CUNA
Credit Union National Association
cuna.org
BILL CHENEY
President & CEO

601 Pennsylvania Ave., NW | South Building, Suite 600 | Washington, DC 20004-2601 | PHONE: 202-508-6745 | FAX: 202-638-3389

November 18, 2013

The Honorable Debbie Matz
Chairman
National Credit Union Administration Board
1775 Duke Street
Alexandria, VA 22314-3428

Dear Chairman Matz:

I am writing to you on behalf of the Credit Union National Association, which along with our state league partners, advocates for the nation's state and federally chartered credit unions that serve more than 97 million members.

I very much appreciate meeting and discussing various issues with you on a regular basis. In addition, the "Inside Exchange" interview with you, which is posted on our website, provides credit unions with many insights into concerns and issues the agency is addressing.

With the full complement of NCUA Board members now at the agency, I also want to take this opportunity to summarize in one place for you and the other Members of the Board a number of the key regulatory issues involving NCUA that CUNA is pursuing on behalf of credit unions.

Because these matters continue as, or have become, top regulatory priorities for our members, our objective is to work closely with NCUA to achieve constructive solutions on these highly significant issues. In that connection, this letter not only addresses imperative regulatory issues but offers solutions for the Board to consider that we believe are reasonable and fully consistent with the agency's chief role as safety and soundness regulator.

CUNA urges the agency to give these concerns a full and careful review and adopt the recommendations we are advancing so that regulatory burdens imposed on well-managed credit unions can be minimized and contained without creating any undue additional risks to the National Credit Union Share Insurance Fund (NCUSIF), credit unions, or their members.

On November 8, 2014, CUNA sent a letter to all members of the Federal Financial Institutions Examination Council (FFIEC) urging the regulators to issue a joint statement that examiners will not issue sanctions to institutions that are making good faith efforts to comply with the Consumer Financial Protection Bureau's (CFPB) mortgage rules, at least until September. In addition, we urged the agencies to work with Congress to limit liability for covered financial institutions during that same time frame. In our view, the regulators have not addressed real concerns regarding the disparate impact risks that mortgage lenders will likely face if their mortgages generally conform to the "qualified mortgage" (QM) standard under the CFPB's ability to repay rule.

We will not belabor those points in this letter but NCUA's favorable response to CUNA's requests would be extremely beneficial to those credit unions that must comply with the new mortgage rules.

Credit Union Regulatory Burdens: NCUA Should Take the Lead to Work with the FFIEC to Quantify the Totality of Requirements

NCUA has undertaken efforts to help mitigate the impact of some outdated or needless regulatory provisions. Yet, the capacity for many credit unions to absorb, implement, and monitor compliance under additional new rules is nearing its limit, and regulatory burdens will endanger the future viability of credit unions if the current pace of rules continues unabated.

A recent submission to the Office of Management and Budget from NCUA, which indicates credit unions will spend at least billions of hours on continuing yearly compliance issues, illustrates the critical nature of regulatory burdens for credit unions.

In light of that, we urge NCUA to take into full consideration the scope and magnitude of the regulatory requirements from a variety of regulators that credit unions must already meet in all areas of their operations before imposing new requirements. Moreover, we urge NCUA to eliminate rules that are outdated, unnecessary, or simply provide minimal benefits.

The multitude of new regulations, including under the Dodd-Frank Act, has required credit unions to spend much more on compliance and divert resources to regulatory issues. As a result, fewer resources may be available to pursue new or additional services for members. Since 2008, credit unions have had to adjust to and comply with at least 170 new federal regulatory changes.

We urge NCUA to take the lead under the auspices of the FFIEC to establish a regulatory relief working group that will examine the entire regulatory burden on financial institutions, including current regulations under the CFPB.

Such a group should also quantify the magnitude of the regulatory burden on all sizes of financial institutions. This would help provide a foundation for the pursuit of real relief from Congress and help contain the seemingly endless stream of new rules and regulatory requirements imposed on credit unions and other financial institutions, particularly as a result of the financial crisis and the Dodd-Frank Act.

<u>Risk-Based Net Worth: NCUA Has Ample Supervisory Tools to Handle Problem Cases; Supplementary Capital Must Be Advanced</u>

The agency is reviewing net worth requirements to develop risk-based capital standards that would only apply to federally insured credit unions with assets of more than $50 million. Credit unions in that category constitute about 32% of credit unions, although these institutions account for almost 90% of all credit union members.

