



Credit Union National Association

cuna.org

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April 1, 2014

Office of Information and Regulatory Affairs
Office of Management and Budget
Room 10226, New Executive Office Building
Washington, DC 20503
Attn: Shagufta Ahmed

Re: RIN 3133–AD77, National Credit Union Administration Prompt Corrective Action – Risked Based Capital Proposed Rule

Dear Ms. Ahmed:

The Credit Union National Association (CUNA) appreciates the opportunity to submit comments on the Paperwork Reduction Act (PRA) review regarding the National Credit Union Administration’s (NCUA) Prompt Corrective Action – Risked Based Capital proposed rule. By way of background, CUNA is the nation’s largest credit union trade organization, representing our nation’s state and federal credit unions, which serve nearly 99 million members.

NCUA’s proposed rule was published February 27, 2014 (79 Fed Reg 11184) and seeks to establish new, more stringent risk-based capital (RBC) standards for all credit unions that NCUA defines as “complex.” This term encompasses any federally insured credit union that simply has more than \$50 million in assets.

NCUA’s definition of “complex” credit union is inappropriate and injudicious and will contribute significantly to the paperwork and other burdens associated with the proposal that covered credit unions would face if the proposal is adopted as issued for comments.

The Federal Credit Union Act (FCU Act) directs NCUA to develop a risk based net worth system for complex credit unions that is based on the “portfolios of assets and liabilities of credit unions” (12 USC 1790d(d)). Congress could have directed NCUA to focus only on size in defining “complex” but it did not.

Rather, the FCU Act requires NCUA to consider the complexity of a credit union’s book of assets such as loan and investments as well as liabilities. In other words, based on the credit union’s accounts and financial activities, are the credit union’s operations sufficiently multi-faceted to warrant the credit union being designated as “complex?” Under current § 702.103 of NCUA’s regulations, a credit union is defined as “complex” if “[i]ts quarter-end total assets exceed fifty million dollars (\$50,000,000); and . . . [i]ts [RBNW]



requirement, as calculated under § 702.106, exceeds six percent (6%).” While this definition may not be perfect, it does go beyond mere asset size to determine whether a credit union is complex.

The idea that a financial institution becomes “complex” the moment its assets cross the \$50 million threshold is arbitrary. By any reasonable measure, a financial institution with slightly more than \$50 million in assets is small and likely to be relatively simple. In this connection, we would call your attention to the fact that the Small Business Administration defines “small” financial institutions, including credit unions, as those with up to \$500 million in assets. Federal bank regulators frequently use \$10 billion in defining community banks.

NCUA’s one dimensional approach to the definition of “complex” does not comport with the statute and by relying on asset size alone to determine whether a credit union is complex and thus subject to additional paperwork requirements, NCUA’s proposal casts a regulatory net that is far too wide. As a result, many more relatively small credit unions will be subject to the proposal. More to the point for purposes of a review under the PRA, NCUA’s inadequate definition of “complex” will create paperwork and regulatory burdens for credit unions that should not even be under the rule. Because of their small size, many of these credit unions lack the staff resources necessary to deal with the associated burdens.

According to NCUA, there are 2,237 credit unions that would be considered complex and would be directly impacted by the substantive provisions of the RBC proposal but another 4,624 non-complex credit unions would be subject to additional recordkeeping and information collection requirements if the proposal is adopted. NCUA estimates that the rule will create an additional 122 hours of annual paperwork for non-complex credit unions and 162 hours for complex credit unions.

We seriously question whether the agency has properly evaluated the paperwork burden of the proposal given the insufficiency of the analysis shared with the public. One critical factor that the agency has not apparently included in its analysis is that the proposal if adopted would require credit unions to review their policies and make portfolio changes such as selling assets or restrict growth in order to minimize the impact of the proposal on their capital. Even for credit unions with \$50 million or less in assets, the proposal will mean that they have to plan for compliance well before they reach the rule’s coverage threshold.

The Office of Management and Budget should not even consider the agency’s paperwork burden estimates until NCUA has reconsidered and redefined “complex” in a manner that is consistent, not in conflict, with the FCU Act.

Assuming NCUA’s estimate is accurate – which we do not agree that it is -- the proposal would require three weeks of a full time employee’s work time in a noncomplex credit union and four weeks in a complex credit union.

OMB should request that NCUA provide sufficient details and analysis as to how it developed its paperwork burden estimates, which NCUA has not done. NCUA should be required to make public a detailed analysis of the burdens that will be created by the proposal so that credit unions and other stakeholders can properly analyze the agency's estimate under the PRA.

CUNA and our member credit unions do not object to reasonable data collection when necessary for NCUA or other agencies regulating credit unions to execute their functions properly. However, in submitting a data collection request, agencies should not ignore key factors that will contribute to paperwork burdens, such as the definition of "complex" credit unions, and should be required to include more than mere pro forma support and justification for the data collection.

Conclusion

In closing, we do not believe that the discussion of the paperwork burden accompanying the proposal in the Federal Register satisfies the agency's obligations under the PRA to ensure that the agency is accurately disclosing and assessing the burdens created by the rule. We urge OMB to review NCUA's data collection request and deny it until NCUA amends the definition of "complex" and provides a reviewable analysis to explain sufficiently how it derived its paperwork burden estimates.

Thank you for your consideration of our concerns. If you have any questions about our letter, please do not hesitate to give me a call at (202) 508-6736.

Sincerely,



Mary Mitchell Dunn
Deputy General Counsel and Senior Vice President

cc: Gerard Poliquin, Secretary of the Board, National Credit Union Administration