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July 24, 2019

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

Re: Public Unit and Nonmember Shares; RIN 3133-AFoo

Dear Mr. Poliquin:

On behalf of America's credit unions, I am writing about the National Credit Union Administration's (NCUA) notice of proposed rulemaking regarding public unit and nonmember shares (referred to as nonmember deposits). The Credit Union National Association (CUNA) represents America's credit unions and their 115 million members.

### **Proposed Changes to Payments on Shares by Public Units and Nonmembers**

Current § 701.32 of the NCUA's regulations generally limits the total amount of nonmember shares a federal credit union (FCU) may have to 20% of the credit union's total shares, or \$3 million, whichever is greater, and sets forth procedures that an FCU must follow to seek a waiver from its regional director to accept additional shares.

The NCUA is proposing to amend the nonmember deposit rule to allow federally insured credit unions (FICU)<sup>1</sup> to receive public unit and nonmember shares up to 50% of the credit union's paid-in and unimpaired capital and surplus less any public unit and nonmember shares. Section 107(6) of the FCU Act permits an FCU to receive payment on shares from nonmembers, nonmember credit unions, and nonmember public units and their political subdivisions.

According to the NCUA, the change in standard from "total shares" to "paid-in and unimpaired capital and surplus less any public unit and nonmember shares" would provide credit unions with greater ability to accept public unit and nonmember deposits because undivided earnings are included in the measurement of a credit union's paid-in

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<sup>1</sup> While the proposal would expressly amend § 701.32 pertaining to FCUs, it would also make conforming amendments to § 741.204 to allow all federally insured credit unions to take advantage of these changes.

and unimpaired capital and surplus. The proposed rule does not include public unit and nonmember shares in the calculation of its unimpaired capital and surplus for purposes of this 50% limit. This restriction provides a meaningful limit on the ability of a credit union to increase its leverage indefinitely, which could pose a clear risk to credit unions and the National Credit Union Share Insurance Fund (NCUSIF).

### **CUNA Comments on Proposed Amendments**

We maintain that the purpose of credit unions should continue to be to serve the needs of their member-owners. This includes offering members various services and loans, as well as accepting member deposits. This should always be at the core of a credit union's charter. However, we believe it is important that credit unions have the ability to accept nonmember deposits as a source of funding. As such, we support the purpose of the NCUA's nonmember deposit rule. Nonmember deposits are useful for a number of reasons, including that: alternative sources of funding in general are part of good liquidity management; they can be lower cost than member deposits (even at similar rates since nonmember deposits can be issued in bulk, reducing staff time); they are often a more stable source of funding than borrowing; they can strengthen an FCU's relationship with political subdivisions, public units, or in the case of low-income credit unions (LICU), other charitable or economic development organizations; and they provide a funding option that does not require tying up outside lines of credit, such as from a Federal Home Loan Bank or corporate credit union.

For those and the reasons below, we support the proposal, which we believe will enhance credit unions' ability to serve their members.

We believe public unit and nonmember shares are the functional equivalent of borrowings and, therefore, should be subject to the borrowing limit for FCUs set out in the FCU Act. Section 107(9) of the FCU Act permits an FCU to borrow from any source up to 50% of the credit union's paid-in and unimpaired capital and surplus subject to such rules and regulations as the Board may prescribe. Thus, we support the proposed change that would replace the current nonmember deposit limit of the greater of 20% of total shares or \$3 million with a limit of 50% of the difference of paid-in and unimpaired capital and surplus, less any public unit and nonmember shares. Since we believe nonmember shares are the functional equivalent of (and no more volatile than) borrowings, we do not believe replacing the current nonmember deposit limit with the limit for borrowings would pose any increased risk to the NCUSIF.

Further, we believe the proposed changes will increase the ability of credit unions to accept nonmember deposits, which will enhance growth opportunities for credit unions. As noted in a recent NCUA analysis, the change would increase the system's overall funding capacity by 6% and increase the potential balance sheet leverage by ten percentage points.

