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National Association of Federally-Insured Credit Unions

May 2, 2022

Melane Conyers-Ausbrooks
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428

Re: Asset Threshold for Determining the Appropriate Supervisory Office (RIN: 3133-AF41)

Dear Ms. Conyers-Ausbrooks:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the proposed rule issued by the National Credit Union Administration (NCUA) regarding the asset threshold used for determining the appropriate supervisory agency for larger credit unions. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 130 million consumers with personal and small business financial service products.

NAFCU supports efforts to conserve the NCUA's existing supervisory resources by tailoring the threshold for specialized supervision by the Office of National Examinations and Supervision (ONES) according to risk-based criteria. Increasing the asset threshold used for determining whether a covered credit union will be supervised by ONES is appropriate given the industry's extraordinary, pandemic-related asset growth over the past two years and low levels of fundamental risk.

NAFCU recommends increasing the proposed Tier I threshold from $15 billion, as proposed, to $20 billion to better reflect growth of insured shares. NAFCU agrees that the proposed framework of grandfathering existing ONES credit unions is appropriate but requests that the NCUA explicitly exclude non-grandfathered Tier I credit unions from the proposed definition of "ONES credit union" for the sake of clarity. Lastly, NAFCU encourages the NCUA to ensure that appropriate coordination exists between the Regional Offices and the Consumer Financial Protection Bureau (CFPB) to prevent instances of examination overlap or confusion resulting from the application of differing standards and expectations.

General Comments

NAFCU supports increasing the asset threshold used for determining whether a covered credit union will be subject to ONES supervision. As the NCUA acknowledges, it is reasonable to expect at least nine new federally insured credit unions (FICUs) will meet or exceed the $10 billion threshold as of March 31, 2022, and would become subject to ONES supervision beginning January 1, 2023. Absent an adjustment to the supervisory asset threshold, the influx of nine new

credit unions would strain ONES' ability to effectively carry out its mission of conducting specialized examinations for the industry's largest credit unions.

The NCUA's Regional Offices are capable of effectively supervising larger FICUs and NAFCU expects the proposed restructuring of supervisory responsibilities will not create any additional risk to the Share Insurance Fund (SIF). NAFCU recommends increasing the supervisory asset threshold to a higher threshold of $20 billion to better align the scope of ONES supervision with the risk footprint of the industry's largest credit unions. As long as industry assets continue to grow, it is only a matter of time before the number of ONES-supervised credit unions increases. It is even possible that the NCUA will encounter the same abrupt influx of nine credit unions that are on the cusp of ONES supervision today, only several years later—an event that could even prompt reconsideration of the same questions raised in the current notice: how best to allocate ONES resources and what amount of relative risk necessitates specialized supervision.

NAFCU encourages the NCUA to consider a longer-term strategy for managing the scope of ONES supervision. Adopting a larger Tier I asset threshold in the interim would be one way for the agency to make the most of existing resources while undertaking a more comprehensive analysis of how best to allocate supervisory resources as industry assets continue to grow. It may be inevitable that the NCUA will need to revisit the asset threshold for ONES supervision periodically, but the proposed Tier I threshold does not adequately reflect changes in relative risk resulting from current share growth.

Adjusting the Supervisory Asset Threshold

The notice explains that the proposed adjustment to the asset threshold for ONES supervision was calibrated by applying "a historical loss factor of 30 percent on a FICU failure to the NCUSIF's equity."[1] The NCUA's conclusion from this analysis is that a $15 billion credit union presents "the same relative risk at the end of 2020 as an approximately $10 billion FICU did at the beginning of 2013 when covered credit unions were first transitioned to ONES supervision."[2] However, NAFCU recommends establishing a $20 billion asset threshold to account for the growth of the SIF last year.

From January 1, 2013 through December 13, 2021 the insured share base grew from $839 million to over $1.6 billion, a 95 percent increase. Over that same period, the equity in the fund excluding unrealized gains and losses increased from $10.5 billion to $20.6 billion, also a 95 percent increase. Assuming a constant loss rate, this suggests that a $10 billion credit union would have posed the same risk to the SIF in January 2013 as a $20 billion credit union would today.

