



**National Association
of Federal Credit Unions**
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NAFCU | Your Direct Connection to Education, Advocacy & Advancement

March 19, 2015

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

RE: Comments on the Economic Growth Regulatory Paperwork Reduction Act of 1996 Review

Dear Mr. Poliquin:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents federal credit unions, I am writing regarding the National Credit Union Administration's (NCUA) second request for comment on the review of its regulations pursuant to the *Economic Growth and Regulatory Paperwork Reduction Act of 1996* (EGRPRA).

NCUA requests comments on areas of regulations within the categories of "Agency Programs," "Capital," and "Consumer Protection." NAFCU appreciates the opportunity to offer comments on these categories of NCUA's Rules and Regulations.

General Comments

NAFCU would like to, first and foremost, express our appreciation for NCUA's voluntary participation in the EGRPRA review. This review provides an important opportunity for credit unions to voice their concerns about outdated, unnecessary or unduly burdensome requirements of NCUA's Rules and Regulations.

The growing regulatory burden on credit unions is the top challenge facing the industry today. The number of credit unions continues to decline, as the compliance requirements in a post Dodd-Frank environment have grown to a tipping point where it is hard for many smaller

institutions to survive. While NAFCU and our member credit unions take safety and soundness extremely seriously, the regulatory pendulum post crisis has swung too far towards an environment of overregulation that threatens to stifle economic growth. As NCUA and the other financial regulators work to prevent the next financial crisis, even the most well intended regulations have the potential to regulate our industry out of business.

The impact of this growing compliance burden is evident as the number of credit unions continues to decline. Since 2010, the number of credit unions has declined by 19.1% (more than 1,500). A main reason for this decline is the increasing cost and complexity of complying with the ever-increasing onslaught of regulations. Many smaller institutions simply cannot keep up with the new regulatory tide and have to merge out of business or be taken over.

This growing demand on credit unions is demonstrated by a 2011 NAFCU survey of our membership that found that nearly 97% of respondents were spending more time on regulatory compliance issues than they did in 2009. A 2012 NAFCU survey of our membership found that 94% of respondents had seen their compliance burdens increase since the passage of the *Dodd-Frank Act* in 2010. Furthermore, a March 2013 survey of NAFCU members found that nearly 27% had increased their full-time equivalents for compliance personnel in 2013, as compared to 2012. That same survey found that over 70% of respondents have had non-compliance staff members take on compliance-related duties due to the increasing regulatory burden. This highlights the fact that many non-compliance staff are being forced to take time away from serving members to spend time on compliance issues.

NAFCU urges NCUA to look for ways under its purview to provide relief for credit unions. Recognizing that there are a number of outdated regulations and requirements that no longer make sense and need to be modernized or eliminated, NAFCU compiled and released a document entitled “NAFCU’s Top Ten” in February 2015, that outlines ten key regulatory issues that regulators can and should act on now to provide relief. Further, NAFCU and our members ask that NCUA work with the other financial regulators to develop commonsense and coordinated regulations that will address issues outlined in NAFCU’s “Top Ten” and in this letter.

Agency Programs

Central Liquidity Facility (12 C.F.R §705)

NAFCU believes that obtaining membership in the Central Liquidity Facility (CLF) is unnecessarily burdensome. Under the *Federal Credit Union Act*, to become a member, a natural person credit union must subscribe to the CLF capital stock one-half of one percent of the paid-in and unimpaired capital and surplus. 12 U.S.C. § 1795(a). A corporate credit union must subscribe one-half of one percent of “the paid-in and unimpaired capital and surplus of its member natural person credit unions, or of any credit union comprising such credit union group, and which are no regulator members.” 12 U.S.C. § 1795(c). These standards, both in terms of the capital contributions requirements and the application process, are unnecessarily stringent

and onerous. The fact that the standards are too stringent is evidence, in part, by the fact that only 3.3 percent of federally insured credit unions have direct membership in the CLF.

