NAFCU
3138 10th Street North
Arlington, VA 22201-2149
703.522.4770 | 800.336.4644
F: 703.524.1082
nafcu@nafcu.org
National Association of Federal Credit Unions | www.nafcu.org

September 2, 2014

Mr. Gerard Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

RE: Comments on the Economic Growth Regulatory Paperwork Reduction Act of 1996 Review

Dear Mr. Poliquin:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents federal credit unions, I am writing regarding the National Credit Union Administration's (NCUA) request for comment on the review of its regulations pursuant to the *Economic Growth and Regulatory Paperwork Reduction Act of 1996* (EGRPRA).

NCUA requests comments on areas of regulations within the categories of "Applications and Reporting" and "Powers and Activities." NAFCU appreciates the opportunity to offer comments on these categories of NCUA's Rules and Regulations.

General Comments

NAFCU would like to, first and foremost, express our appreciation for NCUA's voluntary participation in the EGRPRA review. This review provides an important opportunity for credit unions to voice their concerns about outdated, unnecessary or unduly burdensome requirements of NCUA's Rules and Regulations.

The growing regulatory burden on credit unions is the top challenge facing the industry today. The number of credit unions continues to decline, as the compliance requirements in a post Dodd-Frank environment have grown to a tipping point where it is hard for many smaller institutions to survive. While NAFCU and our member credit unions take safety and soundness extremely seriously, the regulatory pendulum post crisis has swung too far towards an environment of overregulation that threatens to stifle economic growth. As NCUA and the other financial regulators work to prevent the next financial crisis, even the most well intended regulations have the potential to regulate our industry out of business.

The impact of this growing compliance burden is evident as the number of credit unions continues to decline. Since 2010, the number of credit unions has declined by 19.1% (more than 1,500). A main reason for the decline is the increasing cost and complexity of complying with the ever-increasing onslaught of regulations. Many smaller institutions simply cannot keep up with the new regulatory tide and have to merge out of business or be taken over.

This growing demand on credit unions is demonstrated by a 2011 NAFCU survey of our membership that found that nearly 97% of respondents were spending more time on regulatory compliance issues than they did in 2009. A 2012 NAFCU survey of our membership found that 94% of respondents had seen their compliance burdens increase since the passage of the *Dodd-Frank Act* in 2010. Furthermore, a March 2013 survey of NAFCU members found that nearly 27% had increased their full-time equivalents for compliance personnel in 2013, as compared to 2012. That same survey found that over 70% of respondents have had non-compliance staff members take on compliance-related duties due to the increasing regulatory burden. This highlights the fact that many non-compliance staff are being forced to take time away from serving members to spend time on compliance issues.

Recognizing that there are a number of outdated regulations and requirements that no longer make sense and need to be modernized or eliminated, NAFCU compiled and released a document entitled "NAFCU's Dirty Dozen" in December 2013, that outlines twelve key regulatory issues credit unions face that should be eliminated or amended. NAFCU applauds the agency's various initiatives to reduce regulatory burden identified on our "Dirty Dozen," including its recent proposals on appraisals and fixed assets. We urge NCUA to continue to look for ways under its purview to provide relief for credit unions. Further, NAFCU and our members ask that NCUA work with the other financial regulators to develop commonsense and coordinated regulations that will address issues outlined in NAFCU's "Dirty Dozen" and in this letter.

Applications and Reporting

Field of Membership/Chartering (12 C.F.R §701.1, Appendix B)

NAFCU supports every effort to strengthen the federal charter, which we believe provides great benefits to consumers. In the past, the NCUA Board has recognized that clarification of NCUA's chartering policy will provide a significant benefit to consumers through increased access to federal credit. We would like to take this opportunity to urge NCUA to take specific actions within its power that would help credit unions make their products and services more readily available and offer more consumers the credit union option.

Definition of "Rural District"

Under NCUA's Rules and Regulations, a "rural district" is defined as (1) a district that has well-defined, contiguous geographic boundaries; (2) more than 50% of the district's population resides in census blocks or other geographic areas that are designated as rural by the United

States Census Bureau; and (3) does not exceed certain other population thresholds. The district's population cannot exceed either (a) the greater of 250,000 or 3 percent of the population of the state in which the majority of the district is located, or (b) if the district has well-defined contiguous geographic boundaries, it does not have a population density in excess of 100 people per square mile, and the total population of the district does not exceed the greater of 250,000 or 3 percent of the population of the state in which the majority of the district is located.