If the NCUA ultimately declines to adopt a higher asset threshold, NAFCU asks that the agency present in a final rule a more complete description of the agency's risk assumptions, including a description of whether the historical loss rate has changed significantly over time. The NCUA should also explain why it chose a highly conservative threshold when accounting for relative risk

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[1] *See* NCUA, Asset Threshold for Determining the Appropriate Supervisory Office, 87 Fed. Reg. 119966, 11988 (March 3, 2022).
[2] *Id*.

to the SIF. NAFCU's analysis of the period from January 1, 2013 through December 13, 2020—the NCUA's measurement timeframe—indicates that the SIF grew 75 percent over that period, which would correspond with an asset threshold of $17.5 billion. Even outside of the current rulemaking, a more transparent overview of the NCUA's analytical assumptions would help inform potential reconsideration of the other covered credit union tiers in Part 702 and provide valuable historical context if the asset threshold is revisited in the future.

ONES-Specific Data Collection Should be Moderated for Tier I Credit Unions

The proposal does not exempt covered credit unions from enhanced data collection under 12 CFR 702.306(d) that is used to generate quantitative assessments for covered credit unions. NAFCU requests the NCUA moderate data collection for Tier I credit unions to reflect practical limitations faced by the Regional Offices, including limits on their ability to manage and contextualize specialized data collected by ONES.

As noted previously, a compelling rationale for adjusting the asset threshold for ONES supervision is to conserve the NCUA's examination resources. However, by preserving the current regime of specialized data collection for all covered credit unions—including those that may be supervised by the Regions—ONES' limited administrative resources will be spread thin as a matter of necessity.

NAFCU has learned that covered credit union data collection will continue to be administered exclusively by ONES through its Division of Quantitative Analysis (DQA). As an initial matter, the NCUA should clarify that ONES will be managing the data collection process for Tier I credit unions and that it will be the point of contact for resolving any data collection issues. NAFCU also recommends limiting the number of specialized data collections applicable to Tier I credit unions.

Historically, one of the more challenging aspects of transitioning to ONES supervision has been the process of developing an appropriate data governance framework to support high quality data submissions. Investments to support data governance are often expensive. It is not uncommon for credit unions entering ONES supervision to hire new full-time employees to manage ONES-required data collections—a business function that typically necessitates a higher budgetary outlay given the technical skillsets involved.

The NCUA should be concerned about imposing excessive data collection costs on credit unions when the scope of Tier I exams carried out by the Regions is likely to be more generalized. Furthermore, if new Tier I credit unions encounter difficulties submitting data to ONES while under formal supervision by their Regional Office, it is unclear whether ONES will have the capacity to address data submission issues or provide the same close support and assistance that is given to covered credit unions today. A related limitation could arise in the context of supervising Tier I credit unions' data governance. Will the Regions examine policies and procedures related to data governance or will ONES? As the functional owner of covered credit union data collections, ONES staff should oversee this aspect of Tier I credit union supervision—yet doing so would likely result in the type of resource strain the proposal hopes to avoid. While it may be possible to shift some data collection responsibilities to the Regions, this would necessitate additional training

and budgetary resources, which NAFCU believes could be better allocated to other initiatives such as improving examination consistency.

NAFCU recommends aligning data collection requirements to reflect the differing supervisory capabilities of ONES and the Regional Offices. The NCUA should also clarify what data collections are necessary to support supervision of Tier I capital planning at a baseline level versus those that support more specialized supervisory functions or requirements that are unique to ONES and Tier II and III credit unions. If the NCUA's Regional Offices are not expected to leverage ONES data to perform specialized exams, or even troubleshoot data submission issues, then collection of additional data should be avoided.

