the NCUA Board to assess the impact of its rules on the operations of federally insured credit unions and their communities, a process that as acting chairman of the agency I have welcomed. While the NCUA is first and foremost a prudential regulator for credit unions and the manager of the National Credit Union Share Insurance Fund (NCUSIF), the Board recognizes the significant regulatory burdens credit unions face. If we can minimize those burdens without jeopardizing safety and soundness or ignoring congressional directives, it is reasonable for us to do so.

For public policy reasons, the NCUA Board has chosen participate in the regulatory review process provided by EGRPRA, although our regulatory review includes other agency initiatives to assess credit union compliance costs and benefits. The EGRPRA review process enhances the agency's comprehensive annual review of one-third of its regulations. It also facilitates the NCUA's overall regulatory approach, which is to implement statutory requirements through regulations, guidance, policies, and practices that accomplish the goals of Congress in an efficient and effective manner, imposing the minimum burden necessary to promote the safety and soundness of credit unions and their members' deposits. As set out more fully in this report, the EGRPRA review process has led to several important improvements and modifications to the NCUA's regulations.

The NCUA Board is committed to providing effective, targeted regulation and appropriate supervision while containing requirements that impede innovation at our nation's credit unions. The NCUA Board continues to look for ways to strengthen its capabilities to identify emerging concerns in a timely way even as we review our rules to help limit credit union compliance burdens. More and more rules not only curtail credit unions and their members, but also impose growing costs and resource allocation dilemmas on the NCUA.

Consistent with the goals of EGRPRA, the NCUA Board looks forward to continuing our efforts to fulfill congressional mandates while affording well managed credit unions important flexibility and discretion, consistent with safety and soundness, in order to help them meet the changing financial needs of their members now and into the future.

Without limitation, we intend to substantially revise the risk-based net worth rule; permit credit unions to issue supplemental capital for risk-based net worth purposes; revise and finalize the proposed field of membership and securitization rules; and modernize the central liquidity facility, stress-testing, and corporate credit union, rules, among others; all in strict compliance with the Federal Credit Union Act and other applicable law. We will also work with Congress to update the FCUA to facilitate credit union operations and growth so as to ensure the safety and soundness of the NCUSIF.



J. Mark McWatters  
Acting Chairman

## **I. Executive Summary**

Congress enacted EGRPRA as part of an effort to minimize unnecessary government regulation of financial institutions consistent with safety and soundness, consumer protection, and other public policy goals.<sup>1</sup> Under EGRPRA, the appropriate federal banking agencies (Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation; herein agencies<sup>2</sup>) and the Federal Financial Institutions Examination Council must review their regulations to identify outdated, unnecessary, or unduly burdensome requirements imposed on insured depository institutions. The agencies are required, jointly or individually, to categorize regulations by type, such as “consumer regulations” or “safety-and-soundness” regulations. Once the categories have been established, the agencies must provide notice and ask for public comment on one or more of these regulatory categories.

NCUA is sympathetic to the need for regulatory compliance burden reduction on behalf of the credit unions we regulate. At the same time, the agency is cognizant and respectful of its responsibility as a safety-and-soundness regulator. The financial crisis of 2008 and the Great Recession that ensued thereafter underscored the need for effective, prudential regulation within the U.S. financial sector. As is documented throughout this report, the agency is guided by the need to strike a balance between these competing considerations. The agency has worked diligently within the EGRPRA process to identify needed regulatory changes and then take quick action, where possible, to adopt those reforms. We also have identified several statutory issues that Congress may want to consider acting on to provide credit unions with more regulatory relief going forward.

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<sup>1</sup> EGRPRA, Pub. L. No. 104-208, Div. A, Title II, § 2222, 110 Stat. 3009 (1996); codified at 12 USC 3311.

<sup>2</sup> The Office of Thrift Supervision was still in existence at the time EGRPRA was enacted and was included in the listing of agencies. Since that time, the OTS has been eliminated and its responsibilities have passed to the agencies and the Consumer Financial Protection Bureau.

NCUA looks forward to continuing its approach as a responsive regulator, continually re-examining and re-considering its rules and regulations to assure that compliance burden remains within reasonable limits, with significant flexibility and discretion afforded well managed credit unions consistent with safe and sound operations.

Since 1987, NCUA has followed a well-delineated and deliberate process to continually review its regulations and seek comment from stakeholders, such as credit unions and their representatives. Through this agency-initiated process, NCUA conducts a rolling review of one-third of its regulations each year—we review all of our regulations at least once every three years.

This long-standing regulatory review policy helps to ensure NCUA’s regulations:

- accomplish what Congress intended;
- minimize compliance burdens on credit unions, their members, and the public;
- are appropriate for the size and risk profile of the credit unions regulated by NCUA;
- are issued only after public participation in the rulemaking process, consistent with the Administrative Procedure Act; and
- are clear and understandable.

This rolling review is intended to be transparent for stakeholders. NCUA publishes on our website a list of the applicable regulations under review each year and invites public comment on any or all of the regulations.

## II. Overview of NCUA Participation

NCUA is not required to participate in the EGRPRA review process, because NCUA is not defined as an “appropriate Federal banking agency” under EGRPRA.<sup>3</sup> Nonetheless, the current board embraces the objectives of EGRPRA and in keeping with the spirit of the law, the Board has participated in the review process. (The NCUA also participated in the first EGRPRA review, which ended in 2006).

The categories used by NCUA to identify and address issues are:

- Agency Programs;
- Applications and Reporting;
- Capital;
- Consumer Protection;
- Corporate Credit Unions;
- Directors, Officers, and Employees;
- Money Laundering;
- Powers and Activities;
- Rules of Procedure; and
- Safety and Soundness.

These categories are comparable, but not identical, to the categories developed jointly by the banking agencies covered by EGRPRA but they reflect some of the fundamental differences between credit unions and banks. For example, ‘corporate credit unions’ is a category unique to NCUA’s chart. For the same reason, NCUA decided to publish its notices separately from the joint notices used by the banking agencies, although all of the notices were each published at around the same time. NCUA included in its EGRPRA review all rules over which NCUA has drafting authority, except for certain rules that pertain exclusively to internal operational or organizational matters at the agency, such as NCUA’s Freedom of Information Act rule.

Copies of the four notices the NCUA published in the *Federal Register* in connection with the EGRPRA process are attached as an appendix to this report.<sup>4</sup>

NCUA did not elect to participate in the outreach sessions sponsored by the agencies, because the sessions were targeted directly to banks, and understandably, much of the discussion

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<sup>3</sup> See 12 USC 1813(q).

<sup>4</sup> Dates of publication were as follows: June 4, 2014, (79 Fed. Reg. 32,191); December 19, 2014, (79 Fed. Reg. 75,763); June 24, 2015, (80 Fed. Reg. 36,252); and December 23, 2015, (80 Fed. Reg. 79,953).

focused on issues of principal applicability to banks. NCUA routinely conducts town-hall meetings, listening sessions, and other outreach activities, during which views from stakeholders are solicited and discussed. In addition to providing information on agency proposals, rules, personnel contact information and board members' travel schedules, since 1987 NCUA has invited public comment on one-third of its existing rules each year.<sup>5</sup> The result is a review of the agency's rules completed within rolling three-year cycles. Comments received during this rolling one-third review are blended in with and considered as applicable along with comments submitted in response to the EGRPRA notices.

NCUA is also mindful that credit unions are subject to certain rules issued or administered by other regulatory agencies, such as the Consumer Financial Protection Bureau (CFPB) and the Department of the Treasury's Financial Crimes Enforcement Network. Because we have no independent authority and limited ability to change such rules, our notices—as do the joint notices prepared by the other agencies—advise that comments submitted to us but focused on a rule administered by another agency will be forwarded to that other agency for appropriate consideration.

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<sup>5</sup> Interpretive Ruling and Policy Statement (IRPS) 87-2, 52 Fed. Reg. 35,231 (September 8, 1987), as amended by IRPS 03-2, 68 Fed. Reg. 32,127 (May 29, 2003).

### **III. Summary of Comments Received Under the NCUA EGRPRA Review**

#### **1. APPLICATIONS AND REPORTING**

##### **Field of Membership and Chartering**

Two commenters addressed this topic;<sup>6</sup> each of whom suggested that NCUA expand its definition of “rural district” and provide greater flexibility to federal credit unions seeking to add a rural district to their field of membership. Two commenters also requested that NCUA eliminate or modify quality assurance reviews for associational common bond, including extending the “once a member always a member” principle in to this area. One commenter proposed that NCUA simplify procedures for conversion from one type of charter to another and allow federal credit unions converting to community charter to continue serving their pre-existing field of membership, including new members. One commenter proposed that NCUA should allow a credit union converting to a federal charter to accept new members from associational groups that had been served prior to the conversion. One commenter requested that NCUA simplify the process for adding underserved areas, and another commenter proposed that NCUA should add to the list of associations for which automatic approval is available. This commenter also proposed that NCUA eliminate the threshold determination concerning membership eligibility for certain associational groups. As discussed more thoroughly later in this report, the Board did propose and adopt several significant changes in this area in 2016.

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<sup>6</sup> Applications and reporting—79 Fed. Reg. 32,191 (June 4, 2014); Field of membership and chartering—12 CFR 701.1; IRPS 03-1.

## **Fees Paid by Federal Credit Unions**

One commenter addressed this topic and suggested that NCUA provide clearer disclosure to credit unions as to how fees paid to the agency are managed.<sup>7</sup> The commenter requested that NCUA provide non-aggregated components of the expenditures from the several funds NCUA manages, such as how monies from the National Credit Union Share Insurance Fund are allocated to the NCUA budget.

## **Applications for Insurance**

One commenter addressed this matter,<sup>8</sup> focusing on provisions governing interest rate risk pursuant to 12 CFR 741.3. Specifically, the commenter asked that the rules in this particular area be clarified and simplified.

## **Financial, Statistical, and Other Reports**

One commenter wrote on these provisions.<sup>9</sup> The commenter suggested that NCUA conduct a comprehensive review and evaluation of the current Call Report protocol, with a view toward making the 5300 Call Report more in line with the Federal Financial Institutions Examination Council model. The agency is considering ways to streamline the call report.

## **Purchase of Assets and Assumption of Liabilities**

One commenter addressed this provision and recommended that NCUA ease restrictions on the purchase of assets and assumption of liabilities by federally insured, state-chartered credit

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<sup>7</sup> Fees paid by federal credit unions, 12 CFR 701.6.

<sup>8</sup> Applications for insurance, 12 CFR 741.0, 741.3, and 741.4.

<sup>9</sup> Financial, statistical, and other reports, 12 CFR 741.6.



unions from federally insured, non-credit union depository institutions.<sup>10</sup> Specifically, the commenter proposed that NCUA change its rule to simply require notice to, rather than approval by, NCUA's regional offices for purchase and assumption transactions undertaken by federally insured, state-chartered credit unions. As an alternative suggestion, the commenter advocated including in the rule a 30-day deadline for action by the regional office on requests for approval.

### **Conversion of Insured Credit Union to Mutual Savings Bank**

Two commenters addressed this provision.<sup>11</sup> Both commenters urged NCUA to clarify and streamline the process under which conversions are approved. One commenter also proposed that NCUA should support legislative changes to enable a state-chartering authority, rather than NCUA, to review and approve requests by federally insured, state-chartered credit unions to convert to another form of federally insured depository institution.

