



**National Association
of Federal Credit Unions**
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Arlington, VA 22201-2149

NAFCU | Your Direct Connection to Education, Advocacy & Advancement

May 23, 2011

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

RE: Proposed Rule on Net Worth and Equity Ratio

Dear Ms. Rupp:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents federal credit unions (FCUs), I am writing to you regarding the National Credit Union Administration's (NCUA) proposed rule to amend, among other things, the regulatory definition of "net worth" and "equity ratio." *See* 76 Fed. Reg. 16345 (March 23, 2011).

On January 4, 2011, President Obama signed into law Senate Bill 4036, which became Public Law 111-382. The law amends the Federal Credit Union Act in four ways. First, it authorizes the NCUA to impose premium assessments on federally-insured credit unions (FICUs) to pay pending or future expenses of the Temporary Corporate Credit Union Stabilization Fund (Stabilization Fund) directly. This is in addition to NCUA's existing authority to repay Treasury advances. Second, the law amends the definition of "equity ratio" for the National Credit Union Share Insurance Fund (NCUSIF) so that the ratio is calculated only using the NCUSIF's financial statements. Next, the statutory definition of "net worth" is amended so that NCUA § 208 assistance can be added to a credit union's net worth for purposes of Prompt Corrective Action (PCA), and also for purposes of calculating "net worth" in combinations. Lastly, the law requires the Comptroller General of the United States to conduct a study on NCUA's supervision of corporate credit unions and implementation of PCA and submit the report to the Financial Stability Oversight Council, which must then submit its own report to Congress on actions taken in response to Comptroller General's report.

The proposed rule implements the statutory changes to the definition of "net worth" and "equity ratio," while also making technical changes to the definition of the "net worth" as it applies in the context of combinations.

NAFCU supports the proposed rule. We offer the following comments, which are restricted to the aspect of the proposed rule related to the inclusion of section 208 assistance in “net worth.”

Definition of Net Worth

A main feature of the proposed rule is the proposed change to the definition of “net worth” relative to how NCUA § 208 assistance is considered in the calculation of a credit union’s net worth for PCA purposes. Under the proposed rule, a credit union would be able to include § 208 assistance as regulatory capital where the assistance consists of capital accounts that:

- have a remaining maturity of five years or more;
- are not insured by the NCUSIF;
- may not be pledged as security on a loan to, or other obligation of, any party;
- have non-cumulative dividends; and
- are subordinate to the NCUSIF, shareholders, and creditors.

NAFCU supports the proposed definition, including the limitations on the type of capital that may be counted as regulatory capital, and urges the agency to move to adopt the proposal expeditiously. With respect to the types of assistance that could be counted as regulatory capital, we believe that it is important that the agency places an emphasis on the permanency of the capital while also strengthening the impact of § 208 assistance. NAFCU believes the proposal takes these factors into account adequately. We also believe the proposed definition is consistent with the FCU Act and implements the recent statutory changes appropriately.

As NCUA is aware, NAFCU has supported legislation that would allow for inclusion of alternative sources capital in a credit union’s calculation of net worth under some circumstances. It is our position that section 208 assistance should be counted in “net worth” as long as the capital accounts: (a) do not alter the cooperative nature of the credit union, including, but not limited to, members’ ownership and control of the credit union; (b) are subordinate to all other claims against the credit union, including the claims of creditors, shareholders, and the NCUSIF; and (c) are uninsured. We are pleased that both Public Law 111-382 and the proposed rule’s limitations on the type of capital accounts that would be able to count toward “net worth” are consistent with our position.

Nonetheless, we believe it would be helpful for the NCUA to provide clarification on the scope and effect of the proposed change to the definition of “net worth.” As discussed below, for example, the NCUA should clarify that section 208 assistance would count toward the net worth of a credit union both in cases involving a merger as well as where a merger is not contemplated.

Public Law 111-382 modified the definition of “net worth” to add the following:

“(A) with respect to any insured credit union, means the retained earnings balance of the credit union, as determined under generally accepted accounting principles, together with any amounts that were previously retained earnings of any other credit union with which the credit union has combined;

“(B) with respect to any insured credit union, includes, at the Board’s discretion and subject to rules and regulations established by the Board, assistance provided under section 208 to facilitate a least-cost resolution consistent with the best interests of the credit union system; and

“(C) with respect to a low-income credit union, includes secondary capital accounts that are—

“(i) uninsured; and

“(ii) subordinate to all other claims against the credit union, including the claims of creditors, shareholders, and the Fund.”

124 Stat. 4135.

As is readily apparent, each of the three components of the changes is distinct from the others. Subsection (A) deals exclusively with the calculation of net worth in the context of combinations. Separately and distinctly, subsection (B) deals exclusively with the calculation of net worth involving section 208 assistance. Lastly, subsection (C) deals only with low-income credit unions. Thus, without question, each of the sections cannot be read together and as affecting each other.

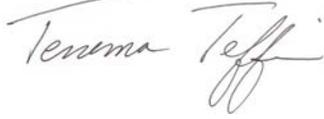
NAFCU believes that the proposed definition of “net worth,” as it applies to section 208 assistance, **would not** limit capital assistance that would be counted toward a credit union’s net worth to the context of a merger between a credit union and a failed or failing credit union. In fact, given the construction of the statutory changes and the clear intent of Congress, we do not think such limitation can be imposed. Accordingly, we urge the NCUA to clarify that section 208 assistance would count toward the calculation of “net worth” in all cases where the assistance is provided to the credit union, subject to the limitations on the specific types of capital accounts outlined in the proposal.

We note, further, that if the statutory changes are read to limit the inclusion of capital assistance to only situations involving mergers, it would clearly be contrary to statutory construction and could also lead the NCUA to place more focus on mergers as a primary tool for resolving problem credit unions. This would occur because the net worth of a troubled credit union, absent a merger, would not include section 208 assistance. We do not think this is a desirable result and in fact could run counter to NCUA’s mandate that it utilizes the least cost resolution consistent with the best interest of the credit union system.

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NAFCU appreciates the opportunity to comment on the proposed rule. Should you have any questions, please contact me by telephone at (703) 842-2268 or ttefferi@nafcu.org.

Sincerely,

A handwritten signature in cursive script that reads "Tessema Tefferi". The signature is written in black ink and is positioned above the printed name and title.

Tessema Tefferi
Associate Director of Regulatory Affairs