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National Association of Federally-Insured Credit Unions

May 21, 2021

Melane Conyers-Ausbrooks
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

RE: Asset Thresholds (RIN: 3133-AF36)

Dear Ms. Conyers-Ausbrooks:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the interim final rule (IFR) issued by the National Credit Union Administration (NCUA) to temporarily amend its regulations in Part 702, Subpart E (Subpart E) regarding capital planning and stress testing requirements for covered credit unions. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 124 million consumers with personal and small business financial service products. NAFCU and its member credit unions appreciate the meaningful relief offered by this IFR for federally-insured credit unions (FICUs) that recently crossed the \$10 billion threshold and other thresholds in Subpart E in measuring total assets for purposes of the capital planning and stress testing requirements through 2021 and 2022.

NAFCU encourages the NCUA to provide broader relief regarding the timeframe for calculating credit union assets to assist those credit unions that have seen remarkable share growth during the pandemic and are nearing the threshold for compliance with Subpart E's requirements but have not yet passed that threshold. Additionally, NAFCU encourages the NCUA to clarify its reservation of authority to subject certain credit unions to the enhanced regulatory requirements in Subpart E. The NCUA should also pursue enhanced coordination with the Consumer Financial Protection Bureau (CFPB) regarding examinations generally and asset threshold measurement for purposes of supervision and examinations.

General Comments

Throughout the COVID-19 pandemic, credit unions have been at the forefront of developing flexible loan modifications and other accommodations for furloughed and terminated borrowers. At the same time, most FICUs have faced significant, unplanned upswings in share growth propelled by the twin drivers of materially increased member savings rates and unprecedented federal stimulus policy. As stated in NAFCU's previous letter, dated January 25, 2021, the "pandemic has largely frustrated [credit unions'] efforts to reasonably predict how quickly they will grow and can plan to meet new standards or expectations."

The November 2020 IFR issued by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency

highlighted the need for similar relief in the credit union industry. Therefore, NAFCU generally supports this IFR and appreciates the NCUA's swift action to promulgate this much needed relief. For those FICUs that recently crossed the \$10 billion asset threshold or the \$15 billion and \$20 billion thresholds, the IFR represents an opportunity to concentrate more fully on member service during this critical period while thoughtfully executing long-term growth strategies and preparing for enhanced regulatory requirements.

Despite the IFR's issuance, new and increased regulatory requirements and costs are still threatening to arrive years sooner than previously anticipated for a number of FICUs. The IFR's applicable period is too limited because many credit unions are approaching the \$10 billion threshold but will not be able to avail themselves of the relief offered in this IFR. The disparity in flexibility afforded to those credit unions that have recently crossed and those that may soon cross the \$10 billion asset threshold justifies another assessment for potential further relief.

NAFCU also reiterates the need for longer-term relief in the form of a more permanent change to the NCUA's present mode of calculating FICUs' total assets when determining the applicability of Subpart E's capital planning and stress testing regulations. As the NCUA acknowledged in its proposal to transition to the Current Expected Credit Losses standard, the *Federal Credit Union Act* does not define the term "total assets" and defers interpretation to the "regulatory discretion of the [NCUA] Board." These types of assets pose little or no risk to credit unions' balance sheets, and the NCUA should accordingly evaluate how discounting cash and cash equivalent assets on deposit when calculating FICUs' total assets may provide deeper support for the credit union industry's functionality and competitive posture without encouraging risk to the National Credit Union Share Insurance Fund (NCUSIF).

Broader Relief for Large Credit Unions

NAFCU supports the use of March 31, 2020 as the benchmark for determining a FICU's assets for the applicability of Subpart E's capital planning and stress testing requirements and whether a credit union is classified as a Tier I, II or III covered credit union. Permitting impacted FICUs to use March 31, 2020 asset data in this way is a logical extension of the NCUA's prior pandemic-related actions to support credit union industry functionality as FICUs work to maintain the flow of credit to member households and communities. This temporary regulatory relief also facilitates safe and effective FICU operation without material risk to the NCUSIF. Moreover, FICUs whose total assets retreat below the \$10 billion threshold as the U.S. and world economies emerge from the pandemic's stresses will not incur unnecessary regulatory burden in the interim. Other FICUs may take the opportunity afforded through this IFR to thoughtfully reduce total assets below the \$10 billion threshold by divesting less impactful and less efficient business lines, thereby achieving more time to prepare for supervision by the NCUA's Office of National Examinations and Supervision (ONES) and the CFPB.

However, credit unions spend many years planning for the transition to ONES supervision and CFPB examinations. Due to the recent, unprecedented share growth, many credit unions' transition timelines suddenly condensed significantly; in some instances, credit unions' anticipated timeframes for crossing the \$10 billion threshold were cut by three to seven years, depending on

their expected growth rate. As substantiated in the IFR, FICUs with total assets just below \$10 billion experienced mean balance sheet growth of nearly 14 percent in 2020. This sudden asset growth, compounded by the time spent assisting members during the pandemic, which was every credit union's number one priority, means that credit unions cannot recoup the valuable preparation time they lost. Given the significant complexities a FICU encounters as it crosses the \$10 billion threshold, unforeseen share growth in the second half of 2020 and first quarter of 2021 disrupted the most prudent compliance costs forecasts and left impacted FICUs exposed to severe compliance budget shortfalls in both 2021 and 2022.