### **Mergers of Federally Insured Credit Unions; Voluntary Termination or Conversion of Insured Status**

Three stakeholders commented on this process.<sup>12</sup> One commenter criticized NCUA by noting that the agency has been too selective in designating which credit unions may be merger partners for distressed credit unions. Another requested that NCUA provide more comprehensive and up-to-date guidance on how to execute and complete a merger, focusing on operational concerns; in doing so, the commenter suggested, NCUA should solicit and obtain input from stakeholders. Another suggested that NCUA should clarify which aspects of the merger and conversion rules apply to federally insured, state-chartered credit unions.

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<sup>10</sup> Purchase of assets and assumption of liabilities, 12 CFR 741.8.

<sup>11</sup> Conversion of insured credit union to mutual savings bank, 12 CFR part 708a.

<sup>12</sup> Mergers of federally insured credit unions, 12 CFR part 708b.

## **2. POWERS AND ACTIVITIES**

### **a. LENDING, LEASING AND BORROWING**

#### **Loans to Members and Lines of Credit to Members**

Two commenters addressed this rule.<sup>13</sup> One proposed that NCUA liberalize its policy about rental of real estate-owned properties and mandatory marketing efforts. The other commenter suggested that NCUA remove a requirement that state laws governing prohibited fees and non-preferential loans be “substantially equivalent” before federally insured, state-chartered credit unions are exempted from NCUA’s rule. The commenter proposed that NCUA should replace this with the standard of minimizing risk.

#### **Loan Participations**

One commenter addressed this section. The commenter suggested that NCUA should exempt federally insured, state-chartered credit unions from 12 CFR 701.22 where state law provides for adequate safety-and-soundness controls. Alternatively, the commenter proposed, NCUA should streamline the rule by focusing on safety-and-soundness considerations and removing intricately detailed regulatory requirements.

#### **Share, Share Draft, and Share Certificate Accounts**

One commenter addressed this rule and proposed that NCUA should allow for pass-through insurance coverage on shares comprising lawyers’ trust accounts, involving client funds held in trust by attorneys (subsequent to this comment, Congress amended the Federal Credit Union Act to specifically allow for this).<sup>14</sup> The commenter also proposed that NCUA should

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<sup>13</sup> 79 Fed. Reg. 32,191, (June 4, 2014) and 12 CFR 701.21.

<sup>14</sup> Share, share draft, and share certificate accounts, 12 CFR 701.35.

provide pass-through coverage for prepaid debit card accounts established to accept government benefits through a pooled automatic clearinghouse arrangement.

### **Member Business Loans**

Four commenters addressed this provision.<sup>15</sup> It should be noted that NCUA conducted a comprehensive review of this rule in 2015, with final changes adopted in February 2016, subsequent to the receipt of these comments. Many of the issues identified by the commenters were considered and addressed during this revision process.

One commenter proposed that NCUA should:

- eliminate all regulatory requirements for member business loans not specifically required by statute;
- re-interpret the agency's posture on the exception for credit unions with a history of primarily making member business loans; and
- liberalize guidance in Letter to Credit Unions 13-CU-02 concerning waiver options.<sup>16</sup>

Another commenter proposed that NCUA should:

- broaden agency interpretation of federal credit unions with a history of primarily making member business loans;
- simplify and make more flexible the procedures for obtaining individual and blanket waivers; and
- support statutory changes that would liberalize the current member business loan restrictions.

A third commenter proposed that NCUA should:

- support legislative change to raise the 12.25 percent of assets limit on aggregate member business loans;
- raise the small loan exception from the member business loan definition to \$100,000;
- distinguish between underwriting considerations and the statutory limit in the member business loan definition;

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<sup>15</sup> 12 CFR part 723.

<sup>16</sup> The entire waiver system has been eliminated from the revised rule.

- eliminate the waiver requirement from the rule and simply supervise to established safety-and-soundness standards;
- distinguish in the rule between seeking forbearance about an existing loan and waiver for a prospective loan; and
- eliminate the two-year experience requirement in 12 CFR 723.5(a).

A fourth commenter suggested that NCUA should:

- enlarge to 20 percent of net worth the amount of construction and development loans that may be held;
- extend the exemption for construction loans for which the borrower has contracted to purchase the property to include financing land for residential builders where infrastructure is already in place;
- expand the categories of parties not required to provide a personal guarantee of repayment, and allow in some cases for a guarantee to be limited to ownership interest in the corporate borrower;
- increase to \$500,000 the aggregate limit on loans to members or groups of associated members, and exclude the limit altogether in cases in which a loan has been transferred to “special assets,” with an established reserve;
- eliminate or clarify the references in the definition of construction and development loans to “major renovations,” which is potentially subject to different interpretation; and
- streamline and automate the waiver process, using standardized documents.

### **Maximum Borrowing**

One commenter addressed this provision, and suggested that NCUA change the requirement that federally insured, state-chartered credit unions must request approval for a waiver from the regional office so that only notice, not approval, is required.<sup>17</sup> As an alternative, the commenter proposed that NCUA develop and impose a 30-day deadline for action by the regional office on requests for approval.

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<sup>17</sup> Maximum borrowing provision, 12 CFR 741.2.

## **Leasing**

One commenter commented on this section.<sup>18</sup> The commenter suggested that NCUA allow credit unions to determine for themselves whether to obtain a full assignment. The commenter also proposed that NCUA add more flexibility to the rule in terms of residual value limits.

### **b. INVESTMENT AND DEPOSITS**

#### **Designation of Low-Income Status**

##### **Receipt of Secondary Capital Accounts by Low-Income Designated Credit Unions**

One commenter addressed this issue and proposed that NCUA eliminate the compliance burden on federally insured, state-chartered credit unions regarding limits on secondary capital accounts by leaving this issue to state law.<sup>19</sup>

##### **Payment on Shares by Public Units**

One commenter addressed this provision and recommended that NCUA eliminate compliance burden on federally insured, state-chartered credit unions by allowing limitations on the receipt of public unit deposits to be determined exclusively by applicable state law.<sup>20</sup>

#### **Fixed Assets**

One commenter addressed this provision.<sup>21</sup> The commenter proposed that NCUA raise the regulatory exemption in the current rule from \$1 million to \$50 million, and also add a *de minimis* exception for occupancy and raw land ownership.

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<sup>18</sup> 12 CFR part 714.

<sup>19</sup> 12 CFR 701.34.

<sup>20</sup> 12 CFR 701.32.

<sup>21</sup> 12 CFR 701.36.

## **Investment and Deposit Activity**

One commenter addressed this provision and suggested that NCUA allow federal credit unions to purchase mortgage servicing rights as an investment.<sup>22</sup>

## **Credit Union Service Organization**

Three stakeholders commented on this provision.<sup>23</sup> One questioned whether NCUA had legitimate authority to regulate credit union service organizations, CUSOs directly. This commenter proposed that NCUA should remove the extra regulatory requirements affecting CUSOs engaged in complex or high-risk activities. The commenter further suggested that NCUA scale back the application of the rule to federally insured, state-chartered credit unions. Another commenter proposed the elimination of the regulatory requirement that CUSOs submit financial reports directly to NCUA. This commenter also requested that NCUA change the rule to increase the amount a federal credit union may invest in a CUSO and expand the scope of permissible CUSO activities. A third commenter cautioned that NCUA should use existing registration systems to capture CUSO data, rather than developing a new system, which the commenter indicated has the potential of being very burdensome.

### **c. MISCELLANEOUS ACTIVITIES**

#### **Federal Credit Union Bylaws**

Two commenters addressed this topic;<sup>24</sup> both urged that NCUA update and streamline the bylaws to assure maximum flexibility and ease of use; one of the commenters identified specific changes to articles IV, V, and VII of the federal credit union bylaws.

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<sup>22</sup> 12 CFR part 703.

<sup>23</sup> 12 CFR part 712.

<sup>24</sup> 12 CFR 701.2; appendix A to part 701.

### **3. AGENCY PROGRAMS**

#### **Community Development Revolving Loan Program**

One commenter requested a change in the language of this section,<sup>25</sup> to the extent that it calls for the state regulatory authority to “concur” in a state-chartered credit union’s application for membership in this program. Instead, the commenter suggested that the language in the rule be changed so as not to imply that the state regulator was validating the application, but rather simply recognizing it.

#### **Central Liquidity Facility**

Three commenters characterized as burdensome the requirement of purchasing stock in the Central Liquidity Facility as a prerequisite to membership and borrowing.<sup>26</sup> Two commenters also recommended that the Central Liquidity Facility be authorized to make short-term loans, and all three commenters encouraged NCUA to identify and support necessary legislative changes regarding the CLF to Congress.

#### **Low-Income Designation**

Four commenters addressed the low-income designation program.<sup>27</sup> Three advocated liberalizing the program, urging exercise of the authority to the fullest extent possible, along with expanding the universe of credit unions that are eligible for the designation. Suggestions included improving transparency, redefining the concept of “low income” to include other flexible standards relating to total median earnings, extending the statistical approach to include

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<sup>25</sup> 12 CFR parts 705 and 725; and 12 CFR 701.34 79 (Fed. Reg. 75,763 (December 19, 2014)).

<sup>26</sup> 12 CFR part 725.

<sup>27</sup> 12 CFR 701.34.

military personnel and other low-salaried people, permitting credit unions to self-designate their status as low income, expanding the benefits available to qualifying credit unions, and permitting a credit union that has achieved the designation to continue with it without having to requalify at a subsequent date. Two commenters advocated making the designation permanent. Two commenters advocated permitting credit unions to achieve the designation without having to resort to a statistical analysis, for example by permitting reference to historical performance, a certified mission statement, or based on offering products tailored specifically to meet the needs of low-income people.

One commenter suggested changing the rules applicable to federally insured, state-chartered credit unions so that NCUA, not the state regulatory authority, makes the initial designation, with the state then concurring. The same commenter noted that currently the federally insured, state-chartered credit union designation is covered by guidance, not a rule, and suggested that this disparity be addressed so that both state and federal charters get similar treatment under the rule. The commenter noted that coverage of federally insured, state-chartered credit unions in general is not clear under the current rule, which refers only to federal credit unions. This commenter also sought clarification under the rule for the mechanics of how credit unions that no longer meet the designation criteria are to be handled. The commenter suggested that compliance should be determined over four consecutive quarters; if a credit union during that time falls out of compliance, it should be given five years to come back into compliance before being treated as a non-designated institution. The commenter recommended that 12 CFR 701.34(a)(5) be eliminated from the rule, insofar as the time period identified therein has elapsed.



With regard to secondary capital for low-income designated credit unions, one commenter suggested that the issue should be governed by state law for federally insured, state-chartered credit unions; another commenter requested greater flexibility with respect to secondary capital, including permitting natural persons to make investments in the form of secondary capital, and to allow a committee of the board of directors to approve the redemption of secondary capital.