We appreciate that NCUA has noted that the agency will give credit unions and other stakeholders plenty of time to comment on the proposed changes once they have been issued by the Board.

Even so, our members are seriously concerned about the prospect of a new rule on additional net worth requirements. As you know, given the prompt corrective action structure of credit unions, new risk-based net worth requirements could mean some credit unions will have to pull back on products and services in order to set aside net worth on top of the 7% they already provide as a well-capitalized credit union. More fundamentally, because Congress has hard-wired the leverage ratio into the Federal Credit Union Act, and restricted the statutory definition of net worth to retained earnings, it may very difficult, if not impossible for NCUA to devise a fair risk-based net worth standard.

The extent to which a new rule on risk-based net worth is needed is far from clear. Most credit unions are doing well financially, as the agency's most recent data shows, with solid but manageable loan and membership growth.

The average net worth of federally insured credit unions is over 11% and the number of CAMEL code 4 and 5 credit unions has decreased as of last month by almost 4% to only 317. Over half of these credit unions have assets of less than $10 million.

Further, even though the current statutory prompt corrective action system is deeply flawed and Congress needs to revise and update it -- which should include authority for supplemental capital -- most credit unions have been able to adjust under the present system. This is true, notwithstanding the fact that examiners often require capital well above the 7% level. Moreover, the agency has ample authority currently to handle individual supervisory cases, including requiring additional capital on a case-by-case basis when circumstances warrant it.

In light of these factors, instead of issuing a new rule, we think the Board should focus on the use of its wide range of supervisory tools to identify concerns at individual credit unions before they become critical. In other words, NCUA should address such problems at the individual institution level rather than under a broader rulemaking approach. The very low number of credit union failures throughout the financial crisis demonstrates that credit unions were not undercapitalized going into the recession and the current approach has worked fairly well from the standpoint of managing losses. Moreover, the current approach is efficient and far less intrusive and costly than imposing additional net worth requirements that all covered credit unions would have to meet or at least regularly analyze.

If the agency determines that the severity of net worth and prompt corrective action issues within federally insured credit unions collectively justifies a new rule, we urge the agency to minimize the rule's impact to the greatest extent possible.

Meanwhile, we also urge the agency to work with the credit union system to urge Congress to provide significant reform of the current statutory system.

Despite the fact that credit unions have become accustomed to the current system, it penalizes credit unions for growth in the face of the increasing need and demand for credit union services in communities across this country. In addition, by limiting net worth accumulation to retained earnings, the current system precludes most credit unions from obtaining supplemental capital, which could be a significant and useful resource to help reinforce credit unions' overall financial strength.

Rather than pursue a one dimensional effort by changing regulations to impose even more net worth requirements -- even if as a practical matter the rule's impact is limited to a small number of credit unions -- we urge NCUA to work with the credit union system to support statutory capital reform. This approach could appropriately address risk management but in the context of a system that also accommodates well-managed credit union growth.

Corporate Credit Union Stabilization Fund

Later this month, the NCUA Board will set the range for the assessment for the Corporate Credit Union Stabilization Fund for 2014 and you have indicated your support for as low an assessment as possible. CUNA applauds your view on this and believes that your stance is firmly grounded in the facts as they are known today. We strongly encourage the Board to support a very limited range, starting with zero.

Whether there will be the need for an actual assessment in 2014 will be determined in July. In our view, an assessment will not be necessary.

As of this year, credit unions have paid about $4.8 billion to cover the corporate credit union losses. CUNA's analysis shows that the assessment of around $700 million for this year is more than likely sufficient to cover any remaining losses on the failed corporate credit unions' legacy assets. Even if more losses did occur, which does not appear likely, they would no doubt be small and as a consequence, we do not think there should be a rush to collect for them next year.

Given the improving economy and other factors, including the management of the Fund, the losses of the affected corporate credit unions appear to be generally paid for, and a sufficient liquidity buffer is building with the Treasury line of credit, so we urge the NCUA Board to avoid an assessment in 2014.

