



100 YEARS STRONG

November 20, 2018

Mr. Gerald Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428.

New York Credit Union Association Comments on NCUA Regulatory Reform Agenda

Dear Mr. Poliquin,

As President/CEO of the New York Credit Union Association, which has advocated on behalf of state and federally chartered credit unions for more than 100 years, I would like to take this opportunity to comment in support of NCUA's Regulatory Reform Agenda. I would also like to suggest additional areas where mandate relief would be beneficial.

Given the scope and volume of NCUA's proposals, the Association is limiting our comments to the Tier 1 Proposals. The Association is in favor of many of the proposed amendment, but we will use this letter to highlight those areas where reform would be most beneficial.

Elimination of Readily Marketable Collateral Standard

One additional amendment NCUA should make as part of its Tier 1 proposals would address an issue that has directly impacted the New York credit union industry. Traditionally, NCUA regulations imposed a concentration limit prohibiting federally insured credit unions for making aggregate business loans to any one member or group of members in excess of 15% of a credit unions net worth, but permitted credit unions to go as high as 25% with the approval of NCUA. As part of its revisions to the member business loan regulations, NCUA eliminated the requirement for credit unions to obtain a waiver of the 15% concentration limit. Instead, credit unions are now authorized to make loans with concentrations as high as 25%. Unfortunately, NCUA mandated that amounts above the 15% threshold must be backed by "readily marketable collateral." No such requirement had previously been imposed on credit unions exceeding the 15% cap.

Readily marketable collateral is a legal term of art that has not previously been imposed on credit unions. In determining whether to classify collateral as "readily marketable" the Office of the Comptroller of the Currency has focused on an instrument's (1) Fungibility, (2) trading ease, (3) ability to obtain reliable price quotations on a daily basis, and (4) trading of the instruments through a regulated market. [See ELIGIBILITY OF CANADIAN GOVERNMENT BONDS AS READILY MARKETABLE COLLATERAL FOR THE PURPOSE OF 12 U.S.C. 84(a) (2) AND 12 C.F.R. 32.4., 1991 WL 566325, at *1. Canadian bonds satisfy the definition because they are "easily traded, with reliable bid/ask quotations available on a daily basis, and are sold via a regulated market." Id at WL 566325, at *2.]

Unlike banks, which can easily obtain and utilize such collateral, credit unions typically do not OFTEN deal with collateral that satisfies the above criteria. As a result, some credit unions have been unable to engage in member business loans that they were previously authorized to engage in, notwithstanding the fact that one of the primary purposes of NCUA's member business lending reforms was to give credit unions greater flexibility to make member business loans provided doing so was consistent with a credit union's risk profile and expertise. Consequently, NCUA should exercise its regulatory power to remove the readily marketable collateral standard and instead mandate that a credit union only be allowed to make such loans based on sound and prudent underwriting standards backed by adequate collateral.

Separately, each numbered comment below corresponds to the Tier 1 Proposal for which NCUA is requesting comment:

1. §701.21—Loans to Members and Lines of Credit to Members

The Association strongly supports clarification in this area. For example, currently a federal credit union is permitted to make residential real estate loans to members of varying lengths, but some of these loans must be approved on a case by case basis. Removing the "case by case" requirement is consistent with NCUA's decision to give credit unions greater flexibility in making loans, provided such loans are consistent with prudent safety and soundness consideration.

In addition, the Association agrees that many of the provisions in §701.21 are drafted in such a way that makes understanding and implementing them properly needlessly challenging. For example, currently there are three different provisions impacting the aggregate amount of loans that credit unions can make to a single borrower or group of borrowers. There is simply no need for regulations to be duplicative.

Finally, we support NCUA's proposal to do away with the aggregate caps on vehicle loans serviced by specific third parties. The primary concern of regulators should be to ensure that a credit union engages in adequate due diligence over its third parties rather than categorically blocking additional loans involving a proven third-party relationship.

4. Appendix B to Part §701—Chartering and Field of Membership Manual

As the Association has made clear in previous comment letters to the Board, it is in favor of giving community credit unions greater flexibility to grow. Every time a community credit union is allowed to provide services in an area, it is providing one more financial option to consumers who can only benefit from the increased financial competition. Furthermore, the current restrictions placed on community credit union expansions barring communities with populations over 2.5 million from being considered "Well Defined Local Communities" for charter expansion purposes, is arbitrary and goes well beyond what federal law requires of NCUA. There are many well-defined local communities throughout the country in excess of 2.5 million people.

The Association is concerned with the suggestion that charter expansions in well-defined local communities that have greater than 2.5 million persons be subject to public hearings. NCUA's responsibility is to make sure that charter expansions comply with relevant regulations. This is a technical legal issue and not one for which public input is necessary or appropriate. Frankly, far

from aiding NCUA in its analysis of a proposed charter expansion, a public comment period will provide nothing more than a platform for opponents of the industry to reflexively criticize any proposal, no matter how beneficial it would be to consumers.

6. Part 702—Capital Adequacy

A top priority of NCUA should be the reconsideration of many aspects of the NCUA's Risk Based Capital Rule. Not only should the compliance date be extended beyond January 1, 2019, but NCUA should raise the asset threshold for compliance with this mandate to at least \$500 million. As the Association has noted to the Board previously, the purpose of risk based capital requirements is to give larger institutions greater flexibility while ensuring that regulations appropriately address systemic risks posed by larger institutions. A \$100 million threshold satisfies neither of these criteria.

12. Securitization

While withholding judgment on any specific securitization request, the Association certainly believes that NCUA should use its legal opinion letter authority to authorize securitizations of certain types of loans. This approach has already been taken by NCUA. Furthermore, in many instances, the ability to securitize loans is consistent with powers already granted to credit unions. Properly utilized securitization enhances the industries safety and soundness by providing larger institutions an additional mechanism to mitigate risk.

13. Part 722—Appraisals

The Association supports NCUA's consideration of establishing appraisal guidelines specifically for credit unions. Credit unions have proven that their underwriting and mortgage servicing techniques are by and large better than those of the mainstream banking industry. To the extent that appraisal thresholds can be adjusted so as to be consistent with credit union practice, the NCUA should do so.

The Association supports NCUA's ongoing efforts to lessen the regulatory burden on credit unions. I hope these comments and suggestions will be helpful to NCUA as it continues to look for ways to make the credit union industry as efficient as possible consistent with its overall safety.

Sincerely,

A handwritten signature in black ink, appearing to read "W. J. Mellin". The signature is fluid and cursive, with a large initial "W" and "J" and a smaller "Mellin".

William J. Mellin
President/CEO
New York Credit Union Association