



May 2, 2011

VIA E-MAIL TO: [regs.comments@ncua.gov](mailto:regs.comments@ncua.gov)

Mary Rupp  
Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314-3428

**RE: Notice of Proposed Rule Making – Removing References to Credit Ratings**

Dear Ms. Rupp,

The Ohio Credit Union League (OCUL) appreciates the opportunity to comment on the National Credit Union Administration's Notice of Proposed Rule Making – Removal of References to Credit Ratings.

The comments reflected in this letter represent the recommendations of the Ohio Credit Union League. The Ohio Credit Union League is the trade association for credit unions in Ohio and advocates on behalf of 390 credit unions and their 2.7 million members in the state of Ohio. We appreciate the opportunity to provide suggestions and feedback to the National Credit Union Administration prior to adoption of any rules as proposed.

### **Summary of Proposal**

Section 939A of the Dodd-Frank Act requires each Federal agency to review (1) any regulation issued by such agency that requires the use of an assessment of the creditworthiness of a security or money market instrument; and (2) any references to or requirements in such regulations regarding credit ratings. Section 919A further requires each agency to modify any such regulations to remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standards of creditworthiness as each respective agency shall determine appropriate. Each agency shall seek to establish, to the extent feasible, uniform standards of creditworthiness for use by the agency, taking into account the entities it regulates that would be subject to such standards.

NCUA identified 24 general areas of its regulations that contain references to nationally recognized statistical rating organization (NRSROs) credit ratings. This Notice of Proposed Rule Making makes revisions to portions of the regulations governing investments by natural person credit unions as found in Part 703; investment activities by corporate credit unions as found in Part 704; involuntary liquidations of Federal credit unions as found in Part 709; and NCUA's regulatory flexibility program as found in Part 709 and 742.



### **Standards for Permissible Investment Activities**

Previously, under sections of Part 703, regulating natural person credit unions and sections of Part 704, regulating corporate credit unions, the creditworthiness of particular investment activities was measured by using certain ratings from a NRSRO. In order to comply with Section 939A of the Dodd-Frank Act, NCUA proposes to substitute a narrative standard.

As an example, investment in a municipal security by a Federal credit union may only be made if the Federal credit union determines that “the issuer has at least adequate capacity to meet its financial obligations, even under adverse economic conditions, for the projected life of the security.” In arriving at this determination, the credit union must prepare and document an internal analysis. §703.14(e).

In the Supplementary Information provided with the Proposed Rule, NCUA indicates that this approach is not contrary to its current requirements of a robust credit risk management policies that go beyond reliance on credit ratings – including internal testing and assessment and/or reviewing reports, analyses, opinions, and other assessments issued by third parties. Also in the Supplementary Information, NCUA indicates that it intends to issue additional supervisory guidance on making the determination of creditworthiness, but does not indicate when this guidance will be released.

While understanding that the removal of references to credit ratings is dictated by the Dodd-Frank, OCUL believes that the regulations as written are open to a wide variance of opinion as to whether an issuer meets the standard of permissible investment activity. The standard as written is subjective and open to interpretation by both Federal credit unions and NCUA examiners. Issuing these regulations without the promised additional supervisory guidance on determining creditworthiness is premature.

Additionally, NCUA should clarify in the Proposed Rule that a Federal credit union may rely on an external assessment of creditworthiness when evaluating the capacity of a municipality to meet its financial obligations, as stated in the Proposed Rule regarding evaluation of a broker-dealer (§703.8) or of a safe-keeper (§703.9).

### **Reliance on Regulations from Other Regulatory Agencies**

The proposed regulation as drafted indicates that a “mortgage related security” and a “small business related security” are defined partially by reference to the Securities and Exchange Act of 1934. The definitions of those types of securities include reference to credit ratings as currently drafted. Section 939 of the Dodd-Frank Act requires that the Securities Exchange Commission (SEC) perform the same review required of NCUA to remove such references from its regulations, but the SEC has not yet proposed its new regulatory definitions, and the agency has until July 21, 2012, in which to finalize its new regulations. In the absence of the new definitions from the SEC, Federal credit unions may not invest in such securities unless the credit union has specific evidence that the SEC considers such security to meet the requirements of the relevant section of the Securities Exchange Act.