The current definition of "rural district" was revised in February, 2013. As NAFCU has expressed many times to NCUA, it is important that the definition not be overly restrictive and consequently deprive many Americans the opportunity to receive high quality financial services from a credit union that would like to offer its services to them.

While NAFCU welcomed NCUA's efforts to enable more credit unions to obtain a community charter under the "rural district" designation, we continue to hear from our members that the final rule has had only a limited effect. We urge the agency to reconsider the definition of "rural district" so as to provide greater flexibility for credit unions that would like to serve rural areas of our nation. A more flexible definition of "rural district" would increase credit availability to those who might otherwise not have ready access to financial services.

First and foremost, NAFCU notes that under the "three percent option" only those credit unions that seek to serve in rural areas in the thirteen most populated states in the country have been affected by the final rule. Those credit unions that would like to serve persons who live in rural areas in the remaining thirty-seven states and U.S. Territories remain subject to an arbitrary 250,000 population limit.

NAFCU is also concerned with the final rule's 250,000 population limit. In prior communications with the agency, we urged NCUA to, at the very least increase this limit to the pre-2010 level of 500,000, which was reduced without explanation. With the 2010 changes, the agency effectively decided that a "rural district" is actually 60% smaller in population than it previously thought. This fact, in and of itself, is troubling. NAFCU believes the 250,000 limit is arbitrary and does not pass even a cursory review of our nation's makeup. We urge the agency to reconsider this threshold.

Further, NAFCU believes NCUA should either remove or greatly increase the 100 person per square mile limit, as this population density threshold is far too low. NAFCU does not believe a person-per-square mile limitation should be part of the analysis for determining whether a credit union should be granted a community charter with "rural district" designation.

Charter Conversions

NAFCU continues to hear from our members that NCUA's Rules and Regulations governing charter conversions for credit unions that seek to convert from one type of federal charter to another are unnecessarily cumbersome. We ask that NCUA review its rules on conversions and initiate a rulemaking for changes, with particular focus on conversions to a community charter.

As NCUA is well aware, NAFCU and our members strongly oppose the agency's chartering rule that prevents a single- or multi-associational chartered federal credit union (FCU) from continuing to serve its existing field of membership when it converts to a community charter, unless the field of membership is entirely within the new community. The effect of this limitation has been that FCUs are dissuaded from offering their services to more people, a result that we do not believe is desirable. Accordingly, we urge the NCUA to remove this restriction.

Associational Common Bond

In April 2014, NCUA proposed a rule to amend the associational common bond requirements in its Chartering and Field of Membership Manual. NAFCU supports NCUA's efforts to ensure that only groups who meet the current associational common bond requirements are added in an FCU's field of membership, and we applaud the agency's initiative to streamline the expansion process.

NAFCU supports the proposal's automatic approval for certain associations for inclusion in a federal credit union's field of membership, and appreciates the agency's efforts to streamline this part of the field of membership expansion process. While NAFCU agrees with the groups the agency included in the proposal, we also suggest that NCUA provide automatic approval for parent-teacher associations, fraternal organizations, military-affiliated associations and 501(c)(3) nonprofits. Due to their structure, practices and functions, these organizations should be recognized as valid associations based on the associational common bond requirements.

While NAFCU supports the proposal's automatic approval, we continue to have concerns with its threshold determination. Because NCUA's Chartering and Field of Membership Manual currently requires the agency to evaluate an application by the totality of the circumstances, NAFCU believes that adding a step before this evaluation is unnecessary. Additionally, the requirement that an association be in existence for at least one year is arbitrary and unnecessary. NAFCU and our members believe that it should not matter how long the association has been in existence, only that it serves its members and meets the criteria of the "totality of the circumstances" test.

While NAFCU does not support any threshold determination requirement, should NCUA move forward with such a requirement, we ask that the agency develop specific factors and guidance for determining when the threshold requirement is met. Including objective standards would provide credit unions with needed clarity to effectively meet this threshold determination requirement.

Quality Assurance Review

The preamble section of the associational common bond proposal highlights NCUA's Office of Consumer Protection's ongoing Quality Assurance Review process. Because NAFCU supports the ability of FCUs to add members in accordance with the *Federal Credit Union Act* (FCU Act), we have concerns and questions regarding NCUA's process for conducting these reviews.

