

Cooperative Credit Union Association

Massachusetts • New Hampshire • Rhode Island

Creating Cooperative Power

March 19, 2015

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

Re: Cooperative Credit Union Association, Inc. Comments on Regulatory Review
Pursuant to EGRPRA

Dear Mr. Pollard:

On behalf of the member credit unions of the Cooperative Credit Union Association, Inc. (“Association”), please accept this letter of comment regarding the National Credit Union Administration (“NCUA”) Board’s request for comments on regulatory review pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (“EGRPRA”). Collectively the Association is the tri-state trade association of Massachusetts, New Hampshire, and Rhode Island serving over 200 credit unions, who further serve approximately 2.6 million consumer members, and operates as part of the Credit Union National Association (“CUNA”).

The Association commends the NCUA for electing to participate in the EGRPRA review process, including developing its own regulatory categories that are comparable with those developed by the appropriate federal banking agencies (“Agencies”) and issuing a separate notice from the Agencies that is consistent and comparable, except on issues that are unique to credit unions. The NCUA is not considered an “appropriate federal banking agency” and therefore is not required to participate in the EGRPRA review, and the Association praises the agency for its commitment to the objectives of EGRPRA, most notably the identification of regulations that are outdated, unnecessary, or unduly burdensome.

Credit unions are subject to hundreds of regulations from a multitude of agencies. This level of regulation limits credit unions’ ability to serve their members. Regulatory compliance invites costs, in the form of staff time, data processing systems, administrative costs, and training. The funds that are allocated to regulatory compliance are diverted from the member service side, resulting in a reduction of the services offered to members.

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Attached to this letter is a detailed example of how regulatory burden affects credit unions. A New Hampshire federally insured state-chartered credit union, which was formerly federally chartered, provided a summary of the practical impacts faced by management when a regulation is created, amended, or replaced. While the example provided references a regulation promulgated by the Consumer Financial Protection Bureau, the impact is the same regardless of regulatory origination. As noted, the rule replacement resulted in an annual cost of \$56,000 in order to purchase a new software system, increased loan processing time from 40 to 50 days, and required the hiring of at least one new employee along with complete department retraining.

It is the observation of the Association that regulatory compliance is a major factor underlying credit union mergers and the current local trend amongst mid-size credit unions. This issue was faced by our New Hampshire credit union, who over the past few years has merged in two small credit unions who could no longer support the regulatory burden.

In the Notice of Regulatory Review (“Notice”), the Board specifically mentions its sensitivity to the impact of agency rules on small institutions. The Association encourages the Board to increase the threshold for meeting the “small” classification to having assets of \$100 million or less. This change would be consistent with agency policy. The Board recently approved a proposed rule and policy statement to update the definition of a “small entity” under the Regulatory Flexibility Act to include credit unions with assets of up to \$100 million from \$50 million. This would exempt these credit unions from the interest rate risk rule. It also changed the asset size threshold in the recently release risk-based net worth proposal from \$50 million to \$100 million. The same approach was taken regarding emergency liquidity. The Association encourages the agency to continue this focus on smaller and mid-size credit unions whose resources are more limited to adapt to the volume of regulatory changes.

While these comments will address the three categories of regulations on which burden reduction recommendations are requested holistically, we would like to emphasize the disproportionate burden faced by small and mid-size institutions due to regulations. It is critical that the agency tailor its supervisory and regulatory requirements to reflect the complexity and risk of individual credit unions. Small and mid-size credit unions have business models, corporate structures, and risk profiles that are very different from other larger institutions supervised by the agency. A flexible approach that considers both size and risk profiles allows the agency to adjust the rigor and intensity of its supervision and supervisory expectations to each institution.

Further adopting a risk-based regulatory approach for all credit unions is also supported by the Association.

I. Review Process

It is the position of the Association that credit unions suffer under substantially too many regulations, which place barriers in the way of their ability to fully and efficiently serve their members and leaves the financial system underserved. While NCUA's voluntary participation in the EGRPRA review process is appreciated, an alternative approach is suggested to further simplify the review process. Since 1987, NCUA has reviewed one-third of its regulations each year in an effort to streamline, modernize, or, where appropriate, eliminate regulations. The intent behind this one-third review mirrors that of the review conducted under EGRPRA. It is suggested that one cohesive approach with standardized deadlines is more beneficial to both the agency and credit unions, rather than the piecemeal approach currently in place. Credit unions could have a centralized focus on advocacy and provide more holistic operational views of the impact of regulations. It would be more efficient and productive if the agency combined the one-third review with the EGRPRA assessment in the years that the agency participates in EGRPRA.

II. Agency Programs

Designation of Low-Income Status; Receipt of Secondary Capital Accounts by Low-Income Designated Credit Unions - 12 CFR 701.34

The approach adopted by the NCUA to ensure that eligible credit unions are determined and then made aware that they may be designated as "low-income" is strongly supported and commended by the Association. The "low-income" designation provides a variety of benefits and opportunities and can be extremely useful to credit unions, not the least of which are the ability to exceed the arbitrary limit placed on member business lending and the ability to access supplemental capital. The Association has prioritized member awareness of the designation and its benefits, and has worked individually with credit unions that have attained and accepted the designation to understand its parameters. Proactive steps to encourage state regulators to recognize the designation have also been led by the Association. We look forward to continuing to promote the designation.

