

June 29, 2020

The Honorable Rodney E. Hood  
Chairman  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314

Dear Chairman Hood:

On behalf of the Credit Union National Association (CUNA), thank you for your responsiveness to credit union concerns during the COVID-19 crisis. Your willingness to make thoughtful policy changes at this time is greatly appreciated by our industry.

We also appreciate your outreach to credit unions, state leagues, and CUNA committees during the past several months. As we have stated in previous letters to you, this outreach is critical to comprehending the current economic environment and what the next several months and years may look like for the credit union industry.

As a follow-up to our previous correspondence, we offer the following policy recommendations and comments for your consideration.

### **Troubled Debt Restructuring**

First, the Troubled Debt Restructuring (TDR) exemption, created by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), will expire at the end of 2020, or 60 days after the end of the national emergency, whichever is earlier. We believe the current situation warrants that this deadline be extended.

Under the CARES Act § 4013 and interagency guidance, if a loan was current either on December 31, 2019, or at the time of modification, COVID-related modifications to the loan are exempt from TDR treatment. However, under CARES Act § 4022, borrowers of federally-backed mortgage loans (Fannie, Freddie, VA, FHA) may request and obtain forbearance of up to 12 months during the national emergency.

The effect is the TDR exemption lasts only until the end of 2020, but most forbearances will not end until 2021 (at which time credit unions will likely need to modify the loan). As a result of the unintentional provision misalignment, lenders will need to account for many loans modified due to COVID-19 as TDRs. The financial impact on credit unions will be significant.

The economic impact of the COVID-19 pandemic on borrowers and financial institutions will likely last well beyond the conclusion of this calendar year. We encourage NCUA to support legislative efforts to extend the CARES Act's temporary TDR relief for an additional year, until the end of 2021, and to continue working with the other banking regulators to ensure the interagency guidance on TDRs remains in effect for the duration of the crisis and its aftershocks. Such action is necessary to provide credit unions enough time to meaningfully and effectively help financially distressed members.

## **Capitalizing Interest on Mortgage Loans**

As expressed in our April 8, 2020, letter to you, we noted that credit unions have told us that it would help credit union members if the NCUA would allow interest to be capitalized on consumer mortgage loans, in connection with a loan modification made during the time of the pandemic. This approach would be consistent with the requirements of Fannie Mae and Freddie Mac. Credit unions that already provide loans sold to Fannie Mae and Freddie Mac will re-amortize the loans with capitalized interest during the modification. We urge NCUA to provide credit unions the flexibility to modify consumer mortgage loans in the same manner as those sold to Fannie Mae and Freddie Mac. This is especially critical as it may take many months for consumers to become financially healthy given the COVID-19 crisis.

## **Risk-Based Capital (RBC)**

We were disappointed that the NCUA Board removed from its June Board meeting agenda the proposed rule, Part 702, on risk-based net worth. We hope that a proposed rule allowing for regulatory relief will be heard in the near future. While we have always maintained that NCUA's new risk-based capital (RBC) rule is unnecessarily burdensome for credit unions and a solution in search of a problem, we believe this position is particularly evident given the current environment.

It may take years for consumers to recover from COVID-19 and the economic consequences of social distancing, lockdowns, and unemployment. Credit unions must dedicate the next several months and years to ensuring members have the necessary resources available to them to recover from this crisis. To provide credit unions and their members more time to recover from this crisis, we reiterate our comment from our April 8, 2020, letter asking NCUA to further delay the RBC effective date to, at earliest, January 1, 2023. This delay will also allow NCUA more time to study whether additional changes should be made from these requirements or to forego the initiative altogether, given the new COVID-19 economic environment.

## **Overdraft Policy**

As you know, overdraft protection permits a consumer's withdrawal from their share draft account to be processed in situations when the withdrawal exceeds the consumer's available balance. In accordance with all relevant laws and regulations, a consumer can choose to opt in to these services as part of their account agreement. Credit unions offer these programs as a convenience and accommodation to a member's benefit, and members that choose to opt in often do so for the peace-of-mind these services provide, to ensure bills are paid on time and to protect their credit ratings.

