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NAFCU | Your Direct Connection to Education, Advocacy & Advancement

August 4, 2014

Michael J. McKenna
General Counsel
Office of General Counsel
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

Dear Mr. McKenna:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association exclusively representing the interests of our nation's federal credit unions, I am writing to you regarding the National Credit Union Administration's (NCUA) 2014 Regulatory Review. NAFCU appreciates the opportunity to comment. As you will note, we are not restricting our comments to the list of regulatory items listed on the agency's 2014 regulatory review agenda as we believe there are a number of unlisted issues that deserve the agency's immediate attention.

NAFCU continues to have concerns regarding NCUA's proposed risk-based capital rule. As there has not been a rule as important to the basic nature of credit unions daily business as this rule in many years, it is our hope that NCUA takes the necessary time to parse through the more than 2,000 comment letters and does not rush the process for the final rule.

NAFCU believes there needs to be a number of changes made before the rule is finalized including, the proposed risk-weights for real estate, investments, member business loans (MBLs), CUSOs, and corporates. Fundamentally, many of these changes can be made by removing the ill-fitting interest rate risk and concentration risk components to the risk-weighting in this rule.

NCUA Chairman Matz has stated publicly that NCUA will be extending the implementation timetable for longer than the proposed 18 months. NAFCU agrees that the implementation period must be extended due to the complexity and the extensive impact of this proposed rule. Any implementation period should be no less than three years after passage of any final rule. Credit unions will need at least that long to make safe and sound decisions about potentially fundamental changes to core business decisions including investments and product offerings.

NAFCU's "Dirty Dozen" is a collection of twelve regulations to eliminate or amend to provide regulatory relief to credit unions. NCUA Chairman Matz acknowledged NAFCU's "Dirty Dozen" list during her remarks at the NAFCU Annual Conference on July 23, 2014 and said the agency is working to address those items under its jurisdiction. Chairman Matz referenced the following: 1) Expand credit union investment authority; 2) Seek updates and modernization of the NCUA's fixed assets rule; 3) Improve the process for credit unions seeking changes to their field of membership; 4) Seek added flexibility for credit unions that offer member business loans; 5) Modernize NCUA advertising requirements; and 6) Eliminate redundant NCUA requirements to provide copies of appraisals upon request. NAFCU thanks NCUA for its attention to these important issues and urges NCUA to work with the other regulators on the items from the "Dirty Dozen" such as increasing the number of transfers allowed to made per month from savings accounts and updating the requirement to disclose account numbers to protect the privacy of members.

Part 749 – Records Preservation Program and Guidelines

NCUA attempts to strike a balance in part 749 between allowing the flexibility to allow for different requirements for state and federal law and ensuring that all credit unions are preserving important documents. This is complicated by an ever increasing pattern of mergers within the industry that confuse credit unions as to what records from the merged in former credit union to keep.

NAFCU believes that NCUA should keep two things in mind while it reviews part 749. First, it should offer guidance as to what records a credit union should keep post-merger. This can be done through guidance or through another medium such as a separate guide book, but the important thing is to make sure that credit unions understand what they are responsible for preserving post mergers. Secondly, NCUA should maintain the flexibility that the current regulation provides for credit unions. Any new guidance should refrain from prescribing specific mandates of record retention. This will allow them to more easily follow both federal and state law. This flexibility is also imperative to credit unions to be able to personalize their policies to best fit their unique membership and individual credit union.

Part 748 – Security Program

In the July 2014 edition of the NCUA Report, there was an article called *Understanding The Basics Of An Information Security Policy* that laid out effective information security policy elements from general policy objectives to a summary of security strategies and control mechanisms. The information in this article and other pertinent information should be incorporated into proper guidance for part 748 that give credit unions an idea of how to properly construct their information security program while being flexible enough for credit unions of different size and complexity to tailor their programs to their credit union.

