



Credit Union National Association

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[Filed via regcomments@ncua.gov](mailto:regcomments@ncua.gov)

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

Re: Maintaining Access to Emergency Liquidity
12 CFR Part 741, RIN 3133-AD96

Dear Ms. Rupp:

This letter represents the views of the Credit Union National Association on the agency's proposal regarding liquidity risk management, which was published in the Federal Register July 30th, 2012. By way of background, CUNA is the largest credit union advocacy organization in the country, representing approximately 90 percent of our nation's more than 7,000 state and federal credit unions, which serve over 95 million members. Our letter was developed under the auspices of CUNA's Examination and Supervision Subcommittee, with input from CUNA's System Liquidity Task Force, CUNA Council Members, Leagues and others.

CUNA Opposes a New Regulation on Emergency Liquidity

CUNA does not support the emergency liquidity requirements as proposed and urges the agency not to proceed to a final rule with the proposal.

While CUNA recognizes it is important for credit unions to address key operational issues, such as sources of emergency liquidity, appropriately and in a timely manner, we do not agree that a regulation on this issue is necessary to further safety and soundness within the credit union system.

As the agency is aware, interagency guidance on liquidity policies, plans, and procedures took effect in May 2010.¹ The other regulators, to our knowledge, have not found the need to issue regulations on emergency liquidity.

After reviewing the interagency guidance again, we have concluded that the guidance sufficiently addresses primary issues regarding liquidity risk management. In light of that, a new regulation would be redundant in terms of safety and soundness results, while imposing significant and unnecessary

¹ "Interagency Policy Statement on Funding and Liquidity Risk Management," 75 Fed. Reg. 13,656 (Mar. 22, 2010).



compliance costs on credit unions. Moreover, NCUA and state examiners already have sufficient authority to direct credit unions to address any material deficiencies in their liquidity risk management policies and implementation.

Credit unions are already inundated with too many rules and any additional regulatory requirements should be imposed only if there is clear and convincing evidence that they are needed from a material safety and soundness standpoint or to meet statutory requirements.

In our view, the agency has not provided sufficient rationale or justification for issuing a new regulation, particularly since the current interagency guidance is comprehensive. The Supplementary Information describing the agency's proposal states that depository institutions need to have access to sources of emergency liquidity,² but that point is also stressed in the interagency guidance. The Supplementary Information specifically states that the rulemaking was initiated because 6,019 credit unions will no longer have access to the Central Liquidity Facility when U.S. Central Bridge ceases to exist. However, NCUA has not addressed why a new rule on specific liquidity requirements is necessary to insure that those credit unions find another source of emergency liquidity.

Although overall liquidity management and policies are vital to credit union operations, we believe that there is no need for credit unions to secure access to specific types of emergency liquidity beyond what other federally insured depository institutions are required to do. NCUA's Advance Notice of Proposed Rulemaking³ on this topic notes that only 4.5% of all credit unions have completed all the paperwork requirements to borrow from the Federal Reserve Discount Window, and only 1.3% have direct access to the CLF. However, all but 10 of the roughly 1,400 credit unions with assets over \$100 million (the group covered by additional requirements under the proposed rule) are eligible to access the Discount Window, and those 10 could quite easily qualify. In other words, access to emergency liquidity for large credit unions is readily available and a new rule on the topic is not necessary.

Further evidence of the lack of a need for specific emergency liquidity is the fact that for 29 years of its 31-year history, the CLF did very little lending to natural person credit unions. More than 91% of the lending the CLF has ever done occurred in just 2008 and 2009, and virtually all of that was related to dealing with the conserved corporate credit unions. Over the other 29 years of its existence, the CLF extended an average of 18 loans a year, with an average loan size of just \$3.3 million. Finally, in really dire circumstances, the National Credit Union Share Insurance Fund can extend emergency liquidity to a credit union under Section 208 of the Federal Credit Union Act.

We also believe the proposal's lack of sufficient justification renders it deficient under the Administrative Procedure Act⁴ and Executive Orders Numbers 13563

² Maintaining Access to Emergency Liquidity, 77 Fed. Reg. 44, 503 (proposed July 30, 2012).

³ Maintaining Credit Union System Liquidity, 76 Fed. Reg. 79,553 (Dec. 22, 2011).

