



**National Association
of Federal Credit Unions**

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NAFCU | Your Direct Connection to Education, Advocacy & Advancement

September 21, 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*
Review

Dear Mr. Poliquin:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally insured credit unions, I am writing to you regarding the National Credit Union Administration's (NCUA) third 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 review within the categories of its existing regulations related to "Corporate Credit Unions," "Directors, Officers, and Employees," and "Money Laundering." See 80 FR 38252 (June 24, 2015). 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 This review provides an important opportunity for credit unions to voice their concerns about outdated, unnecessary or unduly burdensome requirements of NCUA's Rules and Regulations. As NAFCU has consistently maintained, regulatory burden is the top challenge facing all credit unions. While smaller credit unions continue to disappear from the growing burden, all credit unions are finding the current environment challenging. Finding ways to cut-down on burdensome and unnecessary regulatory compliance costs is the only way for credit unions to thrive and continue to provide their member-owners with much-needed financial services and the exemplary service.

Recognizing that there are a number of outdated regulations and requirements that need to be modernized or eliminated, NAFCU compiled a document entitled “NAFCU’s Top Ten” in February 2015. This document outlines ten key regulatory issues that regulators can and should act on now to provide relief. NAFCU and our members ask that NCUA work with the other financial regulators to develop commonsense and coordinated regulations that will address NAFCU’s concerns outlined in this letter and in “NAFCU’s Top Ten.”

Before addressing the specific regulations that are a subject of the third EGRPRA review, NAFCU would like to take the opportunity to reiterate our members’ position on several pending issues before the NCUA Board, including:

Member Business Lending

NAFCU and our members appreciate the NCUA Board’s commitment to reducing unnecessary regulatory burden through its recent Member Business Lending (MBL) proposal. *See* 80 FR 37898 (July 1, 2015). The proposal will remove many of Part 723’s prescriptive underwriting and personal guarantee requirements, thereby eliminating the current waiver process. Instead, the proposal would allow credit unions to independently develop their commercial lending underwriting standards. NAFCU strongly supports the proposal because credit unions with well-established, solid commercial lending infrastructure and sound risk management policies deserve the flexibility to serve business owners without unnecessary regulatory restraint. It is important to note, NCUA’s proposal does not alter the statutory cap on credit union member business lending established in the *Federal Credit Union Act* (FCU Act) and is not an attempt to circumvent Congressional intent. This statutory cap imposes an aggregate limit on an insured credit union’s outstanding MBLs and the proposed rule does nothing to change that. The proposal would simply allow credit unions to prudently write their own business loan policy without prescriptive regulatory limits.

NCUA seeks to delay implementation of the final rule for 18 months to “allow NCUA and state supervisory authorities adequate time to adjust to the new requirements, including training staff, and for affected credit unions to make necessary changes to their commercial lending policies.” *See* 80 FR 37898, 37912 (July 1, 2015). While NAFCU and our members recognize the importance of robust and diligent examiner training, we urge the agency to adopt an implementation timeline that will make this rule effective as soon as possible. Further, NAFCU’s member credit unions have indicated that they will prioritize training their staffs and updating their policies to conform to the new rule as quickly as possible. Accordingly, NAFCU recommends that NCUA delay implementation of the final rule no more than 12 months in order to strike a balance between properly educating and training NCUA examination staff as well as providing much needed regulatory relief to credit unions as quickly as possible.

18-month exam cycle

As NAFCU outlined in our August 18, 2015 letter, we believe that an 18-month examination cycle would allow NCUA to better prioritize staff and resources, while still balancing risk factors and maintaining the safety and soundness of credit unions. Credit unions have healed along with the overall U.S. economy since the financial crisis. Given that current risk to the NCUSIF and economic trends mirror 2001-2007, NAFCU and our members strongly urge the agency to implement an 18-month examination cycle that would allow federal credit unions determined to be “low risk” to receive no more than two exams in a three year period. This approach would preserve the agency’s ability to address risk through requisite supervision and monitoring, but would streamline NCUA’s staff and resources for a more cost-effective budget. Simply put, this approach will allow NCUA more flexibility in balancing staff and resources without compromising the safety and soundness of the industry

NAFCU and our member’s appreciate NCUA’s thoughtful review of our letter, and we NAFCU look forward to continuing the dialogue with the agency about how to adopt an extended exam cycle for healthy credit unions that will efficiently provide relief and effectively maintain our industry’s safety and soundness. Further, we welcome engagement with NCUA about what processes and procedures are needed in order for NCUA to implement an 18-month exam cycle.