Data security breaches are a serious problem for both consumers and businesses. Credit unions bear a significant burden as they incur steep losses in order to reestablish member safety after a data breach occurs. The number and scope of data breaches are significant, and the damage realized may surprise those who have not been intimately involved.

In December 2013 at the height of holiday shopping season, the Target Corporation announced that as many as 40 million credit- and debit-card customers were exposed to potential fraud. Target acknowledged that customer names, credit or debit card numbers, their expiration dates and encrypted security codes, as well as encrypted debit card PIN data was among the information stolen when its systems were breached.

Then in early 2014, Neiman Marcus and Michaels Stores Inc. admitted to breaches during the same time frame. While it will be many months before the true breadth of either breach is realized by financial institutions and their customers, Michaels recently reported that as many as 2.6 million customers had their information compromised between May 8, 2013 and January 27, 2014, and another 400,000 consumers' credit cards were compromised at their Aaron Brothers stores.

Unfortunately, the Target and Neiman Marcus, Neiman Marcus, and Michaels breaches are just the some of the latest in a long line of major data security breaches that include in 2011, Michaels Stores, Inc. notified its customers that more than 90 terminals in 20 different states had been compromised in a debit card PIN scheme. Tens of thousands of customers' debit cards may have been compromised and the scheme has been linked to hundreds of thousands of dollars in fraudulent withdrawals in California alone. In 2009, the Heartland Payments Systems, the sixth-largest payments processor at the time, announced that its processing systems were breached in 2008, exposing sensitive data associated with 130 million U.S. debit and credit cards. An estimated 4.2 million credit and debit card numbers were stolen from Hannaford Bros. Grocery Stores in the New England area in 2008. Retail giant TJX lost 94 million customer records in 2007.

NCUA has issued guidance including the guidelines in part 748 for safeguarding member information as well as guidance on response programs for unauthorized access to member information and member notice. In cases of data breaches or fraud it is the credit union that must notify their members, issue new cards, change account numbers, and perform a host of other activities, all of which cost both time and money. As cases of fraud become more prevalent, costs that credit unions pay for insurance, prevention services, and staff to handle member concerns continues to grow. As the volume of plastic card usage increases, so does the risk of data breaches and fraud.

NAFCU urges NCUA to work with Congress on data security reforms that: 1) Establish national standards for safekeeping of all financial information; 2) Establish enforcement standards for data security that prohibit merchants from retaining financial data, and require merchants to disclose their data security policies to customers; and 3) Hold merchants accountable for the costs of a data breach, especially when it was due to their own negligence; shift the burden of proof in data breach cases to the party that incurred a breach; and require timely disclosures in the event of a breach.

Interest Rate Risk

NCUA has indicated that interest rate risk (IRR) remains a regulatory concern and NCUA will potentially address interest rate risk rules later this year. NAFCU urges NCUA to carefully consider the impact on credit unions before potential rulemaking regarding IRR.

Credit unions must already follow stringent interest-rate risk-management policies and NCUA has provided a large amount of guidance on the issue[1]. NAFCU believes that proper interest rate risk management is important, but opposes unnecessary regulatory action. NAFCU encourages NCUA to include stakeholders in any discussions on IRR prior to issuing any new regulation and to carefully consider the impact of any new rules or regulations on credit unions.

Risk-Based Capital

The recent proposed rule regarding risk-based capital attempts to incorporate interest rate risk by requiring credit unions to hold more capital for those investments with longer weighted-average-life. NAFCU acknowledges that interest rate and concentration risk are risks that every credit union needs to manage and plan for, but a risk-based capital rule is not the way for a regulatory to manage IRR.

NAFCU urges NCUA to eliminate the interest rate risk components of the risk-weighting for investments. Rather, NCUA should change those risk-weights to be consistent with the risk-weighting given to those assets by the FDIC.