⁴ Administrative Procedure Act (APA), Pub. L. No. 79-404, 60 Stat. 237 (1946).

and 13579. As jurisprudence in this country has shown, courts will generally uphold a federal agency's regulation when it is determined that the rule is not "arbitrary and capricious" or an "abuse of discretion." We think any new regulation, not just ones from NCUA, should comport with this standard and thoroughly explain to stakeholders the need for the rule, consistent with the APA and the Executive Orders. Without sufficient justification for the proposal, we urge the agency not to proceed.

If NCUA Proceeds, CUNA Urges Changes Be Incorporated into the Final Rule

If despite the fact that the underpinnings of the proposal have not been sufficiently detailed the Board proceeds with the proposal, we urge it to make several significant modifications.

First, the Board has proposed lighter regulatory requirements for smaller credit unions; we generally support this approach in a number of regulations. However, the definition of smaller credit unions for purposes of reduced regulatory burdens under any liquidity final rule should dovetail with the agency's revised definition of "small entity" that is under review by the NCUA Board now.

For larger credit unions, we feel the agency should not only utilize asset size but also indicators such as loan-to-share ratios in determining whether additional liquidity policy and federal liquidity source requirements should be imposed.

A major issue of concern for a number of credit unions has been the exclusion of the Federal Home Loans Banks as a permissible federal source of emergency liquidity. Under the proposal, the agency would require larger credit unions to choose and reflect in their written liquidity policy a federal source of emergency liquidity and only the Central Liquidity Facility and the Federal Reserve's Discount Window would be permissible choices.

A number of our members rely on the Federal Home Loan Banks (FHLB) for certain services, including emergency liquidity. It is our understanding that the FHLBs apply fair market valuations to such collateral and that when market conditions indicate that the value of the collateral should be decreased, the Banks have required institutions to provide additional collateral in order to receive emergency liquidity.

After reviewing the issue of the FHLBs as a source of emergency liquidity in detail with NCUA staff, FHLB officials and our members, we have concluded that the FHLBs should be a permissible source of emergency liquidity for credit unions for any credit union that has sufficient excess collateral so that even in adverse conditions it would meet FHLB collateral requirements for the amount of necessary emergency liquidity.

However, each FHLB should be required to provide assurances to NCUA that they can and will be able to provide emergency liquidity to eligible member credit unions. This agreement should be formalized under a memorandum of

understanding between NCUA and each of the FHLBs. Absent such an agreement, a FHLB should not be included as a permissible emergency liquidity source for credit unions.

NCUA requested comments on the costs and benefits of applying Basel III liquidity measures and monitoring tools to credit unions with assets of \$500 million or more. This is a multi-faceted, potentially costly effort, which CUNA is reviewing and may be providing additional comments to the agency on this.

However, in general, we do not support the application of these requirements to credit unions either under guidance or in a regulation. The Basel III requirements have raised questions from banks and regulators alike and were not developed with any consideration of the unique nature, structure or characteristics of credit unions. We urge the agency to refrain from imposing such or similar requirements on credit unions.

Separate from the agency's emergency liquidity proposal, CUNA's System Liquidity Task Force, chaired by Terry West, President and CEO of VyStar Credit Union, has been considering the role and future of the CLF. We appreciate that agency senior staff have met with the Task Force during our meeting in Chicago August 17th. We believe that the CLF has utility and we recognize the important role that it played during the financial crisis as NCUA developed its course of action regarding corporate credit unions.

However, with the demise of U.S. Central Bridge, credit unions feel that the CLF must be modified, for example, to address the requirement for stock subscriptions and to facilitate the ability of credit unions to use the CLF as readily as institutions are able to utilize the Federal Reserve's Discount Window. Our Task Force will be following up with legislative and possibly other recommendations, and we hope to work with the agency to pursue them.

Thank you for consideration of our views on the emergency liquidity proposal. Please feel free to contact CUNA's Chief Economist Bill Hampel or me if there are questions about our comment letter.

Sincerely,



Mary Mitchell Dunn

CUNA Deputy General Counsel and Senior Vice President

Cc: Chairman Debbie Matz
Board Member Michael Fryzel
NCUA Executive Director David Marquis
NCUA General Counsel Mike McKenna
NCUA Director of Examination and Insurance Larry Fazio
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