Separately, the NCUA should ensure that regional examiners receive proper training to oversee Tier I credit unions' capital plans. Capital planning is meant to be an iterative process that improves over time.[3] Appropriate examiner feedback to validate or reasonably challenge internal governance and risk assumptions plays a significant part in terms of supporting the iterative nature of capital planning. Accordingly, NAFCU encourages ONES to periodically assess the consistency of capital planning supervision conducted by Regional Offices to ensure Tier I capital planning practices are aligned with ONES' expectations. This will ensure that covered credit unions are not confronted with radically different standards when they advance to higher tiers of capital planning and stress testing supervision.

The NCUA Should Adjust Capital Planning and Stress Testing Thresholds to Match Adjustments to the Tier I Supervisory Threshold

The NCUA should adjust the Tier II and Tier III covered credit union thresholds to proportionally match any Tier I adjustment. Separately, the NCUA should explore the possibility of realigning the covered credit union definition to reflect differences in relative risk today versus when the covered credit union definition in Part 702 was first developed.

As compared to banks, covered credit unions encounter formal stress testing requirements at a much smaller size. At the time the NCUA's 2018 Capital Planning and Stress Testing Rule was approved, the Dodd-Frank Wall-Street Reform and Consumer Protection Act required banks with total consolidated assets of more than $10 billion to conduct periodic company-run stress tests.[4] Shortly after the 2018 rule was published, Section 401 of the Economic Growth, Regulatory Relief and Consumer Protection Act increased the threshold for bank-run stress tests to $250 billion in total assets. Although the NCUA noted in its 2018 Rule that it did not consider "the risks that banks pose to the [Deposit Insurance Fund] as analogous to the risks that covered credit unions pose to the NCUSIF," it held open the possibility of revisiting the capital planning and stress testing tiers for covered credit unions in the future.[5] NAFCU believes that several years of

[3] *See* NCUA, Principles of Capital Policy and Capital Planning (2014), available at https://www.ncua.gov/files/publications/regulations/principles-of-capital-policy-and-planning.pdf.
[4] *See* NCUA, Capital Planning and Supervisory Stress Testing, 83 Fed. Reg. 17901, 17902 (April 25, 2018).
[5] *See* 83 Fed. Reg. 17902 ("[the NCUA] does not believe that *at this time* the size thresholds for banks are appropriate for covered credit unions.") (emphasis added).

supervisory data regarding covered credit union capital planning, including through a recent period of extreme stress, permits informed reconsideration of the tiers and their associated thresholds.

If the NCUA were to increase the Tier I threshold to $20 billion, as NAFCU proposes, then Tiers II and III should also increase by $10 billion respectively. The NCUA appears to acknowledge in its proposal a principle of proportionality; that is, a recognition that the threshold for instituting enhanced supervision should scale to account for industry growth and changes in relative risk. In other words, if the risk posed to the SIF by a $10 billion credit union today is less than what the same sized credit union would have posed when ONES was created, then the target for ONES supervision should shift upwards. Matching the scope of ONES supervision to the relative risk footprint of large credit unions as assessed in 2013 ensures that the number of credit unions under ONES does not continue to expand indefinitely to the detriment of ONES' current mission or budgetary prerogatives.

Under the same principle of proportionality, the NCUA should consider corresponding adjustments to the covered credit union definition, since the unique supervisory requirements for covered credit unions were initially targeted at a narrow subset of institutions that could present the greatest risk to the SIF. In the NCUA's 2014 Capital Planning and Stress Testing rule, the agency noted that "The Board believes it is important to require capital planning and stress testing at the credit unions that, by virtue of their sheer size, could pose the greatest risk to the [SIF], while limiting the regulatory burden."[6]

Even if the NCUA ultimately retains the current covered credit union definition, it should still proportionally adjust the Tier II and Tier III thresholds so there is a meaningful span of time for Tier I credit unions to acclimate to capital planning supervision before engaging in formal stress testing.

The NCUA must clarify limits on its proposed reservation of authority

The proposal states that there may be rare instances that warrant placing a FICU with assets between $10 billion and $15 billion under ONES supervision. To address such situations, the proposal would permit the NCUA to use existing reservations of authority in Part 702 Subpart C to transfer a Tier I covered credit union to ONES supervision before it becomes a Tier II or III covered credit union.

