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National Association of Federally-Insured Credit Unions

August 16, 2022

Frank Kressman
General Counsel
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

RE: Regulatory Review (2022)

Dear Mr. Kressman:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing to you regarding the National Credit Union Administration's (NCUA) 2022 Regulatory Review of one-third of its regulations. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 131 million consumers with personal and small business financial service products. NAFCU looks forward to an open dialogue with the agency regarding opportunities to modernize, improve, and find appropriate flexibilities in existing regulations so that credit unions may grow and better serve their communities. NAFCU and its member credit unions greatly appreciate the NCUA Board's willingness to consider regulatory changes that properly tailor rules to the risks and activities actually taken by credit unions.

With respect to the regulations under consideration in 2022, certain aspects may require congressional action to achieve full modernization with industry standards and practices. In such instances, NAFCU urges the NCUA to coordinate with members of Congress and support legislation to update the Federal Credit Union Act (FCU Act). As for areas of regulations in which the agency has authority to act, NAFCU asks that the NCUA carefully consider the recommendations outlined below. NAFCU looks forward to future opportunities to work with the NCUA to achieve the modernization of the regulations affecting America's credit unions.

701.1 Federal Credit Union Chartering, Field of Membership Modifications, and Conversions

Strengthening the credit union dual chartering system is imperative to the future strength and well-being of the credit union industry. The dual chartering system functions best when the state and federal credit union (FCU) charters keep pace with one another. But in recent years, several states have been much more progressive in modernizing their field of membership (FOM) rules. As a result, the industry has seen multiple FCUs convert to state charters because of their inability to grow under a federal charter. Below, NAFCU outlines several suggested amendments to Part 701 and the NCUA's Chartering and Field of Membership Manual (Manual), found in Appendix B to Part 701.

Maturity Limits

NAFCU strongly supports the NCUA reevaluating its authority to adjust the maturity limitations set in Part 701. More specifically, the NCUA should reconsider whether mortgage loans for non-owner-occupied properties must be subject to the general 15-year maturity limit in § 701.21(c)(4)(i) and are ineligible to qualify for the 40-year longer-term mortgage loan maturity limit in § 701.21(g)(1). NAFCU has previously advocated for the agency to review this specific issue[1] for the following reasons: (1) it is possible for a member to have more than one principal residence, including, but not limited to, those members who are in the Armed Forces and older Americans who may split their time between two different homes; (2) the FCU Act's language is broader than the NCUA's previous interpretations, providing an opportunity for the agency to reevaluate this general 15-year maturity limit.[2]

The NCUA should consider congressional intent as it reviews its authority under the FCU Act. Section 1757(5)(A)(i) of the FCU Act refers to the principal residence of "a" member, whereas the very next section regarding maturity limits for mobile homes reads "a loan to finance the purchase of a mobile home, which shall be secured by a first lien on such mobile home, to be used by *the* credit union member as his residence…"[3] This was an intentional differentiation made by the drafters of the FCU Act and this gives the agency the leeway to reinterpret the definition of "principal residence" to include a one-to-four family home where at least one of the residents is a credit union member associated with the member-borrower and the residence is the principal residence of that credit union member. Moreover, no provision of the FCU Act requires the same member to be the borrower of the loan. Although in its final rule[4] the NCUA explained it does not have authority to make such a reinterpretation, NAFCU requests the NCUA again reconsider that determination. If the NCUA again determines that a legislative amendment to the FCU Act is required, NAFCU respectfully requests the NCUA support such efforts, including the Member Business Loan Expansion Act[5] and the Expanding Access to Lending Options Act.[6]

Separately, in its 2019 final rule, the NCUA noted that it would take under advisement certain comments regarding other maturity limits that were outside of the scope of that rulemaking to evaluate whether to issue a separate proposed rule at a later date. NAFCU urges the NCUA to now issue a proposed rule to expand the 20-year maturity limit applicable to loans to members for the purchase of a mobile home that is the member-borrower's residence and is secured by a first lien, second mortgage loans secured by a residential dwelling which is the residence of the member-borrower, and loans to finance the repair, alteration, or improvement of a residential dwelling that

[1] *See* NAFCU Letter to the NCUA re: Loans and Lines of Credit to Members (RIN 3133-AE88), Oct. 9, 2018, https://www.nafcu.org/system/files/files/10-9-18%20Letter%20to%20NCUA%20on%20Loans%20to%20Members.pdf.
[2] *See* 12 U.S.C. 1757(5)(A)(i).
[3] *See* 12 U.S.C. 1757(5)(A)(ii).
[4] NCUA, *Final Rule: Loans to Members and Lines of Credit to Members*, 84 FR 10971 (Mar. 25, 2019), https://www.federalregister.gov/documents/2019/03/25/2019-05186/loans-to-members-and-lines-of-credit-to-members.
[5] H.R. 5189, 117th Cong. (2021).
[6] S. 762, 117th Cong. (2021).

is the residence of the member-borrower.[7] The NCUA should consider expanding this 20-year maturity to at least 25 years to provide greater parity with banks and other lenders.

