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CUNA

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June 11, 2021

Ms. Melane Conyers-Ausbrooks
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

Re: Temporary Regulatory Relief in Response to COVID–19—Prompt Corrective Action; RIN 3133–AF19

Dear Ms. Conyers-Ausbrooks:

On behalf of America's credit unions, we are writing to the National Credit Union Administration (NCUA) in support of the interim final rule (IFR) providing temporary regulatory relief regarding prompt corrective action (PCA), and to encourage the NCUA Board to pursue additional PCA relief. The Credit Union National Association (CUNA) represents America's credit unions and their more than 120 million members.

## Interim Final Rule on PCA

The IFR made two temporary changes to the NCUA's PCA regulations to help ensure that federally insured credit unions (credit unions) remain operational and liquid during the COVID–19 pandemic.[1] The first change amends the PCA regulations to temporarily enable the Board to issue an order applicable to all credit unions to waive the earnings-retention requirement for any credit union that is classified as "adequately capitalized." The second change modifies these regulations with respect to the specific documentation required for net worth restoration plans for credit unions that become "undercapitalized." These temporary modifications are in place until March 31, 2022. This rule is substantially similar to an IFR that the NCUA published on May 28, 2020 (2020 IFR).[2]

The relief provided by the 2020 IFR expired at the end of 2020. In March of this year, CUNA and state credit union leagues sent a letter (CUNA/League letter)[3] urging the NCUA Board to adopt another IFR extending the flexibility of the 2020 IFR. In response to advocacy efforts, as well as the agency's recognition that credit unions will receive a

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[1] 86 Fed. Reg. 20,258 (Apr. 19, 2021).
[2] 85 Fed. Reg. 31,952 (May 28, 2020).
[3] CUNA/League Letter to NCUA Board re PCA Relief (Mar. 19, 2021), *available at* https://www.cuna.org/uploadedFiles/Advocacy/Actions/Comment_Calls,_Letters_and_Testimonies/2021/Letters/031921_CUNA-League%20Letter%20to%20NCUA%20Board.pdf.

significant increase in deposits due to stimulus checks related to the American Rescue Plan Act of 2021, the NCUA reinstituted the since-expired amendments to the PCA regulations on a temporary basis.

As stated in the CUNA/League letter to the agency, CUNA strongly supports the two changes to the PCA requirements made by the IFR. First, CUNA supports the NCUA's temporary change to section 702.201—Earnings-Retention Requirement for "Adequately Capitalized" Federally Insured Credit Unions, as it provides credit unions with greater flexibility if they fall to the PCA "adequately capitalized" level due to unhistorical, abnormal share deposit influxes. This amendment temporarily changes the requirement for an "adequately capitalized" credit union to increase the dollar amount of its net worth by a specified amount until the credit union becomes "well capitalized," and instead provides a blanket waiver by the NCUA Board of the earnings retention requirement for all "adequately capitalized" credit unions.

Second, CUNA supports the NCUA's temporary change to section 702.206(c)—Net Worth Restoration Plans, which waives the net worth restoration plan content requirements for credit unions that become "undercapitalized" primarily due to share deposit growth. In such cases, a credit union may submit a significantly simpler net worth restoration plan to its Regional Director. This change is reasonable, as it reduces the burden on credit unions that have reduced net worth capital ratios primarily because of share deposit growth during the pandemic.

While we appreciate and support the changes included in the IFR, we reiterate the call in our comment letter[4] regarding the 2020 IFR that the NCUA refrain from prematurely setting a specific end date for these temporary relief measures. We recommend instead that the NCUA extend these temporary PCA measures until the later of: (1) the end of the COVID-19 pandemic as determined by the U.S. Centers for Disease Control and Prevention or other federal entity authorized to make such a determination; or (2) March 31, 2022 as provided in the IFR. This would help ensure these important and prudent PCA relief measures are available throughout the pandemic and the resulting economic turbulence and volatility, and do not expire at an arbitrary date that may require an additional IFR to extend such relief.

