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November 13, 2012

Ms. Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke St
Alexandria, VA 22314-3428

Re: Comments on Proposed rule and Interpretive Ruling and Policy
Statement 12–2, Asset Thresholds affecting Regulatory Relief for Small Credit
Unions; RIN 3133–AE07

Dear Ms. Rupp:

This letter represents the views of the Credit Union National Association on the agency’s proposal regarding its definition of the asset threshold definition of “small entity” for Regulatory Flexibility Act (RFA) analysis and regulatory relief. Published in the Federal Register Wednesday, September 26th, 2012, the proposal seeks to amend Interpretive Ruling and Policy statement (IRPS) 87–2, as amended by IRPS 03–2, and two NCUA regulations that apply asset thresholds to grant relief from risk-based net worth and interest rate risk requirements.

By way of background, CUNA is the largest credit union advocacy organization in the country, representing approximately 90 percent of our nation’s more than 7,000 state and federal credit unions, which serve over 95 million members. Our letter was developed under the auspices of CUNA’s Small Credit Union Committee, with input from Leagues and others, and the economic analysis was provided by CUNA’s Senior Economist Mike Schenk.

Summary of CUNA’s Views – CUNA Urges A Higher Threshold for Regulatory Reviews and for Determining Access to Services

While we support changing the threshold for a “small entity,” we urge NCUA to revise its proposal in several significant ways. First, for purposes of RFA and similar analyses to assess the impact of appending proposal, the agency should use the same level that bank regulators use for such determinations. Under the RFA, the Small Business Administration has currently set the level for “small business” at \$175 million and all of the federal financial regulators except for NCUA have adopted that level. The SBA is proposing to raise the level to \$500 million, a move that CUNA wholeheartedly supports.



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The agency's definition is also used to determine small credit unions' access to assistance and services from NCUA. For that process we do not think that the upper limit should be the same ceiling as the one that applies for regulatory analyses. Instead, NCUA should allow credit unions that have no more than \$50 million in assets to be eligible for assistance and services from the agency. Alternatively, NCUA could set the size standard for assistance and services at a reasonable percentage of credit union assets. For example, the total assets in all credit unions with less than \$50 million are about 6.5% of the total assets in the credit union system.

Also, we believe the proposed three-year review of the threshold definition should be amended to require automatic adjustments every 18 months, which is the same review cycle imposed on the SBA under the RFA.

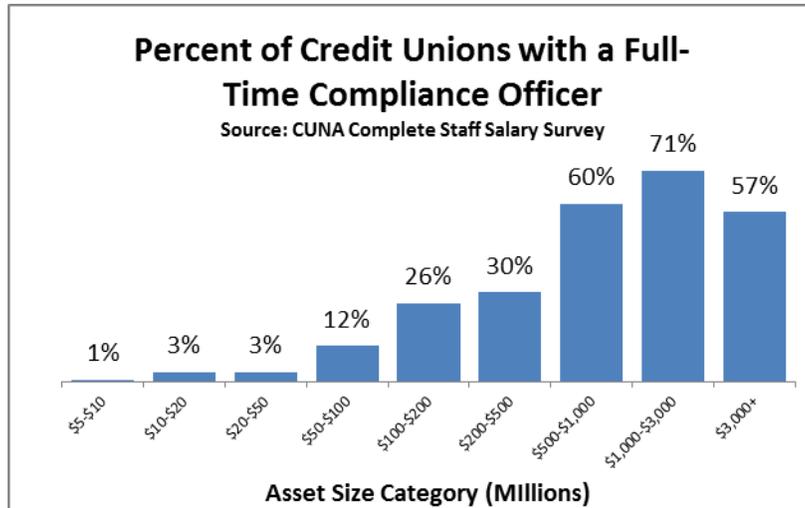
The Need for A Revised Definition of “Small Entity” is Measureable

There is a pressing need to change the threshold definition of “small entity” and CUNA appreciates the agency's steps to review the current \$10 million benchmark, which has been in place for nearly a decade. Over this period, credit unions have faced growing regulatory burdens and issues, some initiated by NCUA and others imposed by different agencies, which have threatened the ability of many credit unions to continue to provide critical services to members and to expand the availability of cooperative financial services to more Americans. Since 2008, CUNA estimates that credit unions have been subjected to an excess of 120 regulatory changes from at least 15 different federal agencies.

