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CUNA

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Office of the General Counsel
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

Re: NCUA 2023 Regulatory Review

To Whom It May Concern:

On behalf of America's credit unions, we are writing to the National Credit Union Administration (NCUA) regarding the Office of the General Counsel's (OGC) annual review of one-third of the agency's regulations. The Credit Union National Association (CUNA) represents America's credit unions and their more than 135 million members.

We appreciate the NCUA's willingness to solicit public input on one-third of its regulations on an annual basis. We support the agency's commitment to continually reviewing its regulations to determine whether they should be updated, clarified, simplified, or eliminated.

As the NCUA is aware the cumulative regulatory burden on credit unions is near an all-time high. Therefore, we urge the NCUA to promulgate new or expand existing rules only if such rules are clearly warranted based on a compelling need. Similarly, the agency should strongly consider the current regulatory burden on credit unions as it proceeds with this and future regulatory reviews.

The 2023 regulatory review includes Parts 711 through 747. This letter offers a number of suggestions—some new and some previously offered—on how to streamline, clarify, and/or otherwise improve the regulatory requirements included within these parts.

Part 712: Credit Union Service Organizations

<u>NCUA Oversight of Credit Union Service Organizations</u>

CUNA is a strong supporter of credit union service organizations (CUSO) and the ability of credit unions to utilize them to improve their product offerings to their members. CUSOs are one of the few outlets available to credit unions to develop innovative mechanisms that help support their operations and enhance their ability to provide the kinds of financial services their members need and want.

While there have been some regulatory changes over the years that enhance NCUA's involvement in this area, it is accepted that the Federal Credit Union (FCU) Act does not provide NCUA with direct oversight authority of CUSOs and other third-party vendors.

The NCUA has acknowledged this lack of authority on several occasions, and has expressed to Congress a need for statutory authority over third parties. We strongly disagree with such a need. CUNA believes the NCUA has effectively managed any risk associated with third-party vendors within the agency's current regulatory authority. Credit unions are required to perform due diligence on their third-party vendor relationships, and this due diligence is already subject to supervision by the NCUA. As such, CUNA opposes legislative changes aimed at establishing blanket NCUA oversight authority in this area.

Cryptocurrency-Related Services Should Be a Pre-Approved CUSO Activity

We appreciate the recent updates to the CUSO regulations that: (1) expand the list of permissible activities and services for CUSOs that FCUs may lend to or invest in to include origination of any type of loan that an FCU may originate; and (2) grant the NCUA additional flexibility to approve permissible activities and services.[1] The expanded CUSO lending authority allows CUSOs to better serve credit union members by making loans that may have previously been impractical for the credit union to make. Further, the addition of the permissible CUSO activities process represents smart rulemaking that increases the NCUA's agility to consider and approve future permissible activities by CUSOs.[2]

Currently, section 712.5 includes "checking and currency services" in its list of pre-approved CUSO activities. This includes coin and currency services, as well as stored value products. Additionally, the list includes "electronic transaction services" such as electronic funds transfer services and cyber financial services. Finally, CUSOs are permitted to engage in "trust and trust-related services."[3]

As noted, the NCUA recently adopted a rule to expand the list of permissible CUSO activities to include originating any type of loan that a FCU may originate and to grant the agency additional flexibility to approve permissible activities and services.[4] In the final rule, the agency acknowledged that it should be flexible in its approach to expanding permissible CUSO activities. Specifically, the rule states that the NCUA "believes it is reasonable to add new approved activities without issuing the matters for public comment. . . ."[5]

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[1] 86 Fed. Reg. 59,289 (Oct. 27, 2021).
[2] CUNA Comment Letter to NCUA re CUSO Proposal (Apr. 30, 2021), *available at* https://downloads.regulations.gov/NCUA-2021-0036-1015/attachment_1.pdf.
[3] 12 C.F.R. 712.5.
[4] 86 Fed. Reg. 59,289 (Oct. 27, 2021).
[5] *Id.* at 59,299.

