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August 5, 2013

Mr. Michael J. McKenna
General Counsel
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

RE: Regulatory Review for 2013

Dear Mr. McKenna:

This letter responds to the request for comments regarding the National Credit Union Administration's (NCUA) Regulatory Review for 2013, under voluntary compliance with Executive Order 12866. CUNA is the nation's largest advocacy organization for our nation's state and federal credit unions, which serve more than 96 million members. Many of these comments draw on current concerns and issues as well as issues we have raised in the past but that remain unresolved.

Executive Summary

Compliance costs resulting from regulatory burdens continue to be a major concern for credit unions. NCUA's annual review of its regulations is an opportunity for the agency to consider and enact meaningful changes to its rules that could decrease the regulatory load under which credit unions operate and the compliance costs they incur. The list below summarizes the key points and recommendations CUNA has addressed in our comment letter.

National Credit Union Share Insurance Fund – Part 745

- NCUA should eliminate Temporary Corporate Credit Union Stabilization Fund Assessments.
- NCUA should stop applying federal rules to state credit unions as part of NCUSIF coverage.
- NCUA should offer insurance to IOLTA accounts on the same basis as the FDIC.
- NCUA should allow insurance on prepaid debit cards when the person giving the card is a member.

Member Business Loans – Part 723

- NCUA should eliminate all requirements that are not specifically stated in the FCU Act, such as construction and development loan limits; the requirement for the personal guarantee of the borrower(s); loan-to-value ratios; appraisal requirements, and others.
- NCUA should continue to champion legislation increasing the cap.
- NCUA should revisit exemptions under "history of primarily making" language in the FCU Act.

Credit Union Service Organizations – Part 712

- NCUA should not advance its proposed CUSO regulation.
- NCUA should minimize CUSO regulatory requirements.
- NCUA should revamp CUSO requirements in the proposed derivatives rule.

Appraisals – Part 722

- NCUA's requirements should not be more stringent than those of bank regulators.
- NCUA should modify appraisal requirements to align with the guidance provided by the December 2010 Interagency Appraisal and Evaluation Guidelines.

Fidelity Bond and Insurance Coverage – Part 713

- CUNA supports a waiver process under which credit unions that no longer qualify for the higher deductible could have more than the 30 days to obtain the required coverage.

Privacy – Part 716

- NCUA should support efforts to eliminate annual privacy notice requirements.

Fair Credit Reporting – Part 717

- NCUA should revise this regulation to reflect that the CFPB now has significant responsibility for this law.
- NCUA should also work with the CFPB to reduce FACT Act burdens.

Incidental Powers – Part 721

- NCUA should allow FCUs to engage in incidental activities authorized for state credit unions in the state or states in which they operate, to the extent such powers are not inconsistent with the FCU Act.
- NCUA should supplement its three-part test for determining an incidental power with the approach used by the Comptroller of the Currency in recent opinion letters, which broadens the test and renders it more flexible.
- NCUA should approve the following:
    - Pre-paid funeral home accounts under the Trustee or Custodial Services category;
    - Management of repossessed residential properties for other credit unions; and
    - A foreign currency investment pilot program.

Central Liquidity Facility – Part 725

- The CLF should be updated.

Accuracy of Advertising and Notice of Insured Status – Part 740

- NCUA should simplify its rules along the lines line of the FDIC requirements.

Administrative – Part 747

- NCUA should vastly improve the examination appeals process to ensure fairness.
- NCUA should improve its appeals process for other administrative issues.

Credit Unions' Regulatory Burdens Must Be Considered Before Any New Rules Are Imposed

The NCUA Board Chairman has made efforts to help mitigate the impact of some needlessly onerous rules. Yet, the capacity for many credit unions to absorb, implement and monitor compliance under additional new rules is nearing its limit and regulatory burdens will endanger the future viability of credit unions if the current pace of rules continues unabated.

In light of that, we urge NCUA to take into full consideration the scope and magnitude of the regulatory requirements from a variety of regulators that credit unions must already meet in all areas of their operations before imposing new requirements. Moreover, we urge NCUA to eliminate rules that are unnecessary, several of which are highlighted in this letter.

National Credit Union Share Insurance Fund – Part 745

CUNA remains concerned regarding assessments from the Temporary Corporate Credit Union Stabilization Fund (TCCUSF). These assessments have been a major cost burden to credit unions. Based on CUNA's analysis, this year's assessment could cover the remaining losses regarding the legacy assets and with the continued improvement in the performance of legacy assets, future assessments are not necessary. For these reasons, we urge NCUA to eliminate further TCCUSF assessments.