NAFCU believes legislation is necessary to relax the current CLF membership standards. NCUA has indicated that one of its legislative priorities is to enhance access to emergency liquidity for the credit union system by making targeted changes to the CLF and expand the agency's access to the U.S. Treasury. NAFCU strongly supports this priority, and we are ready and willing to work with NCUA to pursue legislative changes to the CLF in order to increase direct credit union membership.

Capital

Capital Adequacy (12 C.F.R §702)

Net worth Classification and Prompt Corrective Action

NAFCU will submit comments separately pursuant to NCUA's January 27, 2015, proposed rule on this section of NCUA's Rules and Regulations.

Capital Planning and Stress-testing

In 2014, NCUA promulgated a final rule requiring annual stress testing for federally insured credit unions with \$10 billion or more in assets. This rule also requires covered credit unions to develop and submit capital plans with certain mandatory elements and analyses to NCUA on an annual basis. NAFCU strongly opposed this rulemaking as inappropriate, costly and unnecessary for covered credit unions.

While NAFCU recognizes that the health of the National Credit Union Share Insurance Fund (NCUSIF) is essential for the credit union industry, and stress testing and capital planning are important tools for credit unions to assist in proper management, we believe that the 2014 capital planning and stress testing rule does little to enhance the security of the NCUSIF. Instead, the rule adds additional regulatory burden on credit unions. Given that the covered credit unions survived the recent financial crisis without the need for additional NCUA stress testing and oversight, NAFCU and our members believe NCUA failed to demonstrate how the 2014 rulemaking is worth the cost to the rest of the credit union industry.

Consumer Protection

Truth in Savings (12 C.F.R §707)

Appendix C's Official Staff Interpretations does not reflect the current Section 707.2. Specifically, citations in the Official Staff Interpretation to 707.2 do not align with the corresponding subparagraphs in the section. For example, the term "share account" is defined in Section 707.2(v), but the Official Staff Interpretation references the definition as Section 707.2(x). NAFCU recommends making a technical change to the regulation to change the letter "x" to the letter "v."

Fair Credit Reporting- identity theft red flags (12 C.F.R §717, Subpart J)

Section 1025 of the *Dodd-Frank Act* transferred rulemaking authority of the *Fair Credit Reporting Act* to the Consumer Financial Protection Bureau (CFPB). Under the *Dodd-Frank Act*, NCUA only retained regulatory authority for §§ 717.90 and 717.91, and Appendix J to Part 717. To reflect this rulemaking authority transfer, the CFPB, in 2011, published its Fair Credit Reporting regulation at 12 C.F.R. Part 1022 (Regulation V). *See* 76 Fed. Reg. 79308 (Dec. 21, 2011). While the CFPB's Regulation V is substantially similar to Part 717, there are some discrepancies between the two. One example is that Regulation V fails to deal with the identity theft red flags section that is covered in Appendix J to Part 717.

NAFCU recommends that NCUA amend Part 717 to reflect *Dodd-Frank Act's* transfer of subparts A, C, D, E, and I of Part 717 to the CFPB. We, however, believe NCUA retain Appendix J to Part 717 regarding identity theft red flags, as these requirements are not addressed by Regulation V.

Share Insurance (12 C.F.R §745)

NAFCU-supported H.R. 3468, *Credit Union Share Insurance Fund Parity Act* mandates that NCUA provide share insurance coverage to interest on lawyers' trust accounts (IOLTAs), and other similar trust accounts, on a pass-through basis regardless of whether they are comprised of funds of members or nonmembers. In December 2014, NCUA Chairman Matz announced that federal credit unions may immediately begin offering IOLTAs with share insurance coverage. She also indicated that NCUA will make changes to Part 745 to fully conform with the *Credit Union Share Insurance Fund Parity Act*.

