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Submitted *via* email: boardcomments@ncua.gov

November 20, 2017

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

RE: CUNA Comments on NCUA Regulatory Reform Agenda

Dear Mr. Poliquin:

The Credit Union National Association (CUNA) appreciates the opportunity to comment on the National Credit Union Administration (NCUA) Regulatory Reform Agenda. CUNA represents America's credit unions and their 110 million members.

CUNA applauds the effort, intent, and approach of NCUA to address the myriad of outdated, ineffective, and excessively burdensome regulations applicable to the credit union industry. CUNA appreciates the agency's commitment to balancing safety and soundness regulation with encouraging a robust and thriving marketplace for credit unions to serve their member-owners. A CUNA-backed study conducted by Cornerstone Advisors found that from 2010-2014, credit unions bore a regulatory burden of \$7.2 billion dollars, which included \$6.1 billion in new, post-Dodd Frank Act regulatory costs and \$1.1 billion in lost revenue.

The regulatory compliance cost burden is especially egregious for smaller financial institutions. More than one-third of U.S. credit unions have five or fewer full-time employees, at least two of whom are primarily engaged in regulatory compliance functions. Over 40% of America's credit unions hold less than \$20 million in assets. Wall Street investment banks—largely considered responsible for the financial transactions that led to the 2008 financial crisis—these credit unions are not, and yet they continue to bear an undue regulatory compliance burden with regulations designed to deter, punish, or dis-incentivize for-profit banks.

As you are aware, when a credit union, fully-owned by its cooperative-based membership, spends the resources of the member-owners on new rules and compliance, they are spending fewer resources on serving members with safe and affordable products and services. This comment letter will address the NCUA Regulatory Reform Agenda recommendations for



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regulatory relief, and recommend additional issues for the agency to pursue to help ensure robust credit union industry operations without sacrificing prudential safety and soundness.

CUNA also recognizes and applauds the commitment to regulatory relief undertaken by the NCUA thus far, as further evidenced by the expedience and pace of the Tier 1 proposals, many of which have been proposed, if not finalized during this calendar year 2017.

Tier 1 Recommendations (Years 1 and 2)

1. Loans to Members and Lines of Credit to Members

CUNA supports regulations that provide credit unions flexibility in loans offered, collateral to secure loans, terms, collections, and underwriting. From a compliance practitioner standpoint, co-location of all loan maturity limitations will be useful. Codification of the legal opinion that clarifies a lending action not subject to the Generally Accepted Accounting Principles (GAAP) standard for a “new loan” is therefore not subject to the maturity limits will provide clarity and consistency across examination regions.

CUNA also supports longer maturity limits for 1-4 family real estate loans and other similar housing loans. Moreover, CUNA supports changes to the Federal Credit Union Act (FCUA) to designate 1-4 non-owner-occupied loans as real estate, rather than member business, lending.

2. Loans to Members and Lines of Credit to Members: Single borrower and group of associated borrowers

Again, for compliance purposes, repositioning the references for limits on single borrower and group of associated borrowers into one statutory location will provide consistency, which CUNA supports.

3. Loans to Members and Lines of Credit to Members: Third-party servicing of indirect vehicle loans

CUNA supports the elimination of portfolio limits and the related waiver provision. In development of a new comprehensive third-party due diligence regulation addressing the minimum expectations for credit unions using and third-party loan servicers, servicing standards should apply uniformly and not impose any new or additional regulatory burdens.



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4. Loans to Members and Lines of Credit to Members: Compensation in connection with loans

Credit unions should have flexibility to offer senior executive compensation plans that reflect their organizational goals, not subject to additional decision-making scrutiny. This position holds across the board: from loan incentives, to a look-back on compensation in voluntary mergers. De minimus thresholds should apply in any assessment of compensation, discretionary or compulsory.

5. Appendix B to Part 701—Federal Credit Union Bylaws

Any Advanced Notice of Proposed Rulemaking (ANPR) and subsequent working group to address updating bylaws should not impose new and additional regulatory compliance or reporting burdens on credit unions. Indeed, bylaws should be optional, with credit unions permitted to use their own bylaws.

6. Appendix A to Part 701—Chartering and Field of Membership Manual

CUNA strongly supports the proposed rule to revise the chartering and field of membership (FOM) rules to remove the population limit on a community statistical area, and rather address a unity of common interests or interaction in determining what constitutes a community. This update adequately reflects the movement maintained in modern American society and is a much-welcome and necessary update.