The FCU Act fundamentally provides that "once a person becomes a member of a credit union...that person or organization may remain a member of that credit union until the person or organization chooses to withdraw from the membership of the credit union" *See*, 12 U.S.C. §1759(d)(3). Under this fundamental right, NCUA does not have the authority to remove a person or group from a credit union's field of membership. In this spirit, NAFCU believes that NCUA also lacks the direct authority to remove an association from a FCU's field of membership. The Quality Assurance Review, however, potentially does exactly that—it allows NCUA to divest a previously approved association from a FCU's field of membership. To be clear—NAFCU is not supporting associations that do not comply with the FCU Act, but we believe that credit unions should be afforded due process.

Federal Credit Union Bylaws (12 C.F.R. § 701.2, Appendix A)

The Federal Credit Union Bylaws are at the center of many aspects of credit union governance. In 2007, the NCUA Board adopted the current standard 2007 Federal Credit Union Bylaws (FCU Bylaws) and incorporated them as Appendix A to Part 701 in October 2007. They have not been amended or revised since this incorporation.

As NCUA knows, NAFCU believes that it is time for the agency to conduct a thorough review of and make appropriate changes to the FCU Bylaws. Revisions to the bylaws are overdue, given that the last substantive revisions were made over six years ago. Accordingly, NAFCU would like to express our appreciation to NCUA for establishing a working group in 2013 to solicit input from credit unions and industry representatives on how to effectively incorporate the appropriate changes to the FCU Bylaws. NAFCU also assembled a working group of its members and staff to review the FCU Bylaws.

In July 2014, NAFCU submitted the specific recommendations of our working group to the agency. Today, we once again urge NCUA to adopt these recommendations in order to modernize the FCU Bylaws and afford greater flexibility to FCUs. NAFCU would like to also take this opportunity to suggest additional revisions to the FCU Bylaws that we believe will further modernize outdated procedures.

Article IV, section 3, of the FCU Bylaws states that a special meeting must be called by the chair at the request of 25 members or 5% of the members, whichever is larger, but not more than 750 members. NAFCU recommends that the 750 cap be increased to 1000 in order to prevent manipulation of the board by a small number of members.

In addition, Article V, option A2, A3 and A4 provides that signatures of 1% of the members, with a minimum of 20 and a maximum of 500, are needed for nomination by petition. NAFCU suggests that NCUA eliminate the cap of 500 and require that the petition be signed by 1% of the credit union's members. NAFCU believes this will create a mechanism to keep pace with credit union growth.

Finally, Article VIII, Option 1, section 7 of the FCU Bylaws states that no loan or line of credit may be made unless approved by the committee or a loan officer. NAFCU recommends that

NCUA amend this section to reflect that credit unions are allowed approve loans through technological services, not just individuals. Through legal opinions and guidance, NCUA has articulated its belief that a fully-automated system for a loan application, underwriting, and funding is legally permissible under the FCU Act. The agency, however, has yet to codify this position in the FCU Bylaws. NAFCU and our members believe NCUA should amend the FCU Bylaws to reflect that credit unions are allowed approve loans through technological services, as long as they use the appropriate safeguards determined by NCUA and their individual internal policies.

Fees Paid by Federal Credit Unions (12 C.F.R. § 701.6)

NCUA is funded by the credit unions it supervises. Each year, credit unions are assessed a different operating fee based on asset size. NCUA then pools the monies it receives from credit unions and uses those funds to create and manage an examination program. The monies that NCUA collects, however, have significantly increased over the past six years to cover a $109.7 million increase in the agency's budget during that period.

NAFCU supports the agency's efforts to accurately calculate the appropriate overhead transfer rate and urges NCUA to maintain a rate that is equitable to FCUs given they are funding the remaining agency expenses through operating fees. NAFCU encourages NCUA to continue to look for ways to decrease costs in order to reduce fees FCUs pay to the agency. In connection with this, NAFCU believes that credit unions deserve clearer disclosures of how the fees they pay the agency are managed.

As NAFCU has stated in previous communications to the agency, NCUA is charged by Congress to oversee and manage the National Credit Union Share Insurance Fund (NCUSIF), the Temporary Corporate Credit Union Stabilization Fund, the Central Liquidity Fund, 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, NAFCU and our members strongly believe that 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. For example, NAFCU and our members believe that NCUA should be transparent about how the monies transferred from the NCUSIF through the overhead transfer rate are allocated to the NCUA Operating Budget.