Examination and Exam Appeals Issues: An Examinations Working Group Would be Very Useful

In a number of areas of the country, examination issues seem to have leveled off. Even so, a sizeable number of credit unions continue to raise ongoing concerns about various examination issues that often relate to examiner directives that seem arbitrary and highly subjective. These include directives to: increase the ALLL account despite documentation from the credit union's auditor or accounting practitioner that such a step is unwarranted; curtail mortgage lending, auto lending, and/or student lending because of concentration concerns; prohibit a low-income credit union from exceeding the MBL cap; discourage loan modifications; and others. The agency has taken steps to promote awareness regarding the rights of credit unions to appeal examiner directives. Nonetheless, concerns remain as to whether credit unions' issues will be given fair consideration should they seek to contest an examiner's findings or directives.

CUNA, leagues, and credit unions support examination standards that are both rigorous and fair, but are concerned that issues such as the ones identified above remain unresolved. We believe credit unions deserve objectivity and balance in the examination process and believe you agree.

In the coming weeks, CUNA will reinstitute our national examination survey for state and federal credit unions to let us know how they feel their last examination was conducted; we will share the aggregate results of the survey, which will capture negative and positive comments, with NCUA and state regulators.

We hope to use the data to continue our efforts to encourage useful and efficient examinations and the development of a transparent and readily understood review process under which credit unions are able to appeal examiner directives and findings effectively, without fear of retaliation. CUNA wants to work with NCUA to continue to achieve examination improvements and to develop a robust appeals process so that credit unions are assured that they have an avenue to seek relief when they believe the agency has rendered an arbitrary or unjust decision that negatively impacts their institution.

In that connection, we urge NCUA to assemble a working group on examination and appeals issues. The purpose of such a group would not be to advocate any particular credit union's issues. Rather, the group's purpose would be to look holistically at the examination process and to make recommendations for improvements in the evaluation process, communications to and from examiners, and the appeals process under which credit unions could pursue disagreements with examiners.

NCUA's Support on Financial Accounting Standards Board (FASB) Issues is Critical

This spring, FASB proposed extensive changes to the methodology for recognizing and reporting credit impairment in financial instruments. We strongly opposed the proposal, which would be detrimental to the credit union system, and could have serious, unintended consequences for borrowers and the economy.

Under the proposal, covered entities would be expected to estimate the present value of cash flows associated with all loans and other assets that are not expected to be collected over the life of the loan or asset. The reporting entity would consider past events, current conditions, historical loss experiences, the borrower's credit worthiness, forecasts of expected credit losses, and predictions about the economy.

NCUA communicated directly with FASB about the negative impact of this proposal, for which we commend the agency. CUNA filed a strongly worded letter opposing the application of the proposal to credit unions. We urge NCUA to continue weighing in with FASB, as we are doing, to reiterate concerns and help ensure that FASB considers appropriate analysis and reasoning as to why credit unions should not be under the FASB changes.

Another FASB proposal defines a "public business entity." CUNA supports this proposal, which we believe could be very positive for the credit union system. The proposal would allow credit unions and other nonpublic business entities to use accounting and reporting alternatives under GAAP.

NCUA's views on this issue are very significant because, under the proposal, prudential regulators such as NCUA would play a key role in permitting their regulated entities to report under modified standards that would still qualify as GAAP. We urge NCUA to do all it can to coordinate with FASB to support FASB's efforts to allow non-publicly traded entities to be eligible for accounting treatment that is more closely tailored to their business models.

Credit Union Service Organization (CUSO) Proposal: NCUA's Authority is Very Limited

CUNA strongly supports authority for credit unions to invest in or lend to CUSOs that are permitted to offer a wide array of products and services that support the diverse needs of credit unions and their members. Many credit unions rely on CUSOs and these organizations must have flexibility to respond to the needs of credit unions, consistent with the Federal Credit Union (FCU) Act.

We appreciate that NCUA has delayed consideration of the CUSO proposal issued in 2011 and has not rushed the adoption of a final rule. Nonetheless, because the FCU Act does not provide direct authority to NCUA regarding CUSOs, we continue to urge NCUA to refrain from issuing a broad-based rule and instead consider how best to utilize its supervisory authority over an affected credit union to address any material safety and soundness issues that relate to the credit union's involvement with its CUSO or CUSOs.