In addition, share insurance costs remain a great concern for federally insured credit unions, and CUNA supports the NCUA Board's efforts to minimize those costs. CUNA also strongly urges NCUA to consider lowering the normal operating level of the NCUSIF from 1.3% to 1.2%, as is permissible under the FCU Act, which would help to contain insurance costs while providing sufficient funding for the NCUSIF.

Also regarding share insurance issues, CUNA continues to request that NCUA revisit its stance on insuring Interest on Lawyers Trust Accounts (IOLTAs). These accounts are established by an attorney or a law firm and are comprised of funds that are owned by specific clients of the attorney or firm. The FDIC has held that these accounts are "fiduciary" accounts that are insured based on the client's interest in the account (FDIC Advisory Opinions 92-30 (May 12, 1992) and 98-2 (June 16, 1998).

Currently, NCUA treats IOLTAs as agent accounts, tying insurance coverage to the membership status of the client, rather than the attorney. "…Client funds in an IOLTA account are insured by the NCUSIF only for those clients who are members of the credit union." (NCUA OGC opinion 08-0840, October 8, 2008).

However, if NCUA were to consider IOLTAs as fiduciary accounts as the FDIC does, rather than agency accounts, it could afford insurance coverage for the funds of all the clients, up to the insurance limits, regardless of their membership status, as long as the attorney is a member of the credit union. NCUA treats guardianship, custodian, and conservator accounts as fiduciary accounts and has determined that for these accounts "either the party establishing the account…or the beneficiary" may obtain insurance coverage. NCUA's current interpretation of the FCU Act as it relates to these accounts puts credit unions at a disadvantage because banks can offer more favorable insurance coverage for the clients' funds.

Another issue regarding insurance coverage has surfaced in the context of pooled accounts under an interim final rule issued January 2011 by the Financial Management Services concerning Federal Government Participation in the Automated Clearing House. Under the interim final rule, a credit union may only offer a prepaid debit card to a member for receipt of the member's federal benefit payments if the card meets several conditions, including meeting the requirement

for pass-through Share Insurance by the NCUSIF. The FDIC has already determined that such pooled accounts will receive the same insurance coverage as other deposit accounts. (FDIC GCO No. 8, November 13, 2008). We urge NCUA to act consistently with the FDIC regarding insurance coverage for these accounts.

Member Business Loans – Part 723

Credit unions are an important source of funding for small businesses in their fields of membership. Such activity benefits not only the individual businesses but also the communities in which the businesses are located. Further, credit union business lending helps to strengthen our economy. Contrary to the portrayal of member business lending in comment letters from banking trade associations, credit union member business lending is a safe and prudent endeavor, as 5300 Call Report data indicates.

CUNA strongly supports (H.R. 688) and Senate (S. 968) MBL legislation that would lift the current cap on MBLs to 27.5% of total assets, up from the current 12.25% ceiling. CUNA also supports Representative Pete King's (D-NY) Capital Access for Small Businesses and Jobs Act (H.R. 719). The act would allow well-capitalized credit unions to match a growing deposit base from a growing membership with capital from sources other than retained earnings, which currently is the only type of capital that counts toward the capital ratio.

We also appreciate NCUA's efforts to support increased MBL authority, including repeated statements from the Chairman to encourage greater leeway for credit unions to make more business loans.

On the regulatory side, we think there is also more that can be done to streamline small business lending for credit unions. All of the regulatory requirements for MBLs that are not specifically required by the Federal Credit union Act should be eliminated. These include: the requirement for the personal guarantee of the borrower(s), loan-to-value ratios, construction and development loan limits, appraisal requirements, and other regulatory restrictions.

While these requirements may be waived upon application by the credit union to NCUA, the waiver process has been strongly criticized by a number of credit unions. Rather than subject credit unions to a cumbersome waiver process, we think the agency should eliminate these requirements. At the very least, we urge the agency to develop and implement in all regions a waiver process that will be timely and allow credit unions to obtain much needed flexibility in operating their member business loan programs.

