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August 3, 2015

Michael J. McKenna
General Counsel
Office of General Counsel
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

RE: 2015 NCUA Regulatory Review

Dear Mr. McKenna:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally insured credit unions, I am writing to you regarding the National Credit Union Administration's (NCUA) 2015 Regulatory Review. NAFCU appreciates this opportunity to comment. As you will note, we are not restricting our comments to the items listed on the agency's 2015 Regulatory Review agenda, as we believe there are additional issues that require the agency's immediate attention.

General Comments

Regulatory burden is the top challenge facing all credit unions. While smaller credit unions continue to disappear from the growing burden, all credit unions are finding the current environment challenging. Finding ways to cut-down on burdensome and unnecessary regulatory compliance costs is the only way for credit unions to thrive and continue to provide their member-owners with basic financial services and the exemplary service they need and deserve.

Acknowledging this increasing regulatory burden, NCUA Chairman Matz announced in March 2015 that the agency was "committed to making 2015 the year of regulatory relief." NAFCU agrees that the agency needs to focus on ways to provide much needed relief to credit unions, many of whom are struggling to survive in a post-Dodd-Frank environment characterized by overwhelming compliance burdens. It is clear the regulatory pendulum has swung too far in favor of overregulation and has become a threat to economic growth. Recognizing that there are a number of outdated regulations and requirements that no longer make sense and must be modernized or eliminated, NAFCU drafted and released a document entitled "NAFCU's Top Ten Regulations to Eliminate or Amend" in February 2015 (attached to this comment letter). This document outlines ten key issues that regulators can and should act on now to provide meaningful relief.

It is also important to note that the credit union industry faces looming challenges from regulators and external threats which could impair both economic growth and the ability to serve its over 100 million members. In particular, the Financial Accounting Standards Board (FASB) has announced plans to finalize a new standard for the financial reporting of credit losses, which would require credit unions to artificially increase allowances on their balance sheets and reduce available capital. Meanwhile, the Consumer Financial protection Bureau (CFPB) has begun the initial stages of a planned rulemaking which would significantly limit the ability of credit unions to provide a consumer-friendly product in the payday lending space. As for external threats, the growing danger of data breaches has become a serious problem for consumers, businesses, governments, and financial institutions as cyber attackers continue to adapt and find new ways to penetrate systems. NAFCU and its members urge that NCUA work with the FASB, the CFPB, and other financial regulators to develop commonsense and coordinated approaches to effectively address these issues and more.

Financial Accounting Standards Board

The FASB determined post-financial crisis that there was a need to establish a more predictive model for the financial reporting of credit losses on loans and other financial instruments held by lending institutions. In March 2015, the FASB announced, after an exhaustive seven-year study of the issue, expectations to finalize the standard for timely financial reporting of credit losses in the third quarter of 2015. NAFCU has come out in strong opposition to the FASB's proposal as it would lead to increased costs on the industry while providing few, if any, benefits.

Specifically, the FASB proposal would establish a "current expected credit loss" (CECL) model for financial institutions. Under this model, the Allowance for Loan and Lease Loss (ALLL) would reflect a credit union's current *estimate* of the contractual cash flows that the credit union does not expect to collect, based on its assessment of credit risk as of the reporting date. Past events, the current economic environment, and other subjective forecasts about the future would factor into the institution's assessment of expected losses. This model would replace the current "incurred loss" model that does not require recognition of the credit loss until the loss is probable (or has been incurred). The practical effect of this change will be an immediate increase to the credit union's ALLL balance and reduce capital, which will impair the capital ratio.

NAFCU believes NCUA should engage the FASB in order to remove duplicative regulatory burdens on an already extremely safe and sound industry. In particular, NCUA and the FASB should carefully consider the possible negative effects the FASB's accounting changes could have if it is allowed to be implemented in combination with NCUA's Risk-Based Capital (RBC) proposal, discussed below.

