

Cooperative Credit Union Association

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Creating Cooperative Power

November 20, 2017

Gerard Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Cooperative Credit Union Association, Inc. Comments on NCUA Regulatory Reform Agenda

BY EMAIL ONLY

Dear Mr. Poliquin:

On behalf of the member credit unions of the Cooperative Credit Union Association, Inc. (“Association”), please accept this letter relative to the National Credit Union Administration’s request for comments on its Regulatory Reform Agenda. The Association is the state trade association representing credit unions located in the states of Delaware, Massachusetts, New Hampshire and Rhode Island, serving approximately 190 credit unions which further serve approximately 3.6 million consumer members.

The Association commends the NCUA for undergoing much needed reform and modernization efforts, and for its commitment to the objectives of the executive branch’s regulatory reform agenda. Such efforts include the voluntary establishment of a Regulatory Reform Task Force and the identification of regulations that should be repealed, replaced, or modified on the basis of being outdated, unnecessary, or ineffective, among other considerations. The NCUA has undertaken a similar commitment to regulatory reform under both its Office of General Counsel’s annual one-third review of all regulations, as well as the Economic Growth and Regulatory Paperwork Reduction Act of 1996, both of which resulted in more favorable operating conditions for credit union. As the Task Force will have reviewed all of NCUA’s regulations as part of its reform agenda, the Association supports the suspension of the Office of General Counsel’s one-third review of regulations and the Task Force’s recommendation that the one-third review be revived again in 2020.

The Association acknowledges the NCUA for its efforts to alleviate the regulatory burden placed on all credit unions in recent years. Such efforts, which include the closing of the temporary corporate credit union stabilization fund, increased transparency relative to the budget and overhead transfer rate, and revision of the field of membership and member business lending rules, help the Association’s member credit unions to better serve their consumer members and increase operational efficiency.

As you are aware, 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

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allocated to regulatory compliance are diverted from the member service side, resulting in a reduction of the services offered to members. 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.

The Association strongly supports the spirit of the NCUA's Regulatory Reform Agenda and the vast majority of the Task Force's recommendations and prioritization placements. This comment letter will address areas of the agenda of the greatest importance for purposes of operational flow and enhanced member service by topic, as well as provide recommendations for the agency to pursue that would help ensure robust credit union industry operations without sacrificing prudential safety and soundness.

Alternative Capital

Part 701.34 is currently listed in Tier 2. The Association disagrees that the impact of an overhaul to the alternative capital rules will be low.

The Association has provided detailed comments on alternative capital authority to the NCUA, and incorporates all previous recommendations by reference in this letter, to include the Association's comments that alternative capital authority is necessary considering risk-based capital requirements, and that the concepts of secondary capital and supplemental capital should be consolidated.¹

The overwhelming majority of the Association's members support alternative capital authority for all credit unions, and the impact of a rule that grants alternative capital authority will be substantial. The need for capital modernization continues as credit unions experience the challenges not only of external factors such as economic cycles, but also those such as social media and Bank Transfer Day, with no alternatives for growth opportunities beyond their ability to generate retained earnings. The need for increased earnings through managed risk is stronger than ever and a critical component of capital modernization. Credit unions seek such a tool to increase loan portfolios and other growth opportunities within the not-for-profit cooperative structure.

The Association strongly feels that having the option to issue and accept alternative capital is vital to safeguarding the future safety and soundness of the credit union system. Unforeseen circumstances that may be beyond a credit union's control could strain its capital position to a point where having the ability to quickly raise supplemental capital would be a valuable option. Often, the only option credit unions currently have to raise capital is by increasing their retained earnings balance, which may not be sufficient in a severely stressed situation. Alternative capital authority would also provide an additional source of protection for the National Credit Union Share Insurance Fund.

Additionally, the Association seeks 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,

¹ Cooperative Credit Union Association, Inc. Comments on Advance Notice of Proposed Rulemaking on Alternative Capital RIN 3133-AE66, May 9, 2017.

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.

