

March 19, 2015

Mr. Gerard Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

Re: Comments on Regulatory Review pursuant to EGRPRA

Dear Mr. Poliquin:

The Credit Union National Association (CUNA) appreciates the opportunity to submit comments to the National Credit Union Administration (NCUA) Board's request for comments on the second regulatory review pursuant to Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA). By way of background, CUNA is the national trade association for America's state and federally chartered credit unions. CUNA represents approximately 90% of America's 6,500 credit unions and their 102 million memberships.

Credit unions are subject to too many regulations, and many of the regulations currently in place are needlessly complex. We continue to support efforts by NCUA and other agencies to reduce the regulatory obligations credit unions must meet. While we appreciate this review, we urge the agency to consider improvements in its review process. For example, NCUA also reviews one-third of its rules every year, separately from EGRPRA. It would be more efficient and productive if the agency combined that review with the EGRPRA review in the years that the agency participates in EGRPRA. Supporting two simultaneous regulatory reviews is confusing to credit unions and takes NCUA staff time that could be better spent drafting rules that reduce regulatory burden.

We continue to urge the agency to establish and maintain a regulatory reduction working group comprised of credit union officials selected through a public nomination process. The purpose of the group would be to provide NCUA with recommendations on an annual basis aimed at reducing or eliminating regulation, reporting requirements, and directives. Such recommendations could be included as part of its annual regulatory review. We believe such a working group would significantly enhance the agency's regulatory review process and result in changes that streamline requirements while fulfilling congressional mandates and safety and soundness.

The recommendations below are specific to those areas for which NCUA is seeking comments under its EGRPRA review.

Designation of low-income status; receipt of secondary capital accounts by low-income designated credit unions - 12 CFR 701.34

We appreciate NCUA's efforts over the last several years to help identify credit unions that qualify for the low-income designation and the agency's encouragement for the credit unions to accept the low-income designation. We understand that some eligible credit unions have not accepted the designation. Others have accepted the designation but have been hesitant to take full advantage of its authorities for fear that market fluctuations and other factors out of their control may disqualify them, causing them to have to unwind additional business lending or supplemental capital offerings. We believe that the NCUA could do even more to allow credit unions to qualify for low-income status.

CUNA urges the Board to aggressively review the low-income designation to provide a path for additional credit unions to qualify, to provide greater transparency with respect to the qualification thresholds and to enhance certainty that if a credit union drops temporarily below a threshold that it will not have to immediately begin an unwinding process that could result in the credit union pulling back services to members and, potentially, laying off staff.

The Federal Credit Union Act (FCUA) gives the NCUA Board extensive authority to define "low-income" for exemptions to the FCUA's limitations on accepting non-members' deposits, member business loan limits and access to supplemental capital. NCUA recognizes the operational advantages of a low-income credit union designation (LICU) as demonstrated by the agency's outreach efforts to make sure that eligible credit unions are aware that they may qualify for designation as "low-income."

CUNA urges NCUA to exercise its statutory authority to the fullest extent possible in defining "credit unions serving predominantly low-income members." LICUs operate with expanded powers that are not available to non-LICU credit unions. These expanded powers represent real regulatory relief, and thus enable credit unions with these powers to better serve their members.

NCUA currently uses a statistical approach to define "low-income members", which also automatically includes "those members enrolled as students in a college, university, high school, or vocational school." This definition could be expanded to include military and other historically lower paid industries.

NCUA could also adopt other approaches for credit unions to qualify as low-income. These include a narrative approach where credit unions could describe

why they should be given a low-income designation without statistical analysis. Low-income designation could also be extended to credit unions that historically serve low-income communities, certify a mission to serve low-income people, or tailor products and services specifically to people that are low-income.

Credit unions are concerned about crossing the threshold once they start to operate as a LICU and develop a business dependent on a LICU's expanded powers. Some credit unions that have received LICU status have noted that they do not understand how they qualified and how closely they operate to the qualification threshold. It is difficult for them to manage to the threshold if they do not understand the process. We urge NCUA to bring greater transparency to the qualification matrix to assist LICU credit unions in identifying eligibility and maintaining the status.

LICU credit unions should not fear rules changes, growth, or changes to their fields of membership that could impact LICU status. One reason credit unions eligible for LICU status give for not accepting the status is that the five-year wind down requirement is far too short. They cannot justify establishing a business lending program if they fear that they will have to wind it down in five years' time, because the credit union drops below the qualifying threshold. We urge NCUA to bring greater certainty to the LICU status by making the LICU designation permanent.

