August 21, 2024

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

RE: Regulatory Review: Regulatory Publication and Voluntary Review as Contemplated by the Economic Growth and Regulatory Paperwork Reduction Act (NCUA-2024-0014)

Dear Ms. Conyers-Ausbrooks,

On behalf of its member credit unions, the Cooperative Credit Union Association, Inc. ("Association") appreciates the opportunity to comment on the National Credit Union Administration's (NCUA) Regulatory Review: Regulatory Publication and Voluntary Review as Contemplated by the Economic Growth and Regulatory Paperwork Reduction Act. This is the first of four NCUA notices on regulatory review the agency will issue over the next two years. The Association is the state trade association representing approximately 200 state and federally chartered credit unions located in the states of Delaware, Massachusetts, New Hampshire, and Rhode Island, which further serve over 4.9 million consumer members. The Association developed these comments based on a survey of our members.

The Association's High-Level Comments

- The Association supports America's Credit Unions' comments in response to NCUA's Regulatory Review. We incorporate those comments into the Association's comments by reference.

- Credit unions are smaller and less complex than the major banks whose actions often indirectly influence credit union regulation, especially in consumer protection. Credit unions' cooperative model also incentivizes credit unions to benefit their member-owners, not profit off them at their expense. We urge the Board to adopt the "Principle of Proportionality" authorized by the Basel Committee on Banking Supervision[1] to recognize the credit union difference and reduce unnecessary regulatory burdens.

- We urge the Board to streamline its merger application process, especially with respect to federally insured state-chartered credit unions (FISCUs), under Part 708b of NCUA rules because they must often submit two different merger

[1] Basel Committee on Banking Supervision, *High-Level Considerations on Proportionality* (July 2022), *available at* https://www.bis.org/bcbs/publ/d534.htm.

applications in form but not substance. NCUA should work with state-supervisory authorities to develop a common merger application that FISCUs can submit to both NCUA and state credit union regulators to eliminate redundant paperwork burdens.

- In addition, the Board should expand the scope of emergency mergers pursuant to 12 C.F.R. Part 701 Appendix B(II)(D)(2). Pursuant thereto, a merging credit union "must be either insolvent or in danger of insolvency" in addition to other factors. Many small credit unions have strong financials and do not meet the above criteria, but due to factors including, but not limited to waning membership, aging board and/or management, and lack of succession planning, such credit unions are in dire need of merging and many times, merging quickly. The NCUA should consider additional criteria to approve emergency mergers to relieve continuing credit unions from the burdensome time and costs to provide needed relief to troubled credit unions who are otherwise financially viable.

The Association's Detailed Comments

A. Need and Purpose of the Regulations:

Question 1: Have there been changes in the financial services industry, consumer behavior, or other circumstances that cause any regulations in these categories to be outdated, unnecessary, or unduly burdensome? If so, please identify the regulations, provide any available quantitative analyses or data, and indicate how the regulations should be amended.

We urge the Board to remove its "reasonable geographic proximity" requirement from its *Chartering and Field of Membership Manual*'s field-of-membership expansion service test for Multiple Common Bond federal credit unions and replace this requirement with a narrative submitted by the applicant explaining how the credit union intends to serve the group in question, including by using online services.

NCUA's *Chartering and Field of Membership Manual*, codified at Appendix B to 12 C.F.R. Part 701, requires Multiple Common Bond federal credit unions wishing to add an additional associational or occupational common bond to have a service facility within "reasonable geographic proximity" of the office of the association or select-employee group to be served. *See id.* at Ch. 2, §§ II.F, IV.A.1.

Technological improvements, however, have made the issue of geographic proximity obsolete. Many associations and employers also have members or employees located throughout the United States, meaning that the traditional approach of measuring the distance between a physical credit union branch office and the office of an association or company has far less relevance than it did previously.

Today, credit unions can serve individuals anywhere in the United States using mobile banking technology and a nationwide surcharge-less ATM network such as Co-op, AllPoint, or MoneyPass. While shared branching network locations can qualify as a "service facility," shared ATMs typically do not qualify as service facilities under NCUA's existing rules. In addition, following Co-op Solutions' merger with PSCU and rebranding as Velera, de novo credit union charter applicants may no longer be able to receive the letters of intent required by Phase 2 of NCUA's de novo chartering process to support the proposition that the de novo credit union would be able to join the Co-op shared branching network (even if participation in a shared branching network is an operational necessity for the de novo charter applicant).