The *Credit Union Share Insurance Fund Parity Act* expressly addresses IOLTA, but it also provides pass-through insurance coverage to "other similar trust accounts." As NCUA considers a rulemaking to conform with this legislation, NAFCU recommends that the agency provide broader coverage for "REALTOR(R)" escrow and prepaid funeral accounts. Similar to how a lawyer establishes an IOLTA under state law to hold his or her clients' funds, escrow agents and funeral homes establish "REALTOR(R)" escrow and prepaid funeral accounts under state law to hold the funds of the consumers that they serve. Because these accounts have a similar structure to IOLTAs, NAFCU and our members respectively request that NCUA amend Part 745 to provide pass-through share insurance coverage to "REALTOR(R)" escrow and prepaid funeral accounts.

NAFCU also believes the *Credit Union Share Insurance Fund Parity Act* authorizes NCUA to provide pass-through share insurance coverage to the funds underlying stored value products and general-use prepaid cards. Stored value products commonly serve as the delivery mechanism for vital consumer funds, such as employee payroll, government benefit payments, and tax refunds. General-use prepaid cards also offer a safe and effective way for consumers to store funds, make purchases, and pay bills.

Section 721.3(l) states that stored value products are activities preapproved as incidental powers necessary or requisite to carry on a credit union's business. NCUA has also made it clear that

“[g]ift cards are a type of stored value product that federal credit unions may provide their members.” See OGC Op. 08-0121 (June 10, 2008). Further, the Federal Deposit Insurance Corporation (FDIC) has determined that it may provide pass-through insurance coverage to stored value products and “other nontraditional access mechanisms” in certain circumstances. See FDIC GCO No. 8 (November 13, 2008).

NAFCU and our members firmly believe that Part 745 unnecessarily places credit union issuers at a competitive disadvantage relative to bank and nonbank issuers because the NCUSIF does not currently insure the balances on stored value cards. Given the passage of the *Credit Union Share Insurance Fund Parity Act*, NAFCU urges NCUA to bring Part 745 into parity with the FDIC’s insurance coverage for stored value products and “other nontraditional access mechanisms” by extending pass-through share insurance coverage to the funds underlying store valued products and general-use prepaid cards.

Accuracy Advertising and Notice of Insured Status (12 C.F.R §740)

NAFCU strongly supports federal insurance for credit unions. We believe that federal insurance is not only pivotal for the industry’s viability, but we also consider it a cornerstone. In the past, the NCUA Board has recognized that modernizing NCUA’s advertising and share insurance disclosure rules to recognize the growing use of quickly advancing technology will provide a significant benefit to consumers. NAFCU would like to take this opportunity to urge NCUA to take specific actions within its power to amend Part 740 to accommodate the rise of social media, mobile banking, and digital communication platforms.

Social Media

In December 2013, the Federal Financial Institutions Examination Council (FFIEC), of which NCUA is a member, issued guidance regarding social media and its effect on consumer compliance and risk management. Through this guidance, FFIEC intended to provide financial institutions “guidance in their efforts to ensure that their policies and procedures provide oversight and controls commensurate with the risks posed by their involvement with social media” See *FFIEC Social Media: Consumer Compliance Risk Management Guidance* (December 11, 2013).

While the FFIEC guidance was useful to credit unions, NAFCU continues to hear from our members that applying Part 740 to social media is unclear, complicated, and burdensome. Section 740.5, for example, contains requirements that are impossible to apply to social media, especially interfaces that are interactive. NAFCU and our members believe these rules should be amended with the use of social media in mind to include more flexibility as opposed to the rigidity of the current rules. Credit unions have fared very well in safely adopting the use of such technology, and they take actions necessary to ensure their policies and procedures provide oversight and controls with regard to the risk associated with social media activities.

Television and Radio

In 2011, the NCUA Board approved amendments to Part 740 of NCUA's Rules and Regulations that mandate inclusion of the agency's official advertising statement in a greater number of radio and television advertisements, annual reports, and statements of condition. These amendments provide an exemption for radio and television advertisements that do not exceed 15 seconds, the exemption. Prior to these amendments, however, the exemption applied to radio and television advertisements that do not exceed 30 seconds.