Regarding voluntary mergers, CUNA maintains concerns over internal merger-related disclosures that may provide a spurious correlation between compensation and governance, given the proposed look-back extends two years prior to any voluntary merger. Therefore, CUNA supports a 12 month look-back, especially if a final rule incorporates a de minimus exception, with forward-looking reviews time-limited rather than open-ended.

NCUA should further facilitate mergers between credit unions with dissimilar fields of membership when there is no interest to retain the field of membership (FOM). This can be accomplished by updating the NCUA chartering manual to eliminate the need for a conversion. A merged credit union could change its FOM and have its merger approved in a single application, rather than a lengthy multi-step review. As emergency merger authority exists to permit a merged credit union to retain its FOM, the ability to eliminate the multiple-step redundancy has precedent.



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7. Appendix B to Part 701—Emergency Mergers

CUNA supports the increased flexibility provided in the emergency merger triggers, but maintains objection to any regime that would result in rigid guidelines forcing credit union mergers. In the background discussion to NCUA's proposal, the agency notes that roughly 73 credit unions that fell below 2% net worth during the last 20 years remain active today. This illustrates the need to avoid any approach that would impose an inflexible, one-size-fits-all rubric to resolve financially-challenged institutions.

8. Appendix B to Part 701—Capital Adequacy

CUNA supports raising the stress testing threshold from \$10B to a value significantly higher. As most of American credit unions are well-under the \$10B threshold currently, but have room to grow, the increase reflects macroeconomic realities, rather than maintaining a dollar amount that is inflexible. This perspective ought to apply throughout the regulatory sphere. Further, large credit unions subject to the stress testing requirements, are best equipped to internally self-conduct these exercises, with reports to examiners, given that unlike the banking agencies, NCUA staff are not consistently involved in large institution contingency exercises.

9. Capital Adequacy—Risk-Based Capital

CUNA supports an implementation delay in the risk-based capital rule, given compliance requirements have not been adequately noticed to provide systems integration updates. Risk-based capital (RBC) rules and regulations must be narrowly tailored to capture only the appropriate risk profiles intended. As we have noted, credit unions are unique and vary in terms of asset class, lending activities, and membership fields; CUNA cautions against a one-size-fits-all approach or methodology that would subject credit unions to undue regulatory burden that fails to appropriately address their activities.

10. Part 704—Corporate Credit Unions

The proposed amendments affect the calculation of capital after corporate credit unions consolidate and set a retained earnings ratio target to meet prompt correction action standards. CUNA agrees with NCUA that expressly including merger-acquired GAAP equity as retained earnings will clarify that capital is available to cover losses, resulting in greater accounting transparency and reduced ambiguity. We support counting perpetual contributed capital (PCC) as Tier 1 capital, especially given the confusion for credit union auditors evaluating potential PCC impairment. The limitation of PCC for regulatory capital purposes undermines the full value of PCC to absorb losses during an economic event.



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11. Part 704—Fidelity Bond and Insurance Coverage

A credit union's decisions and choices to secure fidelity bond and insurance coverage should be permitted to be made solely on the institution's own product and service needs, and not subject to operational interference by a regulator. Whereby credit unions are unique entities due to their membership limitations, they should be free to employ flexibility as prudent in their own decision-making.

12. Part 715—Supervisory Committee Audits and Verification: Engagement letter, target date of delivery

CUNA supports the regulatory relief provided herein to remove the specific "120 days" requirement to permit flexibility in negotiating delivery dates and alleviate the need to secure a waiver of target compliance.

13. Part 715— Supervisory Committee Audits and Verification: Audit per Supervisory Committee Guide

In removing the reference to NCUA's Supervisory Committee Audit Guide, and replacing it with minimum standards a supervisory committee audit would be required to meet if they do not obtain a Certified Public Accountant (CPA) opinion audit, no new or additional regulatory compliance burdens or obligations should be required. To the extent the replacement adds confusion or inconsistency, rather than streamlined flexibility, effort should be made to ensure clarity and consistency in terms of what constitutes "minimum standards."

14. Securitization

NCUA has completed this recommendation by issuing a legal opinion interpreting FCU's incidental powers to authorizing the buying and selling of securities, including a safe harbor rule related to liquidation of assets transferred with a securitization or participation in securities offering. CUNA supports the ability of credit unions to provide financial services sought by their membership and approved by their leadership.