A risk-based capital rule is a poor tool for managing these IRR, and simply requiring credit unions to hold more capital does not address or solve any issues that individual credit unions have when trying to manage IRR. Both Basel III and the FDIC interim final rule are constructed in such a way that authorities would employ other mechanisms to measure and control for risk other than credit risk. In order to comply with the comparability mandate of The FCU Act,[2] NCUA should follow the other federal banking regulatory agencies in this regard.

To better control for interest rate risk, NAFCU believes that a more sensible alternative to the proposed rule would be to continue to apply industry-accepted methods as part of a competent supervision and examination process. NCUA already has a number of requirements and guidance regarding interest rate risk that credit unions must comply with. Instead of making credit unions hold more capital, NCUA should first look to its existing requirements and regulations. Banking regulators have prescribed this as well and by holding credit unions to significantly different standards, NAFCU is concerned that NCUA may be running afoul of the will of Congress regarding the requirement that the rule be comparable to what banks have to follow.

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[1] The current interest-rate risk final rule, a letter to credit unions on the subject (12-CU-05), and the top subject in the most recent NCUA supervisory focus (13-CU-01).

[2] *12 U.S.C. §1790d(b)(1)(A)(ii).*

Budget Transparency

As the agency charged by Congress to regulate, charter, and supervise federal credit unions, NCUA oversees and manages the National Credit Union Share Insurance Fund (NCUSIF), the Temporary Corporate Credit Union Stabilization Fund (TCCUSIF), the Central Liquidity Fund (CLF), and its annual operating budget. These funds are comprised of monies paid by credit unions. NCUA is charged with protecting these funds and using its operating budget to advance the safety and soundness of credit unions.

Because these funds are fully supported by credit union assets, credit unions are entitled to know how each fund is being managed. Currently, NCUA publicly releases general financial statements and aggregated balance sheets for each fund. However, the agency does not provide non-aggregated breakdowns of the components that go into the expenditures from the funds. Although NCUA releases a plethora of public information on the general financial condition of the funds, NAFCU urges the agency to fully disclose the amounts disbursed and allocated for each fund by line item.

Part 760 – Loans in Areas Having Special Flood Hazards

On October 30, 2013, NCUA, the Department of Treasury, the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Farm Credit Administration issued a joint notice of proposed rulemaking regarding loans in areas having special flood hazards. This proposed rule would require credit unions with assets of more than $1 billion, or servicers acting on their behalf, to escrow premiums and fees for flood insurance for any loans secured by residential improved real estate or a mobile home. The proposed rule would also require that credit unions accept private flood insurance that meets the statutory definition to satisfy the mandatory purchase requirement. It also includes new and revised sample notice forms and clauses. Finally, the proposed rule would amend the force-placement of flood insurance provisions to clarify that a lender or its servicer has the authority to charge a borrower for the cost of flood insurance coverage commencing on the date on which the borrower's coverage lapsed or became insufficient. The proposal stipulates the circumstances under which a lender or its servicer must terminate force-placed flood insurance coverage and refund payments to a borrower.

Escrow Requirements

Based on the requirements of the proposed rule, there are significant costs associated with establishing and maintaining escrow accounts. NAFCU has heard from a number of credit unions in rural and underserved areas that are concerned that this added cost could drive them out of the mortgage business for homes in flood hazard areas, ultimately limiting member options. NAFCU would like NCUA and its sister agencies to consider this when making any changes to requirements for escrows.

Part 797 – Procedure for Debt Collection

The Consumer Financial Protection Bureau (CFPB) recently released an advanced notice of proposed rulemaking (ANPR) regarding debt collection practices signaling their intent to regulate debt collectors. Credit unions are not, generally speaking, debt collectors under the Fair Debt Collection Practices Act (FDCPA) because they are not collecting debts on behalf of others. Credit unions typically only collect on their own obligations. However, credit unions are subject to the Dodd-Frank Act's provisions concerning unfair, deceptive, or abusive acts or practices (UDAAPs).