Credit Union Service Organizations

Currently, Part 712 addressing Credit Union Service Organizations (“CUSOs”) is listed as a Tier 3 topic. The Association supports the expansion of permissible activities to be conducted by CUSOs to include “loan origination of all types of loans that may be provided by a credit union.” With this more encompassing definition, the specific origination authority for business loans, consumer mortgage loans, student loans, and credit card loans would no longer be required. The future health of the credit union industry is dependent upon the capability of meeting the service and convenience expectations of the membership, which requires credit unions to develop a broader spectrum of capabilities. Clarifying confusing rules and eliminating an unfair impediment to the development of cooperative solutions by credit unions can only provide beneficial to member service and the health of the industry.

As such, the Association would support the combining and simplification of lending rules. Credit unions are often confused about their regulatory authority due to the piecemeal organization of the various lending rules. If this were to be undertaken, the Association would recommend enhancing the federal preemption where possible to ensure that federal credit unions in multi-state situations have a clearer regulatory framework.

More specifically, the Association supports the ability of credit unions and CUSOs to package and sell loans to investment buyers. As credit unions are increasingly the source for home lending, they seek to educate their members and provide the right product to fit members’ unique needs. To continue to do so cost effectively, credit unions need to participate in the securitization markets. To obtain the volume required for securitization, credit unions need the capability to combine their loan production into multi-issuer packages. Enabling this cooperative activity would be another significant contributor to future financial health and stability for the industry.

Lastly on this topic, the Association respectfully requests that the NCUA use this review process to examine and revise its current approach to the safety and soundness supervision of credit union CUSO investments. It is the position of the Association that this is best performed through the credit union supervisory framework, not the direct supervision of CUSOs.

Bank Secrecy Act

The Association recommends that Part 748, which contains provisions on Bank Secrecy Act compliance, be re-prioritized into Tier 1, rather than kept in its current position in Tier 3. The Bank Secrecy Act (“BSA”) is primarily enforced by the Financial Crimes Enforcement Network (“FinCEN”) under the Department of the Treasury. However, the NCUA continues to impose its own rules on federal credit unions under the BSA. Any duplication in requirements regarding the BSA goes to the continued regulatory burden that already exists on credit unions.

It is suggested that the NCUA work collaboratively with the Treasury, in particular FinCEN, and its colleagues to eliminate duplication in any area under the BSA. Additionally, it is requested that the NCUA explain all examination policies and priorities, particularly new ones, and provide the information in one “examination issues” location on the agency’s website and in agency documents, such as letters to credit unions and examiner’s guides.

This effort should not be delayed for more than three years, as opportunities exist currently to create meaningful regulatory changes and minimize the costs and challenges credit unions encounter under BSA and anti-money laundering requirements.

Capital Adequacy – Risk-Based Capital

The Association supports an implementation delay in the risk-based capital rule, given compliance requirements have not been adequately noticed to provide systems integration updates. RBC rules and regulations must be narrowly tailored to capture only the appropriate risk profiles intended. As noted in previous comment letters on this topic, credit unions are unique and vary in terms of asset class, lending activities, and membership fields. The Association 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.

Chartering and Field of Membership

The Association 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 society and is a welcome and necessary update.

The Association has provided detailed comments regarding voluntary mergers to the NCUA, and incorporates all previous recommendations by reference in this letter.² The Association 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. The Association believes that should a lookback period be maintained in a final rule, 12 months would be a sufficient look-back period, especially if a final rule incorporates a de minimis exemption, threshold, or wage increase percentage, 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 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.

² Cooperative Credit Union Association, Inc. Comments on Notice of Proposed Rulemaking on Bylaws; Bank Conversions and Mergers; and Voluntary Mergers of Federally Insured Credit Unions RIN 3133-AE73, August 7, 2017.

Appeals

The Association is appreciative of the NCUA's efforts to streamline and improve the appellate review process. The Association 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, the Association supports an option for independent review.

Small Institution Exemption

Lastly, the Association suggests that the NCUA 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.

Investments

The Association supports the expansion of credit unions' investment authority. To be competitive in 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 section 703, 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. 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

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

November 20, 2017

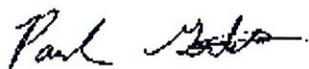
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Conclusion

The Association expresses its appreciation to the NCUA for seeking stakeholder input into this subject. The Association looks forward to the opportunity to comment on specific proposed rule changes in the next round.

Thank you for your consideration of these views. The Association appreciates the opportunity to provide input and I remain available to address any questions or concerns at pgentile@ccua.org that you or your staff may have at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul C. Gentile".

Paul C. Gentile
President/CEO

PCG/mabc/kb