Survivorship

As the Baby Boomer generation continue to age, credit unions have seen an accelerated transfer of shares out of member accounts. This trend is due, in part, to outdated membership eligibility limitations that only extend the option of becoming a member to a deceased member's surviving spouse. Credit unions report that the experience with immediate family members of a deceased member can be confusing and cause friction when the immediate family member wants to join the credit union and maintain existing accounts but is unable to do so because of the current regulatory restrictions.

In the interest of assisting credit union members during a difficult time by providing a streamlined means of maintaining long-held member relationships, the NCUA should initiate a rulemaking to amend the Manual to expand the current exemption for membership to include all "immediate family" surviving a decedent member.[8] The NCUA should also redefine the term "immediate family" to encompass a broader range of blood and legal relatives. The FCU Act grants the Board the statutory authority to effectuate these changes, so NAFCU urges the NCUA to promptly propose a rule to update membership eligibility.

Community Chartered Credit Unions

As the COVID-19 pandemic has normalized remote work, many employees now live geographically distant from their place of employment. In recognition of this, the NCUA should consider allowing community-chartered credit unions to include in their FOM those individuals whose place of employment falls within the FOM but who live outside of the community. These individuals clearly constitute "persons who live, work, or worship" within the community and the NCUA should recognize that with the changing nature of the workplace, remote employees should be considered part of the community.

Underserved Areas

The NCUA has made substantial efforts to expand credit unions' ability to grow and serve their communities, such as through modernizing the definition of "service facility" in the Manual for multiple common bond (MCB) FCUs for the purpose of adding groups and underserved areas, and NAFCU applauds these efforts. However, NAFCU is disappointed in the NCUA's decision to exclude ATMs and online and mobile banking platforms under the definition of a service facility in its rule. The 2021 final rule fell short in helping credit unions meet service facility requirements that would in turn help the industry better support disadvantaged communities. It is critical for

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[7] 12 C.F.R § 701.21(f)(1)(i)-(iii).
[8] *See* NAFCU, Letter to NCUA on Field of Membership Reform and Surviving "Immediate Family" (Mar. 21, 2022) available at https://www.nafcu.org/system/files/files/3.21.2022%20Letter%20to%20NCUA%20re%20FOM%20Reform%20and%20Surviving%20Immediate%20Family.pdf.

online and mobile banking platforms to be recognized as service facilities as technologies continue to evolve and consumer needs and demands change. Moving forward, NAFCU encourages the NCUA to ensure that the federal charter keeps pace with changes in state laws, technology, and the financial services industry. Although legislation is necessary to amend portions of the FCU Act's limitations on chartering, the credit union industry as a whole will benefit from the continued modernization of the NCUA's chartering and FOM procedures, as well as removing all non-statutory constraints on FOM chartering and expansion.

Greater outreach to underserved areas is of particular importance. More flexibility under the FOM rules would help FCUs reach potential members who want and need affordable financial services as well as provide much needed regulatory relief by streamlining the FOM process for community, MCB, and trade, industry, or profession (TIP) charters alike. Therefore, NAFCU supports the NCUA's prospective amendments to its chartering and FOM regulations in Appendix B to Part 701 in the 2022 Spring Rulemaking Agenda to remove outdated requirements, simplify the charter approval process, and clarify regulatory language in support of greater financial inclusion within the NCUA and the credit union system.[9]

701.2 Federal Credit Union Bylaws

NAFCU continues to advocate for greater flexibility for credit unions to develop bylaws that cater to their unique fields of membership and dynamic member needs. The NCUA should revisit the bylaws on a more consistent basis to identify and reduce confusing bylaw provisions and to incorporate technological advances. NAFCU appreciates the NCUA's commitment to updating, clarifying, and simplifying the bylaws.

CUGMA and Member Expulsion

NAFCU was pleased to see the Credit Union Governance Modernization Act (CUGMA) be signed into law on March 15, 2022, providing the promise of much needed relief to credit unions that have long struggled with restrictions on the expulsion of members who are violent, disruptive, or who engage in criminal behavior. In order to provide credit unions with the means to utilize this relief, the NCUA should move quickly and judiciously to promulgate a rulemaking and adopt a policy on member expulsion under CUGMA, even before the 18-month deadline for adopting a final rule, which is September 15, 2023.