NAFCU urges the NCUA to work with the CFPB to distinguish between credit unions collecting on their own behalf and third-party debt collectors in its regulatory efforts. The CFPB should not promulgate regulations under its FDCPA authority that would apply to credit unions or other financial institutions that are not currently subject to the FDCPA requirements. The statutory provisions of the FDCPA stemmed from Congress' concerns about the impersonal, profit-driven, and unaccountable actions of third-party debt collectors.

As non-profit mutual organizations, credit unions answer directly to their members and enjoy a unique relationship with their membership. When credit unions collect on their own obligations, they work to continue to support their relationships with their members. Credit unions' priorities are to bring the loans current and return to normal member service relationships. This continuing relationship is very different from the relationship between a third party collection agency and a debtor associated with an account referred to the collection agency. Accordingly any regulatory regime built under the FDCPA's authority should not apply to credit unions collecting on their behalf. Furthermore, credit unions are already restricted from engaging in these predatory practices under the UDAAP provisions and their own policies.

Rather than creating additional requirements for credit unions that are collecting on their own obligations and are not currently under the purview of the FDCPA, NAFCU would like to see the NCUA work with the CFPB to release guidance which can be used by credit unions in designing their own policies and procedures.

Part 717 - Fair Credit Reporting

The purpose of part 717 is to implement provisions of the Fair Credit Reporting Act. It applies to federal credit unions and deals with how credit unions obtain and use information about a consumer to determine the consumer's eligibility for products, services, or employment, share information among affiliates, and furnish information to consumer reporting agencies.

These topics are also covered by the CFPB in Regulation V. The CFPB's Regulation V is substantially similar to Section 717 except for subpart J covering identity theft red flags, which is not present in Regulation V.

NCUA should address the duplicative nature of the two regulations and retract subsections A, C, D, E, and I of Section 717. They are already covered by the CFPB and perform the same function. NCUA should however keep subsection J of Section 717 regarding identity theft red flags, which is not present in Regulation V.

Part 723 – Member Business Loans

NCUA Chairman Debbie Matz recently stated that the NCUA Board will look to give greater flexibility to credit unions offering member business lending. In a speech at NAFCU's Annual Conference in Las Vegas, she stated "At my Listening Sessions, we heard from credit union officials with innovative ideas to modernize the member business lending regulation in order to serve more small businesses. We are working to incorporate new ideas while keeping in place appropriate safety and soundness measures." NAFCU appreciates the willingness of NCUA to look at modernizing and changing the regulations regarding member business loans (MBL).

As NAFCU outlined in its "Dirty Dozen" list of regulations to eliminate or amend as well as in a detailed letter on March 5, 2014 to the NCUA Board, there are several aspects of the MBL requirements which should be improved, including: changes to the waiver requirements and waiver process to make it more efficient and easier to obtain individual and blanket waivers; expanding opportunities to obtain waivers; and removing the five year relationship requirement to obtain a personal guarantee waiver. Additionally, NCUA should use its authority granted in the Federal Credit Union Act to provide an exception to the limitations on member business loans for those credit unions that have a history of making MBLs to their members for a period of time.

Part 740 - Accuracy Advertising and Notice of Insured Status

First and foremost, NAFCU would like to express its strong support for federal insurance for credit unions. We believe that federal insurance is not only pivotal for the viability of the industry, but is, in fact, a cornerstone. Thus, we support efforts to strengthen and stand ready to work with the NCUA on this issue.

NCUA has already recognized the advancement of technological advancements in recent rules such as the voluntary liquidations rule. That forward thinking should be applied to other rules as well.

Social Media

The growing use of social media outlets to communicate with consumers clearly presents challenges to credit unions in ensuring that they engage in use of social media in both a safe manner as well as in such ways that they are complying with applicable regulations. As social media matures, more financial institutions will use them to interact with members and customers. Credit unions have fared very well in safely adopting the use of such media, and they take actions necessary to ensure their policies and procedures provide oversight and controls with regard to the risk associated by social media activities.