Mergers of Federally Insured Credit Unions; Voluntary Termination or Conversion of Insured Status (12 C.F.R. § 708b)

Mergers between credit unions are becoming increasingly more frequent in today's industry. In 2013, there were 245 mergers, and since the first quarter there have already been 45 mergers this year. Despite the growing prevalence of credit union mergers, however, NCUA has not issued substantive guidance on this issue in almost 10 years. While the agency has released resources and hosted webinars addressing concerns that arise on the frontend, such as "when to consider a merger," and "how to find a mergering partner," NCUA has failed to issue guidance for the operational issues that arise on the backend as credit unions execute the merger. For example, the "Truth in Mergers: A Guide for Merging Credit Unions" released in May 2014, only serves as a framework for credit union leaders who are considering a merger. It does not offer any clarity on the operational concerns that arise during or after a merger. NAFCU continues to hear from its members that credit unions need updated substantive guidance on how to conduct a merger. NAFCU would like to take this opportunity to request that NCUA, in consultation with industry representatives, review and, as appropriate, revise its Credit Union Merger and Conversion Manual.

In 2010, NCUA issued supervisory letter 10-CU-11 to credit unions attempting to address the criteria and processes involved in mergers. Before this letter, the agency had not issued guidance on the merger process since 2005 when it released its Credit Union Merger and Conversion Manual. While the 2010 letter was useful to credit unions, NAFCU continues to hear from our members that the merger process is unclear, complicated, and burdensome. As a result, a number of well positioned credit unions have been unable to execute mergers due to the uncertainty surrounding NCUA's requirements. In particular, NAFCU's members are unclear as to what their responsibilities are to the merging credit union's members who have products that are incongruous with those that they offer.

Given that it has been almost 5 years since the last guidance was released on mergers, and nearly a decade since NCUA substantively revised its Credit Union Merger and Conversion Manual, NAFCU believes that the agency should take steps to review and make appropriate changes to the Credit Union Merger and Conversion Manual. We believe the agency should conduct a comprehensive review of the entire Manual. Further, we believe it is critical that NCUA's review and analysis should, from the onset, involve industry input. In order to effectively consider and incorporate industry input, we strongly urge the agency to establish a working group or advisory committee comprised of qualified industry participants and organizations.

Powers and Activities

Member Business Lending (12 C.F.R. § 723)

The Member Business Lending (MBL) regulation, as NAFCU and our members have consistently maintained, is far too restrictive and cumbersome.

In July 2014, at NAFCU's Annual Conference, Chairman Matz stated that the agency is currently considering ideas raised during her 2014 Listening Sessions that would modernize the MBL regulation. NAFCU appreciates this action and would like to take this opportunity to reiterate the improvements we believe could be made to the MBL regulation that would benefit credit unions as well as their small business members.

As NAFCU outlined in both its March 5, 2014, letter to NCUA Board and its "Dirty Dozen" list of regulations to eliminate or amend, 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 FCU Act to provide an exception to the limitations on member business loans (the MBL cap) for those credit unions that have a history of making MBLs to their members for a period of time.

MBL cap – exception authority

Section 1757a of the FCU Act contains the limitations on MBLs. Under Part 723 of NCUA's Rules and Regulations, the aggregate MBL limit for a credit union is limited to the lesser of 1.75 times the credit union's net worth or 12.25% of the credit union's total assets. However, the FCU Act also contains exceptions to the MBL cap. In particular, it provides exception authority from the MBL cap for "an insured credit union chartered for the purpose of making, **or that has a history of primarily making, member business loans to its members**, as determined by the Board." *See*, 12 U.S.C. § 1757a(b)(1) (Emphasis added.)

Traditionally, this provision in § 1757a has been construed narrowly by NCUA. Section 723.17(c) of NCUA's Rules and Regulations currently defines credit unions that have a history of primarily making member business loans as credit unions that have either 25 percent of their outstanding loans in member business loans or member business loans comprise the largest portion of their loan portfolios, as evidenced by any Call Report or other document filed between 1995 and 1998. NAFCU continues to hear from our members that this definition is overly restrictive and often prevents them from extending sound loans to their small business members, many of whom have been abandoned by other financial institutions due to their smaller size.

NAFCU urges NCUA to take a broader interpretation of the history of primarily making MBLs provision of the FCU Act. This can be done by NCUA utilizing its statutory authority to create an exception from the MBL cap for all credit unions that have a history of making MBLs for an extended period of time. NAFCU and our members believe that a credit union that has had a successful MBL program in place for a period of five years or greater would be a reasonable basis to satisfy this statutory authority. In fact, in response to Representative Ed Royce's question for the record at the April 8, 2014, House Financial Services Committee Hearing on Regulation and Supervision of Financial Institutions, NCUA's General Counsel noted that the agency has the statutory authority to create this exception. In his response to Representative Ed Royce's question, NCUA's General Counsel confirmed that "NCUA has the statutory authority to define if a credit union, which has had a significant proportion of its portfolio in member

business loans for the last five years, has a history of primarily making member business loans and would therefore qualify for an exemption from the statutory cap."