15. Part 722—Appraisals

As referenced earlier herein, NCUA (and the financial regulators, writ-large) should address dollar amount thresholds based on current and projected financial data. CUNA supports raising the commercial real estate loan appraisal threshold from the present \$250,000, to \$400,000. CUNA prefers NCUA to operate on its own authority, rather than joining with the banking



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agencies' task force, to raise both the commercial real estate (CRE) appraisal threshold, and separately, the threshold (at \$1M for banks) relating to certain qualifying business loans not dependent on the sale or rental income of the property.

16. Part 740—Accuracy of Advertising and Notice of Insured Status

Whereas credit unions must presently include the official advertising statement in radio and television ads exceeding 15 seconds in duration, Federal Deposit Insurance Corporation (FDIC)-regulated banking institutions are not required to include the similar-FDIC statement unless such ad exceeds 30 seconds, rendering the NCUA rule for credit unions more restrictive than that which is applied to banks. Federally-insured credit unions are also required to include the advertising statement on statements of condition that must be published, while banks are exempt. The proposed rule seeks to rectify these regulatory inequalities, and provide print, radio, and television advertising parity among banks and credit unions. A reduction in compliance costs involved with additional publication requirements and longer disclaimers in advertisements is a tangible benefit—one that for-profit banking institutions have disproportionately enjoyed since FDIC advertising rule revisions in 2011. Indeed, CUNA would have preferred expedient action by NCUA to rectify this disparity in the intervening six years.

17. Part 741—Requirements for Insurance

Conforming changes to reflect the fair provision that dividend disbursements from the Share Insurance Fund only be provided to entities who have made calendar year payments into the Fund is equitable. CUNA expects the same principles to be applied when TCCUSIF rebates are distributed in 2018.

CUNA believes the Share Insurance Fund's net operating level can and should return to its historical 1.3% over the next several years. As the regulatory reform agenda moves forward in eliminating duplicative and outdated compliance burdens, allowing credit unions to focus attention on driving the financial future of their membership, continued stability will further ameliorate additional concerns regarding the Fund's normal operating level. CUNA is committed to further cooperation with NCUA to achieve such outcome.

18. Supervisory Review Committee

CUNA appreciates the NCUA's willingness to provide several opportunities for review of material supervisory determinations from a program office. The intermediate Supervisory Review Committee is a welcome addition, as is the opportunity for oral argument before the Board directly, in the shed of tools a credit union may use. Given the nature of the



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regulator/regulated relationship, however, CUNA believes that an independent review option should also be available. Further, the Board should allow a request for oral hearing up until the final disposition. It is entirely possible that as a credit union works through a complaint it may determine an oral hearing is appropriate and it should be able to request one up until an appeal decision is made.

19. Appeals

CUNA appreciates the thorough legal review conducted by NCUA to streamline and improve the appellate review process. CUNA continues to believe, however, that the agency should provide a mechanism for collection of examination feedback on the performance of individual examiners. Independent, ongoing, and confidential surveys should be processed and compiled by an external third-party, free from public repercussion. Such a process would be advantageous for NCUA by demonstrating education, training, and consistency metrics, as well as assisting in the merit pay process. Most industries, including credit unions, have successfully implemented client satisfaction methodologies to support data-driven decision-making processes. As the appeals process is currently the only mechanism to provide feedback, CUNA supports an option for independent review.



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Tier 2 Recommendations (Year 3)

1. §701.22—Loan Participations: Aggregate amount of loan participations that may be purchased from any one originating lender

CUNA supports eliminating the prescriptive limit on the aggregate amount of loan participations that may be purchased from any one originating lender. Returning flexibility to the individual credit union to set its own established limit within its risk appetite and consistent with the established policies of the credit union's board of directors is appropriate given the inadequacy of a one-size-fits all rubric in this regard. Credit unions should have the authority to invest in loan participations without unreasonable limitations related to how the loans were originated.

2. §701.23: Purchase, Sale, and Pledge of Eligible Obligations

Again, this provision would return the authority to purchase loans and other assets into one section, with authority to credit union decision-making. Removal of the supervisory ratings and limitations beyond the statutory scope for the FCUA will aid credit unions in their member service business by reducing undue regulatory burden. Providing credit unions with the unlimited ability to purchase, sell, and pledge eligible member obligations is at the spirit of the credit union business model.