Field of Membership (12 C.F.R. § 701.1)

In January 2015, NCUA established a Field of Membership (FOM) Working Group to identify and examine ways to strengthen the federal credit union (FCU) charter. NAFCU commends the agency for proactively soliciting stakeholder comment and insight on how it can streamline FOM expansions. To assist in this important endeavor, NAFCU convened a taskforce of over 50 of its members of various asset sizes, charter types, and geographical locations to examine issues related to NCUA's existing FOM procedures and regulations. A letter detailing the recommendations of NAFCU's taskforce was presented to NCUA on May 13, 2015, with the expectation that these suggestions would affect progressive procedural and regulatory FOM relief. The following is a brief overview of NAFCU's extensive list of recommendations; please reference NAFCU's May 13, 2015 FOM letter for a more comprehensive discussion of each issue.

NAFCU's members continue to raise questions about NCUA's Office of Consumer Protection's policies and procedures, particularly during the process of applying for FOM expansions or conversions. NAFCU believes that NCUA can remedy and streamline these procedural issues by releasing interpretive guidance and outlining a more transparent process. In particular, NAFCU recommends the following procedural changes: (1) update the Chartering and FOM Manual to reflect the current process; (2) establish deadlines for FOM amendment requests; and (3) increase transparency in the decision-making process.

NAFCU also believes that NCUA has the ability and latitude under the *Federal Credit Union Act* (FCU Act) to promulgate regulatory solutions to the existing FOM restrictions. Because any regulatory change requires NCUA Board action and a Notice of Proposed Rule Making (NPRM), NAFCU encourages the NCUA Board to move swiftly on proposing regulatory changes in order to ensure that the federal charter keeps pace with state charters. These recommended changes include removing all non-statutory requirements that impose geographic and population-based limitations on community charters. In particular, NAFCU suggests that the agency reconsider its definitions of "well-defined local community" and "rural district." NAFCU urges NCUA to remove the 2.5 million population cap for a "well-defined local community" as well as removing or significantly increasing the 250,000 population limit or, at minimum, restore the pre-2010 population threshold of 500,000. Similarly, the current population density threshold for a "rural district" is far too low, and the person-per-square-mile limitation should not be part of the qualifying formula. However, if NCUA insists on a person-per-square mile limitation, then NAFCU strongly recommends that the 100 person per square mile limit be raised substantially. In addition to the above suggestions, NAFCU's May 13, 2015, letter also includes extensive recommendations for changes to regulatory limitations on Trade, Industry, or Profession (TIP) Charters, charter conversions, the service facility requirement, and the emergency merger guidelines.

Bylaws (12 C.F.R. § 701.2)

The Federal Credit Union Bylaws (FCU 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 and incorporated them as Appendix A to Part 701 in October 2007. *See* 72 FR 61495 (October 31, 2007). The only substantive issue addressed in the 2007 rulemaking concerned director succession.

Because it has been eight years since substantive amendments were made to the FCU Bylaws, NAFCU strongly believes that NCUA should modernize the FCU Bylaws and afford greater flexibility to FCUs. During its 2012 Regulatory Review, NCUA received public comment on the FCU Bylaws reflecting the industry's call for FCU Bylaw modernization. In the 2012 Regulatory Review Report, the Office of General Counsel suggested that the NCUA Board form a working group to review the bylaws and determine if they should be modernized, and in 2013, NCUA established such a group NCUA and credit union industry participants. 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.

Loans to Members and Lines of Credit to Members (12 C.F.R § 701.21)

Executive Compensation

Section 701.21 includes a general prohibition from credit officials, employees, and their immediate family members from receiving incentives or outside compensation for loans made by the credit union. *See* 12 C.F.R. § 701.21(c)(8). There are some exceptions to this prohibition, namely that an employee, including senior management, may receive an incentive or bonus based on the credit union's overall financial performance. The regulation, however, has resulted in inconsistent application in how credit unions can use the "overall financial performance" measure.

NAFCU and our members believe that Section 701.21(c)(8) allows for loan growth to be included as a part of the "overall financial performance" calculus as it is not a determinative factor. Accordingly, NAFCU and our members strongly urge the agency to implement more flexibility when examining a credit union's methodology for calculating "overall financial performance."