We also strongly urge the agency to revisit exemptions for federal credit unions under the "history of primarily making" language in the FCU Act. (PL 105-219, 1998, HR 1151, Credit Union Membership Access Act.) We brought this issue to the attention of agency staff in previous years. As you know, the FCU Act provides

exceptions from the cap on MBLs of the lesser of 1.75 times the minimum net worth of a well-capitalized credit union or 1.75 times the credit union's actual net worth. One of the exceptions is for credit unions that have a "history of primarily making member business loans" to their members, and Congress delegated to NCUA the authority to define "history of primarily making" MBLs.

In implementing PL 105-219, NCUA defined "history of primarily making" to focus on those credit unions that had MBLs comprising at least 25% of their outstanding loans or MBLs comprised the largest portion of the credit union's loan portfolio. Under NCUA's rule, credit unions could show evidence of a history of primarily making MBLs with call report data from January 1995 to September 1998. The agency has not reviewed the definition of "history of primarily making" since that time.

The FCU Act does not require NCUA to measure a credit union's history of primarily making MBLs from the passage of the Act and would allow the agency to set a reasonable, contemporaneous time period for a credit union to establish a "history" of making MBLs.

This action is supported by the Legislative History to HR 1151. It provides that Congress intended for the NCUA to "interpret the exceptions … [to the cap], to permit worthy projects access to affordable credit union financing." Thus, NCUA is free to reset the definition using a current timeframe that reflects the current lending practices of credit unions.

NCUA's waiver process, personal guarantee, and other requirements remain impediments for credit unions making MBLs. The recently issued Supervisory Letter 13-CU-02 addresses waiver criteria but does not indicate that credit unions should have the flexibility to make MBLs to members without a personal guarantee or should be granted a blanket waiver from the personal guarantee requirement. Credit unions with well-run MBL programs should be given latitude to run their programs without undue constraints from the NCUA.

Credit Union Services Organizations (CUSOs) – Part 712

Because the financial marketplace continues to evolve, CUNA supports authority for credit unions to invest in or lend to CUSOs that may engage in a broad range of activities that will help support the diverse needs of credit unions and their members. Many credit unions rely on CUSOs and these organizations must have flexibility to provide services that will help ensure credit unions are responsive to the needs of their members yet consistent with the Federal Credit Union Act.

As we stated in our comment letter dated September 13, 2011 on NCUA's proposal regarding CUSOs, we believe the proposal was too harsh, and we continue to question the agency's authority to regulate CUSOs directly as the proposal called for. We appreciate that NCUA has delayed further consideration of the proposal,

and we urge NCUA to drop it altogether. The agency already has sufficient authority to address credit union safety and soundness concerns that involve CUSOs. A new broad rule regarding CUSOs should not be driven by problems a few credit unions have encountered with their CUSOs, particularly when the vast majority of CUSOs are operated in a safe and sound manner, providing much needed services to credit unions and their members.

One aspect of NCUA's requirements regarding CUSOs should be reconsidered. That is, the requirement involving financial statement audits. As NCUA has indicated, generally accepted accounting principles (GAAP), specifically Accounting Research Bulletin 51, Consolidated Financial Statements, allow a credit union that is the majority owner of a CUSO to utilize a consolidated audit.

However, NCUA has limited this ability to use a consolidated audit to wholly-owned CUSOs. Under GAAP, subsidiaries generally are fully consolidated if the parent institution holds more than 50% of the subsidiary. This standard is the proper one to apply in the context of these rules and, therefore, we strongly encourage NCUA to permit a consolidated audit for a majority-owned CUSO as defined under GAAP.

Although not specifically part of the CUSO regulation, we urge NCUA to revisit the limitation on the use of CUSOs in the agency's proposed derivatives rule. The proposal differentiates the services offered by wholly-owned CUSOs and CUSOs with shared ownership. This represents a change in the regulation of credit unions involved with CUSOs, and one that is not for the better. We do not think this approach is appropriate and we urge NCUA not to adopt it as part of the derivatives rule.

Appraisals – Part 722

CUNA believes that current NCUA regulations pertaining to appraisal requirements for loan modifications, renewals, and refinancing put credit unions' members at a significant disadvantage, especially when compared to bank customers. Since Title XI of the Financial Institution Reform, Recovery and Enforcement Act (FIRREA) was adopted in 1989, new appraisals for extensions of existing credit have not been required when there are no new monies advanced beyond closing costs or when there have been no obvious and material changes in market conditions. FIRREA allows an evaluation to be used in lieu of an appraisal when only one of these conditions is present. The Interagency Appraisal and Evaluation Guidelines published on December 2, 2010 reaffirmed this.

