

August 7, 2017

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

Re: Appeals Procedures;  
RIN 3133-AE68

Dear Mr. Poliquin:

The Credit Union National Association (CUNA) appreciates the opportunity to submit comments concerning the National Credit Union Administration's (NCUA) Notice of Proposed Rulemaking on Appeals Procedures for Credit Unions. CUNA represents America's credit unions and their 110 million members.

CUNA generally supports the proposed appeal procedures rule as it would provide more uniform board appeals procedures across NCUA regulations that allow for informal appeals to the NCUA's Board (Board). These updated procedures would replace Board appeal provisions currently embedded in individual regulations with a comprehensive set of procedures. These procedures would apply to regulations in which a decision rendered by a regional director or designated NCUA staff is subject to an appeal to the Board. We agree with the Board that the placement of the current procedures in individual rules instead of designating a global process is confusing. We also understand that harmonizing these various procedures into one rule could adversely impact an appeal procedure that is more flexible than the proposed process. However, we think that this tradeoff is acceptable in creating a more coherent appeals process.

We agree that the proposed procedures will result in greater efficiency, consistency, and better understanding by credit unions of the way in which matters under the covered regulations may be appealed to the NCUA Board.

### **Current Appeals Process Embedded in Regulations**

Regulations currently allow for credit unions to appeal many NCUA staff determinations to the Board. Many regulations contain specific requirements, including time requirements, for filing appeals at the staff level. The staff level appeals processes in the proposed rule appear substantially similar to those embedded in the current regulations. We find this acceptable as many of the initial requests and appeals at the staff level are closely related to the subject matter at issue. Furthermore,

since many of these processes are part of the everyday operations existing staff at both NCUA and credit unions are likely familiar with them.

## **NCUA Board Appeals**

The proposed rule removes the current appeals timing requirements, which vary by regulation, and replaces them with standard timing requirements across all Board appeals. However, an exception is section 701.14, which retains the timeframes that are currently in Subpart J to Part 747. The proposed rule would add Subpart B to a new Part 746, which addresses appeals procedures which do not by law require an NCUA Board hearing or appeal. CUNA supports this approach, as it simplifies the current process for appeals that are not formal adjudications and codifies this appeals process into a regulation.

### *Definitions*

We suggest fully defining “reconsideration” in section 746.202. Reconsideration is partially defined in section 746.203(a), but a complete definition in section 746.202 would allow a person to understand the term by simply reading the definitions.

NCUA staff should be required to send a notice for “failure to make a determination,” as defined in section 746.203(g). This notice should, at the very minimum, address the additional information provided from the original determination and again provide notice of the Board appeals rights and timing requirements. The notice would ensure that, at a minimum, NCUA staff reviews and addresses the reconsideration. Furthermore, it would represent responsiveness to an issue that is clearly important to an appealing credit union.

### *Appeal to Board*

Section 746.204(s) sets forth the timeframe for filing an appeal to the Board. We generally agree that 60 days is adequate time for a credit union to file an appeal and this represents more time than is currently available under some of the regulations. We note that appeals filed for section 701.14 determinations retain the current 15-day requirement. For consistency, we think this should also be 60 days, or at the minimum, NCUA should explicitly specify to credit unions that might appeal under this section that they have much less time to appeal. We believe the standardization of the filing timeline could lead a credit union to assume that all appeals have a 60-day deadline.

### *Preliminary Considerations*

The final rule should clarify and provide more detail on the power of the special counsel to conduct the *initial review* process as required by section 746.205(a). This section states that the special counsel “shall review all appeals filed with the Secretary of the Board and make a recommendation for their disposition to the Board.” The section requires the special counsel to make a recommendation for disposition to the Board at the preliminary review level.

Contrast section 746.205(a) with section 746.206(a), which requires the special counsel to conduct a *de novo* review of the appeal. The Board should clarify whether a decision will be made after a recommendation as required by section 746.205(a), or whether every appeal will have a *de novo*

review as described in section 746.206(a). It is unclear how these two sections work together and whether there can be a decision based on a special counsel report of an initial review.

*Request for Oral Hearing*

Section 746.2079(a) sets forth the procedure for requesting an oral hearing. The section requires the petitioner to request an oral hearing as part of the initial petition. Instead, the Board should allow a request for oral hearing up until the final disposition. It is entirely possible that as a credit union works through a complaint it may determine an oral hearing is appropriate and it should be able to request one up until an appeal decision is made.

**Conclusion**

Thank you for the opportunity to provide comments on the proposed updates to the appeal procedures. Credit unions will benefit from NCUA standardizing the process of appealing staff decisions to the Board. If you have any questions about our comments, please do not hesitate to contact me at (202) 508-6705.

Sincerely,

A handwritten signature in cursive script that reads "Lance Noggle".

Lance Noggle  
Senior Director of Advocacy & Counsel