The strain of complying with ever-changing and ever-increasing regulatory requirements is particularly onerous for smaller credit unions as most of the costs of compliance do not vary by size, and therefore are a much greater encumbrance for smaller as opposed to larger institutions. If a smaller credit union offers a service, it has to be concerned about complying with most of the same rules as a larger institution, but can only spread those costs over a much smaller volume of business.

Today, there are nearly 1,000 credit unions operating in the U.S. with one or fewer full-time equivalent employee. Nearly one-half of the nation's credit unions operate with just five or fewer full-time equivalent employees. Anecdotally, many of these folks tell us they put in 70- and 80-hours a week trying to keep up with regulations and the constant barrage of regulatory changes.

As shown in the graph below, relatively few credit unions under \$500 million in assets have the resources to employ a full-time compliance officer. Not surprisingly, smaller credit unions consistently say that their number one concern is regulatory burden. Difficulties in maintaining high levels of member service in the face of increasing regulatory constraints are undoubtedly a key reason that roughly 300 small credit unions merge into larger credit unions each year.



A Higher Threshold Definition is Appropriate

The agency proposes a \$30 million threshold definition, based on a detailed historical review of the trends in “small entities” expressed as a percent of total FICUs, percent of total movement assets, percent of system net worth and percent of NCUSIF.

From a regulatory compliance perspective only, a small financial institution structured as a not-for-profit cooperative “credit union” is essentially identical to a small institution structured as a for-profit “banking institution.” Similarly-sized credit unions and banks face nearly identical financial and operational challenges in struggling to meet regulatory burdens: In general, a “large” \$100 million credit union has the same level of financial and human resources available to comply with regulations as does a “small” \$100 million banking institution.

CUNA’s ongoing analysis of regulatory burden in the banking and credit union sectors concludes that credit unions and banks face similar regulatory strictures, except that in several areas, such as member business lending, credit unions face heavier compliance burdens than their banking counterparts.

NCUA Should Use the Same Threshold as the Other Federal Financial Regulators Do for Purposes of Regulatory Analyses

Today, federal banking regulators use the Small Business Administration’s (SBA) small business size definition for their Regulatory Flexibility Act (RFA) analyses of the banking institutions they regulate. The SBA currently defines small finance and insurance companies (including banks and credit unions) as those institutions with assets up to \$175 million. As indicated above, the SBA is proposing to raise the level to \$500 million, and CUNA is supporting that change.

Also, the Consumer Financial Protection Bureau and the Federal Reserve Board when issuing regulations aimed at the credit union sector use the same asset threshold definition in considering small entities for RFA purposes.

With these considerations in mind, we urge NCUA to use the same small entity definition employed by banking regulators in their RFA analyses.

NCUA Should Also Raise the Eligibility Threshold for Credit Unions to Seek Agency Assistance and Access

In addition, the ceiling on the size of credit unions that are eligible to apply for agency assistance and services should be treated separately from the one that applies to regulatory analyses, but nonetheless it should also be increased.

However, rather than raising the eligibility ceiling from \$10 million to \$175 million (or ultimately to \$500 million if the SBA approves its proposal), we think the threshold for assistance should be set at a lower level, such as \$50 million.

This will provide a reasonable increase in the number of credit unions that may apply for such assistance and services without placing an undue strain on the agency's budget and financial resources. It would also help ensure that only the credit unions with the greatest needs would be eligible for NCUA's assistance. As an alternative in setting the threshold for services and assistance, NCUA could use a reasonable percentage of credit union industry assets test.

The Complexity Index is Not a Reliable Indicator of Risk

We note that the NCUA's \$30 million proposed threshold value is influenced by a "Complexity Index." The complexity index is derived by assigning points based on factors such as a FICU's cash and liquidity positions, whether it holds real estate or member business loans, and whether it invests in credit union service organizations. In all, 27 products/activities were evaluated. Credit unions that offer a particular product or engage in a particular activity are assigned a value of "1" for that product or activity. Otherwise, a value of "0" is assigned. Thus, individual credit unions can have complexity index values ranging between "0" and "27".