Based on comments from the agency, we know a CUSO rule remains in development. We urge that a new rule for the entire credit union movement not be driven by problems a few credit unions have encountered with their CUSOs, particularly when the vast majority of CUSOs are operated in a safe and sound manner. We are also concerned that NCUA authority over CUSO's could put them at a disadvantage relative to their "non-CUSO" competitors.

We will continue to urge the agency to minimize regulatory intrusion into the operations of CUSOs and allow these institutions to maintain their role of supporting credit unions' efforts to respond to the changing needs of their members, without excessive regulation.

NCUA's Derivatives Proposal: We Encourage the Agency's Efforts to Move Forward

As we stated in our comment letter filed in July, CUNA strongly supported the agency's efforts to solicit comments on a proposal to authorize derivatives investments to help credit unions manage their interest rate risk (IRR). However, we did not support a number of the provisions in the proposal, such as the imposition of fees for credit unions to apply for derivatives authority and we did not support an asset eligibility threshold for derivatives participation. We offered a number of recommendations for improvements in the rule, including regarding the investment limitations.

NCUA took a very positive step in issuing the derivatives proposal for comment, and we urge the agency to continue its favorable actions in this area by including the changes we recommended and approving the rule as expeditiously as possible.

NCUA's Budget for 2014: Five Years of Increases Do Not Justify Additional Agency Costs

CUNA appreciates that the agency cut its 2013 budget in mid-year by about $2.6 million, an action we strongly support. We believe this step reflects efforts to operate more efficiently.

Nonetheless, credit unions are well aware that the agency's budget has gone up every year for the last five years – about 58.48% total over that time period.

Credit unions are frustrated about the agency's budget for a number of reasons. Prominent among these are the fact that there seems to be little opportunity for oversight by Congress or the credit unions that pay the costs of NCUA's operations, and the fact that there does not seem to be a clear connection between spending and the achievement of strategic goals.

CUNA, the leagues, and credit unions do not want the agency to be underfunded. At the same time, we strongly oppose large, steady increases in the face of the solid financial performance by the credit union system, which continues to rebound from the financial crisis.

It is understandable that the agency as an employer wants to retain and reward good employees. However, we urge the agency to consider that credit unions pay for agency budget increases, including those relating to salaries, bonuses and benefits, and that every effort should be made to address staffing levels as efficiently as possible.

We urge the Board to do all it can to hold the line on expenses for its 2014 budget, consistent with and in recognition of the diligent efforts credit unions undertake to contain their costs in order to serve their members to their best ability.

Waiver Process for MBL and Loan Participation Requirements: NCUA Should Allow For an Expedited Process When Warranted

NCUA's new loan participation rule, as well as the member business loan regulation, allow for waivers from regulatory provisions that are not specifically required under the FCU Act; this authority has the potential to provide real regulatory relief for credit unions that obtain waivers.

Also, the agency has issued very useful guidance on the issue of waivers for loan participations and for member business loans that we believe should substantially facilitate the ability of well-managed credit unions to apply for and receive waivers.

An issue of concern remains, however, regarding the time frame for approval of waivers, which is generally 45 days from the time a completed application is received. Credit unions and credit union leagues, such as the Indiana Credit Union League, are concerned that the approval process is too lengthy for all cases, particularly for credit unions that are well-managed and have considerable experience regarding the products that are the subject of a waiver request. There is also a concern that additional requests for information may delay the application. We realize that a credit union is allowed to obtain a blanket waiver of these requirements but obtaining such a waiver may not be possible.

To address these concerns, we urge the Board to consider including a process under which a credit union could request an expedited review of waiver requests that would provide for the review and response from the agency within 10 days. For some credit unions, such as those newly involved with member business loans or loan participations, this expedited process may not be appropriate.

However, we think this is a reasonable request for well-managed, experienced credit unions and urge the agency to modify its wavier process to provide for streamlined processing when the credit union's application and financial condition clearly demonstrate such an expedited review is appropriate.

On a related noted, credit unions have also raised concerns about NCUA's member business loan provisions regarding construction and development loans and question the need for restrictions such as the 15 percent of net worth ceiling on C&D loans, in light of the fact that the limitations are not statutorily required. CUNA urges the agency to consider these concerns and whether the provisions can be updated and improved, if not eliminated, particularly for well managed credit unions. In that connection, we urge NCUA at a minimum to raise the C&D limit to 100 percent of net worth for CAMEL 1 and 2 credit unions.