#### **4. CAPITAL REQUIREMENTS**

Focusing on 12 CFR part 702, prompt corrective action, several commenters noted that, in view of the agency's determination to re-issue its risk-based capital rule, they would stand by their separate comments submitted in response to that initiative. One commenter did note, however, that the recent final rule governing capital planning and annual stress testing for credit unions with assets over \$10 billion was "inappropriate, costly, and unnecessary."<sup>28</sup> This commenter argued that the rule was burdensome and did little to enhance the security of the National Credit Union Share Insurance Fund. Two others complained that NCUA had not demonstrated why a risk-based capital rule is necessary. Another commenter advocated a change in the law so as to allow contributed capital to count toward net worth. This commenter also argued that, in terms of risk-based net worth, \$100 million presents a threshold that is too low to support the "complex credit union" designation; rather, the proper threshold should be \$500 million. In addition, according to this commenter, consideration should be given to factors other than just asset size.

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<sup>28</sup> Capital—12 CFR part 702 and 12 CFR 741.3 (79 Fed. Reg. 75,763 (December 19, 2014)).

One commenter sought clarification in 12 CFR 702.206 that, with respect to federally insured, state-chartered credit unions, NCUA would share its reasoning with the state regulator concerning the adequacy of a net worth restoration plan and allow the regulator to provide its feedback, not just tell the regulator of its decision. This commenter expressed similar views with respect to NCUA's evaluation of a federally insured, state-chartered credit union's business plan. Finally, this commenter noted that it would be submitting several comments directly in response to NCUA's issuance in January 2015 of proposed amendments on the subject of capital planning and stress testing. Previewing those comments, this commenter suggested that the rule be changed to include a definition of capital policy, clarify the standards under which a credit union-administered stress test will be evaluated, include criteria under which NCUA will allow self-testing, and clarify how the agency expects institutions to conduct the stress tests on their own once that is permissible under the rule.

## **5. CONSUMER PROTECTION**

### **Truth in Savings**

One commenter stated that the current disclosure form in use for this rule is outdated, costly and burdensome, and does not work with currently available technologies.<sup>29</sup> The commenter noted that, given that many people now do their shopping online, credit unions need to be able to provide required disclosures in electronic format. The commenter observed that development and use of required disclosures may require the involvement of and coordination with the CFPB and the Federal Reserve Board. The commenter also recommended that credit

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<sup>29</sup> Consumer Protection—12 CFR parts 707, 717 (subpart J), 740, 745, and 760; 12 CFR 701.3, 701.31, 717.82, 717.83, 741.5, 741.9, and 741.10. (79 Fed. Reg. 75,763 (December 19, 2014)).

unions be allowed to offer their members the opportunity to elect to receive disclosures electronically within 10 days of account opening or the assessment of fees. The commenter also advocated disclosures to be provided in electronic format as well as paper disclosures. Two commenters advocated that the rule be revised to permit the use of abbreviated statements when using electronic media. Two commenters advocated elimination of the requirement in 12 CFR 707.5 mandating the advance issuance of certain disclosures. One commenter noted that citations in current staff interpretation to 12 CFR 707.2 are incorrect. One commenter advocated that the language in 12 CFR part 707 make clear that references to dividends include interest.

### **Advertising**

One commenter noted the ambiguity in the rule, for example with respect to minimum font size and style, as it relates to advertisements accessed through the Internet. This commenter included several examples of signage and logos that it uses or proposes to use. The commenter seeks clarification in the rule as to how it would apply in the texting arena, which presents challenges in terms of available space, among other things. The commenter noted a similar concern with respect to the application of the rule to its computerized telephone teller system. One commenter noted that applying 12 CFR part 740 to social media is “unclear, complicated, and burdensome.” Three commenters expressed similar, generalized concerns that application of 12 CFR part 740 to the various electronic and social media that are available needs streamlining, updating, and clarification, and one sought elimination altogether of the font size requirement for print media. In a similar vein, one commenter asked for liberalization of the required use of the advertising notice so that it need not be used except in cases in which the radio or television ad is at least 30 seconds in duration. This commenter also sought implementation of a mechanism by which translations into a foreign language could be standardized and approved in advance and

thus readily available. This commenter also noted that implementation of the Federal Financial Institutions Examination Council's approved social media policy is quite difficult and possibly in conflict with part 740. Another commenter noted a difficulty in discerning whether NCUA or CFPB rules take precedence in this area, for example with respect to regulation Z and its interaction with part 740, and encouraged NCUA to work closely with the CFPB to coordinate and communicate each agency's respective authority. The commenter urged NCUA to persuade the CFPB to provide safe harbor to credit unions following NCUA rules.

### **National Credit Union Share Insurance Coverage for IOLTAs**

Three commenters urged NCUA to work with the national trade associations to implement a recent statutory change by which lawyers' trust accounts may now qualify for pass-through insurance coverage,<sup>30</sup> including the expansion to other types of escrow accounts such as ones used by realtors and funeral directors, as well as to stored value cards and prepaid cards.

### **Flood Insurance**

One commenter requested greater clarification in this rule concerning the delineation of responsibility between the lender and the insurer.<sup>31</sup> Noting some areas of flexibility in the rule, the commenter asked that it be amended to provide more flexibility with respect to the delivery and timing of required notices. This commenter noted with approval the various areas in the rule in which sample notices are provided, and asked that NCUA expand this universe to include others, such as an "acknowledgement of receipt" form. One commenter asked that NCUA review and simplify the escrow requirements in the rule, and also encouraged NCUA to assure that the provisions and requirements in this rule are compatible with Regulation Z.

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<sup>30</sup> Share insurance, 12 CFR part 745.

<sup>31</sup> Flood insurance, 12 CFR part 760.

## **Uninsured Membership Shares**

One commenter characterized the required reporting of this item in the form 5300 Call Report as needlessly tedious and time consuming, and advocated that NCUA simplify the rule to require that reporting be done on an annual, not quarterly, basis.<sup>32</sup> One commenter advocated that NCUA specifically allow federally insured, state-chartered credit unions to accept uninsured share deposits if approved by the pertinent state regulatory authority.

## **Fair Credit Reporting – Identity Theft Red Flags**

One commenter suggested that NCUA amend its rule to reflect more thoroughly that most of the provisions in 12 CFR part 717 have been transferred to the CFPB.

## **6. CORPORATE CREDIT UNIONS**

Acknowledging the importance of the corporate credit union system, and that rule changes were necessary in 2010 in response to the financial crisis,<sup>33</sup> two commenters urged NCUA to find ways to modernize and liberalize the requirements imposed by that rule change. For example, one commenter recommended an increase in the secured borrowing limit from 180 days to two years to enable corporates to offer true liquidity lending. In a similar vein, two commenters suggested that the rule be changed to allow for an outright suspension of the limit during periods of economic stress. One commenter also advocated that NCUA be more transparent in its description of how assets acquired from the failed corporates will be disposed of, and in its description of its strategy and timeline for satisfying the agency's obligations to the Temporary Corporate Credit Union Stabilization Fund.

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<sup>32</sup> Uninsured membership shares, 12 CFR 741.9

<sup>33</sup> Corporate credit unions, 12 CFR part 704, 80 Fed. Reg. 36,252 (June 24, 2015).

Other suggestions involving the corporate rule included moving the voting-record requirement currently contained in 12 CFR 704.13 to the bylaws, and reviewing and liberalizing the requirements in 12 CFR 704.15 regarding audit and reporting requirements, which were characterized by two commenters as overly strict and unnecessary for corporates. One commenter stated that NCUA's approach under 12 CFR part 704 has had the result of homogenization of the corporate industry. Regulatory control over corporates has been monopolized at the federal level, leaving no room for diversification of approaches and possible innovation to occur at the state level, even though six corporates are state-chartered, the commenter stated. According to this commenter, a change in approach, like what has occurred with natural person credit unions and the member business lending rule, would enhance safety and soundness.

## **7. DIRECTORS, OFFICERS AND EMPLOYEES**

### **General Authorities and Duties of Federal Credit Union Directors**

Commenters sought greater clarity and specificity concerning the agency's expectations in this area.<sup>34</sup> For example, one commenter noted that the requirement in the rule for directors to act without discrimination against any member is too uncertain in its meaning and its application. Another commenter suggested that all requirements in this area be collected and codified in an appendix to this section of the rule. The commenter also suggested that NCUA should update the *Examiner's Guide* to clearly articulate which "major policies" need board approval. Noting that federal credit union board members are generally volunteers, two commenters urged that NCUA be as clear as possible about supervisory expectations, including identifying policies that

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<sup>34</sup> 12 CFR parts 711, 713 and 750; 12 CFR 701.4, 701.19, 701.21(d), and 701.33. (80 Fed. Reg. 36,252 (June 24, 2015)).

require board approval. One commenter expressed concern that the requirements in the rule are already covered by applicable state law governing fiduciary duties of directors and so are redundant, and questioned whether “financial literacy” was sufficiently defined. The commenter also questioned why this was included as a duty, and also suggested that NCUA should require only one director to meet the financial literacy requirement.

### **Loans and Lines of Credit to Officials**

One commenter, after noting general support for the restrictions and safeguards in the rule governing loans to insiders, suggested that a change to 12 CFR 701.21(c)(8) was warranted. This section prohibits credit union officials, employees, and family members from receiving incentive payments or outside compensation from loans issued by credit unions. The rule contains an exception, and permits such compensation if based on the credit union’s “overall financial performance.” The commenter suggested that the section be amended to include loan growth as an acceptable measure of overall financial performance, and also to direct examiners to exhibit more flexibility when determining what constitutes “overall financial performance” within the meaning of the rule.

### **Reimbursement, Insurance and Indemnification of Officials and Employees**

One commenter has noted that NCUA has issued numerous opinions over the years interpreting permissible “compensation” for the one federal credit union board member who may be compensated for his or her work as a director. The commenter suggests these letters should be codified into an appendix to 12 CFR 701.33. One commenter stated that the provisions governing indemnification of federal credit union officials, 12 CFR 701.33, are confusing, onerous, and potentially in conflict with state law provisions governing the same topic. In

addition, the commenter noted a potential conflict that could exist for a federal credit union that elected not to adopt NCUA's 2007 version of the federal credit union bylaws. Three commenters noted, generally, that the rules governing indemnification are cumbersome and vague, and may well have the unintended consequence of discouraging capable individuals from serving on federal credit union boards.

### **Fidelity Bonds and Insurance Coverage**

One commenter specifically asked that NCUA codify separately those elements of 12 CFR 713 that apply to federally insured, state-chartered credit unions, instead of the current approach, in which a cross reference to part 713 is set out in 12 CFR 741.201.

### **Golden Parachutes; Indemnification**

Two commenters suggested that the provisions of 12 CFR part 750 are cumbersome, with standards that are too vague and that enable too much second guessing on the part of examiners. These commenters suggested that NCUA should liberalize the rule, revising it so that it meets agency objectives while still protecting worthy officers and directors.