Payday Alternative Loans

Section 701.21 was amended in 2010 and 2011 to enable FCUs to offer Payday Alternative loans (PAL loans), commonly referred to as short-term, small amount loans (STS loans). NCUA spent significant time and resources carefully crafting the PAL loan program in order to create a more consumer-friendly option in the payday lending market. As NCUA is well aware, the CFPB is currently engaged in the early stages of a rulemaking aimed at completely changing the payday lending market.

The CFPB's plan, as indicated in its outline of proposals under consideration, may substantially limit FCU's ability to continue to provide these valuable PAL loan programs. For example, while NCUA's rules currently allow FCUs to offer up to three PALs in a six-month period, the CFPB is considering limiting FCUs to two PAL loans in a six-month period, and requiring that they be at least 45 days in length. The CFPB is also indicating that it may impose an advance notice requirement on a credit union that offers PALs and require that it to provide its members with notification three business days in advance before it accesses their accounts for purposes of paying a PAL.

PAL loans give credit unions another opportunity to work with members in an effort to get them into traditional financial services products and direct them away from predatory actors. Any increase in the regulatory burden associated with these loans will create overwhelming challenges, and the end result will be decreased availability of short-term, small-dollar loan products from reputable credit union lenders. NAFCU strongly urges NCUA to open a dialogue with the CFPB to ensure that the PAL loan program receives a clear and express exemption from the Bureau's upcoming payday lending rulemaking.

Loan Participation (12 C.F.R. § 701.22)

As NCUA acknowledges, loan participations enable credit unions to accomplish many important goals. For example, a credit union may be involved in loan participations to diversify its loan portfolio, improve earnings, generate loan growth, manage its balance sheet, and/or comply with regulatory requirements. The sale of loan participations also allows a credit union to generate liquidity.

NCUA issued a final rule on loan participation in 2013. Under the current rule, purchasing credit unions are subject to a single-originator concentration limit of the greater of $5 million or 100 percent of net worth. Also, there is a limit of 15 percent of the credit union's net worth on loan participation purchases involving one borrower or a group of associated borrowers. The risk retention requirement for originating FCUs is 10 percent, as required by the FCU Act. Meanwhile, the risk retention requirement for other originating eligible organizations, including federally insured, state-chartered credit unions (FISCUs), is 5 percent, unless state law requires a higher percentage. This difference creates an arbitrary disparity between FCUs and FISCUs.

NAFCU believes FISCUs and FCUs should be held to the same standards for risk retention. Although NAFCU would prefer FCUs to be held to a risk retention requirement of 5 percent, this cannot occur without a change to the FCU Act. As a result, NAFCU encourages the NCUA Board to amend Section 701.22 to ensure that FISCUs and other eligible organizations are held to the same 10 percent risk retention requirement. Such a change would create the requisite even playing field all market participants deserve.

NAFCU's member credit unions have also expressed confusion about aspects of the 2013 final rule, and request further refinement. For example, the current regulation requires the loan borrower to become a member of one of the credit unions participating in the loan before a purchasing FCU can complete its purchase of a participation interest in the loan. In addition, the loan must be one that the purchasing credit union is itself empowered to make. The interplay of these two requirements, especially after the 2013 changes to the loan participation regulation, has created confusion about a participating credit union's compliance obligations. NAFCU recommends NCUA examine Section 701.22 for areas where the agency can increase clarity and streamline the loan participation requirements in an effort to encourage more credit unions to take advantage of loan participations.

Designation of Low-Income Status (12 C.F.R. § 701.34)

The FCU Act permits the conferral of special benefits on a credit union designated as serving "predominantly low-income members," including exemptions to general restrictions on non-member deposits, member business loans, and access to secondary capital accounts. The low-income credit union (LICU) designation also makes that credit union eligible to apply for grants and low-interest loans from NCUA. Despite the obvious benefits of the LICU designation, many credit unions eligible to become LICUs choose not to pursue the designation because of confusion over eligibility and concerns of future status changes. NAFCU believes NCUA should review and revise its regulations related to LICUs with the goal of facilitating larger participation in the LICU program.