However, current NCUA regulations require that credit unions meet a stricter standard, thus disadvantaging credit union members. For credit unions, a new appraisal is required in instances where both: 1) no new funds are advanced beyond closing costs, and 2) and there has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy

of the credit union's collateral protection. As a result, credit union members are subjected to added costs and increased processing time.

NCUA also requires credit unions to apply for individual waivers when the LTV is over 80% (115% if a blanket waiver has been issued). Other regulators do not place this burden on their institutions. Instead they only require tracking and reporting of LTV exceptions to the financial institution's Board of Directors, with some limitations on the amount of exceptions as a percentage of Tier 1 capital (Appendix A to Part 365 – Interagency Guidelines for Real Estate Lending Policies). Again credit unions and their members are comparatively disadvantaged.

When the transaction is deemed to be a Troubled Debt Restructuring (TDR), NCUA does allow credit unions to forego NCUA approval for LTV waivers (Supervisory Letter No 13-01 (Evaluating Credit Union Requests for Waivers of Provisions in NCUA Rules and Regulations Part 723, Member Business Loans)). This is positive and improves credit unions' ability to accommodate well-structured modifications. However, NCUA still requires new appraisals for both residential and MBL loans in these cases. Such appraisals are not required for other financial institutions under the same conditions.

CUNA believes that there are some cases in which a new appraisal is necessary. However, the decision about whether a new appraisal should be ordered should be left to the credit union's judgment, as is the case of other financial institutions. The information that updated valuations provide may be valuable, but can usually be adequately addressed through alternative valuation approaches.

NCUA appraisal requirements should align with the guidance provided under the December 2010 *Interagency Appraisal and Evaluation Guidelines*. This change would enable credit unions to provide better service to their members. The ability to address appropriate modifications on a timelier basis will also help prevent potential losses without increasing risks to the credit union or the National Credit Union Share Insurance Fund.

Fidelity Bond and Insurance Coverage – Part 713

Although CUNA did not support the elimination of the Regulatory Flexibility (RegFlex) Program, CUNA generally supported the agency's updates to this part in December 2012 to provide the maximum deductible of up to $1 million for credit unions that are qualified under the new standards. To further improve this rule, CUNA urges NCUA to add a waiver process under which credit unions that no longer qualify for the higher deductible could have more than the 30 days to obtain the required coverage.

Leasing – Part 714

We believe that credit unions should determine for themselves whether obtaining a full assignment is necessary to protect their interests. The Office of the Comptroller of Currency's (OCC) leasing rules do not require full assignment. The OCC rules require a perfected lien and treat the end user lessee as the obligor.

The decision to obtain a full assignment should be based on the credit union's business practices and not on regulatory requirements. Some credit unions may very well decide that a full assignment is the best method to maintain full control of any situation that may arise, especially in the case of default and vehicle disposition, but some credit unions may be justified in deciding this step is unnecessary.

We believe that NCUA should add more flexibility regarding the residual value limits. Leasing transactions differ based on such factors as the length of the lease term and the property involved. The length of the term and the varying rates at which different vehicles depreciate may both affect the decision regarding the appropriate residual value. Credit unions should have discretion to review these factors to make their own determinations, with the assistance of accepted residual leasing guides. Moreover, NCUA should clarify the types of leasing relationships covered by this regulation.

Privacy – Part 716

CUNA continues to believe that the current requirement to deliver privacy notices on an annual basis is unnecessary, especially for credit unions that are not required to provide their members with the right to opt-out of certain information-sharing. Privacy notices should only be required when a member relationship is established and when changes are made to a privacy policy. Eliminating the annual privacy notice requirement, except in the event any changes have been made to the institution's privacy policy, will help to relieve the regulatory burden on financial institutions. This is particularly true for small institutions for which mailing an annual privacy notice is often costly, posing a significant regulatory burden.

Therefore, CUNA supports the Eliminate Privacy Notice Confusion Act (H.R. 749) that Representatives Blaine Luetkemeyer (R-MO) and Brad Sherman (D-CA) have introduced. Eliminating these superfluous annual privacy notices would make the needed privacy notifications more meaningful for consumers while simultaneously reducing the regulatory burden on credit unions. Such relief would afford credit unions added time and resources to spend providing more important financial services to their members. CUNA strongly urges NCUA to advocate for this common sense regulatory relief measure.