## **8. ANTI-MONEY LAUNDERING**

While acknowledging the importance of the Bank Secrecy Act, four commenters urged greater cooperation and coordination between NCUA and the Financial Crime Enforcement Network, or FinCEN, to ensure sensible regulations and exams that are tailored to actual risks affecting credit unions.<sup>35</sup> Two commenters also suggested that NCUA should work closely with the FFIEC and the Office of Foreign Assets Control to minimize the regulatory burden on credit unions, reduce the incidence of required production of duplicate information, provide greater

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<sup>35</sup> Anti-money laundering – 12 CFR part 748 (80 Fed. Reg. 36,252 (June 24, 2015)).



flexibility for credit unions, and curtail the continuous due diligence requirements. These two commenters also sought to enlist NCUA's support for increases in the thresholds for filing currency transaction reports and reductions in the amount of required suspicious activity reporting, both of which are, according to these commenters, of limited usefulness to law enforcement.<sup>36</sup> Another commenter requested that NCUA provide a more clear and thorough explanation of examination policies in this area. The commenter also suggested that examiners be allowed more autonomy and flexibility in this area, instead of the current practice (according to this commenter) which requires immediate reporting through the NCUA chain of command.

Under 12 CFR 748.1(c)(4), a credit union must promptly notify its board of directors, or designated committee, of any suspicious activity report filed. NCUA has defined "promptly" in this context to mean at least monthly. One commenter suggested a liberalization of the rules to allow "promptly" to mean at the next board meeting, to allow a credit union to be in compliance even where its board typically meets every other month. Another commenter suggested NCUA clarify or amend its policy, as reflected in the federal credit union bylaws, to enable a federal credit union to expel a member who has engaged in illegal activity such as money laundering. This would simply require a policy statement to the effect that such a member may be deemed by the federal credit union to be "non-participating" within the meaning of the bylaws.

## **9. RULES OF PRACTICE AND PROCEDURE**

### **Examination Appeals**

Three commenters expressed concern about the process by which an appeal of an examination finding may be pursued.<sup>37</sup> All three commenters advocated a more formalized and

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<sup>36</sup> The gist of the comments has been forwarded to FinCEN.

<sup>37</sup> Rules of practice and procedure—12 CFR parts 709, 710, and 747 (80 Fed. Reg. 79,953 (December 23, 2015)).

established appeals procedure for the resolution of examination disputes. One commenter suggested NCUA issue an advance notice of proposed rulemaking to generate comments and ideas on how best to proceed in this area, noting that the current procedures are underutilized. The consensus of the three commenters addressing this area was that NCUA should develop and implement a process that is transparent, neutral, and effective in providing a forum for credit unions to dispute examination findings.

One commenter requested a clarification or amendment to 12 CFR 747.202, which presently provides that NCUA might seek a charter revocation in the event a federal credit union is found to have committed “any violation” of its bylaws or charter. The commenter noted that this language could benefit from the addition of a qualifier so that potential exposure to such an action would only be in the case of a “material violation,” as opposed to a technical one.

### **Liquidation Payout Priorities**

One commenter recommended NCUA take action now to amend its rules governing liquidation to establish the creditor payout priority that will become applicable if supplemental capital becomes an available option for all credit unions.<sup>38</sup> The commenter noted that, although federal law controls in determining whether supplemental capital counts toward regulatory capital, the issuance itself is a function of state law for federally insured, state-chartered credit unions.

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<sup>38</sup> 12 CFR part 709

## 10. SAFETY AND SOUNDNESS

### Lending

Three commenters addressed the NCUA Payday Alternative Loan rule.<sup>39</sup> Two recommended that NCUA refrain from using prescriptive requirements in the rule, such as aggregate limits, minimum balance and maturity requirements, and minimum length of time for members to qualify for the loans. One commenter urged NCUA to resist efforts by the CFPB to regulate credit union programs, for example by establishing a maximum number of times a loan may be rolled over.

One commenter sought clarification in the lending rule concerning how the term “overall financial performance,” which may be considered in compensating loan officers, squares with the prohibition on the payment of incentive pay. Another recommended NCUA modify the approach it currently takes in the lending rule concerning its evaluation of whether to permit federally insured, state-chartered credit unions to comply with state law for exceptions relating to prohibited fees and non-preferential loans. The commenter recommended that, in evaluating such state laws, NCUA focus on the substantive impact on safety and soundness and not on requiring the state law to be identical in order for NCUA to accept it. The commenter recommended NCUA resurrect the approach formerly taken in the member business loan rule in which NCUA focused on substantive safety-and-soundness considerations and did not require that a state rule be identical in order to be approved.<sup>40</sup> Another commenter advocated that NCUA adopt a principles-based approach to the provisions in 12 CFR 701.21(h), pertaining to

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<sup>39</sup> Safety and soundness – 12 CFR parts 703, 715, 722, 741, 748 (including appendixes), and 749; 12 CFR 701.21 (80 Fed. Reg. 79,953 (December 23, 2015)).

<sup>40</sup> The commenter noted its objection to the mechanism NCUA settled upon in the recently finalized member business loan rule, in which the agency has indicated its review of state laws purporting to govern business lending will focus on whether the state rule covers all aspects addressed in NCUA’s rule and is “no less restrictive” than NCUA’s rule.

acquiring interests in auto loans being serviced by third parties, as opposed to the prescriptive measures currently in the rule.

One commenter noted the need for clarification under 12 CFR 701.22 (which was not included in the categories covered by the fourth notice) as to the status of an automobile dealer who originates and transfers loans to a credit union. The commenter suggested that 12 CFR 701.22 clarify that a dealer acting in that capacity be characterized in the rule as an agent of the credit union. The commenter also recommended the rule be cross-referenced in 12 CFR part 741 as being applicable to federally insured, state-chartered credit unions.

### **Investments and Deposits**

One commenter suggested NCUA permit credit unions, if necessary on a pilot basis, to purchase mortgage servicing rights from other lenders, including other credit unions. The commenter argued that this would help smaller credit unions that originate mortgages but are not able to hold them in portfolio. The commenter also advocated an expanded use of the pilot program option, with a view toward greater innovation and better alignment with what is permissible under the Federal Credit Union Act. The commenter believes this will encourage development of safe, innovative investment products that will ultimately be beneficial to the members. One commenter noted that references in 12 CFR part 703 to the National Association of Securities Dealers, or NASD, should be changed to the Financial Industry Regulatory Authority, or FINRA.

## **Supervisory Committee Audits**

One commenter advocated amending the applicability threshold of the rule from \$10 million to \$100 million, to align with recent changes to the definition of “small credit union” in other rules. Another commenter identified a need for clarification as to which aspects of 12 CFR part 715 are made applicable to federally insured, state-chartered credit unions through 12 CFR part 741. The commenter noted that the rule (as well as elsewhere), would benefit from inclusion in part 741, rather than a cross reference as in the current rule.

## **CyberSecurity Programs and Related Issues**

Three commenters urged NCUA to encourage action by FinCEN to reduce burden by liberalizing its rules concerning reporting and related obligations under the Bank Secrecy Act, such as to increase the reporting threshold for wire transfers, currency transactions, and suspicious activity reports. Two commenters sought clarification under appendix B to 12 CFR part 748 as to what the obligation of a credit union is, if any, in the case of a breach affecting sensitive member information that occurs at a third party, such as a merchant, and not at the credit union itself. Three commenters requested that NCUA clarify and confirm that use by credit unions of the cyber assessment tool recently developed by the Federal Financial Institutions Examination Council is voluntary, not mandatory. Along this line, two commenters urged that NCUA not make the tool a benchmark in IT exams.

## **Recordkeeping**

Three commenters noted burdens associated with the requirement in 12 CFR part 749 that certain records be maintained indefinitely. These commenters assert the costs associated with this requirement significantly outweighs any benefit. For example, keeping member

statements indefinitely serves no real purpose, particularly after any applicable statute of limitations has expired. Instead, these commenters urge that NCUA revise the rule so that retention periods are consistent with applicable statutes of limitations or other guidelines, such as the five-year retention requirement described in appendix P of the FFIEC's 'Bank Secrecy Act Examination Manual.' One commenter noted that the retention obligation for member statements should conform to that which governs canceled checks (characterized by the commenter as being seven years). These commenters noted that there are real costs associated with compliance with the current rule, despite the ability to convert records to electronic format. One commenter also requested clarification in the rule as to what each listed record must include.

## **Examinations**

Three commenters expressed general concern about examiners and the exam process.<sup>41</sup> One noted that, on some occasions, examiners may become overly defensive and insistent that guidance is actually mandatory. Three commenters urged NCUA to place greater reliance on state examinations and reports of examination in connection with federally insured, state-chartered credit unions, such that federal examiners need not participate in every exam. Another suggestion was to have annual exams alternate between state and federal, with the state's one year and NCUA's the next. One commenter noted that, within the last five years, the addition of the CFPB as a regulatory authority has added a degree of urgency to reducing burdens in this area.

Two commenters also requested that NCUA conduct exams less frequently; one of these urged NCUA to move to an 18-month exam cycle, especially for smaller credit unions and those with a low risk profile. Such an approach, according to these commenters, would provide

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<sup>41</sup> 12 CFR 741.1

NCUA with greater flexibility in balancing staff and resources and would result in significant burden reduction for credit unions. One commenter urged that NCUA implement this move before the effective date of the risk-based capital rule. One commenter offered support for revisions to the call report for non-complex credit unions, as well as updates and improvements to the protocol for the Automated Integrated Regulatory Examination System, or AIREs, with one likely result being less time spent on-site by examiners.

### **Appraisals**

One commenter proposed that NCUA revise its rule in the appraisal area to conform to that which applies to banks by eliminating the requirement of an appraisal for business loans under \$1 million for which repayment is not dependent on sales of real estate parcels or income generated by the property.<sup>42</sup> The same commenter encouraged NCUA to include a waiver process in the rule for business loans that exceed this threshold. Another commenter noted that the federal bank regulatory agencies may be considering raising the threshold (currently \$250,000) at which loans must include an appraisal by a licensed or certified appraiser. The commenter recommended that NCUA follow suit if the bank regulators decide to raise the threshold.

### **Liquidity and Contingency Funding**

One commenter proposed that NCUA consider liberalizing its current rule by raising the threshold for applicability of the rule from \$50 million in assets to \$100 million.<sup>43</sup> Another commenter proposed periodic review and revision as appropriate to the asset size category in the

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<sup>42</sup> Appraisals, 12 CFR part 722.

<sup>43</sup> Liquidity and contingency funding, 12 CFR 741.12.

rule of between \$50 million and \$250 million. One commenter additionally questioned the need to add an “S” for market sensitivity to the CAMEL rating system, noting that credit unions differ significantly from banks and that NCUA may not need to add the separate market sensitivity indicator to its exam protocol. One commenter, noting that interpretation of the rule had become rigid and complicated, urged NCUA to provide more flexibility in the rule to enable credit union management to take a greater role in managing their own risk.

### **Regulations Codified Elsewhere**

One commenter urged NCUA to conduct a thorough review and revision of 12 CFR part 741, to minimize potential confusion for credit unions in determining which aspects of rules pertain to them. For example, 12 CFR part 741 includes a cross reference to 12 CFR part 715, pertaining to supervisory committee audits, but does not specify what sections of part 715 are applicable. Similar issues exist, according to this commenter, with NCUA rules on appraisals, bond requirements, and loan participations.