Additionally, any CUGMA rulemaking should be cognizant of the varying and unique characteristics of individual credit unions and provide the regulatory flexibility for credit unions to adopt member expulsion systems and policies that best reflect their composition. Credit unions with large memberships that span multiple time zones will have different procedural considerations in a member expulsion than those credit unions with a smaller membership that is geographically proximate. A one-size-fits-all approach to implementing CUGMA will help neither

[9] *See* NCUA, Agency Rule List - Spring 2022, ACCESS Initiative: Chartering and Field of Membership (FOM) Regulations (Jun. 21, 2022), available at https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202204&RIN=3133-AF46.

of these credit unions, and the NCUA should understand that a flexible approach will generate member expulsion policies and systems that work for all credit unions and their members.

With this focus in mind, as the NCUA works to define the meaning of "substantial" as it applies to a member's violation of the membership agreement and to a member's disruption to credit union operations, it should endeavor to provide an expansive definition that allows the individual credit union to assess each incident by the impact that it has had on the credit union and credit union staff. Similarly, as the NCUA defines "dangerous or abusive behavior," it should provide credit unions with the maximum amount of flexibility needed to protect their employees and their other members. Additionally, in instances in which a member is being expelled for "dangerous or abusive behavior," the NCUA should prioritize the safety of credit union staff and officials by allowing any hearing to be conducted virtually or in a hearing-on-the-papers, that is a hearing conducted by submission of written appeal by the member.

The expulsion of a credit union member is a serious matter and an action of last resort for credit union officials, as the expulsion of a member provides no benefit to the credit union other than protecting its staff and other members from a safety perspective. Hearings on expulsion are often contentious, and the likelihood of dangerous and abusive behavior is elevated, especially from members who have displayed such behavior in the past. The ability to hold virtual or written expulsion hearings will help to ensure the safety of all involved while not sacrificing the due process owed to credit union members. Furthermore, while safety is the number one priority for all credit unions, size, space, and time considerations can make in-person, and sometimes virtual, member expulsion hearings impracticable. The presence of alternative forms of member expulsion hearings, whether in-person, virtual, or written, would recognize that every credit union is unique and that different circumstances call for different approaches.

Meeting and Voting Flexibility

NAFCU appreciates the NCUA's 2019 bylaws update and, in particular, its addition of meeting flexibility through the use of technology. As the COVID-19 pandemic wanes in severity but continues to persist, the NCUA should remain open to additional meeting and voting flexibility as technology evolves, so long as comprehensive cybersecurity measures are in place. The NCUA should make permanent the bylaw flexibility that was issued during the pandemic and, specifically, it should remove the requirement for NCUA guidance prior to invocation of the emergency exception to the in-person quorum requirement.[10] Additionally, the NCUA should remove the requirement that credit unions must send paper ballots to some members and allow the option to conduct voting entirely electronically.

Finally, NAFCU strongly urges the NCUA to support H.R. 6889 and S. 4325, the Credit Union Board Modernization Act, an overwhelmingly bipartisan piece of legislation to modernize credit union board meeting requirements. Reducing the outdated requirements for credit union boards of directors to meet each month to no fewer than six times per year is a welcome modernization that

[10] *See* NAFCU, Letter to NCUA on Request for Permanent Virtual Meeting Flexibility (Sep. 29, 2021) available at https://www.nafcu.org/system/files/files/9.29.21%20Letter%20to%20NCUA%20re%20Virtual%20Meeting%20Flexibility.pdf.

will give credit unions more flexibility and free up resources that could otherwise be used for serving members. This is particularly true for small credit unions in rural and underserved areas. With all of the connectivity and technology available today, credit union boards are able to communicate in an ongoing manner that has negated the necessity of monthly meetings requirements.

701.6 Fees Paid by Federal Credit Unions

NAFCU has long maintained that the NCUA needs to be more transparent and conservative in its budgeting process, as each dollar the agency spends derives from the fees paid by credit unions. As of the end of May 2022, NCUA cash balances rose to $191.8 million, which is slightly higher than 12 months earlier. Conversely, NCUA operating expenses for the first five months of 2022 are $48.3 million, exactly the same as the prior year. The NCUA must recognize that every dollar that credit unions spend funding agency operations are ones that will not go towards investments in the credit union or expanding the credit union's membership. To the extent that the NCUA has cash in excess of its operating expenses, it should avoid the temptation to repurpose those funds, and, instead, the NCUA should return those dollars to credit unions. NAFCU appreciates the diligence of the NCUA Board and staff in working to find cost-saving efficiencies while ensuring sufficient resources are devoted toward the programs that will best assist credit unions in serving their members and communities. NAFCU was particularly encouraged by comments at the July 2022 NCUA Board meeting that discussed the potential for surplus cash to be credited back to credit unions.

