

September 2, 2014

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 regulatory review pursuant to Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA). By way of background, CUNA is the country's largest credit union trade organization, representing our nation's state and federal credit unions, which serve over 100 million members.

Federal bank regulators are required by a 1996 paperwork reduction law, EGRPRA, to review their regulations at least once every ten years. EGRPRA requires the regulators to categorize the regulations to be reviewed, publish the categories for public comment, report to Congress on any significant issues raised by the commenters, and eliminate unnecessary regulations. NCUA voluntarily participates in this process, but does so separately from the other regulators. Credit unions are subject to too many regulations, and thus we support efforts by NCUA and other agencies to reduce the regulatory obligations credit unions must meet. In that connection, 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 assessment in the years that the agency participates in EGRPRA.

Moreover, we urge the agency to establish and maintain a regulatory reduction working group comprised of credit union officials selected through a public nomination process as well as NCUA central office and field staff. The purpose of the group would be to identify recommendations each year to improve, reduce or eliminate regulations, reporting requirements, and directives. Such recommendations could be included in the agency's request for comments on issues it intends to review for a particular year. We believe such a working group would significantly enhance the agency's regulatory review process and result in

ongoing efforts to implement changes that streamline requirements while fulfilling congressional mandates and safety and soundness necessities.

NCUA's request for comments identifies specific issues for review, and our recommendations focus on those areas.

### **Field of Membership/Chartering - 12 CFR 701.1; IRPS 03-1, as amended**

The agency amended the definition of "rural district" in 2013 as a total population that does not exceed the greater of 250,000 people or three percent of the population of the state in which the majority of the district is located. In our view, the FCU Act does not require NCUA to use the same statistical approach that it employs in determining a "well-defined local community." As a result, NCUA could expand the definition of a "rural community" to include contiguous areas that have a population of up to 500,000, within a single state. We also think that NCUA could allow credit unions applying for a rural district to supplement their data with narrative information and materials.

CUNA filed a comment letter with NCUA on the agency's Associational Common Bond Proposed rule. CUNA supported aspects of the proposed rule that would give credit unions a measure of regulatory relief by detailing current practices and adding categories of associations that can be added to a credit union's field of membership without agency approval.

We would support the threshold requirement as a quick means to analyze an association to see if it is appropriate for application to NCUA, but not as a method used to exclude an association that would otherwise pass NCUA's totality of circumstances test. We also support the additional separateness factor in the totality of the circumstances test because it itself is indicative of an association that would meet all of the other factors of the totality of circumstances test.

We remain concerned with what NCUA terms "quality assurance reviews" of approved associations. NCUA has indicated that these reviews are triggered by public complaint that an association does not have a "sufficient associational common bond," which essentially means it is no longer operating as it did when approved by NCUA. We think that, absent egregious practices, an association should be grandfathered and not subject to review. If NCUA insists on these reviews, the agency should detail the ways an association can remedy deficiencies and formalize an appeals process that credit unions can use if NCUA determines that an association will be forcefully removed from an FOM.

We suggest that the agency develop a method for adding pre-approved groups on an ongoing basis and not solely as part of the cumbersome notice and comment process.

Another area within field of membership that we believe the agency should review is whether a state-chartered credit union converting to a federal charter may continue accepting members from previously approved groups, even if such groups would not have been approved if the credit union had been a federal all along.

Under 12 USC §1771 and the agency's field of membership policy, a multiple-group state credit union that converts to a federal charter may retain any group previously approved if the credit union retains its multiple group charter. However, while a converting community credit union may continue to serve members of record, it may not add new members from groups previously approved by the state regulator that are outside the bounds of the NCUA-approved community.

We think this issue deserves further consideration as we do not think that the FCU Act compels the current interpretation. While we agree that all further expansions of the converted credit union should strictly conform to federal requirements, an existing group or area duly approved by a state under state law constraints should be permitted to remain within the field of membership of the federal credit union, allowing it to add new members from that group or area. At the very least, we believe NCUA should allow the converting credit union to submit narrative information to support its ability to add new members from such groups.

We continue to have concerns about the agency's regulatory treatment of underserved areas and the overly cumbersome requirements credit unions must follow to even apply for such an area. We urge the agency to revisit this issue and to consider ways to facilitate expansion into underserved areas.

### **Member Business Loans - 12 CFR 723**

Credit unions are an important source of funding for small businesses in their fields of membership. To facilitate such funding for small businesses further, we recommend that all of the regulatory requirements for MBLs that are not specifically required by the FCU Act should be eliminated. These include: the requirement for the personal guarantee of the borrower(s), loan-to-value ratios,

construction and development loan limits, appraisal requirements, and other regulatory restrictions. While these requirements may be waived the waiver process has been strongly criticized. Rather than subject credit unions to a cumbersome waiver process, we think the agency should eliminate these requirements.

