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August 20, 2020

Office of the General Counsel
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

Re: NCUA 2020 Regulatory Review

To Whom It May Concern:

On behalf of America's credit unions, I am writing regarding the National Credit Union Administration's (NCUA) annual one-third review of its regulations. The Credit Union National Association (CUNA) represents America's credit unions and their 115 million members.

We appreciate the NCUA's willingness to accept public input on the regulations scheduled for review this year. We support the agency's policy of continually reviewing its regulations to determine whether they should be updated, clarified, simplified, or eliminated.

As the NCUA is aware, though it has slowed recently, the cumulative regulatory burden on credit unions is near an all-time high. Therefore, we urge the NCUA to promulgate new or expand existing rules only if such rules are clearly warranted based on a compelling need. Similarly, the agency should strongly consider the current regulatory burden on credit unions as it proceeds with this and future regulatory reviews.

Regulations Included in 2020 Review

- **Part 712: Credit Union Service Organizations (CUSOs)**

Definition of "Corporate CUSO"

We would like to reiterate our comments pertaining to CUSOs provided in response to the agency's recent proposed rulemaking on corporate credit unions. We are generally supportive of the proposed rule, as we believe it will clarify and simplify several provisions of the existing regulation.

In particular, we would like to reiterate our support for the proposed provision that would permit a corporate credit union to make a minimal investment in a CUSO without the CUSO being classified as a corporate CUSO and subject to heightened NCUA oversight.

A corporate CUSO is generally defined as an entity that is at least partly owned by a corporate credit union, primarily serves credit unions, and restricts its services to those related to the normal course of business of credit unions. The NCUA has historically imposed more restrictive standards for corporate CUSOs. The definition of a corporate CUSO is broad and includes no exception for de minimus, noncontrolling equity investments. Accordingly, any corporate credit union equity interest in a CUSO, regardless of how small, is sufficient to designate the CUSO as a corporate CUSO and subject it to additional requirements under the NCUA's existing regulations.

The proposed rule would amend the definition of corporate CUSO so that a corporate credit union could make a de minimus, non-controlling investment in a natural person CUSO without the CUSO being deemed a corporate CUSO. We support this proposed change, as we believe that a corporate credit union's non-controlling investment would not pose the same systemic risks to the credit union system as a controlling investment.

NCUA Oversight of CUSOs

CUNA is a strong supporter of CUSOs and the ability of credit unions to utilize them to improve their product offerings to their members. CUSOs are one of the few outlets that credit unions have to develop innovative mechanisms to support their operations and enhance their ability to provide the kinds of financial services their members need and want.

While there have been regulatory changes over the years that enhance NCUA's involvement with third-party vendors such as CUSOs, it is accepted that the Federal Credit Union Act does not provide NCUA with direct oversight authority of third-party vendors.

The NCUA has acknowledged this lack of authority on several occasions, and has expressed to Congress a need for statutory authority over third parties. Credit unions often rely on CUSOs and/or third-party vendors to deliver products and services to their members. CUNA understands that there may be instances where the NCUA's involvement is warranted for supervising critical CUSOs and vendors that present material risks to the credit union system, but we oppose the NCUA having unlimited authority to supervise all CUSOs and vendors.

- **Part 715: Supervisory Committee Audits and Verifications**

We appreciate the NCUA's recent changes to its rules in Part 715 governing supervisory committee audits and verifications, which became effective in January of this year.

As stated in CUNA's April 2019, comment letter, we support the changes to Part 715, including replacing the option to conduct an audit per the Supervisory Committee Guide with the option to conduct the audit in conformance with certain minimum requirements incorporated into a new Appendix A to Part 715.

While we support the recent changes, we urge the NCUA to issue reference material on how to conduct procedures that meet the minimum requirements of Appendix A. We believe such a resource will benefit credit unions as they continue to comply with these rule changes.

- **Part 722: Appraisals**

We appreciate the agency's recent changes regarding real estate appraisals, both residential and non-residential. We supported last year's amendments that increased the threshold below which appraisals are not required for commercial real estate transactions from \$250,000 to \$1,000,000. Further, we supported the amendments adopted earlier this year that increased the threshold below which appraisals are not required for residential real estate transactions from \$250,000 to \$400,000. We believe increasing the residential appraisal threshold has reduced regulatory burden for credit unions, resulting in both transaction cost and time savings for credit unions and their members.

In addition, we appreciate the NCUA's interim final rule adopted in April of this year that defers the requirement to obtain an appraisal or written estimate of market value for up to 120 days following the closing of a transaction for certain residential and commercial real estate transactions. We believe this rule provides relief for credit unions to allow them to expeditiously extend liquidity to creditworthy households and businesses in light of recent strains on the U.S. economy as a result of COVID-19. Given the current state of the country from both a health and economic perspective, we ask the NCUA to consider extending the effective date of this relief as necessary to accomplish the objectives of this change during the pandemic. It is clear there continues to be a need for such relief, and we believe it is well within the agency's authority to provide an extension of the effective date, which is currently scheduled to expire at the end of 2020.