701.21 Loans to Members and Lines of Credit to Members

Loan Compensation Reform

Although NAFCU was pleased to see the NCUA's announcement in the 2022 Spring Rulemaking Agenda of a proposed rule to modernize the agency's rules regarding compensation in connection with loans and lines of credit for credit union members, we must urge the NCUA to avoid any further delay in issuing the proposed rule. Fixing the loan compensation rules is a common sense and overdue rulemaking that would align the regulations with industry practice and provide relief to credit unions. When the NCUA, through its 2019 advance notice of proposed rulemaking (ANPR), requested feedback on ways to improve loan compensation rules, NAFCU noted that flexibility in compensation regulations is essential to credit unions' ability to attract and promote skilled employees and cultivate better organization-wide employee performance without encouraging inappropriate risks, incentivizing bad loans, or creating conflicts of interest.[11] Specifically, NAFCU recommends that the current structure of section 701.21(c)(8) should be modernized to include loan metrics in setting compensation plans to ensure consistency and clarity across the industry. In addition, the NCUA should provide flexibility in these regulations so that credit unions may develop compensation plans that are unique to their respective business models

[11] *See* NAFCU, Letter to NCUA on Compensation in Connection with Loans to Members and Lines of Credit to Members (Jun. 21, 2019) available at https://www.nafcu.org/system/files/files/6-21-19%20Letter%20to%20NCUA%20on%20Lending%20Compensation%20ANPR.pdf.

and in line with the objectives their boards of directors have identified as necessary for their credit unions to grow.

Permissible Interest Rate Ceiling

Since the beginning of 2022, short-term interest rates have risen higher and more rapidly than at any point in the past decade and, in most cases, nearly three decades. Against this backdrop of rapidly rising key interest rates, thousands of individual FCUs across the country face a wide range of material risks to their well-being. However, few contemporary risks, if any, are as dire as the elevated and accelerating risks to FCUs' earnings. The interplay of durable, elevated share levels and fewer, more volatile core lending opportunities places significant downward pressure on FCUs' net interest margins and, in turn, FCUs' earnings.

Therefore, NAFCU continues to strongly encourage the NCUA Board to establish a floating permissible interest rate ceiling equal to a 15 percent spread above the prime rate or, alternatively, extend the 18 percent permissible interest rate ceiling for the maximum allowable period of 18 months, no fewer than 90 days before its scheduled expiration on March 10, 2023.[12] It is clear from the continued maintenance of the 18 percent permissible interest rate ceiling that every NCUA Board, for decades, has recognized the inherent defects of an arbitrarily low permissible interest rate ceiling.

Contemporary economic conditions plainly warrant this much needed action. The first prong of §701.21(c)(7)(ii)(A)'s two-prong test, that money market rates must have risen over the preceding six months, is clearly satisfied. The second prong of §701.21(c)(7)(ii)(A)'s two-prong test, requiring that the NCUA Board find that broader interest rate pressures threaten individual FCUs' well-being as evidenced by adverse trends in liquidity, capital, earnings, and growth, is no less clearly satisfied.

701.22 Loan Participations

Loan participations enable credit unions to diversify their loan portfolios, improve earnings, generate loan growth, and manage their balance sheets. In addition, loan participations allow credit unions to increase their liquidity. In order to better utilize this tool, NAFCU urges the NCUA to immediately initiate a rulemaking that amends 12 CFR §701.22 to eliminate all aggregate limits on loan participations a federally-insured credit union (FICU) may purchase from any one originating lender or to expressly exclude all loan participations purchased from a FICU from any aggregate limits on loan participations a FICU may purchase from any one originating lender.[13]

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[12] *See* NAFCU, Letter to NCUA on Permissible Interest Rate Ceiling (May 5, 2022) available at https://www.nafcu.org/system/files/files/5.5.2022%20Letter%20to%20NCUA%20Board%20re%20Permissible%20Interest%20Rate%20Ceiling.pdf.
[13] *See* NAFCU, Letter to NCUA on Loan Participations (Mar. 15, 2022) available at https://www.nafcu.org/system/files/files/3.15.2022%20Letter%20to%20NCUA%20re%20Loan%20Participations.pdf.