While it acknowledged in its response the agency has the authority to take a broader interpretation of the history of primarily making MBLs provision of the FCU Act, NCUA explained that the current definition "focuses on a credit union's historical behavior during the years leading up to the enactment of the *Credit Union Membership Access Act* (CUMAA)." NAFCU and our members believe this focus is unnecessarily restrictive, and we urge the agency to expand the scope of the definition. NAFCU contends that it would be more appropriate for NCUA to consider a credit union's history of making MBLs in general, rather than restricting its focus solely to a credit union's behavior from 1995 through 1998. In particular, we believe the agency should define credit unions that have had a successful MBL program in place for at least five years as having a "history of primarily making MBLs." NAFCU encourages the NCUA Board to set this standard and make the exception available to all credit unions.

Waivers

In February 2013, NCUA issued supervisory letter 13-01 to credit unions attempting to shed light on the criteria and processes for obtaining MBL waivers. While this guidance was useful to credit unions, NAFCU continues to hear from its members that the waiver process is complicated, slow moving, and inefficient. As a result, many credit unions have been unable to extend sound loans to their small business members, loans which may have been lost to competitors, or worse, never extended at all.

While waivers should not be used so frequently that they are the norm, the process to obtain one should not be so excessively difficult as to prevent credit unions from serving their membership effectively. Healthy, well-run credit unions with risk focused MBL programs that maintain appropriate policies and procedures and that perform adequate due diligence on their member borrowers should be able to apply for and obtain blanket waivers which would help their membership.

Furthermore, the MBL regulations should be amended to expand a credit union's ability to obtain an individual or blanket waiver. Credit unions, because of their fundamental nature, are in a great position to extend credit to small businesses which will help fuel our nation's economic recovery. Expansion of the waiver capabilities would enable well run credit unions to extend loans to their small business members.

As noted above, the FCU Act contains the limitations on and exceptions to MBLs. *See*, 12 U.S.C. § 1757a. However, the FCU Act does not prescribe limitations on the waivers that NCUA can put in place with regard to the regulations it imposes for MBLs that are not statutory requirements.

Section 723.10 of NCUA's Rules and Regulations contains an enumerated list of MBL related requirements for which a credit union can apply for a waiver. NAFCU believes that this enumerated list of available waivers should be replaced with a more flexible waiver provision

that would allow a credit union to apply for, and obtain, a waiver from a non-statutorily required MBL regulatory requirement. The use of an enumerated list necessarily restricts a credit union from obtaining a waiver of a requirement which is not listed, even where such a waiver would not pose a safety and soundness concern to the credit union. NAFCU encourages NCUA to amend Section 723.10 to provide a more flexible waiver provision.

NCUA could issue appropriate guidance for the types of waivers that a credit union could obtain using a more flexible standard, which could include enumerated lists and appropriate examples. Section 723.11 of NCUA's Rules and Regulations contains the procedural requirements for a credit union to obtain a waiver, and it requires a credit union to submit a waiver request accompanied by a great deal of information related to the credit union's member business loan program. Under a more flexible provision, and taking into account safety and soundness considerations, NCUA should be able to determine from the information required to be provided pursuant to Section 723.11 whether a waiver is appropriate for a credit union. This approach would enhance a credit union's ability to provide MBLs to its members without compromising the safety and soundness of the credit union.

NAFCU also believes legislation is necessary to relax the current MBL restrictions. In particular, NAFCU supports the bipartisan *Credit Union Small Business Jobs Creation Act,* H.R. 688 (and its Senate companion, S. 968, the *Small Business Lending Enhancement Act of 2013*), which would raise the arbitrary and outdated MBL cap on credit unions. We also support Congressional action on the *Credit Union Residential Loan Parity Act*, H.R. 4226, which would exclude loans made non-owner occupied 1- to 4-family dwelling from the definition of a member business loan, and H.R. 5061, which would exclude business loans made to veterans from the definition of a member business loan.