The Association would like to suggest the following changes be made to the regulation. We suggest redefining "low income" area for purposes of designating low income credit unions by incorporating other flexible standards relating to total median earnings. We also suggest that the Board allow federal credit unions to self-designate as low-income credit unions and limit notification to the agency to the call report. The Association also supports the expansion of benefits eligible for low-income designated credit unions, such as extended loan terms. Lastly, we recommend permitting a credit union that meets the low-income designation qualifications once to continue without having to re-qualify at a subsequent date.

While not clearly directly contemplated in the Notice, we seek to provide comment on the limitations placed on federally insured state-chartered credit unions under Part 701.34. It is the position of the Association that secondary capital accounts should be controlled by state law for federally insured state-chartered credit unions, including those seeking a low-income designation by the appropriate state regulatory agency. The limitations placed on federally insured state-chartered credit unions under Parts 701.32 and 701.34, pursuant to Part 741.204, are unnecessarily preemptive and unduly burdensome. While secondary capital accounts do not count toward regulatory capital requirements for non-low income credit unions, the ability to offer the accounts is not inherently unsafe and unsound, and therefore should be subject to state law.

III. Capital

Prompt Corrective Action - 12 CFR 702

The Association is well underway in its review of the agency's second proposed risk-based net worth rule, and anticipates providing a comprehensive letter addressing the proposed risk-based capital system. All aspects of prompt corrective action will be addressed in the comment letter submitted to the agency by the April 27th deadline. Key areas that will be addressed in these comments include the asset size threshold, interest rate risk, the requirement of a written policy, and the risk weights assigned to credit union service organizations and mortgage servicers.

IV. Consumer Protection

The Notice points to the fact that the responsibility for many consumer protection rules that had previously been the responsibility of the agency has been transferred to the Consumer Financial Protection Bureau ("CFPB"). As a general recommendation, the Association urges clarity and consistency between consumer protection rules emanating from different agencies.

While the Notice purports to make a clear divide between which responsibilities and topics continue to belong to the agency, and which belong to the CFPB, in practice, the divide is not as clear. Already rules promulgated by the CFPB have created potential conflicts with other agencies' proposed regulation, for example with the recent Department of Defense Military Lending Act Proposal and payday lending rules.

As pertains to the current Notice, one such area for confusion with NCUA regulation is with advertising. 12 CFR 740 sets forth the agency's regulation on advertising, while Regulation Z, which contains its own advertising rules, was transferred to the CFPB. Another such potential area is with disclosures more generally; 12 CFR 707 relates to Truth-in-Savings with the agency, while Regulation Z relates to Truth-in-Lending with the CFPB. Moreover, Massachusetts maintains an exemption from certain federal Truth-in-Lending provisions, creating yet a third layer of regulatory complexity faced by

Massachusetts credit unions. At a minimum, the Association suggests that the agency work closely with the CFPB to properly and effectively regulate and clearly communicate each agency's respective authority. Also, the Association strongly urges the Board to use its prudential regulatory authority to urge the CFPB to provide safe harbor compliance for credit unions following the NCUA rules on these and other important topics.

Loans in Areas Having Special Flood Hazards – 12 CFR 760

The Association requests further clarification on what creditors, who often have little or no insight on flood insurance, are obligated to do, and requests that they be eliminated from requirements on which they have no information wherever possible. This allows for greater and more streamlined compliance by our industry. Credit unions are concerned that their obligations, without further clarification, will prompt questions from borrowers that mortgage lenders are unable to and should not answer, creating borrower frustration and delay during the mortgage process. Other parties to these transactions, such as carriers of flood insurance and real estate brokers, are strong sources of information relative to premium trends, appropriate coverage levels, and repair/replacement costs. Concerns exist that credit unions might be subject to misrepresentation claims by borrowers about the adequacy of insurance coverages.

The Association would like to acknowledge the provision which allows for alternative methods of notification of insufficient insurance coverage. Part 760.7 places identical requirements on credit unions and credit union servicers regarding notifying a borrower that the property securing the loan is not covered by flood insurance or is covered by insufficient flood insurance and that the borrower should obtain flood insurance for the remaining term of the loan. Duplicative notices to consumers can often be the basis for confusion. Allowing the notification requirement to be fulfilled by either the creditor or the servicer, and without requiring an additional notice for the same transaction, provides flexibility.

Flexibility is requested in the delivery and timing of the notice. As it appears to be the creditor's responsibility to ascertain whether the servicer has provided the notice, there may be situations in which there is a lapse of time between learning that the form has not been provided by the servicer, and when the form has to have been provided. Because it is not within a credit union's immediate purview to be able to determine whether the servicer has fulfilled its obligation of providing the form, the agency should consider enforcement flexibility in potential non-compliance situations by credit unions. Such flexibility would protect good faith efforts to comply with this responsibility.