In the alternative, NAFCU urges the NCUA to immediately and simultaneously issue an interim final rule (IFR) extending the automatic expiration of §701.22(e) from December 31, 2022, to December 31, 2023, and a notice of proposed rulemaking (NPRM) outlining how the NCUA may effectuate the above-requested permanent regulatory relief and such other permanent regulatory relief as the NCUA may deem appropriate and necessary to modernize the NCUA's loan participation regulations. NAFCU also encourages the NCUA to explore how the NCUA may streamline §701.22(c)'s loan participation waiver process and make its outcomes more consistent, how the NCUA may provide FICUs clarity around the definition of a "loan participation," and how the NCUA may enhance FICU-purchased loan participations' marketability.

With the impact of the COVID-19 pandemic ongoing, many FICUs use loan participation agreements to smooth out transient imbalances between deposit-taking and lending activities and to reduce risks to themselves as well as risks to the National Credit Union Share Insurance Fund (SIF). The current rule places a concentration limit on loan participation purchases involving one borrower or a group of associated borrowers to 15 percent of the credit union's net worth, unless waived by the credit union's regional director. Although the rule allows for a waiver, the concentration limit is arbitrary, and the NCUA should reevaluate whether this limit is still appropriate.[14] Not only would other clear and meaningful investment thresholds remain in force, but the NCUA's eliminating the concentration limit would do nothing to weaken regulatory requirements related to loan participation agreement sufficiency or FICUs' underwriting standards.

In addition, NAFCU recommends that the NCUA contemplate an impact study on the benefits and delinquency rates of loan participations over the last few years to ensure that current concentration limits are still appropriate. Potential risks to the SIF should be contemplated by this impact study. Loan participations are beneficial for credit unions, and the NCUA should evaluate this rule to ensure access is not impaired.

701.30 Services for Nonmembers Within the Field of Membership

The NCUA's regulations regarding the types of services that may be offered to nonmembers are largely limited to certain "money transfer instruments," such as travelers checks, money orders, electronic funds transfers, and remittance transfers. This does not reflect modernizations in payment methods, because many consumers utilize prepaid cards and non-reloadable gift cards on a regular basis.

NAFCU urges the NCUA to reevaluate this section of its regulations to clarify that it is appropriate for credit unions to offer prepaid cards or non-reloadable gift cards to nonmembers outside of the context of providing electronic services to members. The NCUA's incidental powers rule permits an FCU to engage in certain preapproved activities incidental to its business, including marketing activities that are intended to attract or retain members or promoting use of the FCU's products

[14] *See* NAFCU, Letter to NCUA on Internal Written Loan Participation Policies (May 26, 2022) available at https://www.nafcu.org/system/files/files/5.26.2022%20Letter%20to%20NCUA%20Board%20re%20Loan%20Participations%20and%20Smaller%20CUs.pdf.

and services.[15] Employing a prepaid card or non-reloadable gift card as a marketing tool to appeal to non-members with the hope that they become a member is an activity that logically falls within this incidental power and should be preapproved. Therefore, NAFCU requests that the NCUA consider avenues to expand section 701.30 to include providing instruments such as prepaid cards and non-reloadable gift cards as services available to nonmembers within the activities preapproved as an incidental power of FCUs.

701.32 Payment on Shares by Public Units and Nonmembers

NAFCU asks that the NCUA consider eliminating the language in Section 701.32 that limits the amount of public unit and nonmember shares to either a fixed percentage of the credit union's total shares, or $3 million, whichever is greater. In order to maximize the benefits of nonmember deposit funding, the NCUA should either use a fixed percentage limit as a standalone measure or increase the dollar amount limit based on an assessment of the credit union's overall risk profile. Additionally, the effects of inflation have made the $3 million threshold outdated and if the NCUA does not replace the language limiting public unit and nonmember shares, it should, at a minimum, raise the threshold to reflect current economic conditions and revisit said threshold periodically to remain reasonable.

The NCUA should also consider a more flexible approach to waivers of the 50 percent limit. While NAFCU understands the NCUA's safety and soundness concerns related to waivers of the limit on public unit and nonmember shares, the NCUA's justification for eliminating the waiver in 2019 relied on historical losses that occurred in a different regulatory environment. Supervision of credit unions has advanced considerably since that time, and the NCUA's exam modernization efforts should be able to accommodate a waiver process if utilized on a case-by-case basis and within conservative limits.

701.34 Designation of Low-Income Status

NAFCU supported the changes to the definition of Grandfathered Secondary Capital as they facilitate efficient deployment of the Treasury Department's Emergency Capital Investment Program (ECIP) funding; however, NAFCU does not support a maximum maturity for ECIP investments that truncates the useful life of the funding as regulatory capital. The NCUA's 2021 Letter to Credit Unions addressing ECIP participation represented a positive development in terms of addressing this concern; however, additional adjustments will be necessary to fully maximize the value of ECIP funding.[16] NAFCU encourages the NCUA to promptly issue a proposed rule to permit ECIP funding to count as regulatory capital for the entire time it is held by eligible institutions.