Fair Credit Reporting – Part 717

The Dodd-Frank Act transferred FACT Act authority to the CFPB. The CFPB issued Regulation V, which substantially duplicates most of the requirements found in part 717. The Dodd-Frank Act, however, did not transfer all rulemaking authority under the Fair Credit Reporting Act. NCUA retains the authority to promulgate rules on: the disposal of consumer information, ID theft red flags, and rules on the duties of card issuers regarding changes of address. NCUA needs to amend part 717 so it properly reflects the NCUA's current regulatory authority and not pre Dodd-Frank Act regulatory authority.

The FACT Act is particularly burdensome and most credit unions are not in a position to readily absorb the costs of additional FACT Act rules, such as training or software. We believe additional emphasis must be placed on reducing the cumulative burdens associated with the FACT Act rules. NCUA and the other federal financial institution regulators, under the auspices of the CFPB, should conduct a specific review of the FACT Act rules as soon as possible.

Incidental Powers – Part 721

As we have in the past, CUNA urges NCUA to take steps to expand FCUs' authority to engage in incidental powers. Such steps should include:

- Supplementing NCUA's three-part test for determining an incidental power with the approach used by the OCC in their opinion letters, which broadens the test and renders it more flexible; and
- Allowing FCUs to engage in incidental activities authorized for state credit unions in the state or states in which they operate, to the extent such powers are not inconsistent with the FCU Act.

CUNA also recommends that NCUA approve the following additional incidental activities, which are:

- Allowing FCUs to accept pre-paid funeral home accounts under the Trustee or Custodial Services category;
- Permitting FCUs to manage repossessed residential properties for other credit unions; and
- Authorizing a foreign currency investment pilot program.

National Credit Union Central Liquidity Facility (CLF) – Part 725

The financial crisis has shown that the CLF played an essential role in facilitating the ability of the NCUSIF to borrow from the federal government during times of economic stress. As such, CUNA is looking at ways the CLF could be modernized to meet potential future system liquidity needs and will be sharing that review with NCUA.

CUNA also firmly backs Representative Gary Miller's (R-CA) "Regulatory Relief for Credit Unions Act" (H.R. 2572). The bill would, among other things, direct the Government Accountability Office to study the need for improvements and modernizations to the CLF. It would also require that the NCUA study the CLF and make legislative recommendations for its modernization. CUNA believes that with modernization, the CLF can play a very important role by meeting the potential future system liquidity needs of the industry.

Accuracy of Advertising and Notice of Insured Status – Part 740

A number of credit unions are advertising via mobile banking/text messaging and have expressed to us concerns with the requirement under section 740.5 that all advertisements include NCUA's official statement, "This credit union is federally insured by the National Credit Union Administration," or the abbreviated statement, "Federally insured by NCUA."

Financial institutions insured by the FDIC may comply with the FDIC's advertising statement requirement by simply displaying "Member FDIC." In an era of communication via condensed messaging (e.g., Twitter), each character in a text message or on a mobile website must be chosen very carefully. In that connection, we ask NCUA to consider revising Part 740 to permit credit unions to use a further abbreviated advertising statement as an option for complying with the agency's Accuracy of Advertising and Notice of Insured Status rule.

Administrative Actions – Part 747

CUNA continues to encourage strong safety and soundness regulation, which is essential to protect credit union members and to minimize NCUSIF costs for all credit unions.

Additionally, we urge the Office of General Counsel to work closely with your field and examination staff to ensure all administrative actions are handled appropriately, fully reflecting safety and soundness concerns as well as the rights of credit union officials. CUNA remains concerned with the appeals process for exam findings and other actions, including appealing waiver decisions.

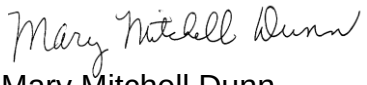
The appeals process is at best inconsistent and sometimes seemingly non-existent. CUNA wants to work with NCUA to ensure that a robust appeals process is put in place so that credit unions are assured that they have an avenue to seek relief when they believe the agency has rendered an unjust decision that negatively impacts their credit union.

Process for Identifying Rules for Review and Soliciting Comments

We continue to believe the process for seeking comments on regulations that are included in the agency's Regulatory Review could be improved. For example, some of the rules included may already be the subject of proposed changes or recent modifications. It is confusing for those rules to be included on the regulatory review list.

Thank you for the opportunity to respond to NCUA's review. If you have any questions about our letter, please do not hesitate to give me a call at (202) 508-6736.

Sincerely,



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