The Association greatly appreciates the promulgation of a Sample Form to be used by lenders to provide the information regarding special flood hazards. Such forms promote uniformity amongst lenders and clarity for consumers through the use of consistent formats and language. It is suggested that such forms be created and provided throughout agency regulations where applicable.

Part 760.9 requires a credit union to retain a record of the receipt of the notices by the borrower and the servicer. It is recommended, therefore, that the Sample Form be amended to include an "Acknowledgement of Receipt" section. An acknowledged statement that a borrower and/or servicer has received the required disclosure protects creditors and also helps keep clear records. Additionally, the Association suggests that additional resources and contact sources about flood insurance products and information should be included in the Sample Form.

As with Part 760.7, the alternative method of notification is appreciated regarding special flood hazards. Part 760.9(e) allows a credit union to obtain satisfactory written assurance from a seller or lessor that he/she provided the required notice to the purchaser or lessee. This alternative allows leeway and confidence to the credit union.

Massachusetts state regulators are currently in the process of reviewing state flood insurance regulations. The Association suggests that the Board remain engaged with local regulators on this process in order to avoid confusion and duplicative requirements.

V. Safe Harbor

The Association encourages the agency to address safe harbor provisions wherever possible in existing regulations. At a minimum, a safe harbor should indicate that compliance with comparable agency provisions ensures compliance with the indicated rule where applicable. Additionally, good faith efforts in complying with rules should be taken into consideration in non-compliance situations. The agency should consider enforcement flexibility in potential non-compliance situations by credit unions. Such flexibility would protect good faith efforts to comply with new and potential conflicting responsibilities.

VI. Small Institution Exemption

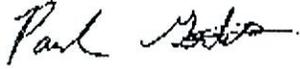
Lastly, the Association suggests that the Board consider small institution exemptions from regulations wherever possible. Small institutions, which it is suggested should be defined as those with less than \$100 million in assets, operate generally with very few employees, and are under acute pressure to remain in compliance with all applicable laws and regulations, while still providing valuable services and benefits to their members.

VII. Conclusion

Thank you so much for your consideration of these views. The Association appreciates the opportunity to provide input on such an important topic and I remain available to address any questions or concerns at (800) 842-1242 that you or your staff may have at your convenience.

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Sincerely,

A handwritten signature in black ink, appearing to read "Paul Gentile". The signature is written in a cursive style with a horizontal line at the end.

Paul Gentile
President/CEO

Attachment

Regulatory Burden Example

Credit Union Profile: State-chartered credit union, \$2.5 billion in assets, 200,000 members, offers fixed and variable rate mortgage loans with a portfolio of over 5,600 loans, only 10 foreclosures in the over 22 years of offering mortgage loans. Clearly, existing mortgage practices do not mislead or deceive consumers of mortgage origination process or costs, but provide quality mortgage loans, without the pressure of additional consumer protection regulations.

Rule: Consumer Financial Protection Bureau Truth in Lending Act and Real Estate Settlement Procedures Act integrated disclosure rules, effective August 1, 2015, which replace the Good Faith Estimate and HUD-1/HUD-1a forms and procedures with two new disclosures – the pre-closing Loan Estimate and the Closing Disclosure - and otherwise revise the mortgage loan origination process and disclosures that consumers receive when applying for and closing on a mortgage loan, to better inform consumers of mortgage transaction costs and allow for comparison shopping.

Burden review of rule: Beginning last fall, a review of the new rules to determine which provisions affected the credit union's mortgage operations. This required a review of 637 pages of regulations (the Federal Register version – the CFPB version is 1888 pages), including the preamble, regulatory text, forms, and official interpretations.

Based on the review, a procedure of 23 pages was written. Instructions were drafted for the Real Estate Department to use to complete the new Loan Estimate and Closing Disclosure, which numbers 22 pages. These efforts alone consumed at least 75 hours.

Amendments were subsequently made to both documents as a result of a recent rule change.

New Software Purchase: A document software company was engaged to provide a software system to complete the new disclosures, at an annual cost of \$42,000. The existing software was discontinued, leaving a net additional annual cost of \$14,000.

New Staff and Training: Under current practice, third party loan settlement agents prepare the HUD-1 and HUD-1a documents for a mortgage closing. With the new rules, our Real Estate Department will complete both the Loan Estimate and the Closing Disclosure, which necessitates hiring at least one new employee to assist with the loan origination process, at an estimated annual cost of \$70,000, including salary and benefits. Full department retraining will also be necessary.

Additional Time: Finally, it is estimated that on purchase transactions, the loan processing time will increase from 40 to 50 days, clearly not benefitting any member borrower, and may reduce our annual mortgage loan volume and related interest income.

Other New Rules: These new rules follow rather closely on the heels of the numerous new mortgage rules implemented in January of 2014, as well as other recent new consumer regulations.

Impact on Mergers: The credit union merged in two small credit unions in the past several years, both of which looked for a merger in large part due to their regulatory burden.