The FCU Act directs the NCUA Board to establish a definition for a credit union serving “predominantly low-income members.” However, there is no statutory requirement that NCUA apply a rigid statistical approach. Currently, “low-income members” are “those members whose family income is 80% or less than the median family income or total median earnings for individuals for the metropolitan area where they live or national metropolitan area, whichever is greater…based on data reported by the U.S. Census Bureau.”

NAFCU believes NCUA should aim to adopt a more flexible approach for defining “low-income members,” such as allowing a credit union to apply for LICU status based on real-world observations of the community it serves. For example, a credit union could make a case for LICU status by showing a history of providing financial services to low-income members or a pattern of developing products designed to benefit low-income members, such as PAL loans, targeted financial education resources, or other products designed to help low-income members build credit.

In addition, when NCUA finalized its 2008 rule related to the low-income definition, the NCUA Board rejected a call from the industry to make the LICU designation permanent or, at minimum, provide a more extensive transition period. NAFCU urges NCUA to revisit the issue of LICU status permanency, as the industry has seen a number of credit unions eligible for the LICU designation decline to accept the designation. Many credit unions have expressed concern about the inadequate amount of transition time built into the regulation. Currently, a credit union that loses LICU status has five years to transition back into compliance with the regulations applicable to “regular” FCUs. NAFCU recommends NCUA increase the transition time to provide a more reasonable adjustment period.

Fixed Assets (12 C.F.R. § 701.36)

On July 23, 2015, the NCUA Board finalized amendments to the agency’s Fixed Assets rule that eliminates the five percent aggregate cap on FCUs’ ownership of fixed assets. A long-sought NAFCU initiative, this final rule will provide credit unions with much-needed flexibility in routine business decisions, while still maintaining the safety and soundness of the industry. NAFCU would like to take this opportunity to again applaud the NCUA Board for its willingness to solicit and incorporate industry feedback in developing this rulemaking.

In addition to removing the five percent aggregate cap, the final rule establishes a single time period for partial occupancy of any premises acquired for future expansion. Specifically, the final rule allows FCUs up to six years from the date of acquisition to meet the partial occupancy requirement, regardless of whether the premises are improved or unimproved property. While NAFCU appreciates NCUA’s efforts to simplify the partial occupancy requirements, NAFCU continues to hear from its members that NCUA’s occupancy requirements inhibit long-term planning among safe and sound FCUs.

NAFCU believes NCUA has the statutory authority to provide greater flexibility in the partial occupancy requirements of the fixed assets rule. Section 107(4) of the FCU Act authorizes an FCU to purchase, hold, and dispose of property necessary or incidental to its operations. While NAFCU recognizes that the FCU Act prohibits a FCU from "engag[ing] in real estate activities that do not support the purpose [of providing financial services to their members]," it should be noted that the statute does not prescribe any specific occupancy requirements for permissible real estate holdings. Nevertheless, NCUA has consistently interpreted this statutory language to mandate full occupancy within a specified time period. NAFCU considers this interpretation needlessly restrictive, as the FCU Act includes no express occupancy mandate on real estate that supports the purpose of providing financial services to credit union members. While NAFCU acknowledges that partial utilization within six years, and a plan to fully utilize assets within a specified period of time, may be appropriate in some instances, NAFCU firmly contends that it should not be mandated by regulation.

During the July 23, 2015, NCUA Board meeting, Chairman Matz and Vice Chairman Metsger encouraged NCUA staff to look for ways to ease the partial occupancy requirement, particularly because many urban credit unions operate in mixed-use buildings. NAFCU appreciates the NCUA Board's leadership on identifying this issue, and we encourage NCUA to address the modern prevalence of mixed-use buildings, as well as look for additional methods to amend the full occupancy requirement to provide more regulatory relief to credit unions.