Investment and Deposit Activities (12 C.F.R. § 703)

Earlier this year, NCUA approved revisions to part 703 of NCUA's Rules and Regulations that expanded FCU investment authorities by granting qualified credit unions authority to engage in derivatives transactions. The rule allows certain credit unions to engage in a limited set of derivatives transactions solely for the purpose of reducing interest rate risk and managing balance sheets. The limited types of derivatives allowed under the final rule are interest rate swaps, floors, and caps; basis swaps; and treasury futures. NAFCU supports this increased investment opportunities for FCUs, and commends the agency for its effort to improve the investment rule.

NAFCU urges NCUA to continue to focus its efforts on evaluating new products and services that would serve as beneficial investment opportunities of FCUs. In particular, NAFCU and our members ask that the agency allow credit unions to purchase Mortgage Servicing Rights (MSRs).

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." *See,* 12 USC § 1757(17) (emphasis added). The FCU Act also grants the agency discretionary authority to limit FCUs' powers.

Part 703 implements this section of the FCU Act by, among other things, providing limits to FCUs' investments powers, including listing prohibited investments and investment activities. Under Section 703.16(a) of NCUA's Rules and Regulations, one of these prohibited activities is the purchase of mortgage servicing rights (MSR) as an investment.

NAFCU believes the NCUA should remove from the list of prohibited activities the ability to purchase Mortgage Servicing Rights (MSRs). 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 often choose to rely on third parties to perform such functions. NAFCU and our members believe it is both in the best interest of these credit unions and the industry as a whole if as many of these functions as possible may be 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 and the NCUSIF. Accordingly, the agency should remove the prohibition against purchasing MSRs from other credit unions.

Fixed Assets (12 C.F.R. § 701.36)

NAFCU will submit comments separately pursuant to NCUA's July 31, 2014, proposed rule on this section of NCUA's Rules and Regulations.

Credit Union Service Organizations (12 C.F.R. § 712)

Over the past few years, NCUA has increased its focus on Credit Union Service Organizations (CUSOs). Most notably, on November 21, 2013, the NCUA Board approved a final rule that extends the agency's regulatory authority over CUSOs by requiring CUSOs to submit financial reports directly to NCUA. NAFCU has stated a number of times that NCUA's attempt to directly examine CUSOs under this rule is beyond the legal authority designated to it by Congress. NAFCU does not believe the agency should resort to the final rule's mechanism in an attempt to regulate and oversee CUSOs. Because NCUA already has the information it needs to effectively oversee the safety and soundness of credit unions as well as the NCUSIF, NAFCU and our members believe that the agency does not need to regulate and oversee CUSOs in the manner prescribed by the final rule.

CUSOs have long been strong partners for credit unions to meet their members' needs. The range of services credit union members receive through CUSOs, including investments, marketing, insurance, and more, have added a welcomed value to the industry. In addition, and very importantly, CUSOs have proved to be an important source of cost savings for credit

unions. During these challenging economic times, credit unions need to be able to function effectively from a business standpoint, and not endure increased unnecessary regulations.

Furthermore, CUSOs provide these great values with minimal risk. Despite the concerns expressed by the agency, credit unions, in a vast majority of cases, conduct their relationships with CUSOs and other third parties well within the agency's regulatory parameters and in accordance with all applicable laws and regulations. As the agency has indicated, there appear to be some cases where some credit unions have not appropriately managed their third-party relationships and, consequently, exposed themselves and the NCUSIF to increased risk. These are, however, rare cases and not representative of the conventional third-party relationship credit unions have with third parties, especially CUSOs.

Furthermore, NAFCU urges NCUA to increase the amount that a credit union is permitted to invest in a CUSO. We ask that the agency focus its attention on expanding the scope of permissible CUSO activities as new products and services are developed. This will allow credit unions to better serve their members while working with partners with whom they have built long standing relationships.

Conclusion

NAFCU appreciates NCUA's participation in the EGRPRA review and applauds the agency for soliciting feedback and input from credit unions regarding unnecessary or unduly burdensome requirements of its Rules and Regulations. NAFCU and our members urge NCUA to continue to reduce future compliance costs and regulatory difficulties faced by credits unions by addressing the issues raised in this letter.

We look forward to continuing to work with NCUA to address ways that the agency could streamline and refine existing regulations in order to more effectively grow and support the dynamic credit union industry. I look forward to hearing from you regarding this important matter. Should you have any questions or would like to discuss these issues further, please feel free to contact me by telephone at (703) 842-2234 or by e-mail at chunt@nafcu.org, or Alicia Nealon, NAFCU's Regulatory Affairs Counsel at anealon@nafcu.org or (703) 842-2266.

Sincerely,

Carrie R Hunt

Carrie R. Hunt
Senior Vice President of Government Affairs and General Counsel