Credit Union National Association
CUNA

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American Association of Credit Union Leagues

January 7, 2022

The Honorable Todd M. Harper, Chairman
The Honorable Kyle S. Hauptman, Vice Chairman
The Honorable Rodney E. Hood, Board Member
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

Re: PCA Relief and Regulatory Review

Dear Chairman Harper, Vice Chairman Hauptman, and Board Member Hood:

On behalf of America's credit unions, we are writing to the Board of the National Credit Union Administration (NCUA) to encourage you to provide additional relief to help credit unions facing prompt corrective action (PCA) challenges. The Credit Union National Association (CUNA) and our league partners represent America's credit unions and their more than 120 million members from all 50 states and the District of Columbia.

Interim Final Rules Providing PCA Relief

We appreciate the current interim final rule[1] (IFR) that extends relief provided by a 2020 IFR[2] pertaining to PCA. Specifically, the IFRs:

- Permit the NCUA Board to issue an order to temporarily waive the earnings retention requirement for any credit union classified as adequately capitalized; and
- Permit credit unions to submit simplified net worth restoration plans if the reduction in capital was caused by share growth resulting from a temporary condition due to the pandemic.

The relief provided by the current IFR is temporary, expiring March 31, 2022.

We appreciate and agree with the recent remarks by Board Member Hood calling for the agency to extend the PCA flexibility provided by the current IFR.[3] We believe such relief should remain in effect until the end of the pandemic as determined by the Centers for Disease Control (CDC) or other federal entity authorized to make such a determination.

[1] 86 Fed. Reg. 20,258 (Apr. 19, 2021).
[2] 85 Fed. Reg. 31,952 (May 28, 2020).
[3] Comments by Board Member Hood during November 2021 Open Board Meeting (Nov. 18, 2021), *available at* https://www.ncua.gov/exit-disclaimer?url=https%3A%2F%2Fevent.on24.com%2Fwcc%2Fr%2F3520175%2F43396EBD491F89FCFBDF33BD399FD1E4.

The NCUA adopted the current IFR, as well as its predecessor, to deal with an increase in share growth resulting from government stimulus payments. The reasons these IFRs were adopted in 2020 and 2021 are still as relevant today.

Continuing the trend from 2020, in 2021, over 91% of credit unions reported asset increases; the median asset growth for all credit unions was 7.6% through the first three quarters, on pace for close to 10% by year-end.[4] Roughly 74% of credit unions have a lower net worth ratio in September 2021 than in December 2020, with a median decline of 35 basis points. Between year-end 2020 and September 2021, the median net worth ratio of all credit unions dropped from 10.9% to 10.6%. Nevertheless, 99.1% of credit union assets remain in credit unions with net worth above 7% as of September 2021. This suggests that additional PCA flexibility on the part of the NCUA will not expose the National Credit Union Share Insurance Fund (NCUSIF) to significant additional stress.

In addition, like the 2020 IFR that was set to expire at year-end 2020, the March 31, 2022 sunset date of the current IFR appears to be an arbitrary, convenient date, as there is no indication that the pandemic-related economic challenges will cease by then. Thus, as requested above, we urge the Board to continue the PCA relief provided by the current IFR until the end of the pandemic as determined by the CDC or other federal entity authorized to make such a determination.

Additional PCA Relief

We reiterate the request included in a letter to the NCUA sent jointly by CUNA and the state credit union leagues last March.[5] Specifically, we continue to urge the agency to provide additional PCA relief by temporarily excluding certain assets from the net worth ratio. Credit unions are increasingly investing funds—which have significantly increased due to an influx of consumer deposits—in zero- and low-risk assets, such as shorter-term Treasury securities. These deposits and resulting investments, however, have caused a decrease in the net worth ratio for many credit unions. Therefore, we ask the NCUA to follow the lead of other federal banking regulators and exclude such investments, as well as 10% of deposits held at the Federal Reserve, from the net worth ratio calculation.

The NCUA has broad authority in defining "total assets," which comprises the denominator of the net worth ratio. The NCUA Board acknowledged this authority in a 2020 IFR that amended section 702.2(k) to allow credit unions to exclude from "total assets" loans pledged as collateral for Paycheck Protection Program (PPP) loans.[6]

We believe it is equally important to amend the definition of "total assets" to exclude certain zero- and low-risk assets. Since we continue to find ourselves in a unique and unprecedented situation given the ongoing pandemic, it is imperative that the agency provide additional flexibility regarding credit union capital. Thus, we ask the NCUA to explore ways to reduce the denominator of the net worth ratio—including by excluding certain assets from the calculation—given that savings growth is a result of the current environment as opposed to something credit

[4] NCUA Quarterly Credit Union Data Summary, 2021 Q3, *available at* https://www.ncua.gov/files/publications/analysis/quarterly-data-summary-2021-Q3.pdf.
[5] CUNA/League Letter to NCUA Board re PCA Relief (Mar. 19, 2021), *available at* https://www.cuna.org/content/dam/cuna/advocacy/letters-and-testimonials/2021/031921_CUNA-League%20Letter%20to%20NCUA%20Board.pdf.
[6] 85 Fed. Reg. 23,212, 23,214 (Apr. 27, 2020).

unions are actively encouraging. Credit unions are not in the business of turning away members or their deposits, but this is a possible though unfortunate alternative that could stem declining net worth ratios.