We urge the Board to remove its "reasonable geographic proximity" requirement its Multiple Common Bond field-of-membership expansion requirements and replace it with a narrative explaining how the credit union intends to serve the associational or occupational group.

The Association also urges the Board to incorporate the Principle of Proportionality into its rulemaking process, as authorized by the Basel Committee on Banking Supervision,[2] to ensure that NCUA rules are properly tailored to credit unions and are right sized to the complexity of the credit union in question. As the Basel Committee noted in its recent *High-Level Considerations on Proportionality* (2022) standard:

> "Financial systems are heterogeneous. Characteristics that tend to vary across financial systems include the distribution of banks' size, international activity, level of sophistication and predominance of domestically owned (including government-owned) versus foreign-owned banks. Some financial systems include both large internationally active banks and small banks serving local communities. Other financial systems consist primarily of small local institutions, some of which might undertake bank-like activities without themselves being banks.
>
> "The distribution of banks within a financial system may influence the approach to proportionality. In a number of jurisdictions, simpler rules are implemented for less complex banks in banking systems that also include large, internationally active banks subject to the Basel Framework."[3]

While credit unions are not "banks" per se, credit unions are smaller and less complex than the major banks whose actions often indirectly influence credit union regulation. This strongly militates in favor or proportional regulation for credit unions. We urge the Board to follow the Principle of Proportionality in all of its rulemakings in order to reduce unnecessary regulatory burdens.

While we recognize that NCUA's consumer protection rules will be subject to a future Regulatory Review, our members are particularly concerned that consumer protection regulation aimed at addressing the largest banks' treatment of their

[2] *Id.*
[3] *Id.* at 2.

customers filters down to harm credit unions that have personal relationships with their members. For many credit unions, consumer protection is their primary objective and, unlike big banks, most credit unions do not have the margin to accept the risks or provide services for free. In contrast, credit unions' cooperative model incentivizes credit unions to benefit their member-owners, not profit off them at their expense.

Question 2: Do any of these regulations impose burdens not required by their underlying statutes? If so, please identify the regulations and indicate how they should be amended.

We urge the Board to clarify its federal credit union member-expulsion bylaw codified at Article XIV in Appendix A to 12 C.F.R. Part 701 to update its notice requirement as follows:

> "The notice must include sufficient detail ~~for the member to understand~~ to inform the member why he or she is being subject to expulsion and an opportunity to respond to the FCU's concerns in a requested hearing."

We believe the Board should make this edit because "understanding" is a subjective standard that does not include a reasonableness element. Considering that NCUA has previously opined that expelled members may be able to sue their credit union to challenge their expulsion, we believe a more objective standard is essential.

Article XIV also requires a federal credit union's board to vote on an expulsion within 30 days of the hearing and limits the time period for "non-substantial" membership agreement violations to those occurring within the prior two years. We do not believe that these time limits are necessary. Instead, the federal credit union's board should vote within a reasonable period of time. Non-substantial membership agreement violations that are reasonably similar to one-another should also not be time-limited because they demonstrate a modus operandi.

B. Overarching Approaches or Flexibilities:

Question 3: With respect to the regulations in these categories, could the Board use a different regulatory approach to lessen the burden imposed by the regulations and achieve statutory intent?

Please see the Association's responses to Questions 1 and 2, above.

Question 4: Do any of these rules impose unnecessarily inflexible requirements? If so, please identify the regulations and indicate how they should be amended.

Please see the Association's responses to Questions 1 and 2, above.

C. **Cumulative Effects:**

Question 5: Looking at the regulations in a category as a whole, are there any requirements that are redundant, inconsistent, or overlapping in such a way that taken together, impose an unnecessary burden that could potentially be addressed? If so, please identify those regulations, provide any available quantitative analyses or data, and indicate how the regulations should be amended.

We urge the Board to streamline its merger application process, especially with respect to federally insured state-chartered credit unions (FISCUs) because they must often submit two different merger applications in form but not substance. *See* 12 C.F.R. Part 708b.