NAFCU generally believes that credit unions' federal insurance status should be transmitted and conveyed as much as possible; however, regulations should be crafted in a manner that balances this important priority with challenges and limitations associated with credit unions' use of media, and the latest technologies and platforms. For example, NAFCU continues to hear from our members that the exemption for 15 second advertisements is ineffective in today's marketing and regulatory environment. As NCUA may know, the *Truth and Lending Act*, *Truth and Savings Act*, the Federal Reserve Board's Regulation D, and certain trigger terms mandate additional disclosures in advertising. In some cases, these disclosures can take up to 10 seconds. Accordingly, if the substance of an advertisement is more than 5 seconds, then the credit union must allocate additional time to issue NCUA's official advertisement. For the exemption to provide meaningful relief, NAFCU and our members strongly urge NCUA to reinstate the 30 second exemption.

In regards to Part 740's application to print advertisements, NAFCU believes the rule requires the official statement to be unnecessarily prominent, resulting in the reduction of the advertisement's substance and purpose. We believe the NCUA logo and statement is a visual representation that only needs to be present to convey its value and importance. Accordingly, NAFCU and our members urge NCUA to remove Part 740's size requirement.

Foreign Languages

Although Section 740.5(d) allows credit unions to use a non-English equivalent of the agency's official advertising statement after receiving approval from their Regional Director, NAFCU continues to hear from our members that approval process is complicated, slow moving, and inefficient. NAFCU urges NCUA to provide approved translations of the official advertising statement in other languages, so that credit unions and Regional Directors do not have to go through the approval process provided for in Section 740.5(d). Providing such a list would eliminate unnecessary time spent by credit unions and NCUA staff going through the approval process.

Office of Consumer Protection

As the agency is aware, the *Dodd-Frank Wall Street Reform and Consumer Protection Act* transferred the rulemaking authority for many consumer protection laws to the Consumer Financial Protection Bureau (CFPB). In 2010, NCUA established the Office of Consumer Protection (OCP) reflecting "NCUA's heightened focus" on the consumer protection objective. Under the umbrella of this Office, NCUA has created four divisions, including two Divisions of Consumer Access, which are responsible for overseeing chartering, charter conversions, bylaw

amendments, field-of-membership expansions, and low-income designations- all issues of extreme significance to credit unions. OCP also administers credit union member complaints for institutions with assets \$10 billion or less.

NAFCU's members continue to raise questions about OCP's policies and procedures, particularly in the process of applying for field-of-membership expansions. A number of NAFCU's members have indicated that it takes up to 18 months before their field-of-membership expansion requests are approved or denied by NCUA. Also, the online application process does not allow credit unions to attach necessary documents to an application, which NAFCU believes unnecessarily delays the process. Furthermore, during that extended time period after submitting the application, NAFCU's members are sometimes unable to get conclusive information about the status of their request from NCUA.

NAFCU believes NCUA could eliminate this unnecessarily cumbersome, lengthy, and confusing process by providing definitive directions on OCP's application expectations and the timeframe for agency action. Also, NAFCU recommends that NCUA outline the steps a credit union may take to appeal an OCP determination. Further, we ask that OCP clarify how the agency handles complaints it receives from credit union members, or those that have been forwarded by the CFPB. We firmly believe that credit unions need to be aware of OCP's internal policies and procedures for handling these matters in order to effectively work with agency in a manner that does not delay positive growth. Finally, NAFCU requests that NCUA update the online process application process to allow attachments and display the true status of a request.

Conclusion

NAFCU appreciates NCUA's participation in the EGRPRA review and applauds the agency for soliciting feedback and input from credit unions regarding unnecessary or unduly burdensome requirements of its Rules and Regulations. NAFCU and our members urge NCUA to continue to reduce future compliance costs and regulatory difficulties faced by credit unions by addressing the issues raised in this letter.

We look forward to continuing to work with NCUA to address ways that the agency could streamline and refine existing regulations in order to more effectively grow and support the dynamic credit union industry. I look forward to hearing from you regarding this important matter. Should you have any questions or would like to discuss these issues further, please feel free to contact me at anealon@nafcu.org or (703) 842-2266.

Sincerely,



Alicia Nealon,
Director of Regulatory Affairs