Statutory Changes to Provide NCUA Flexibility to Work with Credit Unions Facing Pandemic-Induced PCA Requirements

We also support statutory changes to the Federal Credit Union (FCU) Act to provide the NCUA Board with the tools it needs to aid credit unions regarding PCA and other capital issues. The rigid requirements and prohibitions regarding PCA in section 1790d of the Act severely hamper the agency's ability to aid credit unions.[7]

As the agency is keenly aware, credit union capital requirements are different than bank requirements in several respects, including that only retained earnings count as Tier I capital for credit unions and thresholds for credit union capital levels are hardwired into statute. These limitations restrict the NCUA's ability to provide accommodations to otherwise healthy credit unions impacted by natural disaster, pandemic, and other crises.

Thus, in July 2020, as Congress considered additional pandemic recovery legislation, we encouraged[8] the Senate Banking Committee to include language to provide temporary flexibility to the NCUA to offer forbearance from PCA for credit unions impacted by the pandemic that were otherwise healthy prior to the onset of the crisis. While credit unions entered the pandemic extremely well-capitalized, the impact of the ensuing economic crisis has and will put stress on capital and, given credit unions' limited ability to raise capital, the regulator could use additional tools.

While such language ultimately was not adopted, we continue to believe it is critical that the agency be provided with additional authority to adjust capital requirements for credit unions impacted by the current crisis and beyond.

More recently, in a December 2021 letter to the House Committee on Financial Services, we again called on lawmakers to provide the NCUA with much-needed flexibility. Specifically, as Congress considers additional pandemic recovery legislation, we encourage members to include language that allows the NCUA, on a case-by-case basis, to provide forbearance from PCA for credit unions impacted by the pandemic and which were otherwise healthy prior to the onset of the crisis.[9]

We urge the NCUA to engage Congress to pursue changes to section 1790d of the FCU Act to provide the Board with additional tools to aid credit unions that encounter PCA-related difficulties, where such tools are essentially non-existent.

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[7] 12 U.S.C. § 1790d.
[8] CUNA Letter to Senate Banking Committee re Capital Flexibility (July 24, 2020), *available at* https://www.cuna.org/content/dam/cuna/advocacy/removing-barriers-blog/2021/documents/040821_d_PCA%20Flexibility%20-%20CUNA%20-%2020200724%20(2).pdf
[9] CUNA Letter to House Committee on Financial Services (Dec. 1, 2021), *available at* https://www.cuna.org/content/dam/cuna/advocacy/letters-and-testimonials/2021/120121_HFSC_CARES.pdf.

New Regulatory Reform Task Force

In 2017, under the NCUA's Office of General Counsel, the NCUA established a Regulatory Reform Task Force that conducted a thorough review of the agency's rules and regulations. The Task Force ultimately developed two reports recommending the amendment or repeal of regulatory requirements that the Task Force believed to be outdated, ineffective, or excessively burdensome.[10] Based on those recommendations, the Board conducted numerous rulemakings to implement changes aimed at regulatory relief.

We strongly supported the work of the agency in conducting its review and subsequent implementation of changes recommended by the Task Force. Such a comprehensive review and detailed recommendations proved extremely effective in providing the Board with exactly what it needed to pursue timely improvements to its rules and regulations.

While it was a 2017 Executive Order that prompted the NCUA to develop its Regulatory Reform Task Force, the agency did so voluntarily, as the Executive Order did not apply to independent agencies.[11] We believe the NCUA should again proactively take the initiative to comprehensively review its rules and regulations. Specifically, we urge the NCUA to establish a new Regulatory Reform Task Force to review the agency's regulations and recommend changes to eliminate outdated, unnecessary, or unduly burdensome requirements. Unlike its predecessor, the new task force should include not only NCUA staff, but also representatives from individual credit unions as well as credit union trade associations. Such a diverse makeup will ensure the review includes the perspectives of all impacted parties, rather than that solely of the federal regulator. Considering the unprecedented operational, economic, and consumer changes resulting from the COVID-19 pandemic, we believe the agency should pursue this new Task Force and regulatory review in early 2022.

Conclusion

Once again, on behalf of America's credit unions and their 120 million members, we thank you for your leadership during these difficult times and look forward to an extension of the PCA relief provided by the current IFR. Further, we are excited to work with you to establish a new Regulatory Reform Task Force.

Sincerely,

Credit Union National Association

American Association of Credit Union Leagues

Alaska Credit Union League
Association of Vermont Credit Unions
California and Nevada Credit Union Leagues
Carolinas Credit Union League
Cooperative Credit Union Association
Cornerstone Credit Union League
Credit Union Association of New Mexico
Dakota Credit Union Association

CrossState Credit Union Association
Hawaii Credit Union League
Heartland Credit Union Association
Illinois Credit Union System
Indiana Credit Union League
Iowa Credit Union League
Kentucky Credit Union League
League of Southeastern Credit Unions

[10] 83 Fed. Reg. 65,926 (Dec. 21, 2018).
[11] Enforcing the Regulatory Reform Agenda, Executive Order 13777, 82 Fed. Reg. 12,285 (Mar. 1, 2017).

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Maine Credit Union League
Maryland & DC Credit Union Association
Michigan Credit Union League
Minnesota Credit Union Network
Mississippi Credit Union Association
Montana's Credit Unions
Mountain West Credit Union Association
Nebraska Credit Union League and Affiliates
New York Credit Union Association
Northwest Credit Union Association
Ohio Credit Union League
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