NCUA's Proposal on Stress Testing for the Largest Credit Unions Would be Costly and Is Not Required by the Dodd-Frank Act

NCUA is currently seeking comments on a proposal that would require the agency to perform stress tests on federally-insured credit unions (FICUs) with assets of more than $10 billion. The covered credit unions would be required to submit capital plans annually to the agency and make adjustments to their capital in response to the stress testing. The agency states that stress testing "would provide useful information for both NCUA and the FICUs."

The Dodd-Frank Act requires stress testing for large banks and bank holding companies, but does not include such a requirement for credit unions. NCUA believes, however, that stress testing will provide an extra measure of safety to the NCUSIF by ensuring the largest credit unions are able to withstand certain financial situations. The agency has indicated that larger credit unions represent greater risks to the NCUSIF and thus, require additional monitoring by NCUA.

CUNA will be filling a detailed comment letter on the proposal raising a number of concerns. Given the fact that Congress did not specifically require stress testing of credit unions, in contrast to the way it addressed other financial institutions, in our view the agency must provide more analysis and justification for the application of the stress testing requirements to the affected credit unions. We do not believe the agency has adequately explained for example, why the stress testing program will cost $4 million in the first year of implementation and a lesser, but substantial amount thereafter. It is also not clear why the agency has to contract with an outside third party to conduct stress testing, rather than work with the Federal Reserve to perform the tests or simply review the testing that these credit unions perform themselves. In addition, credit unions are concerned that over time, the asset threshold for coming under the rule will migrate downward and credit unions with less than $10 billion in assets will eventually be subject to the rule.

We urge the agency to provide more information and to substantiate the need for and costs associated with the stress testing rule to the credit union system.

Student Loans Should Not Be Discouraged

There is a growing need for affordable credit products to finance the cost of higher education, and a number of credit unions offer important options for families seeking to avoid expensive private student loans. While over concentration in any particular product, including private student loans, is to be avoided, we urge NCUA to work with the credit union system to allow well-managed credit unions with appropriately tailored programs to continue offering student loans that their members need and want.

We also urge NCUA to work with CUNA to support federal legislation that will allow credit unions to offer student loans that have maturities above 15 years, which is currently the limit for student loans offered by federal credit unions. In addition, we are urging the CFPB to support this effort, which if adopted would allow students and or their families to repay student loan debts in a more reasonable time frame, given the size of the loans.

NCUA's Engagement on Cybersecurity Coordination Is Essential

In February of this year, NCUA issued a risk alert (13-Risk-01) to credit unions on cybersecurity, focusing on Distributed Denial-of-Service (DDoS) attacks. NCUA also issued a statement to credit unions regarding cybersecurity awareness month, which was October. These are positive steps but credit unions remain very concerned about cybersecurity issues. Of course, credit unions have no control about when attackers will strike.

NCUA should continue to provide cybersecurity resources and assistance to credit unions, such as 13-Risk-01 which identifies appropriate policies and procedures for credit unions to guard against attacks.

While credit unions are seriously concerned about cybersecurity, they are equally concerned about the potential for the development of complex, overlapping new rules in this area.

In that connection, we urge NCUA to continue to coordinate closely with the Department of Homeland Security, the National Institute for Standards and Technology (NIST), and the Financial Services Sector Coordinating Council for Critical Infrastructure (FSSCC) on the implementation of the President's Executive Order on "critical infrastructure" cybersecurity. We urge NCUA to ensure that the U.S. cybersecurity framework will recognize that credit unions and financial institutions are already subject to robust data security requirements and standards, such as NCUA and FFIEC rules, and should not be subject to additional regulations. This is an objective that CUNA is aggressively pursuing.

In the meantime, we urge the agency to establish a credit union cybersecurity council or working group to help identify and address data security concerns in a manner that recognizes the unique nature and needs of credit unions, without imposing a new layer of regulatory compliance.

NCUA Has an Important Role in Payments Developments

While, at a macro level, payments issues could raise material safety and soundness concerns, NCUA generally does not regulate operational payments issues. Nonetheless, we believe there is an important role for the agency to play in helping to ensure credit unions' concerns are fully considered by other regulators with more direct authority over key payments matters, such as the Federal Reserve Board and the CFPB.

