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National Association of Federally-Insured Credit Unions

July 29, 2019

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

RE: Public Unit and Nonmember Shares (RIN 3133-AF00)

Dear Mr. Poliquin:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in regard to the National Credit Union Administration's (NCUA) proposal to amend § 701.32 of its regulations governing acceptance of public unit and nonmember shares. In general, NAFCU supports the proposal, which would allow federal credit unions (FCUs) to receive public unit and nonmember shares up to 50 percent of the credit union's paid-in and unimpaired capital and surplus less any public unit and nonmember shares. NAFCU expects that the new limit will better enable FCUs—particularly those that have obtained a low-income designation (LICUs)—to achieve growth and safely expand access to financial services within their communities.

General Comments

FCUs are permitted to receive payment on shares from nonmembers with certain restrictions. All FCUs may accept nonmember shares from public units and political subdivisions, as well as from other credit unions. As provided in § 107(6) of the *Federal Credit Union Act* (FCU Act), a LICU has the unique ability to receive payment on shares from any source regardless of membership. For all FCUs eligible to receive public unit and nonmember shares, the NCUA's current regulations limit the total amount of such shares that an FCU may have to 20 percent of the credit union's total shares, or \$3 million, whichever is greater. FCUs are currently permitted to request a waiver of this limit by submitting a written request to their Regional Director. The proposed rule eliminates the waiver option in exchange for a higher general limit and modifies the method by which the limit is measured. NAFCU supports this approach, but recommends retaining and increasing the alternative dollar limit.

As the NCUA acknowledges, public unit and nonmember shares can be regarded as the functional equivalent of other types of short-term borrowings, and at the same time serve as a “more stable and cost-effective source of funding.”¹ Accordingly, it is appropriate that the public unit and nonmember share limit reflect—at a minimum—the 50 percent borrowing limit in § 107(9) of the FCU Act. Not only does this make sense conceptually, it reasonably accounts for changes in

¹ Proposed Rule, Public Unit and Nonmember Shares, 84 Fed Reg. 104, 25018, 25020 (May 30, 2019).

technology and supervisory policy that have greatly enhanced the safety and soundness of the credit union system. The new limit also increases system funding capacity by six percent while maintaining appropriate limits on leverage; for example, by requiring a net worth ratio of at least 17 percent to take full advantage of the proposed authority.

The current 20 percent limit on public unit and nonmember shares—first established 31 years ago—does not reflect significant, intervening changes within the credit union industry. The credit union system today is well capitalized, healthy, and operates under a host of modern safety and soundness regulations. Supervision of credit unions has also changed and the NCUA's ability to address interest rate risk has greatly improved with the introduction of new technologies.

Credit union asset-liability management practices have also evolved since the 1980s, with greater access to data and sophisticated modeling driving many enhancements and strengthening overall safety. As a result, FCUs today are well equipped to plan for and mitigate potential risks associated with a sudden withdrawal of nonmember shares, which the NCUA once cited as a rationale for imposing a more conservative, aggregate limit on public unit and nonmember funds.² In this context, a higher 50 percent limit provides appropriate relief to a healthy credit union system that still faces significant regulatory and competitive barriers to growth.

The NCUA should not discard the alternative dollar limit on public unit and nonmember shares and should increase it.

For the vast majority of credit unions, NAFCU anticipates that the 50 percent limit on public unit and nonmember shares will afford greater flexibility. However, as the NCUA acknowledges, a subset of small FCUs—such as newly chartered credit unions or LICUs—may be reliant on large volumes of nonmember shares. For these FCUs, where the volume of nonmember or public unit shares may be large relative to total shares, an alternative limit measured in dollars provides a mechanism for relief. Accordingly, NAFCU asks that the NCUA not discard the alternative dollar limit. Instead, the NCUA should retain the dollar limit alongside the new limit of 50 percent of the credit union's paid-in and unimpaired capital and surplus less any public unit and nonmember shares. In addition, NAFCU recommends that the NCUA raise the \$3 million limit to at least \$5 million.