Risk-Based Capital

NAFCU urges NCUA to withdraw its current Risk-Based Capital proposal (RBC2). NAFCU continues to believe that NCUA’s proposal is fundamentally flawed because it fails to create a true risk-based approach that would reflect lower capital requirements for lower-risk credit unions and higher capital requirements for higher-risk credit unions. Further, we believe RBC2 is inappropriate because it will only impose more regulatory burden on an already extremely well-capitalized industry. Simply put, if implemented as proposed, RBC2 would unnecessarily and unjustifiably stifle growth, innovation, and diversification within credit unions.

Congress has also recognized concerns about RBC2, as we have seen introduction of bipartisan legislation that would require NCUA to more thoroughly study the proposal and its impact on the industry. This legislation would also compel NCUA to share its analysis with Congress before moving forward with RBC2’s finalization. NAFCU and our members urge NCUA to heed this growing Congressional concern about RBC2 and reconsider the agency’s goal of finalizing the rule by 2015.

NAFCU wants to be clear – we support a risk-based capital system for credit unions that would reflect lower capital requirements for lower-risk credit unions and higher capital requirements for higher-risk credit unions. However, we continue to believe that Congress needs to make statutory changes to the FCU Act in order to achieve a fair system. Such a system should move away from the static net-worth ratio to a system where NCUA joins

the other banking regulators in having greater flexibility in establishing capital standards for institutions. NAFCU believes that through a substantive dialogue and collaboration, NCUA and NAFCU can move toward achieving a workable legislative solution to provide an appropriate risk-based capital regime for the credit union industry.

Corporate Credit Unions

NAFCU has consistently maintained that the health and safety of the corporate credit union system is vital to our industry as a whole. According to NCUA's most recent publically-available Call Report data, over 70 percent of federally insured natural person credit unions are either members of corporate credit unions or have lines of credit at corporate credit unions. With this in mind, it is critical that NCUA ensure the safety and soundness of the corporate credit union system, so that it can continue to provide liquidity and payment system function to the industry.

In 2010, NCUA promulgated a comprehensive overhaul of the regulatory requirements governing the corporate credit union system. NAFCU generally supported the changes, especially stricter capital requirements, limitations on corporates' investment authority, and requirements related to corporates' asset portfolios. NAFCU and our members believe these changes not only mitigate risks to natural person credit unions, but they also protect the National Credit Union Share Insurance Fund (NCUSIF) from potential losses. As the industry continues to heal from the financial crisis, however, NAFCU encourages the NCUA Board to look for all opportunities to provide appropriate relief within Part 704, as well as be transparent in its strategy and timeline for satisfying the Temporary Corporate Credit Union Stabilization Fund's deposit and borrower guarantees

Section 704.9- Asset and Liability Management

In 2015, NCUA finalized amendments to Part 704 that would, among other things, increase corporate credit unions' secured borrowing maturity limit to 180-days. While NAFCU supports this change, we believe the secured borrowing maturity limit should be increased more. A 180-day secured borrowing limit still undermines the ability of corporate credit unions to serve as a source of liquidity, particularly during times of economic distress. By imposing such a stringent timeframe, NCUA severely restricts a corporate credit union's ability to meet its members' liquidity needs. Accordingly, NAFCU recommends that NCUA increase the secured borrowing maturity limit to 2-years. We believe a 2-year timeframe would give corporate credit unions much-needed flexibility to fund seasonal outflows of liquidity.

NAFCU also urges the NCUA Board to amend Section 704.9(b) to provide itself with the ability to suspend secured borrowing limitations during times of severe economic or network distress. Corporate credit unions continue to be critical partners for their members to maintain liquidity and they must have the ability to remain reliable sources of funding during stressed market conditions. NAFCU believes it is vital that corporate credit unions have the ability enter into longer borrowings during these distressed times in order to meet

their members' funding needs. We therefore recommend that the NCUA Board provide an exception to Section 704.9's borrowing limitations under which it may suspend the rule to allow for longer secured borrowing periods during times of severe economic or network distress.

Corporate Resolution

NAFCU would also like to take this opportunity to reiterate our concerns with other aspects of the corporates resolution. Since the Temporary Corporate Credit Union Stabilization Fund (TCCUSF) was established in 2011, natural person credit unions have paid more than \$4.8 billion in assessments. Corporates have also experienced losses stemming from the write-down of US Central. While NAFCU commends NCUA for its vigilant and aggressive pursuit of legal recoveries, we believe that credit unions deserve to be repaid for the hefty assessments they paid to cover the cost of the corporate losses on mortgage-backed securities. Further, we believe there needs to be more clarity as to the disposition of the assets held by the Asset Management and Assistance Center (AMAC). Because NCUA has indicated that the agency is unable to refund credit unions for their assessments until the fund has repaid all of its obligations, NAFCU believes it is of paramount importance that NCUA transparently communicate the agency's strategy and timeline for satisfying the TCCUSF's deposit and borrower guarantees.