To develop a more reasonably tailored framework for subordinated debt beyond the ECIP context, NAFCU also encourages the NCUA to commit to a broader reevaluation of its 2021 Subordinated

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[15] See 12 C.F.R. §721.3(h).
[16] *See* NCUA, Letter to Credit Unions, Emergency Capital Investment Program Participation, 21-CU-11 (Oct. 2021); *see also* NCUA, "NCUA Issues Guidance, Announces Upcoming ECIP Action," (Oct. 20, 2021) ("The third step will be additional NCUA action to permit ECIP funding to count as regulatory capital for the entire time it is held").

Debt Rule.[17] While the Subordinated Debt Rule has helped expand access to regulatory capital for non-low-income credit unions (LICUs), credit union issuers with limited legal and administrative resources are now confronted with new barriers to entry, as compared with the previous Secondary Capital Rule. The complexity of the new regulation could compromise the health of existing secondary capital markets for LICUs that cannot afford specialized counsel to evaluate compliance with offering rules or other novel requirements.

To cultivate a sustainable market for subordinated debt in the future and preserve LICUs' ability to leverage secondary capital to improve their communities' financial well-being, the NCUA should invite future comment on ways to adjust subordinated debt requirements to be less burdensome. Streamlining the procedures for issuing subordinated debt would help preserve its relative utility as a regulatory capital instrument, particularly for non-LICU, complex credit unions that can alternatively choose the Complex Credit Union Leverage Ratio (CCULR) as a mechanism for managing risk-based capital compliance.

701.36 Federal Credit Union Occupancy and Disposal of Acquired and Abandoned Premises

NAFCU urges the NCUA to recognize the need that credit unions have, now more than ever, for flexibility in the occupancy and use of their premises. Specifically, NAFCU requests that the NCUA amend its Part 701.36 to reduce the requirement that credit unions occupy and use at least 50 percent of their premises, and instead require 25 percent occupancy and use.

The NCUA has the statutory authority to provide greater flexibility in the partial occupancy requirements of Part 701.36. The COVID-19 pandemic and evolving communications technology have increased the utilization of remote work and, in many cases, diminished the need for prior levels of office space. The resulting increase in the availability of vacant commercial space and record-high costs for new construction often make conversion of existing construction into credit union premises the financially prudent decision; however, Part 701.36 places restraints on the size of properties that credit unions can consider purchasing and converting. The increased credit union income from leasing a larger unused portion of a credit union's premises contributes to increased credit union safety and soundness. Therefore, amending 701.36 would provide credit unions with much needed regulatory relief that will enhance safety and soundness and allow credit unions greater ability to expand into underserved areas.

702 Capital Adequacy

The NCUA should explore the possibility of realigning the covered credit union definition to reflect differences in relative risk today versus when the covered credit union definition in Part 702 was first developed. As compared to banks, covered credit unions encounter formal stress testing requirements at a much smaller size. NAFCU believes that several years of supervisory data regarding covered credit union capital planning, including through a recent period of extreme stress, permits informed reconsideration of the tiers and their associated thresholds.

[17] *See* NCUA, Final Rule, Subordinated Debt, 86 Fed. Reg. 11060 (Feb. 23, 2021), https://www.federalregister.gov/documents/2021/02/23/2020-28281/subordinated-debt.

Under a principle of proportionality, the NCUA should consider corresponding adjustments to the covered credit union definition as a means of reducing regulatory burden. In the NCUA's 2014 Capital Planning and Stress Testing rule,[18] the agency noted that "The Board believes it is important to require capital planning and stress testing at the credit unions that, by virtue of their sheer size, could pose the greatest risk to the [SIF], while limiting the regulatory burden." When the NCUA developed the current covered credit union threshold, the supervisory requirements intended for this narrow subset of credit unions were designed to match their relative risk to the SIF. If the relative risk posed by a Tier II or Tier III credit union has changed, then it would be appropriate to revisit the Tiering thresholds used for enhanced stress testing requirements.