There is no question that credit unions should be able to access and utilize the latest developments in payments, including mobile payments. To help achieve that result, NCUA should continue to monitor payments developments that impact credit unions, and support appropriate and flexible rules from other regulators that facilitate credit union access to the payments system.

Moreover, the agency should coordinate with the Federal Reserve Banks on their "Payment System Improvement" paper and initiative to identify payment system opportunities and gaps that could affect credit unions. We encourage NCUA to work with other regulators including the CFPB, the Federal Reserve, and NACHA – the Electronic Payments Association, to reinforce that the needs of credit unions and their members should be reflected in government policies, while helping to urge that any new regulatory restrictions, including in the area of overdraft protection, exclude credit unions. CUNA encourages NCUA to report to credit unions on a periodic basis regarding its efforts to help ensure government actions will support credit unions' access to and use of payments technology, without overburdening credit unions with additional new rules in the process.

Positive Steps from NCUA Should Serve As a Template for Further Regulatory Relief

Before closing, I want to acknowledge and thank you for a number of steps that the agency has taken to address concerns pursued by CUNA on behalf of our members, because these steps could serve as a model for future NCUA regulatory relief. These include:

- Issuing examiner guidance that included a discussion of the proper use of Documents of Resolution (DoRs) on October 22, 2013;
- Facilitating low-income status designations;
- Raising key compliance thresholds under the emergency liquidity rule;
- Delaying the rule on credit union service organizations (CUSOs) for over two years;
- Updating the definition of "small credit union;"
- Improving the definition of "rural district" for field of members purposes;
- Enhancing the waiver process as it relates to member business loans and loan participations; and
- Decreasing the agency's 2013 operating budget by $2.6 million.

While I have discussed these issues with you, I did want to highlight the examination guidance issued October 22, 2013 that included a discussion on the use of DoRs. Used properly, the DoR is essential for the examiner and can be useful for the credit union as well in addressing problem areas. However, increasingly credit unions had been feeling that the number of DoRs was excessive and the nature of these instruments was often too harsh for the circumstances. Credit unions we have spoken to are relieved that the agency has addressed these concerns, and we believe the guidance will serve as an important document from the Board that should help minimize misunderstandings between examiners and credit unions on the use of DoRs.

On another issue, the emergency liquidity rule adopted by the Board, CUNA simply does not agree there is a need for a new rule in this area. That said, the Board's decision to raise to $250 million from $100 million the assets threshold for those credit unions that must designate a federal source of emergency liquidity will certainly lessen the burden of this rule. Also, the increase of the threshold to $50 million for those credit unions needing to develop and maintain a written emergency liquidity policy will help mitigate the compliance responsibilities of the rule for small credit unions.

These examples reflect a willingness on the part of the agency to respond to credit union concerns on certain issues, which we certainly commend and encourage. However, as exemplified by this letter, we continue to urge NCUA – as well as all other credit union regulators -- to focus corrective supervisory policies and rulemaking processes on problem areas rather than on the development of regulations and directives that have blanket applicability, regardless of the credit union's level of risk.

<u>Conclusion</u>

There are a multitude of regulatory issues facing credit unions, many that were imposed by Congress, which will remain in effect until Congress takes action to recognize credit unions do not deserve to be subjected to the kinds and layers of regulations that should be applied only to abusers in the financial marketplace.

NCUA and the CFPB have taken a number of steps to address certain regulatory relief issues for credit unions. Nonetheless, there is much more that NCUA, the CFPB and other regulators that impact the daily lives of credit unions can do to minimize credit unions' regulatory burdens. More importantly, there is even more that NCUA should do to facilitate, through a positive regulatory environment and examination culture, the ability of credit unions to serve their members.

We urge the agency, rather than continuing the parade of new rules that apply on a broad basis, to utilize its array of supervisory powers to focus on problem credit unions. We also urge NCUA to do all it can to allow well-managed credit unions the space and latitude they need to serve their members of today and to attract new members for tomorrow.

I would welcome the opportunity to pursue the issues we have raised in this letter and look forward to talking with you again at your earliest convenience. If you have any questions, please do not hesitate to contact me, CUNA's General Counsel Eric Richard, or Deputy General Counsel Mary Dunn.

Best regards,

Bill Cheney
President & CEO