Directors, Officers, and Employees

Section 701.4 General authorities and duties of federal credit union directors

Section 701.4 generally outlines the fiduciary duties and responsibilities of FCU directors. The regulation requires each FCU director to carry out his or her duties in a manner the director believes to be in the best interests of the membership of the credit union as a whole. The regulation also requires directors to be familiar with basic accounting principles, as well as administer the affairs of the FCU fairly and impartially.

While NAFCU and our members appreciate that NCUA has written this regulation with deference to corporate governance best practices and state law, we recommend that the agency add an Appendix to Section 701.4 to index all of the policies required to be board-approved under existing statutory or regulatory mandate. Such an Appendix would clarify FCU Board expectations, as well as elevate unnecessary regulatory burden on credit unions and their volunteers who are currently forced to comb through voluminous regulations or conjecture based on vague examiner guidance as to what policies are required to be board-approved or periodically reviewed by the board.

Given that FCU boards are comprised almost exclusively of volunteers, NAFCU encourages the agency to be as clear as possible about its supervisory expectations for policies that NCUA believes warrant FCU board approval or annual review. Currently, roughly fourteen policies require FCU board approval or annual review under existing statute and regulation. Beyond these codified requirements, NCUA's Examiner's Guide

offers a general statement regarding board approval of policies. This statement specifies that “[t]he board must approve all major policies. Further, it should review and, if necessary, update those policies at least annually.” NAFCU and our members are not aware of any agency-published guidance on what constitutes a “major policy.” Accordingly, NAFCU recommends that NCUA update its Examiner’s Guide to clearly articulate what policies, beyond those mandated by statute or regulation, warrant FCU board approval or annual review. In drafting such supervisory guidance, NAFCU suggests that NCUA consider “major” policies to be those critical to the direction and control of the FCU.

Section 701.21(d) Loans and lines of credit to officials

Section 701.21(d) of NCUA’s Rules and Regulations very closely mirrors the language and intent of the Federal Credit Union Act (FCU Act) codified at 12 U.S.C. § 1757(5)(v). In general, per the statute and regulation, the board of directors of a FCU must approve in any case where the aggregate of loans to an official of the credit union, including loans where the official serves as endorser or guarantor, exceeds \$20,000. Additionally, the rates, terms and conditions on any loan or line of credit either made to, or endorsed or guaranteed by an official or the official’s family member, cannot be more favorable than the rates, terms and conditions for comparable loans or lines of credit to other credit union members. NAFCU and our members support the regulation’s intent to prevent unfair dealing to a credit union’s board of directors.

Although NCUA’s EGRPRA review is very narrowly focused on Section 701.21(d), NAFCU has concerns with other provisions included in Section 701.21 that broadly includes rules related to extending loans and lines of credit to officials. In particular, Section 701.21(c)(8), includes a prohibition against credit officials, employees, and their immediate family members from receiving incentives or outside compensation for loans made by the credit union. There are some exceptions to this prohibition, namely that an employee, including senior management, may receive an incentive or bonus based on the credit union’s overall financial performance. The regulation, however, has resulted in inconsistent application in how credit unions can use the “overall financial performance” measure. NAFCU and our members believe that Section 701.21(c)(8) allows for loan growth to be included as a part of the “overall financial performance” calculus as it is not a determinative factor. Accordingly, NAFCU and our members strongly urge the agency to implement more flexibility when examining a credit union’s methodology for calculating “overall financial performance.”

Section 701.33 Reimbursement, insurance and indemnification of officials and employees

Section 701.33 permits an FCU to compensate only one board member for board service and states that no other official may be compensated for serving as a board or committee member. Rather than explicitly define “compensation,” the regulation provides certain exceptions to what is considered compensation. Over the years, NCUA has issued

numerous legal opinion letters on the issue of “compensation” under this regulation. Unfortunately, many of these legal opinion letters are so old that they are no longer available online. Additionally, because there are so many legal opinion letters on the issue, a number of NAFCU’s member credit unions have indicated confusion about tracking down a specific letter that may address a their compensation question. Accordingly, NAFCU recommends that NCUA revise Section 701.33 to codify applicable NCUA legal opinion letters into in an official staff commentary section.