CUNA looks forward to working with NCUA on exploring ways to make the LICU designation more widely available to credit unions through NCUA's field of membership working group and the upcoming 2015 regulatory review process.

Central Liquidity Facility - 12 CFR 725

CUNA supports the existence and mission of the NCUA's Central Liquidity Facility (CLF). The financial crisis has shown that the CLF played an essential role in facilitating the ability of the National Credit Union Share Insurance Fund (NCUSIF) to borrow from the federal government during times of economic stress. More credit unions would be encouraged to use the CLF if they did not have to purchase CLF stock and become members of the CLF prior to applying for a loan.

A more robust CLF would be positive for the credit union system and exert less pressure on the Federal Reserve's discount window during times when liquidity is needed. Currently, banks may borrow from the Fed's discount window for primary, secondary, and seasonal credit needs, whereas the CLF is essentially a lender of last resort.

The CLF could be improved by eliminating the requirement that the CLF be funded by stock subscriptions paid for by member credit unions. The NCUA Board should allow credit unions to obtain loans from the CLF for short term as well as longer term liquidity purposes. In addition, the NCUA Board should report to Congress on further ways to improve the CLF through legislation.

Prompt corrective action - 12 CFR 702

CUNA will provide detailed comments on prompt corrective action in an upcoming comment letter addressing NCUA's second proposed risk-based capital rule. CUNA appreciates that NCUA listened to the more than 2,000 credit union stakeholders who commented on the first risk-based capital proposal, and that NCUA made substantial improvements reflected in the current proposal. Nonetheless, NCUA has not demonstrated that a risk-based capital rule is necessary. Credit unions weathered the worst financial crisis since the great depression without this rule and can clearly operate in a time of financial stability with little risk to the NCUSIF.

Truth in Savings (TIS) - 12 CFR 707

Credit unions have raised concerns regarding Part 707's use of "average percentage yield earned" (APYE) in statement and account disclosures. In particular, we ask the Board to consider eliminating part of section 707.5 that requires subsequent disclosures for certificates be provided to members 30 days in advance. We believe this is overly burdensome to the credit union and of little or no utility to the member.

Loans in areas having special flood hazards - 12 CFR 760

CUNA has filed two comment letters with NCUA addressing proposed amendments to the flood insurance rules in December 2013 and December 2014. We encourage NCUA to consider the issues addressed in these letters as the agency works towards a final rule.

Credit unions remain concerned with the implementation of escrow requirements without sufficient information in some instances to determine the insurance status of particular loans. Escrow requirements need to be reviewed in conjunction with those contained in Regulation Z, under section 1026.35 to ensure compatibility. Credit unions will also need additional guidance on the implementation of the detached structure exemption.

Share insurance - 12 CFR 745

We look forward to working with the NCUA on updates to Part 745 as required by the Credit Union Share Insurance Fund Parity Act (H.R. 3468). We sent NCUA General Counsel Michael J. McKenna a letter on January 27, 2015, detailing current questions and concerns that credit unions have while trying to offer interest on lawyers trust accounts (IOLTAs) without updates to NCUA's insurance regulation.

NCUA should take the opportunity to maximize the impact of this new law by expanding insurance to accounts such as prepaid funeral accounts, realtor escrow accounts, and prepaid card accounts.

We appreciate NCUA removing contradictory legal opinion letters from the agency's website, but suggest that the letters be restored with an explanation as to why the letters are no longer applicable. We continue to field questions regarding the letters that have been removed, including whether credit unions may continue to rely on these letters.

Advertising - 12 CFR 740

A number of credit unions are advertising via mobile banking/text messaging and have expressed concerns with the requirement under section 740.5 that all advertisements include NCUA's official statement, "This credit union is federally insured by the National Credit Union Administration," or the abbreviated statement, "Federally insured by NCUA." Financial institutions insured by the FDIC comply with the FDIC's advertising statement requirement simply by displaying "Member FDIC."

In an era of communication via condensed messaging (e.g., SMS and Twitter), each character in a text message or on a mobile website must be chosen very carefully. In that connection, we ask NCUA to consider revising Part 740 to permit credit unions to use a further abbreviated advertising statement to comply with the agency's Accuracy of Advertising and Notice of Insured Status rule.

Conclusion

Thank you for the opportunity to express our views on NCUA's second EGRPRA information request. If you have any questions about our comments, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "J. Lance Noggle".

J. Lance Noggle
Senior Director of Advocacy and Counsel