We also strongly urge the agency to revisit exemptions for federal credit unions under the “history of primarily making” language in the FCU Act. (PL 105-219, 1998, HR 1151, Credit Union Membership Access Act.) We brought this issue to the attention of agency staff in previous years and do so again under this EGRPRA review.

One of the exceptions to the FCU Act from the MBL cap is for credit unions that have a “history of primarily making member business loans” to their members, and Congress delegated to NCUA the authority to define “history of primarily making” MBLs. In implementing PL 105-219, NCUA defined “history of primarily making” to focus on those credit unions that had MBLs comprising at least 25% of their outstanding loans or MBLs comprised the largest portion of the credit unions’ loan portfolios.

Under NCUA’s rule, credit unions could show evidence of a history of primarily making MBLs with call report data from January 1995 to September 1998. The agency has not reviewed the definition of “history of primarily making” since that time. The FCU Act does not require NCUA to measure a credit union’s history of primarily making MBLs from the passage of the Act and would allow the agency to set a reasonable, contemporaneous time period for a credit union to establish a “history” of making MBLs.

If NCUA is concerned that many credit unions would escape the cap, then we would welcome the opportunity to work with the agency to establish reasonable parameters that could nonetheless provide more flexibility for credit unions than is currently available.

Supervisory Letter 13-CU-02 addresses waiver criteria but does not indicate that credit unions should have the flexibility to make MBLs to members without a personal guarantee or should be granted a blanket waiver from the personal guarantee requirement. Credit unions with well-run MBL programs should be given latitude to run their programs without undue constraints from NCUA.

## **Loans to Members and Lines of Credit to Members - 12 CFR 701.21**

Even though the financial crisis is now in the past, credit unions continue to hold a substantial number of real estate owned (REO) properties as a consequence of the extended financial crisis. Under NCUA's current policy, federal credit unions must commit to a plan to actively promote an REO property for sale and seek a buyer, with the expectation that it will collect on the sale within 12 months. This is the case even if the REO property is being rented.

CUNA urges NCUA to amend its policy regarding renting REO properties, which was summarized in its December 2008 Letter to Credit Unions (Letter No. 08-CU-25). Specifically, we urge NCUA to relax its policy that a credit union must demonstrate that it is actively marketing an REO property for sale while the property is being rented. It is often more difficult to rent a property if the tenants are concerned the property is being marketed.

We think it would be better if the agency's policy conformed to that of the Federal Reserve Board (Fed), which issued a Policy Statement April 5, 2012. Under the Fed's statement, institutions are required to develop and follow suitable policies and procedures regarding renting REO properties, while making good-faith efforts to dispose of such properties at the earliest practicable date even if the institution is not "actively" marketing the property for sale. Adopting a similar policy for credit unions would give credit unions similar flexibility in the current housing environment.

We believe that amending NCUA's position on REOs as rentals could maintain property values and the quality of surrounding neighborhoods—the very neighborhoods in which the credit union may hold, service, or originate other mortgages. Moreover, renting out vacant REO properties could indeed assist a credit union in keeping its other members in their homes by helping to maintain the value of property in affected communities.

## **Credit Union Service Organizations (CUSO) - 12 CFR 712**

We believe the 2013 final CUSO rule was too harsh, and we continue to question the agency's authority to regulate CUSOs directly. This rule impacted all federally-insured credit unions, but was particularly severe for federally-insured state chartered credit unions (FISCUs) because of the extension of several provisions that had only applied to federally chartered credit unions.

The final rule places extra requirements on CUSOs that perform certain “complex or high risk” activities. Federally chartered credit unions have already been subject to rules addressing accounting, financial statements, and audits. The final rule expands these to FISCUs, which are also now subject to CUSO reporting requirements. “Less than adequately capitalized” FISCUs will now need approval from a state regulator prior to recapitalizing or investing in a CUSO. Finally, all CUSOs will be required to annually provide profile information to NCUA and, for FISCUs, the appropriate state regulator.

CUSOs perform many important tasks for credit unions. We feel that the CUSO rule will make CUSOs less accessible to credit unions, which will eventually harm credit unions and their members. NCUA needs to reduce the burden caused by the CUSO rule before irreparable harm is done to the credit union system.

### **Fixed Assets - 12 CFR 701.36**

We support NCUA’s current fixed assets proposed rule; however, NCUA could offer credit unions more relief by adopting the recommendations in our forthcoming comment letter. Two areas NCUA should consider are raising the exemption from \$1 million to \$50 million in assets and having it track the definition of small credit unions. NCUA should also consider a de minimis exception to occupancy and raw land ownership. Some credit unions own property with little value, which presents no safety and soundness issues. They should be able to keep ownership without applying for waivers or worry about use and occupancy.