The Federal Financial Institutions Examination Council (FFIEC), of which NCUA is a member, finalized guidance in December 2013 regarding social media and its effect on consumer compliance and risk management. The purpose of the guidance was to help financial institutions understand potential consumer compliance and legal risks, as well as related risks such as reputation and operational risks, associated with the use of social media, along with expectations for managing those risks.

NAFCU appreciates the FFIEC's efforts in putting forth the guidance and looks to NCUA to be a leader by offering flexibility to credit unions in this sphere. Use of social media, by credit unions and others, has increased in recent years as social media outlets offer an opportunity to communicate with consumers in manners that consumers themselves find convenient and easy. As consumers, especially younger consumers, demand that service providers use social media to communicate with them, the financial services industry and regulators alike should encourage and facilitate use of these forms of media.

NAFCU also recognizes that examination challenges may arise especially where the regulations may not seem applicable, but while difficult they are not impossible. The more interactive the source of social media, the more likely these challenges would arise. This is why guidance and regulations should be written with the flexibility in mind.

NAFCU believes that NCUA should take social media into account in their regulatory regime and recognize that social media differs from other modes of communication. Regulations governing advertising, such as part 740, for example, contain requirements that are difficult to apply to social media, especially media that are interactive. These rules should be amended with use of social media in mind and include more flexibility for the differences that social media provides as opposed to the rigidity of the current rules.

Television and Radio Advertising

In May 2011, the NCUA issued regulations on advertising and notice of insured status. The regulations, although well-intended, have proved problematic for many credit unions and should be revisited.

The NCUA's regulations advertising and notice of insured status require that credit unions include the agency's official advertising statement in all advertisements. This requirement does not apply to radio and television advertisements that do not exceed 15 seconds; however, prior to the 2011 regulations, the exemption was for radio and television advertisements that do not exceed 30 seconds. Second, the regulations require that in print advertisements, the official advertisement may be no smaller than the smallest font size used in other portions of the materials intended to convey information to the consumer. Third, the rule requiring notice of insured status requires that "Each insured credit union must also display the official sign on its Internet page, if any, where it accepts deposits or opens accounts, but it may vary the font sizes from that depicted in paragraph (b) of this section to ensure its legibility."[3]

[3] *12 CFR 704.4.*

NAFCU generally believes that credit unions' federal insurance status should be transmitted and conveyed as much as possible; however, regulations should be crafted in a manner that balances this important priority with challenges and limitations associated with credit unions' use of media, and latest technologies and platforms.

Foreign Languages

With respect to the requirement in part 740.5(d), that a non-English equivalent of the official advertising statement may be used in any advertising provided that the Regional Director gives prior approval to the translation, NCUA should provide common translations across a variety of languages that can be used by credit unions without the requirement of approval. This would free up time spent by credit unions and NCUA staff going through the approval process.

Examinations

Credit unions now face more examiner scrutiny than ever, as the examination cycles for credit unions have gone from 18 months to 12 months since the onset of the financial crisis even though credit union financial conditions continue to improve. Additional exams mean additional staff time and resources to prepare and respond to examiner needs.

NAFCU has concerns about the continued use of Documents of Resolution (DOR) when they are not necessary or are used in place of open and honest conversations about examiner concerns. According to the most recent NAFCU "Economic & CU Monitor", nearly 40% of credit unions who received DORs during their last exam felt it was unjustified and nearly 15% of credit unions said their examiners appeared less competent than in the past. NAFCU supports effective exams that are focused on safety and soundness and flow out of clear regulatory directives.

Mortgage Exams

In January 2014, many of the new large CFPB mortgage rules became effective including the qualified mortgage/ability to repay rule, the mortgage servicing rule, and the loan originator compensation rule. While the CFPB is responsible for supervision and examination of the handful of credit unions that have more than $10 billion in assets, NCUA is responsible for conducting examinations on these new complex rules for the rest of the credit union industry. It is imperative that NCUA work with the CFPB to coordinate examinations and prepare guidance not just for credit unions, but for their examiners to work from.