This commenter recommended a reorganization of part 741 so that all regulations or portions thereof that are applicable to federally insured, state-chartered credit unions are set out in one place, rather than simply cross-referenced. This commenter also suggests a clarification in 12 CFR 741.204 to provide that NCUA is allowed to act regarding a low-income designation for a federally insured, state-chartered credit union when state law does not provide express authority to the state regulator to act. Similarly, according to this commenter, 12 CFR 741.206 should make allowance for corporate credit unions to be chartered at the state level, and 12 CFR 741.208 should be amended to specify that state law should govern the conversion of a federally insured, state-chartered credit union to non-federal insurance. Finally, according to this



commenter, 12 CFR 741.214 should be amended to reflect that, in cases where the board of directors meets every other month, notice to the board of security incidents on that same basis will be considered sufficiently prompt for compliance purposes.

### **Total Comments Received, by Type**

In response to its four published notices soliciting comment on its 10 categories of rules, NCUA received a total of 25 comments. Of these, eight were generated by national trade associations, four by a national association representing state credit union regulators, six by regional trade associations, two by state trade associations, and five by credit unions.

Following the conclusion of the comment solicitation process, EGRPRA calls for the agencies to review and evaluate the comments and to eliminate unnecessary regulations to the extent that such action is appropriate. The process concludes with a report to Congress. As discussed more fully below, the NCUA Board has already taken steps to consider and reduce when possible and appropriate, credit unions' regulatory burdens.

#### **IV. Significant Issues; Agency Response**

The NCUA Board's efforts to identify credit union compliance burdens and adapt policies and regulations to address those burdens have never been a higher priority than they are now. To that end, the Board's EGRPRA review and its rolling three-year assessment of all NCUA regulations combine with other initiatives to help achieve - the Board's objectives for greater supervisory efficiencies while providing fair yet effective oversight that will mitigate compliance costs for well-run credit unions. At their core, the Board's regulatory relief actions today and into the future must rest on a strong and reinforced safety and soundness foundation.

The issues covered in these initiatives were often addressed by commenters in response to one or more of the *Federal Register* notices issued by the Board consistent with EGRPRA. The agency's principal regulatory relief, categorized by broad subject matter, are discussed in greater detail below.

##### **Field of Membership**

Credit unions are limited to providing service to individuals and entities that share a common bond, which defines their field of membership. The NCUA Board diligently implements the Federal Credit Union Act's directives regarding credit union membership. In October 2016, the NCUA Board modified and updated its field of membership rule addressing issues such as:

- the definition of a local community, rural district, and underserved area;
- multiple common-bond credit unions and members' proximity to them;
- single common-bond credit unions based on a trade, industry or profession; and
- the process for applying to charter or expand a federal credit union.

At the same time it approved the final rule, the Board issued a new proposed rule covering several additional issues pertaining to chartering and field of membership to seek further public comment. Included among the enhancements that are being considered for adoption by the agency is a procedure under which persons or entities wishing to register public comments regarding a proposed community based field of membership application may do so prior to definitive action by the agency.

Plans are also being implemented to upgrade the NCUA's technology platform to allow credit unions seeking a field of membership expansion to track the status of their applications online throughout the application and approval process. The NCUA Board intends that the updated system will be operational by April 2017.

### **Member Business Lending**

Congress has empowered the Board to implement the provisions in the Federal Credit Union Act that address member business loans.

A final rule adopted by the NCUA Board in February 2016 was challenged by the Independent Community Bankers of America, but was affirmed by the District Court for the Eastern District of Virginia in January 2017. The final rule, approved unanimously by the Board, is wholly consistent with the Act as the Court reinforced and contains regulatory provisions which:

- give credit union loan officers the ability, under certain circumstances, to no longer require a personal guarantee;
- replace explicit loan-to-value limits with the principle of appropriate collateral and eliminating the need for a waiver;
- lift limits on construction and development loans;

- exempt credit unions with assets under \$250 million and small commercial loan portfolios from certain requirements; and
- affirm that non-member loan participations, which are authorized under the Federal Credit Union Act, do not count against the statutory member business lending cap.

### **Federal Credit Union Ownership of Fixed Assets**

In April 2016, the NCUA Board issued a proposed rule that would eliminate the requirement that federal credit unions must have a plan by which they will achieve full occupancy of premises within some explicit timeframe. The proposal would allow for federal credit unions to plan for and manage their use of office space and related premises in accordance with their own strategic plans and risk-management policies. The proposal, which remains pending, would also clarify that, under the rule, “partial occupancy” means occupation of 50 percent of the relevant space.

### **Expansion of National Credit Union Share Insurance Coverage**

With the enactment by Congress of the Credit Union Share Insurance Fund Parity Act in December 2014, NCUA was expressly authorized to extend federal share insurance coverage on a pass-through basis to funds held on deposit at federally insured credit unions and maintained by attorneys in trust for their clients without regard to the membership status of the clients.<sup>44</sup> Many industry advocates, including some EGRPRA commenters, urged NCUA to consider ways to expand this type of pass-through treatment to other types of escrow and trust accounts maintained by other professionals on behalf of their clients. The NCUA Board issued a proposed rule in April 2015, inviting comment on ways in which the principles articulated in the Parity Act might be expanded into other areas and types of account relationships.

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<sup>44</sup> Pub. L. No. 113-252

Reviewing the numerous comments received in response to this invitation, the agency undertook extensive research and analysis and concluded that some expansion of this concept into other areas was warranted and legally permissible. Accordingly, in December 2015, the NCUA Board unanimously approved the issuance of a final rule by which expanded share insurance coverage on a pass-through basis would be provided under which a licensed professional or other fiduciary holds funds for the benefit of a client or principal as part of a transaction or business relationship. As noted in the preamble to the final rule, examples of such accounts include, but are not limited to, real estate escrow accounts and prepaid funeral accounts.

### **Improvements for Small Credit Unions**

The credit union system is characterized by a significant number of small, minority, and women owned credit unions. NCUA is acutely aware that the compliance burden on these institutions can become overwhelming, leading to significant expense of staff time and money, strain on earnings, and, ultimately, consolidation within the industry as smaller institutions are unable to maintain their separate existence.<sup>45</sup> While this is a difficult, multi-faceted problem, NCUA is committed to finding creative ways to ease that burden without unduly sacrificing the goal of safety and soundness throughout the credit union system.

The agency has approached this problem from several different angles. Among the adjustments and improvements implemented within the more recent past are the following

- Responding to requests from commenters and other representatives of credit unions, NCUA considered whether to raise the asset threshold for defining a small credit union under the Regulatory Flexibility Act. In February 2015, the NCUA Board unanimously approved a proposed rule that would raise the definitional threshold from \$50 million to

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<sup>45</sup> Along these lines, the agency is considering whether enhanced disclosure requirements in the merger context are appropriate, particularly in relation to payments made to merging credit union officials in connection with the change of control.

\$100 million. Doing so, the Board determined, would lay the groundwork for potential regulatory relief for three-fourths of all credit unions in future rulemakings. The Board adopted the rule in September 2015. At the time, the change made an additional 733 federally insured credit unions eligible for special consideration of regulatory relief in future rulemakings, and these institutions are eligible to receive assistance from NCUA's Office of Small Credit Union Initiatives, including training and consulting. With this latest adjustment, the asset ceiling for small credit unions is now 10 times higher than what it was in 2009.

- Responding to requests to facilitate access to and use of secondary capital by low-income credit unions (of which a significant percentage are also small), the agency has developed a more flexible policy. Investors can now call for early redemption of portions of secondary capital that low-income credit unions may no longer need. These changes also were designed to provide investors greater clarity and confidence.<sup>46</sup>
- The process by which credit unions may claim the low-income designation has also been streamlined and improved. Now, following an NCUA examination, credit unions that are eligible for the designation are informed by NCUA of their eligibility and provided with a straightforward opt-in procedure through which they may claim the low-income designation. During the five-year period ending December 31, 2015, the number of low-income credit unions increased from 1,110 to 2,297, reflecting an increase over that time frame of 107 percent, with more than a third of credit unions receiving the low-income designation. Together, low-income credit unions had 32.5 million members and more than \$324.7 billion in assets at year-end 2015, compared to 5.8 million members and more than \$40 billion in assets at the end of 2010.
- Explicit regulatory relief: Small credit unions have been expressly exempted from the NCUA's risk-based capital requirements. Small credit unions have also recently received

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<sup>46</sup> See <https://www.ncua.gov/News/Pages/NW20150406NSPMSecondaryCapital.aspx> for more information about the low-income credit union secondary capital announcement.

a reprieve from compliance with NCUA's rule pertaining to access to sources of emergency liquidity.

- Expedited exam process: NCUA has created an expedited exam process for well-managed credit unions with CAMEL ratings of 1, 2, or 3 and assets of up to \$50 million. These expedited exams, require less time by examiners on site, and focus on issues most likely to pose threats to the smallest credit unions.
- CDFI enhancements: NCUA signed an agreement in January 2016 with the Department of the Treasury's Community Development Financial Institutions Fund to double the number of credit unions certified as Community Development Financial Institutions within one year. NCUA is leveraging data it routinely collects from credit unions to provide a pre-analysis and to assist in the streamlining of the CDFI application process. In addition, NCUA recently adopted several technical amendments to its rule governing the Community Development Revolving Loan Fund. The amendments update the rule and make it more succinct, improving its transparency, organization, and ease of use by credit unions.

### **Expanded Powers for Credit Unions**

Enhanced powers for regulated institutions, consistent with statutory requirements, can have a significant beneficial effect that similar in some ways to the impact of reducing compliance burden. The NCUA has taken several recent steps to provide federal credit unions with broader powers. These enhancements, as discussed below, have positioned credit unions to take better advantage of the activities Congress has authorized to strengthen their balance sheets.

- In January 2014, the NCUA Board amended its rule governing permissible investments to allow federal credit unions to invest in certain types of safe and legal derivatives for hedging purposes. This authority enables federal credit unions to use simple "plain vanilla" derivative investments as a hedge against interest rate risk inherent in their balance sheet.

- In February 2013, the NCUA Board amended its investment rule to add Treasury Inflation Protected Securities to the list of permissible investments for federal credit unions. These securities provide credit unions with an additional investment portfolio risk-management tool that can be useful in an inflationary economic environment.
- At its open meeting in March 2016, the NCUA Board further amended its investments rule to eliminate language that unduly restricted federal credit unions from investing in bank notes with maturities in excess of five years. With the change, credit unions are now able to invest in such instruments regardless of the original maturity, so long as the remaining maturity at the time of purchase is less than five years. This amendment broadens the range of permissible investments and provides greater flexibility to credit unions consistent with the Federal Credit Union Act.
- In December 2013, the NCUA Board approved a rule change to clarify that federal credit unions are authorized to create and fund charitable donation accounts, styled as a hybrid charitable and investment vehicle, as an incidental power, subject to certain specified regulatory conditions to ensure safety and soundness.

### **Consumer Complaint Processing**

Responding to comments received by interested parties, NCUA conducted a thorough review of the way in which it deals with complaints members may have against their credit union. In June 2015, the agency announced a new process, as set out more fully in Letter to Credit Unions 15-CU-04. The new process refers consumer complaints that involve federal financial consumer protection laws or regulations for which NCUA is the primary regulator to the credit union, which will have 60 days to resolve the issue with its member before NCUA's Office of Consumer Financial Protection and Access considers whether to initiate a formal



investigation of the matter. Results of the new process have been excellent, with the majority of complaints resolved at the level closest to the consumer and with minimal NCUA footprint.