Capital Adequacy (12 C.F.R. § 702)

On January 15, 2015, after much anticipation, the NCUA Board issued a RBC proposal, which would, among other things, establish RBC requirements for "complex" federally insured credit unions. Like the first, this revised proposal has drawn substantial industry and Congressional scrutiny. As NAFCU detailed in its April 23, 2015 comment letter, credit unions believe this rulemaking is not only unnecessary given how extremely well-capitalized the industry is today, but they also fear this proposal will unjustifiably constrain their ability to grow and serve their communities.

Accordingly, NCUA's risk-based capital proposal is of the utmost and ever-increasing importance to NAFCU's membership, the credit union industry, and Congress. In fact, On June 15, 2015, Representatives Fincher, Heck and Posey introduced the bipartisan *Credit Union Risk-Based Capital Study Act of 2015* (H.R. 2769). This bipartisan legislation will prevent NCUA from moving forward with its second risk-based capital proposal until completing and delivering to Congress a thorough assessment of NCUA's legal authority, the proposal's impact on credit union lending, capital requirements for credit unions compared to other financial institutions, and more. The agency would not be able to finalize or implement its revised RBC regulation before 120 days after the report goes to Congress. This legislation further underscores uncertainty surrounding the rule's legality and cost effectiveness. NAFCU and our members have consistently maintained that this rulemaking is unnecessary and costly, and we strongly urge its complete withdrawal.

NAFCU wants to be clear – we support a risk-based capital system for credit unions that would reflect lower capital requirements for lower-risk credit unions and higher capital requirements for higher-risk credit unions. However, we continue to believe that Congress needs to make statutory changes to the FCU Act in order to achieve a fair system. Such a system should move away from the static net-worth ratio to a system where NCUA joins the other banking regulators in having greater flexibility in establishing capital standards for institutions. We also believe that capital reform must include access to supplemental capital for all credit unions.

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

In 2014, 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 supported 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 and our members strongly believe the NCUA should remove this prohibition. 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.

Corporate Credit Unions (12 12 C.F.R. §704)

NAFCU has consistently maintained that the health and safety of the corporate credit union system is vital to our industry as a whole. According to NCUA's most recent publically-available Call Report data, over 70% of federally insured natural person credit unions are either members of corporate credit unions or have lines of credit at corporate credit unions. With this in mind, it is critical that NCUA ensure the safety and soundness of the corporate credit union system, so that it can continue to provide liquidity and payment system function to the industry.

In 2010, NCUA promulgated a comprehensive overhaul of the regulatory requirements governing the corporate credit union system. NAFCU generally supported the changes, especially stricter capital requirements, limitations on corporates' investment authority, and requirements related to corporates' asset portfolios. NAFCU and our members believe these changes not only mitigate risks to natural person credit unions, but they also protect the National Credit Union Share Insurance Fund (NCUSIF) from potential losses. As the industry continues to heal from the financial crisis, however, NAFCU encourages the NCUA Board to look for all opportunities to provide appropriate relief within Part 704, especially in the areas of lending, asset and liability management, and corporate resolution.

Section 704.7- Lending

In 2015, NCUA proposed to amend Part 704 in order to exclude Central Liquidity Facility (CLF)-related bridge loans from the rule's aggregate unsecured lending limit. Specifically, the proposal would define "CLF-related bridge loan" as a loan funded by a Corporate for a term not to exceed 10 business days to a natural person credit union that has been approved for an advance from the CLF and is awaiting funding. In addition, the proposal would exempt these loans from the calculation of "net assets" and "net risk weighted assets" for determining minimum capital requirements for Corporates.

NAFCU appreciates NCUA's initiative in this rulemaking. As the agency recognizes, CLF-related bridge loans allow Corporates to serve as a liquidity provider to their natural person credit union members during times when natural person credit unions are awaiting funding from the Federal Financing Bank (FFB) and the CLF. Because advances from the United States Department of the Treasury (Treasury) can take up to 10 business days to fund, these loans play a critical role in expediting the delivery of funds to the borrowing natural person credit unions. These loans, however, are short-term and have a guaranteed payment source, thereby making them a non-credit risk for Corporates. Accordingly, NAFCU and our members strongly support NCUA's proposal to exclude these loans from Part 704's capital calculations and the aggregate lending limit because we believe it will provide welcome relief without exposing Corporates, natural person credit unions or the NCUSIF to unnecessary risk.