3. §741.8: Purchase of assets and assumption of liabilities

Pursuant to prior comments that credit unions should retain the broad flexibility and authority to lend, purchase and sell assets and liabilities, not subject to NCUA approval in all cases, CUNA welcomes an agency review to determine whether NCUA approvals are necessary in deals between credit unions and other (not federally-insured credit union) market participants.

4. §701.32: Payment on Shares by Public Units and Nonmembers

CUNA supports the development and preservation of community development credit unions (CDCUs) and the use of NCUA statutory authority to support and encourage CDCU growth. Raising the nonmember deposit limit from 20 to 50% would be a positive step.

5. §701.34: Designation of Low Income Status; Acceptance of Secondary Capital Accounts by Low-Income Designated Credit Unions

CUNA supports NCUA's efforts to explore additional sources of capital for purposes of net worth requirement calculations. Supplemental capital should be acceptable to count toward the



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risk-based net worth requirement. We support a supervisory approach that sets forth base requirements for issuance of capital instruments, without specifying precisely how such open-ended rather than restrictively-defined instruments, would comply. The focus instead should be on the approval process, similar to the Federal Drug Administration's drug monograph approval procedures.

6. §701.38: Borrowed Funds from Natural Persons

While a comprehensive borrowing rule could provide clarity to support supplemental capital concerns, CUNA cautions against imposing new or additional regulatory burdens. Any rule, however, should retain flexibility for a credit union to structure the offering in a cost-effective manner, regardless of the nature of the capital instrument, be it equity or subordinated debt.

7. §702: Capital Adequacy

CUNA supports efforts to reduce the applicability of risk-based capital and risk-weights to all smaller credit unions. The rule should be narrowly-focused and simplified; to the extent credit unions must meet RBC requirements, supplemental capital should be permitted to count toward the requirements.

8. §702: Alternative Capital

In our view, CUNA has the statutory authority to include alternative capital to satisfy the risk-based net worth requirement, and should use such discretion to do so. We believe an initial volume limit of 25% of retained earnings or 2% of total assets, whichever is greater, would be appropriate.

9. §703: Investment and Deposit Activities

CUNA supports the expansion of credit unions' investment authority. Removal of unnecessary restrictions not mandated in the FCUA, and adoption of a principles-based approach is appropriate.

10. §701.21: Loans to Members and Lines of Credit to Members

CUNA supports all conforming clarifications to ensure the regulations are clear, consistent, and where appropriate, bundled in relevant, and rational sections.



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Tier 3 Recommendations (Year 4+)

1. TBD—Third-Party Due Diligence Requirements

CUNA supports reorganizing regulations where it makes sense to do so; no new or additional regulatory burdens should be imposed on credit unions in a third-party due diligence regulation.

2. §701.21—Loans to Members and Lines of Credit to Members: Preemption of state laws

Cases in which federal preemption would apply to applicable state laws and regulations should be narrowly tailored so as not to undermine a state supervisory structure. As many credit unions opt for state charters based on their member business needs, any federal legal preemption should not unduly burden the compliance obligations of credit unions who have not sought the degree of federal oversight imposed.

3. §701.21—Loans to Members and Lines of Credit to Members: Temporary interest rate ceiling

Given that the loan interest rate ceiling has stayed at 18% since 1987, CUNA believes it makes sense to study whether future rate changes should be tied to a domestic index. Further, removal of a specific means for notifications is appropriate given the pace of development in modern communication technology. To that end, NCUA should take steps to ensure the application of this principle to all aspects of credit unions' communications, including advocating that credit unions have the flexibility to contact their members via modern communications.

4. §701.37—Treasury Tax and Loan Depositories and Financial Agents of the Government

This provision is no longer applicable and CUNA believes it is irrelevant and unnecessary.

5. §709—Involuntary Liquidation of Federal Credit Unions and Adjudication of Creditor Claims Involving Federally Insured Credit Unions in Liquidation: payout priorities in involuntary liquidation

CUNA does not have concerns regarding equalizing the NCUSIF to be on par with unsecured creditors in payout priority determinations. In fact, increasing the seniority of the Fund will help the larger credit union industry.