Even so, most credit unions rely exclusively on traditional funding from member shares for the overwhelming majority of their funds and are unlikely to change that even under expanded authority. As of March 2019, a total of only 1,326 FICUs (25% of all FICUs) reported having any public unit/nonmember share funding and 738 FICUs (17% of all FICUs) report having borrowings. In combination, only about one-third of FICUs (a total of 1,631 or 31% of the total) report having any public unit/nonmember share funding *or* borrowings.<sup>2</sup>

As of March 2019, the total dollar amount of public unit/nonmember shares outstanding is \$16 billion (equal to 1.1% of system assets) and the total dollar amount of borrowings outstanding is \$52 billion (equal to 3.4% of system assets). In total, alternative funding sources thus are now equal to \$68 billion or 4.5% of total system assets.<sup>3</sup>

The NCUA's proposed limit appears to result in no change in overall funding capacity (i.e., aggregate public/nonmember deposits and borrowing limits) for 2,735 credit unions (51% of all FICUs) and would result in an overall increase in funding capacity for 2,158 credit unions (40% of all FICUs).<sup>4</sup>

The typical credit union that benefits from the change in overall funding capacity would experience an increased ability to leverage its balance sheet, though we do not expect those credit unions to shift funding strategies significantly. Nearly three quarters (71%) of those that will see an increase in funding capacity now report no use of alternative funding and the median alternative funding-to-asset ratio among those that report some alternative funding is 3.7%.<sup>5</sup>

We are unable to separately identify credit unions that have been granted waivers under the current requirements, so we cannot analyze impacts on those institutions. However, we are especially concerned about the operational effects of elimination of those waivers and suggest grandfathering would be most appropriate in those cases. Absent that, a longer-term transition strategy should be available to those facing a newer, lower limit.

We agree with the NCUA's assessment that the proposal will likely be most beneficial to small credit unions and LICUs, due primarily to the fact that they tend to have higher net worth ratios, and a net worth ratio of at least 17% is necessary to take full advantage of the proposed limit. While the number of FICUs that currently are close to their nonmember deposit limit is relatively small, we do see value in the proposed expansion of the regulatory limit.

With the accelerating rate of consolidation we continue to see in the industry, it is critical that we take full advantage of all reasonable opportunities to give these important community resources a chance to not only survive but thrive.

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<sup>2</sup> CUNA analysis based on March 2019, call report data.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

### *Elimination of Alternative Limit of \$3 million*

As noted, the proposal would replace the current limit of the greater of 20% of total shares or \$3 million with a new percentage limit that does not include a dollar amount alternative.

CUNA has identified a number of credit unions that will experience a decline in their overall authority due to the removal of the \$3 million alternative cap. For a small number of these, that change could be especially harmful. Although the NCUA intends to remove waiver authority, CUNA urges the agency to grandfather those that now take advantage of the \$3 million alternative cap and that would be harmed by the change. These are small institutions—typically with total assets of roughly \$1 million and they represent little overall exposure to the NCUSIF.

Further, while, at this time, we do not generally oppose the proposed elimination of the \$3 million alternative limit, we urge the agency to monitor this change to see whether small credit unions, particularly LICUs that rely on large volumes of nonmember deposits as a necessary source of funding or newly chartered credit unions, are adversely impacted by the elimination of the \$3 million limit.

Such review could appropriately be conducted concurrently with the agency's next review of Part 701 as part of the annual one-third regulatory review. At that time, if appropriate, the Board should consider re-instituting the \$3 million alternative limit or providing a special exemption for small LICUs that demonstrate a need for large volumes of nonmember deposits above the 50% paid-in and unimpaired capital and surplus limit and for newly chartered credit unions.

### *Requirement to Maintain a Plan Regarding Use of Funds*

The proposed rule would amend certain safeguards in current § 701.32(b) designed to ensure that an FCU's board of directors conducts adequate due diligence before receiving payment on a significant amount of nonmember deposits. Under the proposed rule, an FCU must develop and maintain for review by NCUA examiners a specific plan regarding the intended use of any borrowings, public unit, or nonmember shares that, taken together, exceed 70% of the credit union's paid-in and unimpaired capital and surplus. The proposed rule does not require FCUs to submit the plans to the NCUA for prior approval.

We support this proposed provision, as we believe it provides credit unions with significant flexibility to adopt prudent funding structures without the regulatory burden of developing a plan regarding the intended use of those funds unless the credit union borrows a significant amount of funds or accepts a significant number of public unit and nonmember shares.

## **Conclusion**

On behalf of America's credit unions and their 115 million members, thank you for the opportunity to share our comments on the proposed rulemaking regarding nonmember deposits. If you have questions about our comments, please do not hesitate to contact me at (202) 508-6743.

Sincerely,

A handwritten signature in black ink that reads "Luke Martone". The signature is written in a cursive style with a long horizontal line extending from the end of the name.

Luke Martone  
Senior Director of Advocacy & Counsel