CREDIT UNION ASSOCIATION OF THE DAKOTAS

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

Dear Mr. Poliquin,

The Credit Union Association of the Dakotas (CUAD) appreciates the opportunity to provide comment to the National Credit Union Administration (NCUA) on the regulatory review issued pursuant to Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). To provide a brief background, the Credit Union Association of the Dakotas represents sixty-eight state and federally chartered credit unions in the states of North Dakota and South Dakota, whose assets total over $6 billion and who have more than 450,000 members.

While not technically required to do so under the EGRPRA, CUAD applauds NCUA for taking the initiative to review regulations in an effort to reduce regulatory burden and for continuing to participate in the EGRPRA review process. As noted by the NCUA, "Congress enacted EGRPRA as part of an effort to minimize unnecessary government regulation of financial institutions consistent with safety and soundness, consumer protection, and other public policy goals." *80 FR 79953* The scope of this review looks at the categories of "Rules of Procedure" and "Safety and Soundness." NCUA seeks comments on regulations that may impose outdated, unnecessary, or unduly burdensome regulatory requirements on federally insured credit unions.

The NCUA notes that it welcomes all comments, but it did list particular issues where it specifically is seeking feedback. One of the specific issues, is the "effect of the regulations on competition. Do any of the regulations in these categories or the statutes underlying them create competitive disadvantages for credit unions compared to another part of the financial services industry?" *80 FR 79955*

CUAD would like to cite to two specific provisions under which the current regulations put credit unions at a competitive disadvantage to other entities in the financial services industry. First, the NCUA's regulations regarding Payday Alternative Loans (PAL loans). In 2010, the NCUA

adopted section 701.21(c)(iii) to enable Federal credit unions to offer short-term, small amount loans as an alternative to predatory payday loans. Under the current regulation, a Federal Credit Union may charge an interest rate of 1000 basis points above the maximum interest rate as established by NCUA if certain conditions are met. CUAD fully supports and believes it is necessary that credit unions are an alternative to payday lenders. However, CUAD believes that several of the conditions required to be able to make these PAL loans are putting Federal Credit Union at a competitive disadvantage and therefore credit unions are not a viable options to predatory payday lenders in some instances.

With regard to the requirement that the principal of the loan is not less than $200 or more than $1000, credit unions should not be limited to a minimum amount for which a loan may be extended and should be able to set their own loan range based on their member's needs and on the credit union's risk tolerance and ability to handle that risk. For example, if a member only needs $100 or $150 in the short term, why should they be required to have a loan for $200? Such narrow restrictions may result in a consumer turning to a payday loan that does not have such requirements.

The NCUA should permit PAL loans with maturities longer than six months. Providing more flexibility in maturities will allow the credit union to better meet the needs of its member.

Under current NCUA regulations, Federal Credit Unions are required to set a minimum length of membership of at least one month before it may extend a payday alternative loan to its member. This requirement needs to be eliminated as it is arbitrary and unnecessary. Individuals seeking payday loans need the money immediately, to require minimum length of membership defeats the purpose of offering an alternative to the predatory payday lender. Length of membership should be determined by the individual credit union based on their underwriting requirements.

The NCUA should raise the cap on the permissible aggregate dollar amount of loans made. Currently, a Federal Credit Union is required to include in its lending policy, a limit on the aggregate dollar amount of PAL loans made to a maximum of 20% of net worth. This limit should be at the discretion of the credit union based on the safety and soundness of the credit union. If it is determined to maintain an aggregate cap for these types of loans, we recommend that NCUA permit waivers above the cap for well capitalized, well run credit unions with a strong, successful history of doing these types of loans.

Another area where NCUA regulations are putting credit unions at a competitive disadvantage is appraisal requirements for member business loans/commercial loans. Section 722.3(a) requires an appraisal performed by a State certified or licensed appraiser is required for all real estate-related financial transactions except those in which: (9) The regional director has granted a waiver from

the appraisal requirement for a category of loans meeting the definition of a member business loan."

In the December 2, 2010, *Interagency Appraisal and Evaluation Guidelines*, which were issued by the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the NCUA, *Section XI. Transactions That Require Evaluations* provides, "The Agencies' appraisal regulations permit an institution to obtain an appropriate evaluation of real property collateral in lieu of an appraisal for transactions that qualify for certain exemptions. These exemptions include a transaction that: Is a business loan with a transaction value equal to or less than the business loan threshold of $1 million, and is not dependent on the sale of, or rental income derived from, real estate as the primary source of repayment." Footnote 28 provides, "NCUA regulations do not contain an exemption from the appraisal requirements specific to member business loans."