### **Interagency Task Force on Appraisals**

Twelve CFR part 722 of NCUA's rules establishes thresholds for certain types of lending and requires that loans above the thresholds must be supported by an appraisal performed by a state certified or licensed appraiser. The rule is consistent with an essentially uniform rule that was adopted by the banking agencies after the enactment of FIRREA. The rule covers both residential and commercial lending.<sup>47</sup>

In response to comments received through the EGRPRA process, NCUA joined with the banking agencies to establish an interagency task force to consider whether changes in the appraisal thresholds are warranted. Work by the task force is underway, including the development of a proposal to increase the threshold related to commercial real estate loans from \$250,000 to \$400,000. Any other recommendation developed by the task force will receive due consideration by NCUA.

## **V. Other Agency Initiatives**

The forgoing discussion reflects actions already taken by NCUA to address credit unions compliance and regulatory costs and to update and improve to its regulations. Several

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<sup>47</sup> In contrast to the agencies, NCUA's rule contains no distinction, with respect to the appraisal requirement, between commercial loans for which either sales of real estate parcels or rental income derived from the property is the primary basis for repayment of the loan, and loans for which income generated by the business itself is the primary repayment source. Under 12 CFR part 722, the dollar threshold for either type of commercial loan is \$250,000; loans above that amount must be supported by an appraisal performed by a state certified appraiser. By contrast, the banking agencies' rule creates a separate category for the latter type of commercial loan and establishes a threshold of \$1 million; loans in this category but below that threshold do not require an appraisal.

additional, related initiatives are under active consideration by the NCUA Board and are likely to be implemented within the relatively near term. Each of these proposed program or regulatory changes is discussed below.

### **Possible Temporary Corporate Credit Union Stabilization Fund Proposal for Early Termination**

Congress authorized the creation of the Temporary Corporate Credit Union Stabilization Fund in 2009.<sup>48</sup> The availability of this Fund allowed the agency to respond to the insolvency and failure of five large corporate credit unions without immediate depletion of the share insurance fund, which protects the deposits and savings of credit union members. This Fund also enabled the agency to fund massive liquidation expenses and guarantees on notes sold to investors backed by the distressed assets of the five failed corporate credit unions. Current projections are that the distressed assets underlying the notes will perform better than initially expected. In addition to improved asset performance, significant recoveries on legal claims have created a surplus that may eventually be returned to insured credit unions. NCUA intends to explore ways to speed up this process, principally by closing the Fund and transferring its remaining assets to the share insurance fund more quickly than initially anticipated. Doing so would bolster the equity ratio of the share insurance fund, leading eventually to a potential distribution of funds in excess of the insurance fund's established equity ratio to the credit union industry.

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<sup>48</sup> Pub. L. No. 111-22 (May 20, 2009), §204(f).

## **Call Report Enhancements**

NCUA intends to conduct a comprehensive review of the process by which it conducts its off-site monitoring of credit unions, namely through the Form 5300 Call Report and Profile. As the data reflected in these reports affect virtually all of NCUA's major systems, the agency's exploration of changes in the content of the Call Report and Profile will be on the front end of NCUA's recently announced Enterprise Solutions Modernization initiative, which will be a multi-year process taking place in stages. As started in the summer of 2016, this effort is comprehensive, ranging from the content of the Call Report and Profile to the systems that collect and use these data such as CU Online and the Automated Integrated Regulatory Examination System, or AIREs. Throughout the process, we will seek input from external stakeholders to ensure our overarching goals are met.

The imperative driving this modernization effort is, quite simply, that credit unions—like other depository institutions—are growing larger and more complex every day. At the same time, smaller credit unions face significant competitive challenges. In such an environment, it is incumbent on NCUA to ensure its reporting and data systems produce the information needed to properly monitor and supervise risk at federally insured credit unions while leveraging the latest technology to ease the burden of examinations and reporting on supervised institutions. For these reasons, three of the other FFIEC agencies — the FDIC, OCC, and Federal Reserve — are currently reviewing their Call Report forms with an eye to reducing reporting burden.

NCUA's goals in review its data collection are:

- enhancing the value of data collected in pre-exam planning and off-site monitoring,
- improving the experience of users,
- protecting the security of the data collected; and
- minimizing the reporting burden for credit unions.

NCUA will review all aspects of data collection for federally insured credit unions. This review will go beyond reviewing the content of the Call Report and Profile, to look at the systems credit unions use to submit data to NCUA—namely CU Online.

The agency has already conducted a broad canvassing of internal and external stakeholders to obtain their feedback on potential improvements in the Call Report and Profile. We have attempted to engage all these stakeholders through a variety of methods, including a request for information published in the *Federal Register* with a 60-day comment period.<sup>49</sup> The comment period was intended to provide all interested parties an opportunity to provide input very early in the process. We also developed a structured focus group process to aid in assessing ideas (to complement internal NCUA and state regulatory agency input), and we have created data-collection systems that can be used to activate the focus group.

### **Supplemental Capital**

NCUA plans to explore ways to permit credit unions that do not have a low-income designation to issue subordinated debt instruments to investors that would count as capital against the credit union's risk-based net worth requirements. At present, only credit unions having a low-income designation are allowed to issue secondary capital instruments that count against their mandatory leverage ratios. For credit unions that are not so designated by NCUA, only retained earnings may be used to meet the leverage requirements in the Federal Credit Union Act.<sup>50</sup> Consistent with its regulatory review objectives, NCUA issued an advance notice of proposed rulemaking to inform possible rulemaking that will describe certain constraints that,

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<sup>49</sup> 81 Fed. Reg. 36,600 (June 7, 2016).

<sup>50</sup> 12 USC 1790d(o)(2); see Legislative Recommendations, *infra*, for additional discussion about this requirement and NCUA's support for amending this provision.

if applied to subordinated debt instruments issued by the credit union, will enable the credit union to count those instruments as capital for purposes of the risk-based capital rule.

## **Risk Based Capital**

NCUA intends to revisit its recently finalized risk-based capital rule<sup>51</sup> in its entirety and to consider whether significant revision or repeal of the rule is warranted.

## **Examination Flexibility**

In response to the financial crisis and the Great Recession that ensued thereafter, NCUA determined in 2009 to shorten its examination cycle to 12 months.<sup>52</sup> The agency also hired dozens of new examiners at that time. Since then, the agency policy has been that every federal credit union, and every state-chartered, federally insured credit union with assets over \$250 million, should undergo an examination at least once per calendar year.

In an effort to implement regulatory relief and to address some inefficiencies associated with the current program, the agency has undertaken a comprehensive review of all issues associated with examiner time spent onsite at credit unions, including both frequency and duration of examinations. The relatively strong health of the credit union industry at present supports addressing exam efficiencies. A working group within the agency was established, and it solicited input from the various stakeholders with interests in this issue, including from within the agency, state regulatory authorities, and credit union representatives. The working group issued recommendations, which the Board incorporated into the agency's upcoming 2017–18 budget. These included the recommendation that the agency provide greater flexibility in

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<sup>51</sup> 12 CFR part 702, subpart A.

<sup>52</sup> Although the exam cycle immediately prior to 2009 had been in the 18-month range, for most of its history NCUA has followed an exam cycle of approximately one year.

scheduling exams of well-managed and well-capitalized credit unions, consistent with the practices of other federal financial regulators and the agency's responsibility to protect the safety and soundness of the share insurance fund. Other objectives for consideration include evaluating the feasibility of incorporating a virtual examination approach, as well as improvements to examiner training and a movement away from undue reliance on "best practices" that are unsupported by statute or regulation. In addition, the agency intends to revisit its recently enacted rule on stress testing for the largest credit unions to consider whether it is properly calibrated, and also to explore whether to move this important function in-house and out of the realm of expensive third-party contractors. The ultimate goal of NCUA's examination review and other initiatives has been and remains that safety and soundness will be assured with minimal disruptive impact on the well managed credit unions subject to examination.

### **Enterprise Solutions Modernization**

NCUA's Enterprise Solutions Modernization program is a multi-year effort to introduce emerging and secure technology that supports the agency's examination, data collection and reporting efforts in a cost effective and efficient way. The changes in our technology and other systems will improve the efficiency of the examination process and lessen, where possible, examination burdens on credit unions, including cost and other concerns identified during our EGRPRA review.

Over the course of the next few years, the program will deploy new systems and technology in the following areas:

- *Examination and Supervision*—Replace the existing legacy examination system and related supporting systems, like the Automated Integrated Regulatory Examination System or AIREs, with modernized tools allowing examiners and supervisors to be more efficient, consistent, and effective.
- *Data Collection and Sharing*—Define requirements for a common platform to securely collect and share financial and non-financial data including the Call Report, Credit Union Profile data, field of membership, charter, diversity and inclusion levels, loan and share data, and secure file transfer portal.
- *Enterprise Data Reporting*—Implement business intelligence tools and establish a data warehouse to enhance our analytics and provide more robust data reporting.

Additionally, NCUA envisions introducing new or improved processes and technology to improve its workflow management, resource and time management, data integration and analytics, document management, and customer relationship management. Consistent with this vision, NCUA intends to consider ways to more transparently streamline its budget and align its priorities with its budget expenditures.

### **Outreach and Coordination with Other Government Offices**

Credit unions are affected by regulations and guidance issued by entities other than NCUA, at both the state and the federal level. In some cases, an appreciation of the unique aspects of credit unions, including their cooperative structure and not-for-profit orientation, may be lacking.

NCUA can and should work with such entities to help assure that these unique aspects are not overlooked, both in the development and the application of rules and policies. At the state level in particular, NCUA intends to work more closely with state credit union regulators to enhance

and preserve the dual chartering system, which has served the industry well for many years. Efficiencies in the joint examination process can also be improved.

### **Additional Areas of Focus**

Several other areas present opportunities for NCUA to focus on improving and enhancing its body of regulations and its oversight of the industry it oversees. These include:

- *Appeals procedures.* At present, the procedures by which a credit union or other entity aggrieved by a determination by an examiner or other agency office may seek redress at the level of the NCUA Board are inconsistent and poorly understood. The agency intends to develop uniform rules to govern this area, both with respect to material supervisory determinations and other significant issues warranting the review by the Board.
- *Corporate rule (Part 704).* Reform and stringent control over the corporate credit union sector was necessary during the financial crisis that began in 2008. Nine years later, a reconsideration of the corporate rule and an evaluation of whether restrictions therein may be loosened is altogether appropriate.
- *Credit Union Advisory Council.* Development of such a Council would enable the agency to listen to and learn from industry representatives more directly, enhancing our efforts to identify and eliminate unnecessarily burdensome, expensive, or outdated regulations.



## **VI. Legislative Recommendations**

NCUA is very appreciative of the efforts in Congress during recent years to provide regulatory relief by passing such laws as the Credit Union Share Insurance Fund Parity Act and the American Savings Promotion Act in the 113<sup>th</sup> Congress. The agency also appreciates recent efforts to enact into law provisions modifying the annual consumer privacy notifications found in the Gramm-Leach-Bliley Act.