Based on existing authority, the NCUA can and should authorize CUSOs to engage in digital asset related activities, including custody services. Cryptocurrency related services will largely track the currency and electronic services already authorized. Current permissible activities for CUSOs, in the context of cryptocurrency, are the logical and natural expansion of these established functions. The NCUA clearly has the authority to expand the list of permissible activities by CUSOs and should strongly consider doing so in the case of cryptocurrency-related services. Under the requirements in the updated CUSO rule, the NCUA can expand permissible activities with less regulatory burden, allowing credit unions and their CUSOs to stay competitive and provide members with the contemporary financial services they need.

<u>Credit Union Investment Authority</u>

Separately, but also addressed in the 2021 rulemaking referenced above, we offer input related to broadening general FCU investment authority in CUSOs based on the FCU Act's provision that authorizes FCUs to invest in organizations providing services associated with the routine operations of credit unions, which is codified in a separate provision from the authority for FCUs to lend to "credit union organizations."[6]

An FCU's authority to lend to and invest in a credit union organization is provided for in two separate provisions of the FCU Act. The NCUA has historically interpreted the lending and investment authority under the FCU Act as referring to the same types of organizations. We offer the following comments in support of the NCUA adopting separate definitions for the types of organizations that an FCU may invest in or lend to, which potentially would expand the types of organizations eligible for FCU investment.

The NCUA should reconsider its longstanding interpretation of FCU investment and lending authority. The agency should explore the ability of credit unions to invest additional capital in "credit union organizations" and consider a rulemaking that would authorize additional investment authority. The FCU Act restricts an FCU's investment in a CUSO to loans that do not exceed 1% of a credit union's paid-in and unimpaired capital and surplus.[7] The FCU Act also authorizes FCUs to invest up to 1% of total paid-in and unimpaired capital and surplus, with the approval of the NCUA, in the shares, stocks, or obligations of any other organization providing services which are associated with the routine operation of credit unions.[8]

We agree with the NCUA's assessment that there are significant differences between lending to a CUSO and investing in an organization. The FCU Act differentiates between these two activities by using different language describing the lending and investment authority for CUSOs and organizations. Further, the NCUA points to the lending authority's reference to "credit union organizations" (CUSOs) and the FCU Act's limits on loans to those credit union organizations that primarily serve the needs of their member credit unions. In contrast, section 1757(7)(I), when defining investment authority, does

[6] 12 U.S.C. § 1757(7)(I).
[7] *Id.* § 1757(5)(D).
[8] *Id.* § 1757(7)(I).

not use the term "credit union organization" but instead uses the term "organization" when describing one of the entities authorized for credit union investment in the section. Also, section 1757(7)(I) does not limit investment authority to organizations that primarily serve the needs of their member credit unions.

The NCUA historically considered an organization described in section 1757(7)(I) of the FCU Act, and a CUSO as described in section 1757(5)(D), as identical entities, thus restricting credit union investment to CUSOs and limiting the investment to 1% of a credit union paid-in and unimpaired capital and surplus. The NCUA should consider changes to its regulations to decouple section 1757(5)(D) from section 1757(7)(I).

Credit unions have expressed the need for this expanded investment authority. For the same reasons that credit unions need expanded lending authority, FCUs need to invest in an array of organizations that do not primarily serve credit unions or credit union members, but still provide services that relate to the routine operations of FCUs. Giving credit unions the ability to partner with banks and fintech companies through investing in what would be a section 1757(7)(I) organization could greatly enhance credit unions' ability to provide financial services to their members.

Support CUSO Federal Home Loan Bank Membership

While outside the authority of the NCUA, we ask the agency to work with the Federal Housing Finance Agency (FHFA) to support any policy changes necessary to permit CUSOs to join the Federal Home Loan Banks (FHLBanks) as members.