NAFCU is concerned that the use of this authority may lack appropriate guardrails. It is not clear whether a covered credit union can appeal an agency decision regarding which tier should be applicable, or whether it should be subject to ONES supervision as a Tier I credit union. The lack of an independent appeals process magnifies this concern.[7] NAFCU encourages the NCUA to clarify the appeal rights of a covered credit union in any situation where the reservation of authority is invoked. NAFCU also requests that the NCUA develop guidelines to describe the specific

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[6] See NCUA, Capital Planning and Stress Testing, 79 Fed. Reg. 24311, 24312 (April 30, 2014).
[7] *See* NAFCU, Letter to NCUA re: Strategies for Future Examination and Supervision Using Digital Technology (August 28, 2020), available at https://www.nafcu.org/letter-ncua-strategies-future-examination-and-supervision-utilizing-digital-technology.

circumstances that would justify use of the authority under 12 CFR § 702.301(c). Written guidelines should ensure that any decision to change the supervisory office of a covered credit union is based on objective criteria for assessing risk. The use of written guidelines would also provide credit unions with a starting point for evaluating the reasonableness of any discretionary agency action related to capital planning, stress testing, or supervisory oversight, and advance the NCUA's goal of fostering transparency.

The NCUA must ensure appropriate coordination exists with the CFPB and should adopt a multi-quarter asset threshold measurement for the purpose of determining covered credit union status

Under the proposal, Tier I credit unions under $15 billion in total assets will be subject to supervision by the appropriate Regional Office. However, the proposal does not alter the supervisory thresholds adopted by other agencies. As a consequence, the Consumer Financial Protection Bureau (CFPB) will continue to examine credit unions that report assets of $10 billion or more in quarterly Call Report for four consecutive quarters. Currently, the NCUA and CFPB are signatories to a Memorandum of Understanding that commits both agencies to coordinating their supervisory activities; however, it is not clear whether this coordination extends to examination activities undertaken by the Regions.[8]

To avoid overlapping examination schedules that impose significant administrative burdens, NAFCU encourages the NCUA to develop a plan for Regional Office coordination with the CFPB. Additionally, NAFCU asks that the NCUA work to harmonize exam expectations to avoid application of conflicting standards. For example, NCUA-administered cybersecurity exams and the CFPB's CMS-IT exam module may cover the same functional areas of IT risk management, but individual examiners might offer different strategies for strengthening IT controls. To avoid inconsistency, the NCUA should ensure that the regional examiners have access to appropriate training that mitigates any potential for misalignment of expectations.

Lastly, to further improve interagency coordination, NAFCU encourages the NCUA to harmonize its method for determining when a credit union becomes a covered credit union with the measurement standard adopted by the CFPB. Specifically, the NCUA should 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. Adopting the CFPB's longer, multi-quarter asset threshold 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.

Conclusion

NAFCU supports the NCUA's proposal to conserve administrative resources by leveraging supervisory the capabilities of the Regional Offices to reduce burden on ONES. Not all covered

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[8] See CFPB, Memorandum of Understanding between the Consumer Financial Protection Bureau and the National Credit Union Administration Regarding Enhanced Cooperation and Coordination,

credit unions require ONES supervision; however, the NCUA should ensure that appropriate coordination exists between the Regions, ONES and the CFPB so that when the transition to specialized supervision does take place, there is consistent application of standards and expectations.

NAFCU also appreciates the NCUA's recognition that specialized oversight of larger credit unions should be calibrated to reflect relative risk to the SIF today and not defined using an outdated asset threshold. NAFCU hopes that this perspective will encourage the agency to consider a higher Tier I threshold for determining the appropriate supervisory office and inform any future reassessments of supervisory tiers as the credit union industry grows.

NAFCU and its members appreciate the opportunity to comment on the NCUA's proposed rule. Should you have any questions or require any additional information, please contact me at amorris@nafcu.org or (703) 842-2266.

Sincerely,

Andrew Morris
Senior Counsel for Research and Policy