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**National Association of Federally-Insured Credit Unions**

August 16, 2021

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

**RE: Regulatory Review (2021)**

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) 2021 Regulatory Review of one-third of its regulations. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 125 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 can grow and better serve their communities. NAFCU and its member credit unions greatly appreciate the NCUA Board's willingness to consider regulatory changes to properly tailor rules to the risks and activities actually taken by credit unions.

With respect to the regulations under consideration in 2021, 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.

**Part 748 Security Program, Report of Suspected Crimes, Suspicious Transactions, Catastrophic Acts and Bank Secrecy Act Compliance**

This regulation requires a federally-insured credit union to develop a written security program and to develop a *Bank Secrecy Act* (BSA) compliance program. NAFCU has consistently acknowledged the importance of SAR requirements to assist in the prevention of tax evasion or money laundering. For credit unions, however, the BSA and implementing regulations impose significant burden and cost. Accordingly, NAFCU encourages NCUA to coordinate with the Financial Crimes Enforcement Network (FinCEN) in ensuring sensible regulation and exams are tailored to actual risks. Such coordinated effort will ensure that the resources and personnel credit unions devote to BSA-related regulatory compliance are allocated accordingly. Additionally, many of our members have indicated that prudential examiners are too heavily focused on auditing

absolute compliance with certain technicalities. Because the intent behind BSA/AML and SAR reporting is to aid in law enforcement efforts, NAFCU believes that examiners should focus on the intent and usefulness of SARs rather than zero-tolerance, technical compliance. As such, we recommend that NCUA amend Part 748 to reflect the spirit of the law while still ensuring safeguards are in place to inhibit bad actors from exploiting the financial system. Finally, NAFCU asks NCUA to support improvements to FinCEN regulations, such as increased thresholds for filing currency transaction and SARs.

As FinCEN promulgates regulations to implement the *Anti-Money Laundering Act of 2020*, NAFCU encourages the NCUA to provide clear supervisory expectations for how credit unions must incorporate the national AML/countering the financing of terrorism (CFT) priorities. Risks vary among credit unions and the set priorities may not be applicable to some credit unions. The NCUA should amend Part 748 to include clear instructions for how credit unions must address the AML/CFT priorities in their risk assessments.

#### **Part 749 Records Preservation Program and Appendices – Record Retention Guidelines; Catastrophic Act Preparedness Guidelines**

This regulation sets out the procedures that federally-insured credit unions must follow for record retention. As noted in comments made in response to the NCUA's 2017 request for comments on the fourth and final regulatory review pursuant to the *Economic Growth and Regulatory Paperwork Reduction Act* (EGRPRA), maintaining records indefinitely is an administrative burden that exceeds the reasonable intentions of record retention rules. Accordingly, NAFCU recommends that record retention requirements align with statutes of limitations, varying based on product and information type. Additionally, it would be helpful for the NCUA to specify that record retention requirements align with state laws. Furthermore, NAFCU requests that the NCUA provide express guidance about its expectations or recommendations regarding whether corporate governance documents from merged credit unions would be appropriate for periodic destruction or whether those are the type of documents that NCUA recommends holding onto permanently. If the NCUA provides guidance that corporate governance documents from merged credit unions are appropriate for periodic destruction, NAFCU requests specificity regarding the length of time that these documents should be retained.

#### **Part 750 Golden Parachute and Indemnification Payments**

This regulation bars federally-insured credit unions that are insolvent, troubled or in conservatorship from making golden parachute payments except under certain circumstances (such as for the hiring of new management to help restore sound operations). It also bars indemnification payments to an institution-affiliated party subject to certain enforcement actions; it does allow the purchase of directors' and officers' insurance and, in some cases, an advance of indemnification payments where responsibility for a violation is still in dispute. NAFCU is concerned that restrictions on the provability of separately negotiated executive severance agreements will impair credit unions' ability to recruit, motivate, and retain talented managers and executives. NAFCU believes that severance should be an allowable claim in liquidation and disagrees that executive claims should be treated differently than other employee claims if they are separately negotiated. Credit union staff should have certainty that the terms of their employment agreement will be honored, even if the credit union enters involuntary liquidation.

Restrictions on executive severance claims could prove detrimental in circumstances where the retention of key employees is essential to preserving the health of a troubled credit union. To guard against employee attrition during times of financial stress, credit unions may find it necessary to use separate eligibility criteria when negotiating post-employment benefits arrangements with executives. Accordingly, NAFCU requests that the NCUA consider whether credit unions may benefit from additional flexibility when offering post-employment benefits.

#### **Part 760 Loans in Areas Having Special Flood Hazards**

This regulation sets forth interagency flood insurance requirements for loans secured by buildings or mobile homes in areas having special flood hazards. First, NAFCU agrees with comments submitted in the NCUA's 2015 request for comments on the second regulatory review pursuant to the EGRPRA and recommends that NCUA provide more flexibility with respect to the delivery and timing of required notices. Additionally, it would be beneficial for NCUA to provide a sample notice of an "acknowledgement of receipt" form, adding to the list of samples that the agency already provides. In addition to regulatory recommendations, NAFCU asks that the NCUA finalize its Interagency Questions and Answers Regarding Flood Insurance with additional clarity to help credit unions comply with the flood insurance rule.

#### **Part 792 Requests for Information under the Freedom of Information Act and Privacy Act, and by Subpoena; Security Procedures for Classified Information**

As we wrote in a March 2021 letter regarding the NCUA's Request for Input (RFI) on its communication methods and related initiatives, NAFCU urges the NCUA to embrace transparency in its approach to *Freedom of Information Act* (FOIA) requests. FOIA requests play a vital role in encouraging good government and increased communication by providing a mechanism to disseminate important information and documents to interested stakeholders as well as the general public. The NCUA's past reliance on FOIA exemptions to protect disclosure of certain information has run counter to these goals and limited the ability of interested parties to understand how and why their government is making certain decision and taking certain actions. NAFCU urges the agency to view FOIA requests through the lens of transparency to disclose as much information as possible so that credit unions understand how the NCUA is making use of credit union dollars and operating to ensure the safety and soundness in the industry.

#### **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 or James Akin, Regulatory Affairs Counsel, at [jakin@nafcuh.org](mailto:jakin@nafcuh.org) or 703-842-2268.

Sincerely,



Ann Kossachev  
Director of Regulatory Affairs