Both credit unions and CUSOs would benefit if CUSOs were granted express authority to join the FHLBanks as members.[9] Mortgage-related CUSOs, of which there are approximately seventy across the United States, originate, process, underwrite, and service loans for credit unions.[10] CUSOs help credit unions, especially those that may not be able to offer mortgage loans to their members by themselves, to provide innovative products and services, increase efficiencies, and gain economies of scale. CUSOs would benefit from FHLBank membership by being able to access FHLBank advances, mortgage purchase programs, and other programs that promote community lending and affordable housing.[11]

CUNA supports any legislative and regulatory changes to expressly include CUSOs for membership, and encourages the NCUA to support FHFA policy changes that would allow all CUSOs to be eligible for membership in FHLBanks, as this will help them better assist their member credit unions' community lending activities. CUSO membership would

[9] *See* 12 U.S.C. § 1424(a)(1) (providing for eligibility of CDFIs); 12 C.F.R. § 1263.6(a) (same). CUSOs that are non-depository CDFIs are eligible for membership, but CUSOs that are not CDFIs are ineligible.
[10] CUNA Letter to FHFA (Oct. 31, 2022) at 8-9, *available at* https://news.cuna.org/ext/resources/NewsNow/2022/10-2022/Comment-Letter---FHFA-Comprehensive-Review-of-the-FHLBank-System.pdf.
[11] *See* CUNA Letter to FHFA re Regulatory Review (June 13, 2023), *available at* https://www.cuna.org/content/dam/cuna/advocacy/letters-and-testimonials/2023/FHFA2023RegulatoryReview.pdf.

further FHFA's duty to ensure the operations and activities of FHLBanks foster liquidity and efficient, competitive, and resilient national housing finance markets. As the prudential regulator of credit unions, it makes sense that the NCUA would support the FHFA in achieving these important objectives.

Part 715: Supervisory Committee Audits and Verifications

This Part describes the responsibilities of the Supervisory Committee to obtain an annual audit of the credit union according to its charter type and asset size, and to conduct a verification of members' accounts. The primary function of the Supervisory Committee is to direct internal audit activities designed to determine whether corporate records are prepared accurately, verify whether internal controls, policies and procedures are maintained and followed, and monitor performance to ensure that elected officials are carrying out their duties.

We appreciate some of the 2019 changes the NCUA made to section 715.7, which outlines the alternatives a credit union that is not required to obtain a financial statement audit (*i.e.*, a credit union between $10 million and $500 million in assets) may elect to utilize in lieu of obtaining a financial statement audit to fulfill its supervisory committee responsibilities.[12] The change replaced the option to conduct an audit per the Supervisory Committee Guide with the option to conduct an audit that meets certain minimum requirements, which were incorporated into a new Appendix A to Part 715. We supported this change, as we believe providing a targeted list of minimum procedures to be included in an audit would clarify and simplify the audit process. Further, the change requiring reference to the single page appendix, rather than the over 350-page Supervisory Committee Guide, has been helpful.

However, along with the 2019 changes intended to streamline the process there were a number of new sections of the supervisory committee exam, as well as revisions that increased reporting burden.[13] As a result, these new and revised sections have drastically increased the scope and associated cost related to the review of the supervisory committee. We have heard from credit unions that audit-related costs have more than doubled. Such an increase is unsurprising given the vast expansion of the scope of the exam.

For example, there are numerous new and expanded requirements related to:

- Teller Controls;
- Teller Summary Sheets;
- ATM Balancing Sheets;
- Electronic Payment Transfers (Automatic Clearing House (ACH)/Wires);
- Allowance for Loan and Lease Losses (ALLL);

[12] 84 Fed. Reg. 53,303 (Oct. 7, 2019).
[13] NCUA Other Supervisory Committee Audit Minimum Procedures Guide: § 715.7 ((Jan. 8, 2020), *available at* https://ncua.gov/files/publications/guides-manuals/2020-supervisory-committee-audit-guide.pdf.

- Controls Over Employee and Official Accounts;
- Fixed Assets;
- Income and Expense;
- Information Systems; and
- Personnel.