In the IFR, the NCUA discusses the burdensome transition costs to comply with the new capital planning and stress testing requirements for credit unions that recently crossed the \$10 billion threshold as they could not have accounted for this in their 2021 strategic financial plans and budgets. Although NAFCU greatly appreciates this recognition of the compliance burden for credit unions that absent this rule would be newly classified as Tier I covered credit unions, the NCUA can and should do more to provide a longer, less burdensome transition for those credit unions that will soon cross the \$10 billion threshold. Many of those institutions are suddenly forced to hire consultants to help prepare for the transition to ONES and CFPB supervision.

The relief afforded by this IFR is very helpful for the handful of credit unions that would qualify under the rule as written, but the NCUA should provide more relief for larger credit unions as they scramble to prepare for enhanced supervisory requirements. NAFCU urges the NCUA to consider offering a transition period for those credit unions that have not yet crossed the \$10 billion threshold but are quickly approaching and will likely cross in the next two years. Growth at those credit unions has been due to the same share growth that precipitated the need for this IFR. Thus, those credit unions should not be penalized for not growing fast enough or within the timeframe prescribed in this IFR by receiving significantly less flexibility in terms of compliance with capital planning and stress testing requirements under Subpart E.

Reservation of Authority

NAFCU supports the NCUA reserving authority to require certain FICUs crossing the \$10 billion threshold due predominantly to pre-planned mergers or purchase and assumption transactions to abide by Subpart E's capital planning and stress testing regulations. Although significant unplanned share growth alone does not increase a FICU's long-term risk profile, even modest mergers and similar institution-combining transactions and thoughtful expansion into new financial services may raise a FICU's risk profile both in the short- and long-term. NAFCU generally supports this reservation of authority to subject certain credit unions that experience planned asset growth to enhanced capital planning and stress testing requirements to ensure they remain adequately funded and do not pose unnecessary risks to the NCUSIF.

However, NAFCU encourages the NCUA to provide greater detail as to how it is evaluating the relevant factors listed in the IFR, specifically asset growth as a result of a merger or purchase and assumption transaction. Since the passage of the *Dodd-Frank Wall Street Reform and Consumer Protection Act*, the credit union industry has seen drastic consolidation, resulting in a reduction of at least 2,300 credit unions, at least partly due to increased regulatory burden. The recent economic

challenges caused by the pandemic may lead to additional consolidation in the credit union industry. Should the NCUA provide the additional flexibility, as requested above, for those credit unions that will soon cross the \$10 billion threshold partly due to a merger with a credit union or purchase and assumption transaction with a bank or other financial institution, NAFCU requests they still receive the type of flexibility contemplated in this IFR.

The NCUA should, at least, clarify the extent to which share growth as a result of a merger or purchase and assumption transaction will subject a credit union to the requirements in Subpart E. In other words, how does the NCUA define the primary cause of share growth at a credit union for purposes of this IFR? For example, if a credit union recently acquired the deposits of another financial institution but such deposits did not account for a majority of the credit union's share growth during the preceding year, would the NCUA still consider subjecting that credit union to enhanced capital planning and stress testing requirements under this reservation of authority? Additional clarity in this area would help credit unions impacted by this IFR or any broader relief effort to adjust and plan accordingly for the appropriate level of regulatory requirements.

Enhanced Coordination with the CFPB

NAFCU recognizes the NCUA's efforts to coordinate with the CFPB on examinations, including recently signing a Memorandum of Understanding (MOU) to "reduce redundancy and unnecessary overlap."¹ NAFCU is hopeful that the goals of this MOU will be carried out in all future exam cycles so that credit unions are not overburdened by weeks-long, consecutive exams from the NCUA and CFPB. This is especially important for credit unions newly subject to ONES and CFPB supervision. The NCUA should explore with the CFPB how to better coordinate efforts to eliminate expensive, unnecessarily duplicative compliance requirements.

Relatedly, to promote even greater coordination, NAFCU again encourages the NCUA to work with the CFPB to establish a uniform asset threshold measurement for credit unions crossing the \$10 billion threshold. Adopting a longer, multi-quarter asset threshold measurement, like that presently used by the CFPB, would better address inaccuracy risks posed by rapid but potentially impermanent share growth. Under a longer, multi-quarter asset threshold measurement, credit unions could more confidently and precisely tailor long-term growth strategies and plan for attendant new and increased regulatory oversight and costs. The NCUA should adopt a similar approach and calculate total assets as the average of the covered credit union's total assets as reported on its Call Reports for the preceding four quarters.

Conclusion

NAFCU appreciates the opportunity to comment on this IFR. NAFCU generally supports the intent of the rule and the temporary relief from Subpart E's capital planning and stress testing regulations but encourages the NCUA to adopt broader relief for credit unions that will soon cross the \$10 billion threshold but do not qualify for the flexibility provided in this IFR. The NCUA should also

¹ NCUA and CFPB Sign Memorandum of Understanding (Jan. 14, 2021), <https://www.ncua.gov/newsroom/press-release/2021/ncua-and-cfpb-sign-memorandum-understanding>.

National Credit Union Administration

May 21, 2021

Page 5 of 5

provide further detail regarding the scope of its reservation of authority to subject certain credit unions to enhanced capital planning and stress testing requirements. Finally, the NCUA should continue to improve its coordination with the CFPB regarding examinations and consider adopting a similar calculation of total assets to include the preceding four quarters. If you have any questions or concerns, please do not hesitate to contact me at akossachev@nafcu.org or 703-842-2212 or, Dale Baker, NAFCU's Regulatory Affairs Counsel, at dbaker@nafcu.org or 703-842-2203.

Sincerely,

A handwritten signature in black ink, appearing to read "Ann C. Kossachev". The signature is fluid and cursive, with the first name "Ann" and last name "Kossachev" clearly distinguishable.

Ann C. Kossachev

Director of Regulatory Affairs