CUAD urges the NCUA to adopt the same exception, consistent with the other agencies, regarding appraisal requirements for commercial loans with a transaction value equal to or less than the business loan threshold of $1 million, and is not dependent on the sale of, or rental income derived from, real estate as the primary source of repayment. CUAD also encourages the NCUA to maintain a waiver process for commercial loans over this threshold.

NCUA is also requesting comments with regard to reporting, recordkeeping and disclosure requirements. Specifically, "Do any of the regulations in these categories or the statutes underlying them impose particularly burdensome reporting, recordkeeping or disclosure requirements?" Part 749 contains the NCUA's regulations regarding Record Preservation Program, including, Appendix A - Record Retention Guidelines. The NCUA developed Appendix A to provide suggested guidelines for record retention. Appendix A notes that "Efficiency requires that all records that are no longer useful be discarded, just as both efficiency and safety require that useful records be preserved and kept readily available." Subpart E to Appendix A lists "What records should be retained permanently?" including key operational records that should be retained permanently.

CUAD believes that it is not efficient to maintain a number of these records permanently. Furthermore, safety and soundness will not be impacted if some of these records were to be marked for periodic destruction instead of permanent retention. For example, with regard to "Applications for membership and joint share account agreement" and "Copies of the periodic statements of members, or the individual share and loan ledger. (A complete record of the account should be kept permanently.)" After the statute of limitations has passed to bring legal action, what is the purpose of retaining these document permanently?

CUAD urges the NCUA to revise its guidelines to allow periodic destruction of documents that will serve no purpose after statute of limitations has passed. CUAD acknowledges these are just "guidelines" and NCUA does not regulate record retention, however, a number of parties place a lot of weight on the NCUA's "guidelines." Therefore, CUAD requests the NCUA to update Appendix A to Part 749 to allow more documents to be periodically destroyed. This will allow credit unions to operate more efficiently and reduce storage costs.

With regard to comments sought on "Overarching approaches/flexibility of the regulatory standards," the NCUA asks, "Generally, is there a different approach to regulating that the Board could use that would achieve statutory goals while imposing less burden? Do any of the regulations in these categories or the statutes underlying them impose unnecessarily inflexible requirements?" *80 FR 79955*.

CUAD believes that the NCUA's regulation regarding liquidity and contingency funding plans under Section 741.12 does not provide flexibility for credit unions to manage their own risk. While this regulation is relatively new, its requirements are over complicatedly and/or guidance on how the credit unions are examined has interpreted this regulation to be overly complicated and burdensome. By way of example, one of our affiliated Federal Credit Unions in the Dakotas with approximately $140 million in assets shared their frustration on this regulation explaining that examiners continuously wanted the credit union to pledge "a bunch of securities and pay for a huge line of credit" when the credit union had more liquidity than they knew what to do with.

CUAD urges the NCUA to provide more flexibility to credit unions regarding management of liquidity or alternatively revise guidance that would provide a more flexible interpretation of this regulation.

Finally, with regard to issues relating to burdens on small insured institutions, NCUA notes that it has "a particular interest in minimizing burden on small insured credit unions (those with less than $100 million in assets). NCUA solicits comment on whether any regulations within these categories should be continued without change, amended or rescinded in order to minimize any significant economic impact the regulations may have on a substantial number of small federally insured credit unions." *80 FR 79955*.

CUAD believes NCUA should modernize its examination process to reduce the frequency of exams on well capitalized and well managed credit unions of all asset size, but most importantly small credit unions. Currently, 12 CFR 741.1 regarding examination, provides, "As provided in Sections 201 and 204 of the Act (12 U.S.C. 1781 and 1784), the NCUA Board is authorized to examine any insured credit union or any credit union making application for insurance of its accounts. Such examination may require access to all records, reports, contracts to which the credit union is a party, and information concerning the affairs of the credit union. Upon request, such

documentation must be provided to the NCUA Board or its representative. Any credit union which makes application for insurance will be required to pay the cost of such examination and processing. To the maximum extent feasible, the NCUA Board will utilize examinations conducted by state regulatory agencies."

Thank you again for taking the initiative to review its regulations in an effort to identify those that may impose outdated, unnecessary, or unduly burdensome regulatory requirements on federally insured credit unions.

CUAD appreciates this opportunity to share our comments and concerns.

Respectfully,

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