CUNA
Credit Union National Association

601 Pennsylvania Ave., NW
South Building, Suite 600
Washington D.C 200004-2601

Phone: 202-638-5777
Fax: 202-638-7734

March 22, 2016

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

Re: Comments on Regulatory Review pursuant to EGRPRA
Document No.: 2015-32167

Dear Mr. Poliquin:

The Credit Union National Association (CUNA) appreciates the opportunity to submit comments concerning the National Credit Union Administration's (NCUA) Request for Comments on Regulatory Review pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). CUNA represents America's credit unions and their more than 100 million members.

CUNA appreciates that the NCUA has elected to voluntarily participate in the EGRPRA review process, although the agency does not technically fall within EGRPRA's definition of an "appropriate Federal banking agency." We further commend the NCUA's willingness to identify opportunities to reduce regulatory burden while maintaining continued safety and soundness of credit unions. In that spirit, we provide our comments on the identified categories.

Uniform Rules of Practice and Procedure (12 CFR 747, Subpart A):

This rule outlines the rules of practice and procedure applicable to adjudicatory proceedings for a hearing under certain circumstances, namely for significant administrative actions against a credit union. CUNA's most recent examination survey of its members indicated 28 percent of credit unions reported dissatisfaction with their most recent examination. Excessive use of documents of resolution, applying "guidance" or "best practice" as regulation, and examiners taking action to "cover" themselves are items that are frequently cited. As such, we believe a more formalized appeals process that provides clear points of entry in the examination should be provided for by the NCUA. The process should be independent and provide credit unions with the information used to make decisions in their examination prior to any substantive hearing on the matter.

Lending (12 CFR 701.21):

This section, in part, authorizes the Payday Alternative Loans (PAL) program for federally chartered credit unions. We applaud the NCUA for being innovative in this area and permitting a model that is closely being looked at by the Consumer Financial Protection Bureau (CFPB) during its rulemaking process. We urge the NCUA to continue to work with the CFPB during their rulemaking process to ensure the program is preserved and thrives. One comment that has been received from numerous credit unions on the PAL program is the requirement that a loan recipient have a minimum membership requirement of at least one month. In our opinion, this is a barrier to serving a good portion of the market that could benefit from these types of loans. In light of the recent moves by the Federal Financial Institutions Examination Council (FFIEC) to enhance the due diligence on new members, the one month requirement is perhaps becoming obsolete and should be reviewed.

Examinations (12 CFR 741.1):

This section requires any federally insured credit unions to undergo examination by the NCUA. In particular, we note the directive in the rule that requires as follows:

> To the maximum extent feasible, the NCUA Board will utilize examinations conducted by state regulatory agencies.

CUNA suggests NCUA could do much more to implement this Board adopted regulation. While we recognize the NCUA has a separate and distinct role as an insurer beyond the safety and soundness component of an examination, much of the items overlap and can easily be conducted by one regulator. We would further suggest that the NCUA strongly consider the model on the banking side which allows a state regulator to alternate exams with a related federal regulator where the institution is operating in a safe and sound manner. We realize this suggestions requires coordinated planning and in some instances the sharing of resources. This has sometimes been difficult among regulators, however, a properly coordinated effort will result in untold relief for credit unions. With the addition of the CFPB as an additional regulator within the past 5 years, we believe strong focus should be placed on developing these supervisory processes that will minimize the regulatory burden on credit unions.

Security Programs (12 CFR 748.0):

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 requirements remains one of the top regulatory issues for a number of credit unions and other financial institutions. We urge NCUA to consider working with other federal financial regulators to provide additional guidance on BSA compliance and to minimize overlap with FinCEN's regulations.

In addition, we urge NCUA and the other federal financial regulators to support legislative and regulatory changes to minimize the costs and problems institutions encounter to meet BSA requirements and to satisfy examiners. We strongly encourage meaningful changes to BSA and anti-money laundering requirements, including increasing the threshold for current transactions from the $10,000 level established decades ago to $20,000 and at least doubling other key thresholds, such as the $3,000 trigger for reporting wire transfers and the $5,000 threshold for filing a Suspicious Activity Report (SAR).

In 2010, FinCEN proposed changes to track money laundering and terrorist financing through cross border electronic transmittals of funds (CBETFs), to further modernize the SAR filing process, and to clarify Foreign Bank Account Report (FBAR) requirements. While CUNA generally supports FinCEN's objectives to track money and to improve the filing process, we have significant concerns about the additional regulatory burdens and compliance costs to credit unions. We urge NCUA and the other regulators to work with FinCEN to help minimize requirements on regulated financial institutions.

Guidelines for safeguarding member information and responding to unauthorized access to member information (12 CFR 748, Appendices A and B):

Appendix B

Another area of concern with Part 748 relates to Appendix B, which contains NCUA's guidance on credit union response programs for unauthorized access to member information and on disclosure of such access to the credit union's members.

In regard to the provisions included in Appendix B, CUNA frequently receives questions from credit unions about their responsibilities following a merchant data breach. In particular, the questions relate to whether a credit union needs to send a member notice and/or notify NCUA when a merchant's breach impacts cards issued by that credit union.

Appendix B to Part 748 only applies to member information systems within the control of the credit union or its service provider. Based on inquiries from credit unions, there appears to be a lack of clear guidance on how to handle merchants' security breaches. We ask NCUA to consider expanding the guidance included in Appendix B. However, we would like to emphasize that such elaboration should be in the form of "guidance" and be limited to the Appendix of Part 748.

Cybersecurity Assessment Tool

In addition, we have some concerns with the Cybersecurity Assessment Tool that was released last summer by the FFIEC, of which NCUA is a member. While we support the FFIEC's effort in the area of cybersecurity, and we feel the tool can be useful, we believe its use should remain voluntary. We do not agree with the FFIEC agencies', including NCUA, decision to implement the tool as part of the examination process to benchmark and assess institutions' cybersecurity efforts. Credit unions should have the flexibility to utilize the tool in the manner they believe is most appropriate for the size and complexity of their operations.

Liquidity and Contingency Funding Plans (12 CFR 741.12):

NCUA has recently updated the Liquidity rule in 12 CFR 741.12 encapsulated by Supervisory Letter SL No. 14-03. NCUA in large part models its requirements on the FFIEC Interagency Policy Statement on Funding and Liquidity Risk Management (10-CU-14). We note that the agency makes distinctions between those with assets of $50 million and $250 million. We suggest the NCUA revisit those thresholds periodically to determine whether or not they should be adjusted.

On a related issue, NCUA has articulated that they intend to add an "S" to the CAMEL rating system and revise the "L" to reflect only Liquidity issues, in large part due to the Office of Inspector General's Review of NCUA's Interest Rate Risk Program (#OIG-15-11). The new "S" ostensibly would be to monitor a credit union's sensitivity to market risk. While there is no current proposal made public by the NCUA at this point in time, we believe these changes are likely driven by similar changes on the banking side. We urge the NCUA to consider the unique structure of credit unions when considering such a change. CUNA suggests Interest Rate Risk, Liquidity, & Contingency Funding are all interrelated and the current procedures under the existing "L" and existing "M" can adequately identify issues in a credit union. While we understand the supervisory guidance for those categories may need to change over time, it does not necessarily warrant the establishment of a new category under the CAMEL rating system.

Thank you for the opportunity to express these views to the NCUA. If you have further questions or would like to discuss CUNA's comments in more detail, please feel free to contact me at 202-508-3630.

Sincerely,

Andrew T. Price
Senior Director of Advocacy & Counsel
aprice@cuna.coop