When the NCUA initially proposed the alternative \$3 million limit, it did so in the context of eliminating RegFlex FCUs' blanket exemption from the limit on nonmember deposits.³ At that time, the Board tailored the \$3 million limit in a way that would spare a small number of RegFlex FCUs any adverse, immediate consequences associated with the change. When it finalized the \$3 million alternative limit in May 2012, the Board also considered the effects of a higher dollar limit on a hypothetical FCU with \$7.5 million in total shares—contrasting the number of total

² Interim Final Rule, Nonmember and Public Unit Accounts, 53 Fed. Reg. 50918 (December 19, 1988).

³ Proposed Rule, Eligible Obligations, Charitable Contributions, Nonmember Deposits, Fixed Assets, Investments, Member Business Loans, and Regulatory Flexibility Program, 76 Fed. Reg. 249 (December 28, 2011).

nonmember shares afforded by the dollar limit with the maximum allowed under the 20 percent of total shares measure.⁴

Setting aside the arbitrariness of using \$7.5 million in total shares as the benchmark today, the alternative dollar limit should be increased to ensure consistency with the 50 percent limit now under consideration. As the Board noted in its May 2012 final rule, a hypothetical FCU with \$7.5 million in total shares that accepts \$3 million in nonmember deposits would result in such deposits representing 40 percent of total shares—or double the amount permitted under the 20 percent of total shares limit that was in effect at the time. If the dollar limit was originally meant to provide relief beyond what was permitted using a measure of total shares, then an increase is warranted. However, any upward adjustment to the dollar limit would still be small in relative terms and would not be expected to have a dramatic aggregate effect, factors that should ease concern that such a change might result in any risk to the National Credit Union Share Insurance Fund.

Lastly, it should be noted that a credit union with \$7.5 million in total shares would have fallen within the 36th percentile of credit unions ranked by share volume in the fourth quarter of 2011, when the \$3 million alternative dollar limit was first proposed. Based on fourth quarter Call Report data from 2018, a credit union in the same percentile would have \$11.7 million in total shares. As discussed previously, \$3 million in nonmember deposits would represent 40 percent of total shares for an FCU with \$7.5 million in shares. For an FCU with \$11.7 million in shares, the 40 percent level would be \$4.7 million. NAFCU recommends that the NCUA retain the alternative dollar limit and increase it to at least \$5 million to ensure that functional relief is available to small credit unions. At the very least, the NCUA should provide a mechanism to ensure that credit unions currently relying on the \$3 million alternative limit are not adversely affected by potential changes.

The NCUA should ensure that written plans, when required, do not frustrate the relief contemplated in the proposal.

The proposed rule would require an FCU to develop and maintain a written plan if its public unit and nonmember shares, taken together with borrowings, exceed 70 percent of paid-in and unimpaired capital and surplus. The proposal also states that FCUs are not required to submit the plans to the NCUA for prior approval.

NAFCU supports this approach and agrees that FCUs that accept public unit and nonmember shares in excess of the 70 percent limit should be able to demonstrate how the credit union will use those funds consistent with prudent risk management principles. To the extent that such planning will naturally become part of a credit unions' asset-liability management, NAFCU believes that the NCUA should not need to adopt new or more complex supervisory procedures for reviewing written plans. In addition, NAFCU recommends that the NCUA communicate its expectations for such plans clearly in advance of examinations to ensure consistent review. In general, NAFCU believes that written plans should not operate as arbitrary barriers to prevent

⁴ Final Rule, Eligible Obligations, Charitable Contributions, Nonmember Deposits, Fixed Assets, Investments, Member Business Loans, and Regulatory Flexibility Program, 77 Fed. Reg. 31981 (May 31, 2012).

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certain credit unions—whether because of asset size or other characteristics—from benefiting from the changes contemplated in the proposal.

Conclusion

The NCUA's proposal to increase the limit on the amount of public unit and nonmember shares that an FCU may accept provides meaningful relief and reflects confidence in the safety and strength of the credit union system today. NAFCU appreciates the opportunity to provide comments in support of the proposal and asks that the NCUA retain and increase the alternative dollar limit to ensure that certain smaller credit unions can pursue prudent growth strategies with additional flexibility. If you have any questions or concerns, please do not hesitate to contact me at amorris@nafcuhq.org or 703-842-2266.

Sincerely,

A handwritten signature in black ink that reads "Andrew Morris". The signature is written in a cursive, flowing style.

Andrew Morris
Senior Counsel for Research and Policy