We recognize that some of these new requirements are necessary related changes, particularly regarding the ALLL. Additionally, some of these new requirements are minimally burdensome, such as annual review of the ALLL policy. Further, some of the changes though have an associated burden are sensical nonetheless, such as the new requirements under the new section Information Systems. However, some of these changes are unnecessary and duplicative, such as Electronic Payment Transfers (Automatic Clearing House (ACH)/Wires), which has a separate review. Thus, we urge the agency to revisit its regulations related to the supervisory committee to scrutinize where unnecessary and/or duplicative requirements can be scaled back. Bringing the scope back closer to where it was prior to the 2019 expansion will save time and money for the NCUA and certainly for credit unions, particularly those of smaller asset sizes.

Part 721: Incidental Powers

Section 721.3(b)(2) permits, as an incidental power, a FCU to offer charitable donation accounts (CDA), which are a hybrid charitable and investment vehicle that may be funded as a means to provide charitable contributions and donations to qualified charities. Currently, only (Internal Revenue Code) section 501(c)(3) organizations are considered to be a "qualified charity" for purposes of the CDA rule. Section 501(c)(3) organizations are generally charitable organizations, churches and religious organizations, and private foundations.

In a June 2022 letter[14] and subsequent meetings, CUNA urged the NCUA to expand the definition of "qualified charity" to also include veterans' organizations under section 501(c)(19). The NCUA Board adopted the CDA rule to allow credit unions to assist tax-exempt organizations that the credit union chooses to help. We believe tax-exempt veterans' organizations under section 501(c)(19) are equally as worthy of financial investment from credit unions as are section 501(c)(3) organizations.

In response, in May of this year, the NCUA proposed expanding "qualified charity" to include section 501(c)(19) organizations.[15] We fully support this proposed change and will be weighing in with a formal comment letter expressing our appreciation and support for this proposed change. Further, we are contemplating whether additional groups, entities, or organizations should be considered a "qualified charity" for purposes of a subsequent rulemaking in this area.

[14] CUNA Letter to NCUA re Expansion of "Qualified Charity" (June 10, 2022), *available at* https://www.cuna.org/content/dam/cuna/advocacy/letters-and-testimonials/2022/061022_CUNA%20Letter%20to%20NCUA%20re%20501c19%20CDAs.pdf.
[15] 88 Fed. Reg. 34,792 (May 31, 2023).

Part 722: Appraisals

Appraisal Thresholds

We appreciate the agency's changes regarding real estate appraisals, both residential[16] and non-residential.[17] We were supportive of the amendments that increased the threshold below which appraisals[18] are not required for commercial real estate transactions from $250,000 to $1,000,000. Further, we supported the separate amendments that increased the threshold below which appraisals are not required for residential real estate transactions from $250,000 to $400,000.[19]

We believe increasing the thresholds, particularly with regard to residential appraisals, has reduced regulatory burden for credit unions, resulting in both transaction cost and time savings for credit unions and their members. However, we continue to hear challenges from member credit unions related to obtaining residential appraisals. This is challenging when there are no applicable exceptions to the appraisal requirement, including the exception for transactions that qualify for sale to Fannie Mae or Freddie Mac or conform to their appraisal standards for the applicable property types, as well as other exceptions under section 722.3(a)(6). This can be particularly challenging in areas where there is not enough sale volume to develop reasonable comps. This can have a detrimental impact on credit unions' ability to lend in rural locations. Conversely, a busy market can also raise challenges obtaining appraisals; this can be due to appraisers who choose not to cover certain markets due to workload constraints or preferred coverage areas.

Thus, we ask the NCUA to explore the possibility of further increasing these thresholds or abandoning them altogether. Further increases, or even elimination of these thresholds, would address some of the concerns noted above.

Appraisal Bias

Credit unions are disturbed by the increase in reports of racial discrimination by appraisers reported by the U.S. Department of Housing and Urban Development.[20] Diverse and often underserved communities face several barriers when it comes to access to financial services, and credit unions have a long history of serving underserved and diverse communities. There is a large and persistent homeownership gap in the U.S.[21]

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[16] 84 Fed. Reg. 23,909 (Apr. 30, 2020).
[17] 84 Fed. Reg. 35,525 (July 24, 2019).
[18] CUNA Comment Letter to NCUA re Part 722, Real Estate Appraisals Proposed Rule (Dec. 3, 2018), *available at* https://downloads.regulations.gov/NCUA-2018-0051-0031/attachment_1.pdf.
[19] CUNA Comment Letter to NCUA re Residential Real Estate Appraisals Proposed Rule (Jan. 23, 2020), *available at* https://downloads.regulations.gov/NCUA-2019-0112-0010/attachment_1.pdf.
[20] Remarks of Senior Advisor to the Secretary of HUD, Virtual Home Appraisal Bias Event (June 15, 2021), *available at* https://www.consumerfinance.gov/about-us/events/archive-past-events/virtual-home-appraisal-bias-event.
[21] Source: U.S. Census via FRED, CUNA Analysis.