Section 704.9- Asset and Liability Management

In 2015, NCUA finalized amendments to Part 704 that would, among other things, increase corporate credit unions' secured borrowing maturity limit to 180-days. While NAFCU supports this change, we believe the secured borrowing maturity limit should be increased more. A 180-day secured borrowing limit still undermines the ability of corporate credit unions to serve as a source of liquidity, particularly during times of economic distress. By imposing such a stringent timeframe, NCUA severely restricts a corporate credit union's ability to meet its members' liquidity needs. Accordingly, NAFCU recommends that NCUA increase the secured borrowing maturity limit to 2-years. We believe a 2-year timeframe would give corporate credit unions much-needed flexibility to fund seasonal outflows of liquidity.

NAFCU also urges the NCUA Board to amend Section 704.9(b) to provide itself with the ability to suspend secured borrowing limitations during times of severe economic or network distress. Corporate credit unions continue to be critical partners for their members to maintain liquidity and they must have the ability to remain reliable sources of funding during stressed market conditions. NAFCU believes it is vital that corporate credit unions have the ability enter into longer borrowings during these distressed times in order to meet their members' funding needs. We therefore recommend that the NCUA Board provide an exception to Section 704.9's borrowing limitations under which it may suspend the rule to allow for longer secured borrowing periods during times of severe economic or network distress.

Corporate Resolution

NAFCU would also like to take this opportunity to reiterate our concerns with other aspects of the corporates resolution. Since the Temporary Corporate Credit Union Stabilization Fund (TCCUSF) was established in 2011, natural person credit unions have paid more than $4.8 billion in assessments. Corporates have also experienced losses stemming from the write-down of US Central. While NAFCU commends NCUA for its vigilant and aggressive pursuit of legal recoveries, we believe that credit unions deserve to be repaid for the hefty assessments they paid to cover the cost of the corporate losses on mortgage-backed securities. Further, we believe there needs to be more clarity as to the disposition of the assets held by the Asset Management and Assistance Center (AMAC). Because NCUA has indicated that the agency is unable to refund credit unions for their assessments until the fund has repaid all of its obligations, NAFCU believes it is of paramount importance that NCUA transparently communicate the agency's strategy and timeline for satisfying the TCCUSF's deposit and borrower guarantees.

Truth in Savings (12 C.F.R. §707)

As NAFCU raised in its March 19, 2015, *Economic Growth and Regulatory Paperwork Reduction Act of 1996* (EGRPRA) comment letter, Appendix C's Official Staff Interpretations does not reflect the current Section 707.2. Specifically, citations in the Official Staff Interpretations to 707.2 do not align with the corresponding subparagraphs in the section. For example, the term "share account" is defined in Section 707.2(v), but the Official Staff Interpretation references the definition as Section 707.2(x). NAFCU recommends making a technical change to the regulation to change the letter "x" to the letter "v."

Mergers of Federally-Insured Credit Unions (12 C.F.R. § 708b)

Mergers between credit unions are becoming increasingly more frequent in today's industry. Despite this growing prevalence, 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 five 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.

Conclusion

NAFCU and our members appreciate NCUA's continued commitment to conducting annual regulatory reviews and we applaud 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 reduce future compliance costs and regulatory difficulties faced by credits unions by addressing the issues raised in this letter.

NAFCU appreciates the opportunity to offer its comments and feedback on NCUA's 2015 Regulatory Review. 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. Should you have any questions or would like to discuss these issues further, please contact me by telephone at (703) 842-2266 or by e-mail at anealon@nafcu.org, or Regulatory Affairs Counsel Alexander Monterrubio by telephone at (703) 842-2244 or by email at amonterrubio@nafcu.org.

