



OHIO CREDIT  
UNION LEAGUE

May 23, 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 Ruled Making – Net Worth and Equity Ratio**

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 – Net Worth and Equity Ratio.

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 386 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 (NCUA) prior to adoption of any rules as proposed.

### **Summary of Proposal**

In January 2011, Public Law 111-382(2011), amending the Federal Credit Union Act (the "Act"), was signed into law by President Obama. This amendment contains four provisions; only two of which required drafting of regulations by NCUA. Those provisions requiring further regulations 1) redefine the equity ratio for the National Credit Union Share Insurance Fund (NCUSIF), and 2) redefine the term "net worth" as it applies to federally insured credit unions for the purposes of prompt corrective action (PCA).

### **Definition of Equity Ratio**

The NCUA proposes to amend the definition of "equity ratio" to clarify that the equity ratio will be calculated using the financial statements of the NCUSIF alone without any consolidation or combination with the financial statements of any other fund or entity. This definition is found in §741.4 of the NCUA Regulations, and the definition is specifically imposed by §202 of the Act.



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OCUL notes that this redefinition is a result of the confusion regarding the equity ratio that was used during the conservation of U.S. Central FCU by NCUA. OCUL supports this statutory clarification on the National Credit Union Insurance Fund definition of “equity ratio” and appreciates NCUA’s efforts in this matter.

### **Definition of Net Worth**

The amendment redefining “net worth” allows the §208 Assistance (“Special assistance to avoid liquidation”) provided to troubled credit unions to qualify as regulatory net worth for purposes of prompt corrective action. This assistance may be provided by NCUA to credit unions it has determined to be in trouble to prevent its closing in the form of loans to the federally-insured credit union (FICU) or the establishing of accounts in the FICU. This proposal would allow a certificate of indebtedness or other similar §208 Assistance meeting certain criteria set out in the regulation to increase the FICU’s net worth by adding the §208 Assistance to the numerator of the credit union’s net worth.

OCUL agrees with this change to the definition of “net worth” as necessary to accurately reflect the financial circumstances of the FICU in situations where NCUA is acting to prevent liquidations.

However, NCUA goes on to add what it terms as a “technical correction” to the definition of credit union “net worth” which exceeds the scope of Public Law 111-382 (2011) by dictating that any “bargain purchase gain” (such as a discount from the target credit union’s book value or other situation where “the fair value of the net assets acquired exceeds the fair value of the equity or member interest in the acquirer”) is deducted from the larger credit union’s net worth prior to the merger so as not to be included in the continuing credit union’s “net worth.”

OCUL notes that this change would have a chilling effect on future mergers of credit unions. Further it does not seem to be consistent with the clear intent of Congress in the Financial Services Relief Act of 2006, which defined FICU net worth as including “the retained earnings balance of the credit union, as determined under generally accepted accounting procedures, together with any amounts that were previously retained earnings of any credit union with which the credit union has combined.” Pub. L. No. 109-351, §504 (2006).

Accordingly, OCUL urges that NCUA drop this technical correction regarding the treatment of “bargain purchase gain” as contrary to the clear intent of Congress in providing a definition of regulatory “net worth” that is in excess of GAAP standards, and in further support, as having a chilling effect on future mergers of troubled FICUs. In the alternative, if NCUA determines a change in the definition of regulatory “net worth” is necessary, OCUL suggests that substituting “equity acquired in merger” for “adjusted retained earnings acquired in merger” would bring the standard under regulatory accounting closer to GAAP while resulting in a more consistent result for the surviving credit union in a wider variety of circumstances.

### **Net Worth in Member Business Loan Context**

The Proposed Rule amends the definition of “net worth” only for purposes of prompt corrective action (PCA), incorporating the revised definition by reference to Part 702. It does not amend the definition of “net worth” in the context of member business lending. NCUA declined to amend its definition of “net worth” in that context, stating that the changes in this law do not address the definition of “net worth” in the context of member business lending.

OCUL suggests that NCUA reconsider leaving this inconsistency in the definition of “net worth” in the NCUA Regulations in that it may very well create confusion in the future.

### **Conclusion**

The proposed changes to the definitions of “equity ratio” of the NCUSIF and “net worth” in the context of prompt corrective action by the NCUA in the case of preventing the liquidation of a troubled credit union are welcome and necessary changes to the existing definitions.

However, the “technical correction” concerning the treatment of “bargain purchase gain” exceeds the scope of Public Law 111-382(2011) and should therefore be omitted from the Final Rule. Alternative changes to NCUA’s regulatory accounting standards to bring them closer to GAAP are possible, and should be considered carefully by NCUA prior to making any changes to regulatory definition of “net worth” that are not specifically required by Public Law 111-382 (2011).

Further, OCUL urges that the definition of “net worth” be made consistent throughout NCUA Regulations, including in the context of member business lending.

The Ohio Credit Union League appreciates the opportunity to present comments on behalf of Ohio’s credit unions to NCUA on its proposed rules for the definitions of “equity ratio” and “net worth.” The Ohio Credit Union League is also willing to provide additional comments and information if son requested. 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,



John F. Kozlowski  
General Counsel



Carole D. McCallister  
Manager, Member Compliance Services

Cc: Mary Dunn, SVP and Deputy General Counsel, CUNA  
Paul Mercer, President, Ohio Credit Union League  
Tim Boellner, Chair, Ohio Credit Union League  
Jennifer Ferguson, Chair, OCUL Government Affairs Committee