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6. §712—Credit Union Service Organizations (CUSOs)

Given the collaboration between credit unions and CUSOs, CUNA supports increasing and enhancing CUSO permissible activities in providing services to help credit unions. CUNA believes the percentage that credit unions can invest in CUSOs should also be increased. CUNA does not believe that CUSOs should be subject to full examinations.

7. §714—Leasing

CUNA maintains that credit unions should have the flexibility to run their business as best suits their members' needs. Leasing regulations should be reduced to allow more credit unions, other than the largest, to engage in this activity, if it is appropriate to their business needs. Credit unions are uniquely positioned to provide creative, tailored lease terms, giving members greater flexibility in personal leases.

8. §725—NCUA Central Liquidity Facility (CLF)

CUNA supports updates to CLF that would reduce minimum collateral requirements and facilitate the use of correspondents.

9. §741—Requirements for Insurance: maximum borrowing authority

State law should govern the borrowing limit for federally-insured state-chartered credit unions.

10. §741—Requirements for Insurance: special reserve for nonconforming investments

CUNA agrees with the removal of this GAAP-inconsistent and unnecessary provision.

11. Part 748—Security Program, Report of Suspected Crimes, Suspicious Transactions, Catastrophic Act, and Bank Secrecy Act Compliance

CUNA urges NCUA to minimize compliance burdens relating to the Bank Secrecy Act (BSA) under Part 748 of NCUA's regulations, which supplements BSA regulations from the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN). Compliance with BSA and anti-money laundering (AML) requirements remains a substantial regulatory issue. CUNA supports raising the thresholds for Currency Transaction Reports (CTRs) and Suspicious Activity Reports (SARs) to a minimum of \$20,000 to ensure that only effective and useful data is transmitted, and field examiners can provide consistent guidance during



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examinations; the current threshold has remained unchanged since 1972. Further, the SAR and CTR forms should also be combined into one form submission.

In regard to special flood hazards, we believe a safe harbor for a financial institution accepting private flood insurance that meets the state regulator’s definition of “private flood insurance” ought to apply, placing the burden on private insurers, rather than lenders, for ensuring compliant flood insurance. Acceptance of alternative private flood insurance should remain the sole discretion of the credit union, rather than a compulsory line imposition.

12. Records Preservation Program and Appendices—Record Retention Guidelines; Catastrophic Act Preparedness Guidelines

CUNA supports the development of an agency working group to identify appropriate changes or improvements to the recordkeeping requirements, once the Tier 1 and Tier 2 agenda items are implemented.

Investments—Part 703 Subpart A; Appendix to Section III—Part 703 Recommendations Details

CUNA supports the expansion of credit unions’ investment authority. To be competitive in the today’s financial services marketplace, credit unions should be permitted to invest in a broad range of investment alternatives, subject to the decision-making control of their member directors. By amending this Section, credit unions could have access to professionally-managed, separate-account investments with greater transparency than is afforded via permitted mutual funds.

NCUA proposes removing the prescriptive due diligence requirements applicable toward investment advisors and broker-dealers; we feel this is appropriate given the nature of those business models, instead requiring credit unions to perform due diligence. Credit unions also should be permitted to invest in municipal bonds without limitation, and to purchase mortgage servicing rights.

Derivatives—Part 703 Subpart B; Appendix to Section III—Part 703 Recommendations Details

CUNA appreciates NCUA’s recognition of the successful implementation of derivatives authority to credit unions, who have responsibly used these instruments to mitigate financial risks. Expanding eligible collateral to include agency debt, removal of limits on permissible off-balance sheet hedging instruments, and elimination of preapproval will allow more credit unions



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to effectively manage interest rate risk, subject to appropriate supervisory intervention. CUNA supports these technical and conforming changes that reflect the current economic and financial landscape.

Conclusion

CUNA is pleased that the agency continues to address the various proposals in the Regulatory Reform Agenda with a consistent and expedient pace. Indeed, the timelines may even be conservative. Credit union members are particularly concerned with BSA/AML relief and we would support an increase in priority for regulatory relief in that area. We also maintain the need for an independent third-party review of examiners, as a mechanism to provide anonymous feedback after an examination.

Thank you for the opportunity to comment on NCUA's Regulatory Reform Agenda. If you have questions concerning this letter, please feel free to contact me at 202.626.7627.

Sincerely,

Monique Michel
Senior Director, Advocacy & Counsel
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