NAFCU urges NCUA to conduct regular meetings both at the leadership and staff levels with the CFPB to ensure that the expectations for credit union examinations of the CFPB mortgage rules are clearly understood by all parties. To that end, NCUA should also encourage the CFPB to give as much written guidance as possible to make certain that their interpretation is consistent across the board.

Independent Appeals Process

As NAFCU has proposed in the five-point plan for regulatory relief, NCUA should enact new examinations fairness provisions to help ensure timeliness, clear guidance and independent appeals process free of examiner retaliation. When designing an independent appeals process, it is important that the structure includes appeals to non-interested parties that do not have an opportunity to retaliate against individual credit unions that make appeals.

NAFCU suggests creating an independent Office of Examination Ombudsman in the FFIEC while also expanding the right to appeal all actions to an administrative law judge (ALJ). Doing so will help promote consistency and eliminate the current conflict of interest inherent in the process. The Office of Examination Ombudsman should be able to receive and investigate complaints from financial institutions, including credit unions concerning examinations, examination practices, or examination reports. They should also be able to review examination procedures from the individual agencies such as the NCUA to make sure they are consistently applied. This independent eye on examinations and view of appeals will help to discourage the inherent conflict of interest in the current system.

While, NAFCU acknowledges that some of these changes require Congressional action, we respectfully request that NCUA support an independent appeals process free of conflicts of interest that prohibits retribution based on appeal.

Fixed Assets

The NCUA Board has released a proposed rule regarding fixed assets at their July 31, 2014 meeting. As NAFCU has stated in the past, we support having the fixed asset rule revised to eliminate the 5% cap on fixed assets. We are glad to see that NCUA has made this a priority. As NCUA Chairman Matz stated on July 23, 2014, “Our intent is to allow federal credit unions to manage their own fixed-asset purchase without having to seek permission or waivers from NCUA. When federal credit unions want to update facilities, upgrade technology or make other purchases that have no impact on safety and soundness, NCUA should not micro-manage individual business decisions.”

NAFCU will be providing a separate and more detailed comment letter on this proposal after getting feedback from our members on the impact of the rule.

Increased Investment Authority

Given the number of risks including interest rate risk, concentration risk, and other risks, it is important to give credit unions the flexibility and the tools to combat those risks. First, we must dispel the notion that expanding investment powers for credit unions would, in and of itself, lead to losses to individual credit unions as well as the National Credit Union Share Insurance Fund (NCUSIF). While there are increased risks associated with expanded investment powers, if risk management tools are appropriately conceived and implemented, the benefits of particular powers can greatly outweigh the risks.

Section 1757 of the FCU Act grants a FCU a range of specific powers that are aimed at enabling it to provide low-cost financial services to its members. In addition, a FCU is authorized to exercise "such incidental powers as shall be necessary or requisite to enable it to carry on *effectively* the businesses for which it is incorporated."[4] *(Emphasis added.)* However, the Act also grants the agency discretionary authority to limit FCUs' powers.

Derivatives

On January 23, 2014, the NCUA Board finalized a rule that would grant qualified credit unions authority to engage in derivative transactions. NAFCU applauds for having the forward thinking that will give some credit unions a powerful tool to combat a rising interest rate environment. NAFCU was also supportive of the eventual change that removed the "pay to play" component which was present in the proposed rule.

NAFCU believes that NCUA should expand the types of derivatives credit unions can invest in beyond the narrow set of investments currently allowed by the rule. This will allow credit unions to better fight IRR and better diversify their portfolios.

Mortgage Servicing Rights

NAFCU believes that NCUA should remove from the list of prohibited activities the ability to purchase Mortgage Servicing Rights (MSRs). In particular, at the very least, a federally-insured credit union should not be prohibited from purchasing MSRs from other credit unions.