### **Share, Share Draft, and Share Certificate Accounts - 12 CFR 701.35**

For quite some time, CUNA has urged the agency to treat Interest on Lawyers Trust Accounts (IOLTAs) as the FDIC does for share insurance purposes. In light of the fact that the agency has not used its authority to classify IOLTAs as fiduciary accounts, as the FDIC does -- which would then allow insurance coverage to be provided for each of the clients whose funds are included in the account – we urge NCUA to work with the credit union system to proactively support legislation that would underscore this authority. NCUA’s current interpretation of the FCU Act as it relates to these accounts puts credit unions at a disadvantage because banks can offer more favorable insurance coverage for clients’ funds.

Another issue regarding insurance coverage has surfaced in the context of pooled accounts under an interim final rule issued January 2011 by the Financial Management Services concerning Federal Government Participation in the Automated Clearing House. Under the interim final rule, a credit union may only offer a prepaid debit card to a member for receipt of the member's federal benefit payments if the card meets several conditions, including meeting the requirement for pass-through share insurance by the NCUSIF. The FDIC has already determined that such pooled accounts will receive the same insurance coverage as other deposit accounts (FDIC GCO No. 8, November 13, 2008). We urge NCUA to act consistently with the FDIC regarding insurance coverage for these accounts.

### **Federal Credit Union Bylaws - 12 CFR 701.2; Appendix A to Part 701**

We understand that NCUA will soon propose amendments to the FCU Bylaws. CUNA members have participated in a working group with NCUA to recommend updates to the Bylaws. CUNA would like to further work with the agency to update and streamline the FCU Bylaws to ensure, among other things, that the bylaws afford as much flexibility to credit unions as is permitted under the FCU Act, and that they are as user-friendly to credit unions as possible.

### **Mergers of Federally Insured Credit Unions; Voluntary Termination or Conversion of Insured Status - 12 CFR 708b**

Credit unions remain concerned that NCUA continues to be too selective in terms of designating a credit union that could take over or merge with a financially distressed credit union and that credit unions that are more local to a distressed credit union than the one NCUA chooses are overlooked or ignored.

Other credit unions have told us and their leagues that they are finding it difficult to obtain information from NCUA regarding the status of their applications for a conversion, merger, or membership expansion. Some have said it could take many calls over several weeks to multiple NCUA staff members just to obtain a status update. In this connection, we urge the agency to clarify its application process to its staff, including the need for timely decisions as well as updates to applicants. For example, the agency should provide a response that shows which analyst or appropriate person is handling the request, an estimated timeline for key decisions, and upcoming steps for the credit union to take, if any.

While we understand that some processes may take more time than others, credit unions believe the application process for mergers, certain conversions, and FOM changes for federally-insured credit unions should be streamlined.

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

NCUA's efforts to ensure that eligible credit unions are aware they may be designated as "low-income" are commendable. Having this designation can be extremely useful to credit unions, including the fact that it allows them to avoid the ceiling on member business lending and provides them access to supplementary capital. CUNA and the leagues look forward to working with NCUA to help publicize the benefits of low-income designation and encourage credit unions that are eligible for such designation to consider whether it is right for them and their members.

## **Leasing - 12 CFR 714**

We believe that credit unions should determine for themselves whether obtaining a full assignment is necessary to protect their interests. The Office of the Comptroller of Currency's (OCC) leasing rules do not require full assignment. The OCC rules require a perfected lien and treat the end user lessee as the obligor.

The decision to obtain a full assignment should be based on the credit union's business practices and not on regulatory requirements. Some credit unions may very well decide that a full assignment is the best method to maintain full control of any situation that may arise, especially in the case of default and vehicle disposition, but some credit unions may be justified in deciding this step is unnecessary.

We believe that NCUA should add more flexibility regarding the residual value limits. Leasing transactions differ based on such factors as the length of the lease term and the property involved. The length of the term and the varying rates at which different vehicles depreciate may both affect the decision regarding the appropriate residual value. Credit unions should have the discretion to review these factors to make their own determinations, with the assistance of accepted residual leasing guides. Moreover, NCUA should clarify the types of leasing relationships covered by this regulation.

## **Conclusion**

Thank you for the opportunity to express our views on NCUA's first EGRPRA information request. If you have any questions about our comments, please do

not hesitate to contact me or CUNA's Deputy General Counsel and Senior Vice President Mary Dunn.

Sincerely,

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

J. Lance Noggle  
Assistant General Counsel