Because the proposed NCUA regulations are dependent upon new regulations from the SEC, OCUL believes that NCUA should delay issuing its new regulations until the SEC finalizes the definitions of those securities which NCUA defines by reference to SEC regulations. In the absence of a definition from the SEC as required by the references to SEC regulations in the NCUA regulations, NCUA will not be able to determine if mortgage related securities and small business related securities as finally defined will be appropriate investments for Federal credit unions.

### **New Concentration Limits**

The Proposed Rule provides that a Federal credit union may purchase and hold a municipal security (MUNI) provided that it meets the investment quality standards discussed above. The Proposed Rule goes on to place a concentration limit on such securities such that the Federal credit union must limit its aggregate MUNIs to no more than 75% of the credit union's net worth and limit its holding of a single issuer to no more than 25% of net worth.

The Proposed Rule also imposes concentration limits on the holding of equity-linked member share certificates, reducing the threshold from 100% to 50% of the credit union's net worth and concentration limits on the aggregate investments with any one counter-party to 25% of net worth and with all counterparties to 50% of net worth.

OCUL notes that there is no provision of a grandfather clause in the Proposed Rule should a Federal credit union currently hold one of these types of securities in excess of the limits. If a Federal credit union were to currently hold a higher concentration of such securities, the Proposed Rule as written would seem to require an immediate sale of securities in order to bring the Federal credit union's investment portfolio into compliance, which may not be the best investment strategy. OCUL recommends that NCUA include a grandfather clause in its final rules, permitting (within a reasonable amount of time) these securities to mature as may be necessary or setting a reasonable timeframe for credit unions to meet the amended concentration limits.

### **Timing of the Proposed Rules**

NCUA is the first of the regulatory agencies to issue regulations to comply with §939A of the Dodd-Frank Act. As such, there are no comparable regulations to review to assure that the NCUA regulations do not impose additional regulatory requirements on Federal credit unions that would place them at a disadvantage in comparison with other financial institutions. OCUL suggests that NCUA delay issuing its regulations in order to compare them with similar regulations from other agencies. Should such conflicting regulations be implemented by other regulatory agencies, in particular the SEC, NCUA would need to amend its Rules on prudent investments by Federal credit unions, increasing the burden on and confusion for Federal credit unions.

### **Conclusion**

The Dodd-Frank Act mandates the removal of references to credit ratings from regulations governing the investments that are permissible for a Federal credit union. The Proposed Rule removes those references by substituting a narrative standard to be used by Federal credit unions in

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determining the creditworthiness of an investment, broker-dealer or safe-keeper. It does not offer more definitive guidance beyond this narrative standard. OCUL suggests that NCUA delay implementing any Final Rule on the topic of investment standards for Federal credit unions until further guidance as noted in the Supplementary Information to the Proposed Rule is issued.

The Proposed Rule incorporates by reference certain definitions in the Securities Exchange Act of 1934. These definitions with the Securities Exchange Act are also required to be modified to remove references to credit ratings, however, the SEC has not issued its rules modifying those definitions. Therefore OCUL suggests that implementation of the Proposed Rule in advance of the SEC definitions may cause the need for changes to this Rule, resulting in confusion and an increased burden to Federal credit unions to come into compliance with the changes.

The Proposed Rule also limits the concentration of certain types of investments within the investment portfolio of a Federal credit union. It does not offer a grandfather clause to allow Federal credit unions which might currently hold investments in excess of the new limits to continue to hold those investments until it is prudent to divest them. OCUL suggests that NCUA amend the Proposed Rule to allow for a timeframe for prudent divestiture of investments by Federal credit unions.

Because of the reasons noted above, OCUL suggests that NCUA delay implementation of its rules regarding removal of credit ratings until other regulatory agencies issue similar rules. Implementing the Proposed Rule as drafted might potentially put Federal credit unions at a disadvantage if these rules are either more restrictive than those regulating other financial institutions or do not offer the guidance necessary for Federal credit unions to make prudent investments.

OCUL appreciates the opportunity to present comments on behalf of Ohio's credit unions to the Board on its proposed rules for the removal of reference to credit ratings. Thank you for your consideration of the comments presented.

If you have any questions, please contact me at (614)923-9766 or [jkozlowski@ohiocul.org](mailto:jkozlowski@ohiocul.org)

Sincerely,



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General Counsel



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