The credit union industry, like each credit union, is a cooperative system. Many credit unions, especially small credit unions, neither have the capacity nor the resources to perform certain functions. As a result, they have to rely on third parties to perform such functions. We believe it is both in the best interest of each such credit union, and the industry as a whole, if as many of these functions as possible are performed by other credit unions. This approach is not only consistent with the credit union cooperative model, but will also better address safety and soundness concerns of individual credit unions as well as the NCUSIF. Accordingly, the agency should remove the prohibition against purchasing MSRs from other credit unions.

Asset-Backed Securities

Asset-backed securities, such as ones backed by auto loans and credit cards receivables, provide a great tool for credit unions to diversity their investment portfolios. That diversity can shield credit unions from volatility in specific segments of their investments and protect them from quick changes in market conditions. Many of these types of securities can also provide an opportunity for yield enhancement in a time where artificially low interest rates have depressed the rate yield income.

[4] *See*, *12 USC 1757(17).*

NCUA's very narrow interpretation of their ability as a regulator to grant expanded investment authorities to natural person credit unions puts credit unions at a disadvantage to their banking peers. There are a number of appropriate types of investments for credit unions that were not expressly authorized in the Federal Credit Union Act, but for which NCUA has the authority to authorize, such as asset-backed securities, that NCUA can and should grant as incidental powers. NCUA also seems to agree with the benefits of many of these investments, but has chosen to take a position that unless authority is expressly granted by the FCU Act, they do not have authority to permit credit unions to invest in these securities.

While NAFCU works with Congress to craft a legislative solution to allow natural person credit unions to invest in asset-backed securities backed by auto loans and credit cards receivables, NAFCU urges NCUA to rethink its interpretation of the FCU Act as it relates to investment authority.

Securitization

On June 19, 2014, the NCUA Board proposed a rule that will allow a credit union to securitize loans that it has originated. In addition to this proposed rule, the NCUA Board also released a concurrent safe harbor proposal. Comments on both of these rules are dues on August 25, 2014, so we will not comment on the specifics of the proposal in this letter.

In general, NAFCU believes the securitization proposal is an important step in expanding credit union investment authority and the safe harbor will foster the confidence investors need to create a successful asset securitization market. Because of the complexities of this rule, NCUA should also provide substantial guidance in any final rule on this topic.

Interest on Lawyers Trust Accounts

NAFCU would like to take this opportunity to address the insurance coverage of Interest on Lawyers Trust Accounts (IOLTAs). It has been NCUA's position that "[t]he issue for credit unions regarding IOLTAs is that the National Credit Union Share Insurance Fund generally only provides insurance to the beneficial owners of an account, and they must be members."[5] An IOLTA, as NCUA knows, is an interest bearing account on which interest is remitted to a beneficiary, most commonly a non-profit entity that provides legal services to indigent persons.

NAFCU requests that NCUA revisits its policy regarding insurance coverage of IOLTAs. We believe that NCUA already has the statutory authority to provide NCUSIF coverage for funds in IOLTA accounts, just as it has the authority to extend insurance coverage to nonmember beneficiaries of revocable trust accounts.[6] In the case of revocable trust accounts, the beneficiary may be "a natural person as well as a charitable organization and other non-profit entity …"[7]

[5] *See, e.g., NCUA's Final Rule on Federal Credit Unions Incidental Powers, 73 FR 62854, at 62855 (October 22, 2008).*
[6] *See 12 CFR § 745.4*.
[7] *12 CFR 745.4(c).*

We respectfully request that NCUA amend its regulations to similarly extend coverage to IOLTA accounts.

NAFCU appreciates the opportunity to provide comments on NCUA's 2014 Regulatory Review. Should you have any questions or would like to discuss these issues further, please contact me by telephone at (703) 842-2212 or by email at pjhoffman@nafcu.org.

Sincerely,

PJ Hoffman
Regulatory Affairs Counsel