## Additional PCA Relief

We reiterate the request from the CUNA/League letter for the agency to provide additional PCA relief by temporarily excluding certain assets from the net worth ratio. Credit unions are increasingly investing funds—which have significantly increased due to an influx of consumer deposits—in zero- and low-risk assets, such as shorter-term Treasury securities. These deposits and resulting investments, however, have caused a decrease in the net worth ratio for many credit unions. Therefore, we ask the NCUA to

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[4] CUNA Comment Letter to NCUA re 2020 IFR (June 29, 2020), *available at* https://www.cuna.org/uploadedFiles/Advocacy/Actions/Comment_Calls,_Letters_and_Testimonies/2020/Comment_Letters/PCA.CUNA.pdf.

follow the lead of other federal banking regulators and exclude such investments, as well as 10% of deposits held at the Federal Reserve, from the net worth ratio calculation.

The NCUA has broad authority in defining "total assets," which comprises the denominator of the net worth ratio. The NCUA Board acknowledged this authority in an IFR last year that amended section 702.2(k) to allow credit unions to exclude from "total assets" loans pledged as collateral for Paycheck Protection Program (PPP) loans.

We believe it is equally important to amend the definition of "total assets" to exclude certain zero- and low-risk assets. Since we continue to find ourselves in a unique and unprecedented situation given the ongoing pandemic, it is imperative that the agency provide additional flexibility regarding credit union capital. Thus, we ask the NCUA to explore ways to reduce the denominator of the net worth ratio—including by excluding certain assets from the calculation—given that savings growth is a result of the current environment as opposed to something credit unions are actively encouraging. Credit unions are not in the business of turning away members or their deposits, but this is a possible though unfortunate alternative that could stem declining net worth ratios.

**Need for Statutory Amendments**

CUNA also supports statutory changes to the Federal Credit Union Act (FCUA) to provide the NCUA Board with the tools it needs to aid credit unions regarding PCA and other capital issues. The rigid requirements and prohibitions regarding PCA in section 1790d of the Act severely hamper the agency's ability to aid credit unions.[5]

As the agency is keenly aware, credit union capital requirements are different than bank requirements in several respects, including that only retained earnings count as Tier I capital for credit unions and thresholds for credit union capital levels are hardwired into statute. These limitations restrict the NCUA's ability to provide accommodations to otherwise healthy credit unions impacted by natural disaster, pandemic, and other crises.

Thus, last July, as Congress considered additional pandemic recovery legislation, we encouraged[6] the Senate Banking Committee to include language to provide temporary flexibility to the NCUA to offer forbearance from PCA for credit unions impacted by the pandemic that were otherwise healthy prior to the onset of the crisis. While credit unions entered the pandemic extremely well-capitalized, the impact of the ensuring economic crisis has and will put stress on capital and, given credit unions' limited ability to raise capital, the regulator could use additional tools.

While such language ultimately was not adopted, we continue to believe it is critical that the agency be provided with additional authority to adjust capital requirements for credit unions impacted by the current crisis and beyond. Since we are pursuing statutory changes to provide the NCUA with additional authority, we believe any chance of success

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[5] 12 U.S.C. § 1790d.
[6] CUNA Letter to Senate Banking Committee re Capital Flexibility (July 24, 2020), *available at* https://www.cuna.org/uploadedFiles/Advocacy/Actions/Comment_Calls,_Letters_and_Testimonies/2020/Comment_Letters/PCA%20Flexibility%20-%20CUNA%20-%2020200724%20(2).pdf.

will require the agency's support of and advocacy for such amendments. Therefore, we urge the NCUA to engage Congress to pursue changes to section 1790d of the FCUA to provide the Board with additional tools to aid credit unions that encounter difficulties in the area of PCA, where such tools are essentially non-existent.

**Conclusion**

On behalf of America's credit unions and their more than 120 million members, thank you for considering our comments in support of the IFR, as well as our additional recommendations. If you have questions about our comments, please do not hesitate to contact me at (202) 508-6743 or LMartone@cuna.coop.

Sincerely,

Luke Martone

Luke Martone
Senior Director of Advocacy & Counsel