NCUA should work with state-supervisory authorities to develop a common merger application that FISCUs can submit to both NCUA and state credit union regulators to reduce unnecessary paperwork burdens.

The Board should expand the scope of emergency mergers pursuant to 12 C.F.R. Part 701 Appendix B(II)(D)(2). Pursuant thereto, a merging credit union "must be either insolvent or in danger of insolvency" in addition to other factors. Many small credit unions have strong financials and do not meet the above criteria, but due to factors including, but not limited to waning membership, aging board and/or management, and lack of succession planning, such credit unions are in dire need of merging and many times, merging quickly. The NCUA should consider additional criteria to approve emergency mergers to relieve continuing credit unions from the burdensome time and costs to provide needed relief to troubled credit unions who are otherwise financially viable.

D. **Effect on Competition:**

Question 6: Do any of the regulations in these categories create competitive disadvantages for one part of the financial services industry compared to another or for one type of federally insured credit union compared to another? If so, please identify the regulations and indicate how they should be amended.

Yes, differing merger application formats for FISCUs—i.e. one established by their state regulator and another format from NCUA—can place FISCUs at a competitive disadvantage relative to federal credit unions in the merger process.

This is also true when state-law merger requirements (such as a membership vote) are more extensive than the rules applicable to federal credit unions, which can place

FISCUs at a disadvantage, especially with respect to "emergency" mergers conducted by NCUA.

We urge the Board to develop a common merger application template with state credit union regulators in order to reduce duplicative paperwork burdens under Part 708b of NCUA rules. 12 C.F.R. pt. 708b.

In addition, NCUA should level the playing field between FISCUs and federal credit unions in the area of "emergency" mergers, *see* 12 U.S.C. § 1785(h), by updating Part 708b to allow FISCUs seeking to acquire a troubled credit union extra time to observe state-law requirements—such as conducting a membership vote at the acquiring FISCUs to authorize the merger, *see, e.g.*, M.G.L. Ch. 171, § 78 ("Consolidation")—instead of choosing a federal credit union to acquire the troubled institution because the federal credit union can move faster.

E. <u>Reporting, Recordkeeping, and Disclosure Requirements:</u>

Question 7: Do any of the regulations in these categories impose outdated, unnecessary, or unduly burdensome reporting, recordkeeping, or disclosure requirements on federally insured credit unions?

Yes, please see the Association's response to Questions 1, 5, and 6.

In addition, Section 741.6 requires federally insured credit unions with more than $1 billion in assets to report income related to overdraft fees and non-sufficient funds (NSF) fees. 12 C.F.R. § 741.6.

We believe credit unions being required to report this information is unduly burdensome and not reasonably related to safety and soundness considerations. We urge the Board to reduce compliance burdens by eliminating this reporting requirement.

Question 8: Could a federally insured credit union fulfill any of these requirements through new technologies (if they are not already permitted to do so) and experience a burden reduction? If so, please identify the regulations and indicate how they should be amended.

Yes, see the Association's response to Question 1, above.

F. <u>Unique Characteristics of a Type of Institution:</u>

Question 9: Do any of the regulations in these categories impose requirements that are unwarranted by the unique characteristics of a particular type of

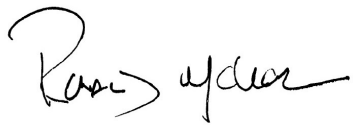
federally insured credit union? If so, please identify the regulations and indicate how they should be amended.

Federal credit unions are subject to a federal interest rate ceiling of 15 percent, or a higher rate set by the NCUA Board for periods of 18 months. *See* 12 U.S.C. § 1757(5)(A)(vi); 12 C.F.R. § 701.21(c)(7). The limitation does not apply to FISCUs or to banks. Currently the Board has temporarily set a maximum interest rate of 18 percent for federal credit unions.

We urge the Board to set a maximum interest rate that is tied to a variable rate index, such as the Prime Rate plus a 15 percent spread. This approach will help level the playing field between federal credit unions and FISCUs, as well as help reduce interest rate risk.

Thank you for the opportunity to comment on the NCUA's Regulatory Review. If you have any questions or desire further information, please do not hesitate to contact the Association at (508) 481-6755 or govaff-reg@ccua.org.

Sincerely,



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