Now is not the time to strip away that peace-of-mind through arbitrary limitations on this popular and helpful service. In fact, in many cases, the opt-in decision was made precisely for the comfort of knowing that transactions would continue to be processed during an emergency or disaster. Many credit unions are already working with affected members to reduce the cost of overdraft fees incurred or to waive fees entirely during this pandemic. As the Board is well-aware, helping economically distressed members is part of credit unions' purpose and DNA.

We believe the best path forward for the NCUA Board is to give credit unions the tools and flexibility necessary to continue working with their members to develop *customized* solutions to secure members' financial well-being, without jeopardizing safety and soundness, and overdraft protection is one such vital tool.

To that end, the recently tabled interim final rule on overdraft would have permitted credit unions to adopt reasonable, flexible policies for members to resolve overdrawn accounts rather than the rigid 45-day time limit required by the current regulation. We support the rule's adoption and believe the NCUA's use of an interim final rule is appropriate given the exigency created by the ongoing national emergency. We strongly recommend the Board reconsider and approve the interim final rule on overdraft protection.

## **Payday Alternative Loans**

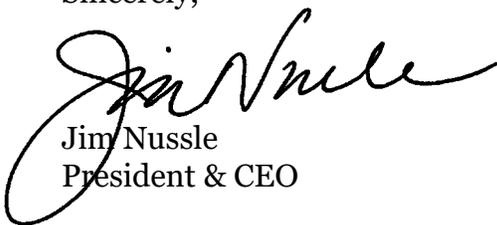
In previous correspondence to you on March 26 and April 8, 2020, CUNA provided comments on how the NCUA's Payday Alternative Loan (PAL) program can be more useful to credit unions and their members. The joint statement, and NCUA's contemporaneous Letter to Credit Unions (20-CU-04), expressly encouraged credit unions to offer responsible small-dollar loan options to consumers and small business members.<sup>1</sup> We appreciate the agency's open communication with credit unions and strongly support the coordinated nature of regulatory activities during this crisis.

Economically distressed new members in need of emergency credit to make ends meet often cannot wait a month to be eligible for a PAL I loan, and instead of waiting may turn to other more costly or predatory lending sources, which is not a desired policy outcome under the PALs I existing 30-day requirement. To ensure credit unions have the flexibility necessary to meet members' needs as banks have with their customers, we recommend the NCUA issue an interim final rule amending Part 701.21 to eliminate the requirement that a borrower "be a member of the credit union for at least one month" before receiving a Payday Alternative Loan I (PALs I), which is currently exempt from the Consumer Financial Protection Bureau's (CFPB) pending small dollar lending rulemaking. We note in contrast that the one-month membership requirement does not exist for the recently adopted PALs II program, which is not exempt from the additional CFPB requirements.

We also ask NCUA to consider providing guidance for credit unions working with financially distressed PAL borrowers. In some instances, a member borrowed a PAL loan prior to the crisis at the maximum term permitted and now, as a result of a change in their financial situation, is seeking options to amend or extend their loan. We recommend the agency clearly provide credit unions the flexibility to work with PAL borrowers to refinance these outstanding loans into other low-cost emergency credit products or to potentially extend the term of the loan. If necessary, NCUA should consider use of an interim final rule to temporarily amend Part 701.21.

We appreciate the NCUA's consideration of and assistance on these important issues as well as you, your Board colleagues, and the agency's staff continuing responsiveness and flexibility as NCUA and credit unions together manage through this economic crisis caused by the pandemic. Please contact me if you would like to discuss these or any other issues further.

Sincerely,



Jim Nussle  
President & CEO

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<sup>1</sup> Proclamation No. 9994, 85 Fed. Reg. 15337 (Mar. 13, 2020).