In terms of issues that are ripe for congressional review and consideration, NCUA's most recent testimony before the Senate Banking and House Financial Services committees included recommendations regarding regulatory flexibility, raising statutory limits on member business lending for federally insured credit unions, providing supplemental capital authority for leverage ratio purposes to credit unions without the low-income designation, and revisiting field-of-membership requirements for federal credit unions.. Each topic is discussed more fully below.

### **Regulatory Flexibility**

Today, there is considerable diversity in scale and business models among financial institutions. Many credit unions are very small and operate on extremely thin margins. They are challenged by unregulated or less-regulated competitors, as well as limited economies of scale. They often provide services to their members out of a commitment to offer a specific product or service, rather than a focus on any incremental financial gain.

The Federal Credit Union Act contains a number of provisions that limit NCUA's ability to revise regulations and provide relief to such credit unions. Examples include limitations on the eligibility for credit unions to obtain supplemental capital, field-of-membership restrictions, curbs on investments in asset-backed securities, and the 15-year loan maturity limit, among others. To that end, NCUA encourages Congress to consider, consistent with maintaining safety

and soundness, providing regulators like NCUA with flexibility to write rules to address the needs of smaller credit unions that pose little risk, rather than imposing rigid requirements on them. Such flexibility would allow the agency to effectively limit additional regulatory burdens, consistent with safety and soundness.

NCUA continues to modernize existing regulations with an eye toward balancing requirements appropriately with the relatively lower levels of risk smaller credit unions pose to the credit union system. By allowing NCUA discretion to scale and time the implementing of new requirements, we could mitigate the cost and administrative burdens of these smaller institutions while balancing consumer and prudential priorities.

We also would like to work with Congress so that all our rules going forward could be tailored to fit the risk presented and even the largest credit unions could achieve regulatory relief if their operations are well managed, consistent with legal requirements.

### **Member Business Lending**

NCUA reiterates the agency's long-standing support for legislation to adjust the member business lending cap, such as H.R. 1188, the Credit Union Small Business Jobs Creation Act, introduced by Congressmen Royce and Meeks, or the Senate companion bill, S. 2028, the Small Business Lending Enhancement Act, introduced by Senators Paul, Whitehouse, and Reed. As introduced in the 114<sup>th</sup> Congress, these bipartisan bills contain appropriate safeguards to ensure NCUA can protect safety and soundness as qualified credit unions gradually increase member business lending.

For federally insured credit unions, the Federal Credit Union Act currently limits member business loans to the lesser of 1.75 times the level of net worth required to be well-capitalized or

1.75 times actual net worth, unless the credit union qualifies for a statutory exemption.<sup>53</sup> For smaller credit unions with the membership demand and the desire to serve the business segments of their fields of membership, the restriction makes it very difficult or impossible to successfully build a sound member business lending program. As a result, many credit unions are unable to deliver business lending services cost effectively, which denies small businesses in their communities access to an affordable source of credit and working capital.

These credit unions miss an opportunity to support the small business community and to provide a service alternative to the small business borrower. Small businesses are an important contributor to the local economy as providers of employment, and as users and producers of goods and services. NCUA believes credit union members that are small business owners should have full access to financial resources in the community, including credit unions, but this is often inhibited by the statutory cap on member business loans.

NCUA additionally supports H.R. 1422, the Credit Union Residential Loan Parity Act, introduced by Congressman Royce and the Senate companion bill, S. 1440, which Senator Wyden introduced. As introduced in the 114<sup>th</sup> Congress, these bills address a statutory disparity in the treatment of certain residential loans made by credit unions and banks. When a bank makes a loan to purchase a 1- to 4-unit, non-owner-occupied residential dwelling, the loan is classified as a residential real estate loan. If a credit union were to make the same loan, it is classified as a member business loan; therefore, it is subject to the member business lending cap. To provide parity between credit unions and banks for this product, H.R. 1422 and S. 1440 would exclude such loans from the member business loan cap. The legislation also contains

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<sup>53</sup> 12 USC 1757a.

appropriate safeguards to ensure NCUA will apply strict underwriting and servicing standards for these loans.

### **Supplemental Capital**

A third area in which congressional action is warranted involves legislation that would allow more credit unions to access supplemental capital, such as H.R. 989, the Capital Access for Small Businesses and Jobs Act. Introduced by Congressmen King and Sherman in the House in the 114<sup>th</sup> Congress, this bipartisan bill would allow healthy and well-managed credit unions to issue supplemental capital that will count as net worth, to meet statutory requirements. This legislation would result in a new layer of capital, in addition to retained earnings, to absorb losses at credit unions.

The high-quality capital that underpins the credit union system is a bulwark of its strength and key to its resiliency during the recent financial crisis. However, most federal credit unions only have one way to raise capital—through retained earnings, which can grow only as quickly as earnings. Thus, fast-growing, financially strong, well-capitalized credit unions may be discouraged from allowing healthy growth out of concern it will dilute their net worth ratios and could trigger mandatory prompt corrective action-related supervisory actions.

A credit union's inability to raise capital outside of retained earnings limits its ability to grow its field of membership and to offer greater options to eligible consumers and small businesses. In light of these concerns, NCUA encourages Congress to authorize healthy and well-managed credit unions to issue supplemental capital that will count as net worth under conditions determined by the NCUA Board. Enactment of H.R. 989 would lead to a stronger capital base for credit unions and greater protection for taxpayers.

## **Field-of-Membership Requirements**

The Federal Credit Union Act currently permits only federal credit unions with multiple common-bond charters to add underserved areas to their fields of membership. We recommend Congress modify the Federal Credit Union Act to give NCUA the authority to streamline field-of-membership changes and permit all federal credit unions to grow their membership by adding underserved areas. H.R. 5541, the Financial Services for the Underserved Act, introduced in the House during the 114<sup>th</sup> Congress by Congressman Ryan of Ohio, would accomplish this objective

Allowing federal credit unions with a community or single common-bond charter the opportunity to add underserved areas would open up access for many more unbanked and underbanked households to credit union membership. This legislative change also could eventually enable more credit unions to participate in the programs offered through the congressionally established Community Development Financial Institutions Fund, thus increasing the availability of credit and savings options in distressed areas.

Congress also may want to consider other field-of-membership statutory reforms. For example, Congress could allow federal credit unions to serve underserved areas without also requiring those areas to be local communities. Additionally, Congress could simplify the “facilities” test for determining if an area is underserved.<sup>54</sup> Other possible legislative enhancements could include elimination of the provision presently contained in the Federal Credit Union Act that requires a multiple common bond credit union to be within “reasonable

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<sup>54</sup> The Federal Credit Union Act presently requires an area to be underserved by other depository institutions, based on data collected by NCUA or federal banking agencies. NCUA has implemented this provision by requiring a facilities test to determine the relative availability of insured depository institutions within a certain area. Congress could instead allow NCUA to use alternative methods to evaluate whether an area is underserved to show that although a financial institution may have a presence in a community, it is not qualitatively meeting the needs of an economically distressed population.

proximity” to the location of a group in order to provide services to members of that group.<sup>55</sup>

Another legislative enhancement that recognizes the way in which people share common bonds today would be to provide for explicit authority for a web-based virtual communities as a basis for a credit union charter. NCUA stands ready to work with Congress on these ideas, as well as other options to provide consumers more access to affordable financial services through credit unions.

## **VII. Conclusion**

Going forward, NCUA will continue its efforts to provide regulatory relief to credit unions through processes like the EGRPRA review and other methods available to it. As the financial services industry and credit union risk landscape evolves, it is important that NCUA smartly adapt. The agency must commensurately and continually improve its current processes to operate efficiently and effectively.

As the government-backed insurer for the credit union system and the regulator of federally chartered credit unions, the agency faces a number of challenges similar to the ones credit unions wrestle with, such as the need to:

- improve our operations and processes to become more responsive to credit union (member) requests, while keeping costs down;
- optimize our use of existing and new technology as a tool, enabling us to do our jobs better; and
- conduct, future credit union exams in ways that minimize any disruptive operational impacts on the credit unions we visit.

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<sup>55</sup> See 12 U.S.C. §1759(f)(1)

As discussed above, revising the data NCUA collects by the Call Report and Profile is only the first concrete step in a much broader and longer-term retooling of how NCUA approaches its role in the credit union system. NCUA has an opportunity now to lay the foundation for a transformation of how the agency conducts business going forward, especially in terms of the Enterprise Solutions Modernization initiative and the continuous quality improvement work group the agency will be using for the examination process.

Such efforts should lead to improvements in NCUA's effectiveness, efficiency gains for NCUA and credit unions, and a better experience for credit unions in interacting with NCUA. As NCUA works to implement reforms to the agency's processes and procedures, we will continue efforts to provide regulatory relief to credit unions, consistent with safety and soundness and the requirements of the Federal Credit Union Act.

Ultimately, our goal remains to be a responsive agency that strikes the correct balance between prudential safety-and-soundness oversight and right-sized regulations that address problems appropriately while enabling the credit unions we regulate to provide important financial choices to meet the growing and evolving financial needs of consumers, small businesses and communities as vibrant components of the U. S. financial sector.

## **VIII. Appendices**

1. Chart of Agency Regulations by Category
2. Federal Register Notices
3. Regulatory Relief Initiative – Summary Chart



<b>Category</b>	<b>Subject</b>	<b>Regulation Cite</b>
<b>1. Applications and Reporting</b>	Change in official or senior executive officer in credit unions that are newly chartered or in troubled condition	12 CFR 701.14
	Field of membership/chartering	12 CFR 701.1; IRPS 03-1, as amended
	Federal Credit Union Bylaws	12 CFR 701.2; Appendix A to Part 701
	Fees paid by federal credit unions	12 CFR 701.6
	Conversion of insured credit unions to mutual savings banks	12 CFR 708a
	Mergers of federally insured credit unions; voluntary termination or conversion of insured status	12 CFR 708b
	Applications for insurance	12 CFR 741.0; 741.3; 741.4
	Financial, statistical and other reports	12 CFR 741.6
	Conversion to a state-chartered credit union	12 CFR 741.7
	Purchase of assets and assumption of liabilities	12 CFR 741.8
<b>2. Powers and Activities</b>		
<b>a. Lending, Leasing and Borrowing</b>	Loans to members and lines of credit to members	12 CFR 701.21
	Participation loans	12 CFR 701.22
	Borrowed funds from natural persons	12 CFR 701.38
	Statutory lien	12 CFR 701.39
	Leasing	12 CFR 714
	Member business loans	12 CFR 723
	Maximum borrowing	12 CFR 741.2
<b>b. Investment and Deposits</b>	Investment and deposit activities	12 CFR 703
	Fixed assets	12 CFR 701.36
	Credit union service organizations (CUSOs)	12 CFR 712
	Payment on shares by public units and nonmembers	12 CFR 701.32
	Designation of low-income status; receipt of secondary capital accounts by low-income designated credit unions	12 CFR 701.34
	Share, share draft, and share certificate accounts	12 CFR 701.35
	Treasury tax and loan depositories; depositories and financial agents of the government	12 CFR 701.37