Specifically, NAFCU recommends that the agency codify the following legal opinion letters into an Appendix to Section 701.33:

Letter Number	Subject	Date
91-0215	Meal Reimbursement For Directors (Your February 7, 1991, Letter)	05/01/91
92-0507	Compensation of Officials (Your May 1, 1992, Letter)	06/10/92
92-0626	Official Compensation (Your Letter of June 9, 1992)	06/19/92
93-0233	Gifts to Committee Members	03/12/93
94-0435	Board Member Health Insurance (Your Letter of January 12, 1994)	05/10/94
95-1148	Partially Self-Funded Employee Health Plans (Your Letter of November 22, 1995)	01/30/96
95-1218	Reimbursement of Expenses (Your Letter of November 28, 1995)	01/18/96
95-1236	Waiving Fees, Cashing Checks and Camel Ratings (Your December 19, 1995, Letter)	01/29/96
97-1257	Annuity Plan for Volunteer Board Members, Your letter dated December 12, 1997	02/04/98
98-0619	Reimbursement of travel expenses for a director's companion	08/25/98
98-1215	Reimbursement to Credit Union Volunteers for Child Care	03/26/99
99-0621	Health Insurance for Board and Committee Members	11/08/99
00-0805	Impermissibility of Free Safe Deposit Boxes for Board and Committee Members	05/24/00
00-0849	Insurance Benefits for Officials and Their Immediate Family Members	10/04/00
02-1203	Payment of Volunteer Official’s Uninsured Medical Expenses.	01/22/03
03-0382	Long Term Care Insurance Benefit for Officials	07/10/03
03-1053	Federal Credit Union (FCU) Officials’ Use of	12/03/03

	Business Equipment	
10-0913	Provision of Long-Term Care Insurance to Credit Union Officials	10/29/10
10-0919	Compensation Under §701.33 of NCUA's Regulations	09/22/10
11-0152	Training Reimbursement to Credit Union Officials	03/11/11
11-0805	Hudson Valley FCU Volunteer Service Award Policy	08/18/11

Money Laundering

NAFCU understands that the financial services industry today is filled with complex money laundering threats and challenges to which credit unions are not immune. As a result, we have always recognized and appreciated the importance of *Bank Secrecy Act* (BSA) requirements for national security, and to assist U.S. government agencies to detect and prevent money laundering or tax evasion. For credit unions, however, the BSA and implementing regulations imposes a significant amount of burden and cost. Accordingly, NAFCU encourages NCUA coordinate with the Financial Crimes Enforcement Network (FinCEN) to ensure sensible regulation and exams that are tailored to actual risks. Such coordinated effort will ensure that the resources and personnel credit unions devote to BSA-related regulatory compliance are allocated for actual risk in the industry.

While NAFCU acknowledges that Section 748 tracks the BSA, and any changes to its requirements would require legislative action, we believe that the agency can make changes to other sections of its regulations in order to provide credit unions greater flexibility in addressing money laundering concerns. Specifically, NAFCU believes that NCUA should consider amending the FCU Bylaws related to expelling credit union members found to be using the FCU's services in furtherance of illegal purposes as defined by the BSA. Although the FCU Act limits an FCU's ability to expel members, NAFCU believes NCUA has the statutory authority to allow FCUs to expel members under these circumstances.

Under the FCU Act, FCUs can only expel members under a non-participation policy, or by a special meeting of members. *See* 12 U.S.C. § 1764. While the FCU Act lists certain criteria that credit unions should consider in their non-participation policies, it does not contain an exhaustive list of factors. NAFCU believes that NCUA has the flexibility to add some additional clarifying language to these sections to provide that a credit union can deem a member "non-participating" if he or she is using the credit union's services in furtherance of illegal purposes. NAFCU and our members contend that a member is only "participating" when he or she does so legitimately and legally. Members who are using the credit union's services in furtherance of illegal purposes, however, are doing neither. Under the current FCU Bylaws, credit unions can only address such members by limiting the members' services. This, however, still allows the member to vote and

effectively participate in credit union activities. Therefore, NAFCU and our members believe it would be appropriate for NCUA to add language to these sections to allow FCUs to deem a member “non-participating” when he or she is using the FCU’s services in furtherance of illegal purposes as defined by the BSA.

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 credits unions by addressing the issues raised in this letter.

We look forward to continuing to work with NCUA to address more ways that the agency can streamline and refine existing regulations in order to more effectively grow and support the dynamic credit union industry. 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,

A handwritten signature in cursive script that reads "Alicia Nealon".

Alicia Nealon
Director of Regulatory Affairs