Importantly, the agency's proposal states that "FICUs with a higher index tend to engage in a greater range of complex activities, which generally decreases the justification for regulatory relief."

However, complexity defined in this way is also a measure of diversification – and diversification reduces risk. Because of this a higher complexity index, at least to some extent, would *increase* rather than *decrease* the justification for regulatory relief.

As shown in the table below, for example, credit unions with less than \$10 million in assets account for 35% of all credit unions and about 1% of total credit union

assets. According to CUNA calculations, the typical credit union in this group has a complexity index of 4. Overall, institutions in this size group accounted for 18% of NCUSIF losses over the 1998 to 2012 period according to NCUA data in the proposal. In contrast, looking at a similar-sized group of credit unions (roughly 2,500 credit unions with \$10 million to \$60 million in assets) we find these institutions control nearly seven times the total assets and have a median complexity index of 12. Despite the substantially higher complexity index and the significantly larger asset base, the group of larger credit unions actually accounted for a marginally lower percentage of total NCUSIF failures over the 1998 to 2012 period.

Complexity Index is Not the Most Reliable Indicator of Risk*		
	CUs with <\$10 Million in Assets	CUs with \$10 million to \$60 million in Assets
Number of CUs	2,415	2,524
Percent of total CUs	35%	36%
Total assets	\$9.7 billion	\$68.6 billion
Percent of total CU assets	0.9%	6.7%
Median Complexity Index	4	12
Percent of NCUSIF failures*	12.3%	11.1%
* Number of CUs, Percent of Assets and Median Complexity is as of mid-year 2012. Failures are based on experience from 1998 to 2012 as outlined in the NCUA proposal.		

CUNA also is deeply concerned that the introduction of this complexity index will be used in a variety of ways, which could lead to the negative or unintended result such as reductions in credit union flexibility, increases in risk profiles, and reductions in member service provision.

A More Frequent and Automatic Review is Desirable

Credit unions – and credit union members – would be best served by a more frequent review and adjustment of the threshold than what NCUA is proposing. If the agency agrees with our position that the SBA’s definition of “small” is appropriate for RFA analyses, we urge the agency to also provide for adjustments to its “small entity” threshold that correspond to adjustments made by the SBA. This would mean automatic adjustments, every 18 months. We also urge a similar review cycle for the threshold that applies to eligibility for NCUA services and assistance.

Other Considerations

We are aware that some at the agency have serious concerns that raising the threshold definition might put more stress on Office of Small Credit Union Initiatives (OSCU) resources. Regrettably, we do not have all the information we need to perform a detailed analysis regarding this concern. However, to address this matter, we are urging the agency to adopt a two-tiered system, with one threshold definition

(i.e., the SBA definition) applying to regulatory relief and a lower threshold (\$50 million or a percentage-of-assets test) applying to access to OSCUI resources.

RFA Analyses Generally

As we have indicated in the past, NCUA's RFA analyses seem to lack rigor and/or fail to account for marketplace realities. We are concerned that too often the agency concludes that its final rules will not have a significant economic or operational impact on a substantial number of small entities. However, reality does not support those conclusions, given the fact that each additional rule has a significant impact. We urge the agency to take its responsibility to comply with the RFA more seriously and carefully examine the marginal effect of each additional regulation as well as to aggressively seek ways to provide relief to a greater number of institutions.

Conclusion

Credit unions are more concerned than ever about regulatory burdens. We urge the agency to do all it can to minimize regulatory requirements including refraining from imposing new regulatory requirements that are not necessitated by statutes or well-documented, systemic safety and soundness issues. We also urge NCUA to do all it can to provide positive regulatory incentives to credit unions, including meaningful flexibility wherever possible.

In the meantime, please let [Mike Schenk](#) or [me](#) know if you have questions about CUNA's letter.

Sincerely,



Mary Mitchell Dunn
Senior Vice President and Deputy General Counsel