Credit Union National Association CUNA

AACUL American Association of Credit Union Leagues

March 19, 2021

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: Rulemaking Aimed at PCA Relief

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

On behalf of America's credit unions, we are writing 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 Rule to Provide PCA Relief

We appreciate Chairman Harper's remarks during the March 18 open Board meeting regarding potential relief in the area of PCA. In May 2020, National Credit Union Administration (NCUA) issued an interim final rule (2020 IFR)[1] that provided credit unions relief related to PCA by:

- Permitting the NCUA Board to issue an order to temporarily waive the earnings retention requirement for any credit union classified as adequately capitalized; and
- Permitting 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 2020 IFR was temporary, expiring December 31, 2020.

Consistent with the Chairman's recent remarks, we ask the NCUA to adopt an IFR essentially identical to the 2020 IFR adopted last year that provided relief to credit unions experiencing PCA issues related to an increase in share growth. The 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.

We believe it is necessary and reasonable for the NCUA to adopt such a rulemaking. The NCUA adopted the 2020 IFR in May to deal with an increase in share growth, resulting from government stimulus payments. The reasons the 2020 IFR was adopted in May 2020 are still as relevant today, particularly with another round of federal stimulus payments on the way.

In 2020, 95% of credit unions reported asset increases; the median asset growth for all credit unions was 14.3% during the year. Overall, during 2020, 91% of credit unions reported a decline in their net worth ratio; the median decline was 108 basis points (1.08 percentage points). During the year, the median credit union net worth ratio nationally fell from 12.0% to 10.9%. Nevertheless, 99.3% of credit union assets remain in credit unions with net

[1] 85 Fed. Reg. 31,952 (May 28, 2020).

worth above 7% at the end of 2020, which is nearly unchanged from the 99.7% level at the start of the year. 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, the December 31, 2020 sunset date appears to be an arbitrary, convenient date, as there was no indication that the pandemic-related economic challenges would cease by then.

In regard to the earnings retention requirement of the 2020 IFR, the Board exercised its statutory authority "in order to enhance flexibility in the application of the earnings retention requirement to avoid a reduction of shares and thus retain system liquidity and capital adequacy, thereby furthering the purpose of PCA. . . . This procedure will lessen the administrative burden on [federally insured credit unions (FICUs)], and the NCUA in providing this relief, by avoiding the need for numerous waiver applications and responses."[2]

In regard to the net worth restoration plan requirement of the 2020 IFR,

> The Board has determined that it is appropriate to modify the regulation addressing [net worth restoration plans] given the disruption caused by the COVID–19 pandemic. The Board believes that it will be able to fulfill its statutory duty to evaluate the net worth restoration plan even if the plan is more concise and streamlined than plans submitted prior to the COVID–19 crisis. . . . The Board further notes that if a FICU temporary falls below being adequately capitalized (or lower) because of share growth, the risk is limited and net worth will likely increase as the shares are withdrawn.[3]

The Board's rationale behind approving the 2020 IFR could equally be applied as rationale for a new IFR providing for the same relief through the remainder of the pandemic.

Additionally, in his remarks during the May 2020 open Board meeting, in expressing support for the 2020 IFR, Chairman Harper noted the "tailored, targeted, and temporary" nature of the rulemaking.[4] Each of these criteria will continue to be present in a new IFR aimed at providing the same PCA relief included in the 2020 IFR. A new IFR would be equally as tailored and targeted, being that we are suggesting provisions identical to those included in the 2020 IFR. Further, being that the pandemic will certainly conclude, a sunset date of that as determined by the CDC or other federal entity would satisfy the temporary criterion.

Temporarily Exclude Certain Assets from Net Worth Ratio

As noted above, deposits in credit unions have swelled during the crisis, largely as a result of government stimulus and changes in consumer spending and savings habits. Credit unions are increasingly investing these funds 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 reiterate our call for 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 an interim final rule last year 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. Specifically, in that rule, the Board stated:

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[2] 85 Fed. Reg. 31,954.
[3] 85 Fed. Reg. 31,955.
[4] Archive of NCUA Open Board Meeting (May 21, 2020), *available at* https://www.ncua.gov/exit-disclaimer?url=https%3A%2F%2Fevent.on24.com%2Fwcc%2Fr%2F2321681%2F4028D952F394A8E27FDD361667726482.

> The Board has broad authority to define the term “total assets.” While 12 U.S.C. 1790d defines “net worth”—the numerator for determining the net worth ratio—it does not define the term “total assets,” which comprises the denominator of the equation. However, the Board has elected to define the term in part 702. In addition to the Board’s broad authority to define the term “total assets,” the Board finds that given the unique and unprecedented nature of the COVID-19 pandemic, encouraging use of the PPP Facility by excluding pledged PPP loans from total assets would further the purpose of § 1790d. Pledged covered PPP loans present less risk and would potentially facilitate resolving the problems of credit unions at the least possible long-term cost to the NCUSIF compared to non-pledged covered PPP loans.[5]

We supported that NCUA interim final rule, as we think it is important to encourage credit union participation in PPP lending. After further review, we believe the NCUA can extend this treatment to all PPP loans.

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 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 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.

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 PCA relief in the coming weeks.

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
Dakotas 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
Louisiana Credit Union League
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
Tennessee Credit Union League
The Credit Union League of Connecticut Inc
Utah Credit Union Association
Virginia Credit Union League
West Virginia Credit Union League
Wisconsin Credit Union League

[5] 85 Fed. Reg. 23,212, 23,214 n.18 (Apr. 27, 2020).