The systemic undervaluation of homes owned by people of color exacerbates the homeownership gap, the racial wealth gap, and, ultimately, harms the long-term financial security of our entire nation. It further discredits the reliability and value of home appraisals generally. Credit unions rely on appraisers for accurate and unbiased opinions on the market value of homes serving as collateral for mortgage loans. When racial prejudice is injected into that process, it prevents credit unions from meeting their mission to serve their members and introduces risk into the housing finance system.

Addressing bias in appraisals and valuations is complex, and will likely involve efforts on multiple fronts, including improving the number and diversity of appraisers, training and certification requirements, establishing equity in selecting comparable valuations, increased use of technology and automation when appropriate, and increased accountability for appraisers. Unfortunately, credit unions have reported that when bias in an appraisal has been identified and reported to appropriate state authorities, often nothing comes of the report.

With appraisers in short-supply and closings delayed, appraisers are in constant demand. The need to increase the size and diversity of the pool of individuals entering this critical vocation is paramount. Conducting appraisals in rural areas is challenging, especially for credit unions who are often the only lenders serving these areas. The appraisal industry is aging and 85% white.[22] Increasing the number and diversity of qualified, working appraisers will improve equity for homebuyers across the country, not only in the quality and accuracy of appraisals but in the speed of the appraisal and closing as well.

Further, the increased use of technology and data to conduct valuations would greatly benefit consumers and reduce reliance on subjective judgments by individuals. In particular, the secondary market's dedication to an antiquated model of in-person appraisals will likely help perpetuate the appraisal industry's inefficient and disadvantageous approach to the detriment of people of color, people in rural areas and low- and moderate-income consumers. Focusing on permitting greater use of bias-free artificial intelligence, virtual video communications, and other technologies could make appraisals less costly, timelier, and more equitable for all.

Part 725: Central Liquidity Facility

<u>Statutory Enhancements</u>

We support the extension of an expired provision in the Coronavirus Aid, Relief and Economic Security (CARES) Act related to the NCUA's Central Liquidity Facility (CLF). This provision enhanced the CLF by, among other things, allowing corporate credit unions to act as agents for smaller (under $250 million in assets), non-CLF member, natural person credit unions. This important provision made it easier for smaller credit unions to access emergency liquidity during the COVID-19 pandemic, providing an

[22] Safia Samee Ali, Black Appraisers Call Out Industry's Racial Bias and Need for Systemic Change, NBC News (June 7, 2021), *available at* https://www.nbcnews.com/news/us-news/black-appraisers-call-out-industry-s-racial-bias-need-systemic-n1269452.

invaluable and necessary lifeline for smaller credit unions, most of which were not CLF members.

This CARES Act provision expired but was then extended through the end of 2022 in the annual appropriations process. The House added an amendment to the National Defense Authorization Act (NDAA) to extend this provision, but it was not adopted in the final version of the NDAA. As a result, these CLF enhancements have been unavailable to credit unions this year.

In these turbulent economic times, we believe that the expired CLF corporate agent enhancement should be extended for three years by the Congress. As some banks face liquidity problems, Congress should act to extend this authority in the event that a crisis develops that might impact the liquidity of America's credit unions. This corporate-agent enhancement expired at the end of last year, despite efforts of the NCUA and CUNA to see it extended. We appreciate the NCUA's ongoing advocacy on this important issue.