Additionally, NAFCU encourages the NCUA to clarify the appeal rights of a covered credit union in any situation where the reservation of authority in Part 702 Subpart C to transfer a Tier I covered credit union to ONES supervision before it becomes a Tier II or III covered credit union is invoked. As the NCUA notes in its final rule modifying the asset threshold used for determining ONES supervision, "[t]he Board expects to provide a credit union subject to proposed use of the reservation of authority with an opportunity to present evidence on why the agency should not proceed with use of the authority."[19] The NCUA should more clearly delineate this anticipated opportunity to respond, such as by describing what evidence will be deemed most persuasive. NAFCU also requests that the NCUA develop guidelines to describe the specific circumstances that would justify use of the authority under 12 CFR § 702.301(c).

703 Investment and Deposit Activities

NAFCU welcomes the NCUA's proposal in its Spring 2022 Rulemaking Agenda to amend part 703 to modernize and improve the NCUA's investment rule and to provide regulatory relief.[20] NAFCU agrees with the Board that there are certain provisions in part 703 that are overly restrictive and unnecessary from a safety and soundness perspective.

Specifically, the requirement in 703.11(a), that an FCU must obtain price quotations on a security from either a minimum of two broker-dealers or from an industry-recognized information provider prior to purchasing or selling a security is overly burdensome and extremely outdated. Although the procurement of a minimum of two price quotations may, on its face, seem reasonable, the reality of repeatedly obtaining those two quotes can prove difficult, if not impossible.

When selling a security, the requirement for two price quotations is rendered moot by the actual mechanics of soliciting a bid on a security because the first bid received by the first broker-dealer will almost always be higher than the second bid received by the second broker-dealer.

[18] NCUA, Final Rule, (Apr. 30, 2014), 79 Fed. Reg. 24311, https://www.federalregister.gov/documents/2014/04/30/2014-09814/capital-planning-and-stress-testing.
[19] NCUA, Final Rule, Asset Threshold for Determining the Appropriate Supervisory Office (Jul. 21, 2022), 87 Fed. Reg. 45005, https://www.federalregister.gov/documents/2022/07/27/2022-16009/asset-threshold-for-determining-the-appropriate-supervisory-office.
[20] *See* NCUA, Agency Rule List - Spring 2022, Investment and Deposit Activities (Jun. 21, 2022), available at https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202204&RIN=3133-AE63.

Additionally, the requirement to solicit two price quotations is likely to damage a credit union's relationships with broker-dealers, as the first broker-dealer will be upset that the credit union has put the security out for bid a second time, and the second broker-dealer will feel its time has been wasted if, as is likely, they do not get the sale. Similar issues arise when purchasing a security, because, if a credit union is offered an attractive mortgage-backed security (MBS) by one broker-dealer, it is highly unlikely that they will be able to find the exact same MBS similarly well-priced for sale at a second broker-dealer.

As to the option to obtain a price quotation from an industry-recognized information provider, the variability of securities, such as MBSs, and the costs associated with obtaining a quote on these securities from an "industry-recognized information provider" can prove prohibitive. Each MBS has unique characteristics and can contain different coupons, maturities, underlying loan counts, underlying loan balances, state mixes, and loan-to-value ratios. While certain information providers, such as Bloomberg, can analyze these various factors and provide a reasonably accurate price quotation, these more sophisticated providers charge tens of thousands of dollars annually for their services, prices that are far outside the budget of many credit unions. Those providers that charge less are also less nuanced in their ability to provide price quotations. Finally, for thinly traded securities, such as some municipal bonds, the infrequency of trades makes relying on any industry-recognized information provider a futile endeavor. The NCUA should provide credit unions with much needed flexibility and allow for trades to be made with reasonable support for the valuations instead of a rigid minimum of price quotations on the security.

704 Corporate Credit Unions

NAFCU supports corporate credit unions and the invaluable role they play as liquidity providers. To ensure that corporate credit unions are adequately equipped to serve the needs of the credit union industry, the NCUA should consider improvements to *both* Part 704 and Part 725 of its regulations, with special attention given to rules governing liquidity management provisions, corporate access to the central liquidity facility (CLF), and investments in corporate credit union service organizations (CUSOs).

Enhancements to Corporate Credit Union Liquidity and Access to CLF

In March 2020, in response to the COVID-19 pandemic, Congress enacted relief legislation in the form of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The CARES Act made four important changes to the CLF including: 1) Increasing its maximum legal borrowing authority; 2) Permitting temporary access for corporate credit unions borrowing for their own needs; 3) Providing greater flexibility and affordability to agent members by no longer imposing a strict capital stock subscription requirement for all members the agent serves, and instead allowing the agent to buy capital stock for a subset of its members; and 4) Providing the NCUA with more clarity and flexibility to approve applications for CLF members that have made a reasonable effort to first utilize primary sources of funding. These changes helped the credit union system and protected the taxpayer during the COVID-19 pandemic; therefore they should be made permanent as a bulwark against the risk of future systemic shocks to industry liquidity

NAFCU appreciates the NCUA Board's bipartisan support for legislation to make permanent the enhancements to the CLF made under the CARES Act. These enhancements, although expired, provided the NCUA with a vital tool to ensure the credit union system had access to a critical contingent liquidity source as it responded to the COVID-19 pandemic. NAFCU urges the NCUA to continue its support for legislative action to make these changes permanent, as it would provide regulatory certainty for FICUs and grant the NCUA additional flexibility to safely manage access to emergency liquidity.

