The National Voice of the State Credit Union System

May 27, 2020

Gerard Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

Re: NASCUS Comments on Interim Final Rule: Regulatory Capital Rule: Paycheck Protection Program Lending Facility and Paycheck Protection Program Loans (RIN 3133-AF16)

Dear Mr. Poliquin:

The National Association of State Credit Union Supervisors (NASCUS)[1] submits the following comments in response to the National Credit Union Administration's (NCUA's) request for comments on Interim Final Rule: Regulatory Capital Rule: Paycheck Protection Program Lending Facility and Paycheck Protection Program Loans (RIN 3133-AF16).[2] The Interim Final Rule (IFR) makes conforming changes to NCUA's Prompt Corrective Action (PCA) rule pursuant to the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).[3] The CARES Act authorizes the Small Business Administration (SBA) to create the Paycheck Protection Program (PPP), a loan guarantee program intended to help businesses affected by the COVID–19 pandemic. The CARES Act requires that PPP loans receive a zero percent risk weighting under the NCUA's risk-based capital requirements.[4]

To reflect the statutory requirement, the IFR amends credit union capital adequacy regulations to provide that covered PPP loans receive a zero percent risk weight and excludes the covered loan from a credit union's calculation of total assets for the purposes of calculating its net worth ratio if the covered loan is pledged as collateral for the Federal Reserve System's PPP Lending Facility.[5] The IFR also excludes covered loans from the definition of a "commercial loan" in NCUA's member business lending and commercial lending regulations.[6]

NASCUS supports this rulemaking and we commend NCUA for moving expeditiously in response to the COVID-19 pandemic crisis. The IFR removes unnecessary and unintended

[1] NASCUS is the professional association of the nation's 45 state credit union regulatory agencies that charter and supervise over 2,000 state credit unions. NASCUS membership includes state regulatory agencies, state chartered and federally chartered credit unions, and other important stakeholders in the state system. State chartered credit unions hold nearly half the $1.5 trillion assets in the credit union system and are proud to represent nearly half of the 117 million credit union members.
[2] NCUA Interim Final Rule: Regulatory Capital Rule: Paycheck Protection Program Lending Facility and Paycheck Protection Program Loans, 85 Fed. Reg. 81, at 23212 (April 27, 2020).
[3] Pub. L. 116-139.
[4] *Supra* note 3 at § 1102.
[5] 85 Fed. Reg. 81, at 23214 (April 27, 2020).
[6] Ibid.

obstacles to credit union participation in the PPP and facilitates the delivery of the program's benefits to thousands of credit union small business members.

NCUA's changes to § 702.106(d) to add PPP loans to the category of low risk assets conforms to the mandate of the CARES Act and is consistent with the treatment of PPP loans by the other federal bank regulators with respect to bank capital rules.[7] NASCUS agrees this change is sound policy and should be implemented without delay.

We also agree that PPP loans pledged as collateral to the PPP Facility should be excluded from the calculation of regulatory capital. Credit unions have closed billions of dollars of loans for their members as part of the federal government's response to the COVID-19 crisis. The Federal Reserve's PPP Facility will serve as an important source of additional liquidity for credit unions participating in the program.[8] The additional liquidity provided by the PPP Facility will enable participating credit unions to make new loans available to members in need of credit during the pandemic.

The SBA's PPP loans are unique. Not only are they guaranteed by the SBA and eligible for forgiveness, the interim final rules governing the PPP specifically limited the lender's underwriting responsibilities.[9] Credit unions, like their bank peers, were encouraged to participate in the program and originate PPP loans to buttress the government's response to the crisis. There is little safety and soundness risk associated with the PPP loans, and therefore, applying the enhanced due diligence of NCUA's § 723 to these loans is of little supervisory benefit. We support NCUA's changes to § 723.2 to exclude PPP loans from the definition of "commercial loan." We also agree that eliminating the regulatory and supervisory burdens of the commercial loan rule as an impediment to credit union participation in the PPP is sound public policy and consistent with Congress' intent for implementation of the CARES Act.

Finally, NASCUS agrees with NCUA that good cause exists for the issuance of these changes as an IFR without advance notice and comment nor a delayed effective date.[10] Given that the PPP is well underway and has a limited duration, it is in the best interest of the public and the credit union system to immediately remove these barriers to credit union participation in the program.

NASCUS appreciates the opportunity to submit comments to NCUA on the Interim Final Rule regarding the treatment of PPP loans with respect to PCA and member business lending. This rulemaking represents a clear example of regulatory relief necessitated by the COVID-19 pandemic and the nation's emergency response to the crisis. The state credit union system stands prepared to continue doing its part to aid in the national response to the economic fall out from the pandemic. The IFR is important in helping to ensure that credit unions are not

[7] 2 85 Fed. Reg. 71, at 20387 (April 13, 2020).
[8] Part 741.12 requires federally insured credit unions maintain several proven sources of contingency funding.
[9] SBA Interim Final Rule: Paycheck Protection Program, Section 3(b), 85 Fed. Reg. 73 at 20815 (April 15, 2020).
[10] 85 Fed. Reg. 81, at 23215 (April 27, 2020).

penalized solely for contributing to the administration of the PPP and participating in the PPP Facility. We would be happy to answer any questions or provide further information at NCUA's convenience.

Sincerely,

- signature redacted for electronic publication -

Lucy Ito
President and CEO