Operational Issues

Per the FCU Act, the CLF is intended to "improve general financial stability by meeting the liquidity needs of credit unions. . . ."[23] Per the FCU Act, and NCUA's regulations, "liquidity needs" covers a range of needs, including short-term credit, seasonal credit, and protracted credit needed for unusual or emergency circumstances.[24] While we understand the CLF is intended to be a backup source of liquidity, we believe it could be utilized by more credit unions with greater frequency if the process to access liquidity (*i.e.*, membership application and request of an advance) were more streamlined and responses to requests were more timely.

Understanding there are statutory provisions that limit the agency's ability to modify certain aspects of the CLF (*e.g.*, capital stock subscription requirement),[25] we ask the NCUA to review Part 725 to assess where it can streamline and improve the process overall.

Credit unions often point to the Federal Reserve's Discount Window as an easier/quicker way to access liquidity. Again, the FCU Act includes certain constraints related to the extension of credit not applicable to the Discount Window, such as that there must be a valid liquidity need and the credit union must be creditworthy.[26] However, the NCUA can improve certain aspects of the process of receiving funds from the CLF, such as the timing involved. When a credit union experiences an unexpected need for liquidity, time is of the essence. The FCU Act requires the NCUA to approve or deny an application within five working days.[27] Five, or even up to eight days depending on weekends and holidays, can be a prohibitively long period to learn whether a funding request has been approved. Thus, causing credit unions to instead pursue other liquidity sources. Particularly, when

[23] 12 U.S.C. § 1795.
[24] *Id.* at § 1795a(1); 12 C.F.R. § 725.2(i)(2).
[25] *Id.* at § 1795d.
[26] *Id.* at § 1795e(a)(1), (2).
[27] *Id.* at § 1795e(a)(1).

sources such as the Discount Window can provide a credit union with same-day liquidity. As such, we ask the NCUA to consider—consistent with the FCU Act—shortening the five-day window provided in in Part 725 to two days.[28]

Part 740: Accuracy of Advertising and Notice of Insured Status

Part 740 details the requirements federally insured credit unions must meet with regard to advertising, including digital advertisements. In particular, sections 740.4 and 740.5 detail the requirements for the official sign and the official advertising statement, respectively.

We have heard from credit unions concerned that the official sign is not made for a digital world. In particular, it would be helpful for the NCUA to evaluate whether it can develop a sign that works better on a digital device. Since so many deposits and other transactions take place through a mobile app rather than a physical space it would make sense to create a NCUA sign specifically intended for websites and mobile apps. Further, we have heard from credit unions that examiners and auditors often recommend credit unions use the official statement rather than the sign, likely due to legibility issues. We recognize that section 740.4(b)(2) allows a credit union to alter the font size of the official sign to make it legible on its website. However, simply altering the font size is often not enough to increase legibility, particularly on a mobile device. In addition to online deposit channels, we ask the agency to provide additional guidance specific to display of the official sign on non-traditional branches, such as: ATMs, ITMs, video kiosks, and café-style branches. Further, we have heard concerns regarding the expense associated with the official sign, particularly when opening new branches. We ask the NCUA to consider how it might be able to reduce such costs, potentially by lowering the amount charged and/or limiting the locations for which a sign is required.

There is some ambiguity around Part 740's application to advertising on social media, such as TikTok, Instagram, Facebook, and the use of influencers. Thus, we ask the agency to provide guidance on advertising on social media. With regard to the official statement and social media, we ask the NCUA to clarify that rather than including the abbreviated "Insured by NCUA" statement in each post, including the statement in a bio or "about us" section of a credit union's profile should suffice. Further, we ask the NCUA to consider adding advertisements posted to social media to the list of exceptions from the official advertising statement.[29]

Part 741: Requirements for Insurance

In December 2021, the NCUA reduced the Normal Operating Level (NOL) of the National Credit Union Share Insurance Fund (NCUSIF) from 1.38% to 1.33%. We appreciate the agency lowering the NOL and look forward to a phase-down of the NOL to 1.30% as the economy stabilizes.

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[28] 12 C.F.R. § 725.17(c), (d).
[29] 12 C.F.R. 740.5(c).