Sincerely,

Alicia Nealon
Director of Regulatory Affairs

NAFCU's Top Ten Regulations to Eliminate or Amend

1. **Improve the process for credit unions seeking changes to their field of membership.** Improvements should include: (1) enabling credit unions to strengthen their associational membership charter; (2) streamlining the process for converting from one charter type to another; (3) remove or greatly increase the current population limits for serving members in a metropolitan area (1 million) and contiguous political jurisdictions (500,000); and, (4) making it easier for all credit unions to add "underserved" areas within their field of membership.

2. **Provide more meaningful exemptions for small institutions.** 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, we encourage the financial regulators to expand many of the compliance thresholds, including raising (1) the 100-remittance transfers allowance threshold; (2) the 500-origination limit for the small creditor exemption; and (3) the 5,000-servicing limit for the small servicer exemption.

3. **Expand credit union investment authority** to allow credit unions to purchase mortgage servicing rights (MSRs). NAFCU strongly pushed for the expansion of credit unions' investment authority to include the ability to engage in limited derivatives activities and to securitize certain assets. NAFCU will continue to seek asset securitization for qualified credit unions. In addition, NAFCU will push NCUA to remove from its list of prohibited investment activities the ability to purchase MSRs. NAFCU believes a federally-insured credit union, at the very least, should not be prohibited from purchasing MSRs from other credit unions.

4. **Increase the number of transfers allowed to be made per month from savings accounts.** The restriction on "convenience transfers" under Regulation D presents an ongoing concern for NAFCU and its members. Members are often unable to understand and remember the arbitrary limits on the number and types of transfers the regulations permit them to make from their savings account. Members expect to have the ability to transfer their funds with ease to and from particular accounts, and the regulation's six-transfer limitation from savings accounts creates an undue burden for both credit unions and their members. This six-transfer limitation should be updated and increased to at least nine transfers per month, while still making a distinction between savings and transaction accounts.

5. **Seek added flexibility for credit unions that offer member business loans.** These improvements could include: (1) securing credit union-friendly changes to the waiver process; (2) increasing the general minimum loan-to-value ratio from 80% to 85%; (3) securing removal of the 5 year relationship requirement; and (4) defining credit unions that have had a successful MBL program in place for at least five years as having a "history of primarily making MBLs."

6. **Update the requirement to disclose account numbers to protect the privacy of members.** Credit unions are currently required to list a member's full account number on every periodic statement sent to the member for their share accounts pursuant to Regulation E. These requirements need to be updated to allow the credit union to truncate account numbers on periodic statements in order to protect the privacy of the member and to reduce the risks of fraud and identity theft.

7. **Update advertising requirements for loan products and share accounts.** The regulatory requirements for advertisement of credit unions' loan products and share accounts have not kept pace with technological changes in the current market place. The requirements of Regulation Z and Truth in Savings should be updated to reflect these changes and advances in practical advertisements and the disbursement of information, while maintaining the integrity and accuracy of the information that the member truly needs to know from the advertisement. Further, NCUA's regulations should be updated to clarify that the official sign is not required to be displayed on (1) mobile applications, (2) social media, and (3) virtual tellers.

8. **Seek improvements to the Central Liquidity Facility.** Reduce the amount of time that it takes for a credit union to secure access to liquidity. In addition, work with NCUA to secure changes the Central Liquidity Facility by removing the subscription requirement for membership and permanently removing the borrowing cap.

9. **Obtain flexibility for federal credit unions to determine their choice of law.** Federal credit unions should be allowed the opportunity to choose the jurisdiction under which they operate without surrendering their federal charter. To this end, NAFCU will work with NCUA to establish a waiver process under which a federal credit union, taking into account safety and soundness considerations, would choose the state law under which it wants one or more of its operations.

10. **Update, simplify and make improvements to regulations governing check processing and funds availability.** These enhancements should include: changing outdated references (i.e., references to non-local checks); changes that are required by statute and are already effective and incorrectly stated in the regulation; and changes that enable credit unions to address fraud.