Corporate Credit Union Governance

The NCUA's current rules regarding corporate credit union board representation require that a majority of the board of directors of a corporate credit union must consist of individuals with the following title or role: CEO, CFO, COO, or treasurer/manager. The NCUA has stated in previous rulemakings that the need for such a specific board requirement bears little relation to the goal of ensuring corporate credit unions' stability during periods of economic stress. In 2010, the NCUA's final rule adopting this requirement contained the following observation: "[w]hether or not these new provisions might have affected the size or scope of the losses is not determinable." The NCUA should reconsider corporate board requirements to improve board diversity and experience and should permit an individual who holds a senior management position at a member credit union to be eligible for board election.

708a Bank Conversions and Mergers

NAFCU appreciates the NCUA's efforts, through its proposed rule on combination transactions with non-credit unions, to provide transparency for transactions where a credit union merges, consolidates, or assumes the liabilities of a bank.[21] The NCUA should work diligently to finalize this important rule. NAFCU also urges the NCUA to streamline and offer a clear timeline for the approval of such transactions as well as provide greater flexibility for FOM requirements both under this proposed rule and more broadly in its regulations. Such flexibility would afford credit unions opportunities to better serve underserved communities by keeping branches open and offering access to safe, affordable financial products and services.

In order to streamline the NCUA's application process, the NCUA should adopt a 30-calendar-day notification timeline to acknowledge receipt of a credit union's application, providing credit unions and the bank transaction partner with certainty that the NCUA's review of the application is ongoing. Additionally, the NCUA should adopt a six-month timeline for review and approval of applications, with the potential for several one-month extensions to allow sufficient time for credit unions to collect important financial documents and other required information.

NAFCU recognizes that all combination transactions are not the same, and that each transaction may face different obstacles and require different timelines. It is critical that the NCUA keep in mind that all transactions are different, and some may require a higher level of review than others.

[21] *See* NCUA, Agency Rule List - Spring 2022, Combination Transactions With Non-Credit Unions; Credit Union Asset Acquisitions (Jun. 21, 2022), available at https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202204&RIN=3133-AF10

As such, bright-line requirements are not appropriate; however, clear guidelines and expectations for the process are essential.

Credit Union-Credit Union Mergers

NAFCU's member credit unions have expressed frustration with the merger process for credit union-credit union transactions. More specifically, instances where a credit union with a multi-select employee group (SEG) charter is a potential merger partner for a credit union with a community charter are particularly fraught. The Manual prohibits a community credit union from merging into a multi-SEG credit union, except in an emergency merger, so in instances where such a transaction is contemplated, the community credit union must convert its charter to a SEG charter in order to merge.

This process can be quite extensive and time-consuming, sometimes delaying the merger unnecessarily. The NCUA also does not allow for conditional approval of a merger pending the charter change and a positive outcome of the required membership vote. This means that if the membership did not vote in favor of the merger, or the merger partner no longer wished to pursue the merger, then the merging credit union would have to potentially again undergo a charter conversion, only further delaying the process and putting the merging credit union at risk. NAFCU asks the NCUA to reevaluate the sequence of its regulatory requirements for credit union-credit union mergers to ease the burden associated with NCUA merger applications and transaction approvals.

708b Mergers of Insured Credit Unions into Other Credit Unions; Voluntary Termination or Conversion of Insured Status

NAFCU urges the NCUA to clarify this rule and provide guidance on whether a merger is required to fully stop if the vote of the members fails due to a lack of votes in support of the merger or if the credit union is permitted to continue pursuing the merger and may hold another vote at some point in the future. Credit unions have expressed confusion about this procedure and the rules fail to address this scenario adequately.

Conclusion

NAFCU appreciates the opportunity to provide comments on regulations under consideration in this year's annual regulatory review. If you have any question or concerns, please do not hesitate to contact me at apetros@nafcu.org or 703-842-2212, or James Akin, Regulatory Affairs Counsel, at jakin@nafcu.org or 703-842-2268.

Sincerely,

Ann C. Petros
Vice President of Regulatory Affairs