Efforts by the agency over the past few years to extend the examination cycle for certain credit unions have been positive, particularly for credit unions for which a 12-month cycle was clearly unnecessary.

In December 2018, the federal banking agencies issued a final rule under the Economic Growth, Regulatory Relief, and Consumer Protection Act giving banks holding under $3 billion in assets an examination only once every 18 months, leaving credit unions on an uneven playing field. Credit unions, however, remain eligible for an 18-month examination cycle only if their asset level is below $1 billion. This regulatory disparity now serves as a comparative advantage for community banks.

Congress has already delegated authority to the NCUA to set the frequency of examinations for credit unions. Credit unions deserve the privilege of providing customer service subject to comparable regulatory supervisory thresholds as applied to banking organizations—and this issue continues to be a concern among industry leadership. We urge the NCUA to extend the credit union asset threshold for the 18-month examination cycle from $1 billion to $3 billion.

Part 745: Share Insurance and Appendix

Deposit Insurance Reform Should Include Credit Unions

Congress is reportedly considering proposals to provide deposit insurance coverage for business transactional accounts at financial institutions. These accounts have daily balances that fluctuate frequently based on receipts, payments, payroll, and the many other transactions that occur in the normal cycle of business activity. The traditional model of fixed deposit insurance may not be the best way to insure such accounts. Should Congress direct the bank's Federal Deposit Insurance Corporation's (FDIC) Deposit Insurance Fund (DIF) to provide higher or unlimited coverage for such accounts, the Committee should provide reciprocal instructions pertaining to the NCUSIF.

Credit unions have many members with accounts for their small and medium sized businesses. Furthermore, small businesses are more frequently reaching out to their community credit union for lending. These member businesses enjoy the service and stability of doing business with credit unions. Credit unions stand ready to serve small businesses and reform to deposit insurance accounts should reflect this fact. It stands to reason that their transactional business accounts should receive the same coverage as those insured by the FDIC. As such, we urge the NCUA to work with lawmakers to ensure they understand the importance of parity on this issue.

Importance of Privately Insured Credit Unions

Privately insured credit unions are currently excluded from participation in the Federal Reserve's new Bank Term Funding Program (BTFP). These privately insured credit unions are vital to the financial health of the people and communities they serve.

Funding from the BTFP is available to federally insured financial institutions that pledge assets as collateral for these loans. The vast majority of credit union deposits are insured by the NCUA up to $250,000 per individual depositor—the same level as any federally insured financial institution. However, under current terms, America's privately insured credit unions are prohibited from accessing the BTFP. We ask the NCUA to support our advocacy efforts to have the Federal Reserve amend the BTFP to allow privately insured credit unions.

Process for Identifying Rules for Review and Soliciting Comments

We appreciate the agency permitting us to accept comments as it considers its 2023 regulatory agenda. However, as we have stated numerous times, we believe the process for seeking comments on regulations included in the NCUA's Regulatory Review could be improved. For example, some of the rules included for review may already be the subject of proposed changes or recent modifications. In such instances, it is unclear the extent to which further amendments to those regulations will be contemplated by the agency.

In addition, since the notice of the regulatory review is not required to comply with the Administrative Procedure Act (APA), and is therefore not published in the *Federal Register*, potential commenters may be unaware of its issuance. To ensure adequate input is received, we ask the NCUA to consider ways to better highlight its request for comments on the regulatory review.

Since the regulatory review process is outside the APA, comments are not made available for public inspection. In addition, the NCUA does not publicly respond to commenters' suggestions. While not required to do so, it would be very useful if the NCUA were to choose to not only post public comments on its website but also publicly respond to input received. Doing so would permit CUNA, and credit unions alike, to identify patterns and/or trends within the regulations included in the review. This would allow for more effective and efficient advocacy, and ideally result in an improved operating environment for credit unions.

Conclusion

On behalf of America's credit unions and their more than 135 million members, thank you for considering our comments on the NCUA's 2023 regulatory review. If you have questions about our comments, please do not hesitate to contact me at (202) 508-6743 or LMartone@cuna.coop.

Sincerely,

Luke Martone

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