- **Part 725: National Credit Union Administration Central Liquidity Facility**

We appreciate the recent amendments to the CLF regulations, which we believe provide additional flexibility and relief for credit unions, including by making it easier to join the CLF and to access liquidity. These amendments implement

changes to the CLF made by the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

In particular, we appreciate the permanent changes to the CLF, which:

- Eliminate the six-month waiting period for a new member to receive a loan. We believe this is a necessary change to ensure the availability of liquidity assistance to all eligible CLF members at the earliest opportunity.
- Ease collateral requirements. We believe this change allows for a greater amount of borrowing overall.

Further, we support the temporary changes to the CLF that:

- Reduce the waiting period for a credit union to terminate its CLF membership.
- Permit an agent member to borrow for its own liquidity needs. Expanding the liquidity resources of corporate credit unions is an added measure of liquidity strength for the system as a whole.

Unfortunately, under the CARES Act, the temporary changes to the CLF are set to sunset at the end of 2020. CUNA has called on Congress to:

- Extend the expanded borrowing authority until at least December 31, 2021;
- Make permanent the ability of corporate credit unions to act as agents for credit unions; and
- Authorize the NCUA to expand the CLF's borrowing authority from 16 to 25 times the paid in capital.

We believe these changes would help ensure the long-term viability of the CLF, providing it with the ability to aid credit unions in any future crisis. We appreciate Chairman Hood and Board Member Harper's similar position that the temporary statutory changes to the CLF should be made permanent. We encourage the agency to continue to advise Congress to do so.

- **Part 741: Requirements for Insurance**

- Normal Operating Level*

- In December 2018, the NCUA Board approved a reduction of the National Credit Union Share Insurance Fund (NCUSIF) Normal Operating Level (NOL) from 1.39% to 1.38% for 2019. We thank NCUA for acting to lower the NOL and encourage the agency to issue additional NCUSIF distributions whenever possible with the expectation that the initial increase in the NOL was temporary. We look forward to a phase-down of the NOL to 1.30% by 2021.

Extended Examination Cycle

Recent efforts by the agency to extend the examination cycle for certain credit unions have been positive, particularly for credit unions for which a 12-month cycle was clearly unnecessary.

In December 2018, the federal banking agencies issued a final rule under the Economic Growth, Regulatory Relief, and Consumer Protection Act giving banks holding under \$3 billion in assets an examination only once every 18 months, leaving credit unions on an uneven playing field. Credit unions, however, remain eligible for an 18-month examination cycle only if their asset level is below \$1 billion.

Congress has already delegated authority to NCUA to set the frequency of examinations for credit unions. Credit unions deserve the privilege of providing customer service subject to comparable regulatory supervisory thresholds as applied to banking organizations—and this issue continues to be a concern among industry leadership. We urge the NCUA to extend the credit union asset threshold for the 18-month examination cycle from \$1 billion to \$3 billion.

Capitalizing Interest on Mortgage Loans

As expressed in our April 8, 2020, letter to Chairman Hood, we noted that credit unions have told us that it would help their 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 the 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.

- **Part 746: Appeals Procedures**

CUNA appreciates the thorough legal review conducted by the NCUA to streamline and improve the appellate review process. However, we continue to believe that the agency should provide a mechanism for collection of examination feedback on the performance of individual examiners. Independent, ongoing, and confidential surveys should be processed and compiled by an external third-party, free from public repercussion. Such a process would be advantageous for the NCUA by demonstrating education, training, and consistency metrics, as well as assisting in the merit pay process. Most industries, including credit unions, have successfully implemented client satisfaction methodologies to support data-driven decision-making processes. As the appeals process is currently the only mechanism to provide feedback, CUNA supports an option for independent review.

Process for Identifying Rules for Review and Soliciting Comments

We appreciate the agency permitting us to provide comments as it considers its 2020 regulatory agenda. However, as we have stated numerous times, we believe the process for seeking comments on regulations included in the NCUA's Regulatory Review could be improved. For example, some of the rules included for review may already be the subject of proposed changes or recent modifications. In such instances, it is unclear the extent to which further amendments to those regulations will be contemplated by the agency.

In addition, since the notice of the regulatory review is not required to comply with the Administrative Procedure Act (APA), and is therefore not published in the *Federal Register*, potential commenters may be unaware of its issuance. To ensure adequate input is received, we ask the NCUA to consider ways to better highlight its request for comments on the regulatory review.

Since the regulatory review process is outside the APA, comments are not made available for public inspection. In addition, the NCUA does not publicly respond to commenters' suggestions. While not required to do so, it would be useful if the NCUA were to choose to not only post these comments on its website but also publicly respond to input received. Doing so would permit CUNA, and credit unions alike, to identify patterns and/or trends within the regulations included in the review. This would allow for more effective and efficient advocacy, and ideally result in an improved operating environment for credit unions.

Conclusion

On behalf of America's credit unions and their 115 million members, thank you for considering our comments on the agency's 2020 regulatory review. If you have questions about our comments, please do not hesitate to contact me at (202) 508-6743.

Sincerely,

A handwritten signature in blue ink that reads "Luke Martone". The signature is written in a cursive, flowing style.

Luke Martone
Senior Director of Advocacy & Counsel