	Refund of interest	12 CFR 701.24
	Trustee or custodian, tax-advantaged plans	12 CFR 724
<b>c. Miscellaneous Activities</b>	Incidental powers	12 CFR 721
	Charitable contributions and donations, including charitable donation accounts	12 CFR 721.3(b)
	Credit union service contracts	12 CFR 701.26
	Purchase, sale, and pledge of eligible obligations	12 CFR 701.23
	Services for nonmembers within the field of membership	12 CFR 701.30
	Suretyship and guaranty	12 CFR 701.20
	Foreign branching	12 CFR 741.11
<b>3. Agency Programs</b>	Community Development Revolving Loan Program	12 CFR 705
	Central liquidity facility	12 CFR 725
	Designation of low-income status; receipt of secondary capital accounts by low-income designated credit unions	12 CFR 701.34
<b>4. Capital</b>	Prompt corrective action	12 CFR 702
	Adequacy of reserves	12 CFR 741.3(a)
<b>5. Consumer Protection</b>	Nondiscrimination requirement (Fair Housing)	12 CFR 701.31
	Truth in Savings (TIS)	12 CFR 707
	Appraisals for higher priced mortgage loans	12 CFR 722.3(f)
	Loans in areas having special flood hazards	12 CFR 760
	Fair Credit Reporting – identity theft red flags	12 CFR 717, Subpart J
	Fair Credit Reporting – disposal of consumer information	12 CFR 717.83
	Fair Credit Reporting – duties regarding address discrepancies	12 CFR 717.82
	Share insurance	12 CFR 745
	Advertising	12 CFR 740
	Disclosure of share insurance	12 CFR 741.10
	Notice of termination of excess insurance coverage	12 CFR 741.5
	Uninsured membership shares	12 CFR 741.9
	Member inspection of credit union books, records, and minutes	12 CFR 701.3
<b>6. Corporate Credit Unions</b>	Corporate credit unions	12 CFR 704
<b>7. Directors, Officers, and Employees</b>	Loans and lines of credit to officials	12 CFR 701.21(d)
	Reimbursement, insurance, and indemnification of officials and employees	12 CFR 701.33
	Retirement benefits for employees	12 CFR 701.19
	Management officials interlock	12 CFR 711

	Fidelity bond and insurance coverage	12 CFR 713
	General authorities and duties of federal credit union directors	12 CFR 701.4
	Golden parachutes and indemnification payments	12 CFR 750
<b>8. Money Laundering</b>	Report of crimes or suspected crimes	12 CFR 748.1
	Bank Secrecy Act	12 CFR 748.2
<b>9. Rules of Procedure</b>	Liquidation (involuntary and voluntary)	12 CFR 709 and 710
	Uniform rules of practice and procedure	12 CFR 747, subpart A
	Local rules of practice and procedure	12 CFR 747, subparts B through J
	Inflation adjustment of civil money penalties	12 CFR 747, subpart K
	Issuance, review and enforcement of orders imposing prompt corrective action	12 CFR 747, subparts L and M
<b>10. Safety and Soundness</b>	Lending	12 CFR 701.21
	Investments	12 CFR 703
	Supervisory committee audit	12 CFR 715
	Security programs	12 CFR 748.0
	Guidelines for safeguarding member information and responding to unauthorized access to member information	12 CFR 748, Appendices A and B
	Records preservation program and record retention appendix	12 CFR 749
	Appraisals	12 CFR 722
	Examination	12 CFR 741.1
	Liquidity and contingency funding plans	12 CFR 741.12
	Regulations codified elsewhere in NCUA's regulations as applying to federal credit unions that also apply to federally insured state-chartered credit unions	12 CFR 741, subpart B

[attach all four Federal Register notices here]

## REGULATORY RELIEF INITIATIVE RESULTS 2011–2016

IMPROVED RULES	BENEFITS
<b>Expanded Regulatory Relief Eligibility for Small and Non-Complex Credit Unions</b>	<ul style="list-style-type: none"> <li>▪ Expanded NCUA’s regulatory exemptions for credit unions with assets of less than \$100 million (<i>up from \$10 million in 2012</i>)</li> <li>▪ Eased compliance requirements for small credit unions to access emergency liquidity</li> <li>▪ More than doubled the number of small credit unions eligible for regulatory relief in future NCUA rulemakings (<i>4,500 out of 6,000 credit unions</i>)</li> <li>▪ Exempted non-complex credit unions (<i>75 percent of all credit unions</i>) from risk-based capital requirements</li> </ul>
<b>Eliminated Fixed Assets Cap</b>	<ul style="list-style-type: none"> <li>▪ Eliminated federal credit unions’ 5 percent cap on fixed assets</li> <li>▪ Removed the need to apply for regulatory waivers</li> <li>▪ Empowering federal credit unions to make their own business decisions on purchases of land, buildings, office equipment and technology</li> </ul>
<b>Pre-Approved Associational Common Bonds</b>	<ul style="list-style-type: none"> <li>▪ Pre-approved 12 categories of associations that federal credit unions may automatically add to their fields of membership</li> </ul>
<b>Expanding Fields of Membership</b>	<ul style="list-style-type: none"> <li>▪ Proposed a modernized field of membership rule to:                             <ul style="list-style-type: none"> <li>• Designate each Congressional District as a well-defined local community</li> <li>• Serve Combined Statistical Areas with populations up to 2.5 million</li> <li>• Raise potential membership to 1 million for federal credit unions in rural areas</li> <li>• Extend membership eligibility to honorary discharged veterans, contractors and businesses in industrial parks</li> <li>• Recognize full-service websites and electronic applications as service facilities for select employee groups</li> <li>• Modernize the definition of “underserved area”</li> </ul> </li> </ul>
<b>Modernized Member Business Lending</b>	<ul style="list-style-type: none"> <li>▪ Finalized a principles-based rule on member business lending to:                             <ul style="list-style-type: none"> <li>• Remove non-statutory limits on member business loans</li> <li>• Empower each credit union to write their own business loan policy and set their own limits under the law</li> <li>• Eliminate the requirement for all business owners to pledge personal guarantees</li> <li>• Remove unnecessary barriers on business loan participations, which help credit unions diversify risks</li> </ul> </li> </ul>
<b>Eased Troubled Debt Restructuring</b>	<ul style="list-style-type: none"> <li>▪ Facilitated credit union loan modifications</li> <li>▪ Ended manual reporting of modified loans</li> <li>▪ Prevented unnecessary foreclosures</li> </ul>

	<ul style="list-style-type: none"> <li>Kept more credit union members in their homes throughout the housing crisis</li> </ul>
<b>Authorized “Plain Vanilla” Derivatives</b>	<ul style="list-style-type: none"> <li>Permits qualified federal credit unions to use “plain vanilla” derivatives to reduce interest rate risks</li> <li>Protects the credit union system from interest rate risks at large credit unions by providing an additional interest rate risk mitigation tool</li> <li>Allows approved federal credit unions to maintain appropriate levels of mortgage loans in portfolios</li> </ul>
<b>Approved Treasury Inflation-Protected Securities</b>	<ul style="list-style-type: none"> <li>Offers federal credit unions an additional investment backed by the full faith and credit of the United States with zero credit risk</li> </ul>
<b>Established Charitable Donation Accounts</b>	<ul style="list-style-type: none"> <li>Empowers federal credit unions to safely pool investments designed to primarily benefit national, state, or local charities</li> </ul>
<b>Eliminating Full Occupancy Requirement</b>	<ul style="list-style-type: none"> <li>Proposed eliminating a requirement that federal credit unions must plan for and eventually reach full occupancy of acquired premises</li> </ul>
<b>STREAMLINED PROCESSES</b>	<b>BENEFITS</b>
<b>“Opt-In” Low-Income Credit Union Designation</b>	<ul style="list-style-type: none"> <li>Implemented an “opt-in” notification process whereby eligible credit unions can simply reply “Yes” to receive their low-income designation</li> <li>Doubled the number of low-income designations in three years, reaching 2,300 credit unions serving 30 million members</li> </ul>
<b>Enhanced Attractiveness of Secondary Capital</b>	<ul style="list-style-type: none"> <li>Provided policy flexibility for Low-Income Credit Unions to redeem secondary capital when investors request</li> </ul>
<b>Expedited Examinations for Smallest Credit Unions</b>	<ul style="list-style-type: none"> <li>Created an expedited exam process for well-managed credit unions with CAMEL ratings of 1, 2 or 3 and assets up to \$50 million</li> <li>Focused expedited exams on issues most likely to pose risks to the smallest credit unions</li> </ul>
<b>Referring Member Complaints</b>	<ul style="list-style-type: none"> <li>Referring member complaints directly to federal credit unions</li> <li>Providing supervisory committees with 60 days to resolve each complaint before NCUA intervenes</li> </ul>
<b>Approving Fields of Membership</b>	<ul style="list-style-type: none"> <li>Provided a 5-page template for community charter applications rather than requiring hundreds of pages of community documentation</li> <li>Upgraded NCUA’s technology platform to allow credit unions applying to expand their fields of membership to track the status of their applications on-line throughout the approval process</li> </ul>

<p><b>Certifying Credit Unions as Community Development Financial Institutions</b></p>	<ul style="list-style-type: none"> <li>▪ Signed agreement with US Treasury to double the number of credit unions certified as Community Development Financial Institutions by January 2017</li> <li>▪ Automating existing NCUA data to pre-qualify low-income credit unions as certified CDFIs eligible for multi-million-dollar grants from Treasury’s CDFI Fund</li> </ul>
<p><b>Cutting Reporting Burdens</b></p>	<ul style="list-style-type: none"> <li>▪ Beginning with the September 30, 2016 Call Report, credit unions will only be required to submit aggregate loan and investment information about credit union service organizations</li> </ul>
<p><b>CLARIFIED LEGAL OPINIONS</b></p>	<p><b>BENEFITS</b></p>
<p><b>Authorized Network Credit Union Model</b></p>	<ul style="list-style-type: none"> <li>▪ Creates a cooperative structure where small credit unions can merge without losing their identity or member services flexibility</li> </ul>
<p><b>Extended Loan Maturities</b></p>	<ul style="list-style-type: none"> <li>▪ Permits loan maturities up to 40 years after loan modifications</li> <li>▪ Significantly reduces monthly payments for borrowers in need</li> </ul>
<p><b>Permitted Indirect Loan Participations</b></p>	<ul style="list-style-type: none"> <li>▪ Allows credit unions to sell portions of indirect loans to raise liquidity</li> <li>▪ Provides buyers another option to diversify loan portfolios</li> </ul>
<p><b>Expanded Vehicle Fleets</b></p>	<ul style="list-style-type: none"> <li>▪ Expanded “fleets” from two to five vehicles for member business loans</li> <li>▪ Increases access to credit for small businesses and startups</li> </ul>
<p><b>Modernized Service Facilities</b></p>	<ul style="list-style-type: none"> <li>▪ Includes full-service video tellers in the definition of federal credit union “service facilities”</li> <li>▪ Empowers federal credit unions to expand services in underserved areas</li> </ul>
<p><b>Changing Charters in Mergers</b></p>	<ul style="list-style-type: none"> <li>▪ Permits credit unions to change charters to facilitate voluntary mergers</li> <li>▪ Enhances credit union services for members of merging credit unions</li> </ul>