CUNA & Affiliates
A Member of the Credit Union System

Credit Union
National Association, Inc.

601 Pennsylvania Ave. NW, South Bldg.
Suite 600
Washington, D.C.
20004-2601

Telephone:
(202) 638-5777
Fax:
(202) 638-7734

Web Site:
www.cuna.org

September 27, 2005

Ms. Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Via E-mail: regcomments@ncua.gov

Re: Regulatory Flexibility Program, 12 CFR 742

Dear Ms. Rupp:

On behalf of the Credit Union National Association, we are pleased to file comments on the National Credit Union Administration's proposed rule to amend its Regulatory Flexibility Program, 12 CFR 742. By way of background, CUNA represents over 90% of the nation's nearly 8,900 state and federal credit unions that serve nearly 87 million members.

Summary of CUNA's Comments

- CUNA supports NCUA's efforts to provide further improvements in the Regulatory Flexibility Program (RegFlex), an initiative which CUNA has endorsed from its inception.
- CUNA supports changing the qualifying net worth ratio requirement from 9% to 7%.
- CUNA does not support the accompanying requirement that credit unions must also maintain the well-capitalized level for six consecutive quarters prior to RegFlex status.
- CUNA supports NCUA's changes to streamline the RegFlex process by eliminating the requirement that NCUA notify credit unions that automatically qualify.
- CUNA supports adding a provision that would allow credit unions to appeal a decision from a regional office that denies RegFlex status.
- CUNA supports additional RegFlex exemptions, such as including as exemptions the provisions that may be waived for member business loans.

- CUNA supports revisions that would allow credit unions to suggest additional RegFlex exemptions. Such recommendations could be submitted to the regions and then forwarded to the NCUA General Counsel's office for consideration as part of future rule changes to RegFlex.

Discussion of CUNA's Views

Since the announcement of RegFlex in 2001, CUNA has strongly supported the approach to regulatory oversight, which it embodies. Under RegFlex, qualifying credit unions may be exempt from regulatory restrictions and take advantage of additional regulatory flexibility in certain areas. Most notably RegFlex credit unions do not have to comply with limitations on fixed assets or on the purchase of eligible obligations. Well-run credit unions deserve such flexibility and all credit unions should be given incentives to manage their operations effectively.

Also since its inception, CUNA has advocated setting the qualifying net worth ratio at 7%, instead of 9%, as the current regulation requires. In our view, if a credit union meets the well-capitalized level, additional net worth should not be necessary to achieve RegFlex status. Thus, we agree with NCUA's proposed change to reduce the general qualifying net worth level to 7%.

However, we do not support the requirement that a credit union must maintain a 7% net worth level for six consecutive quarters to achieve RegFlex status. This requirement, which would replace the current requirement that the qualifying net worth level be met for a single quarter, seems to be inconsistent with RegFlex and the concept of regulatory leeway for well-operated credit unions. Moreover, the regulatory latitude provided under RegFlex, even with the lower qualifying net worth levels, does not expose well-run credit unions or the credit union system to risk that is appreciably greater than risk associated with the current RegFlex program.

Under the proposal, a credit union that has a CAMEL rating of 2 or better and has not been able to maintain 7% net worth for the last six quarters would be able to apply to its NCUA Regional Director for RegFlex status. However, we do not think this step should be necessary if a credit union is well-capitalized and has been so for the last quarter.

NCUA's RegFlex rule allows a credit union to appeal a decision of a regional director to revoke a credit union's RegFlex status. We also believe that a credit union that applies to the agency for RegFlex status and is not granted that status should be able to appeal that decision as well.

While NCUA did not propose additional RegFlex exemptions, it did ask for additional comments on such exemptions. As we have in the past, CUNA recommends that NCUA include as RegFlex exemptions the provisions under the member business loan (MBL) rule for which credit unions may seek waivers, such as loan-to-value requirements. Already, NCUA has exempted RegFlex credit unions from the requirement to obtain the personal liability and guarantee of the borrower on an MBL, which is one of the requirements of the MBL rule that can be waived. We encourage NCUA to consider expanding RegFlex activities to include the other waivable requirements under the MBL rule.

Also, we encourage NCUA to facilitate the ability of credit unions to submit ideas regarding additional exemptions under the RegFlex program. One way to accomplish this would be to establish a process under which credit unions could submit their ideas to their examiner or NCUA regional office which would forward them to the agency's Office of General Counsel for inclusion in future rule changes to the RegFlex program. While credit unions may submit recommendations to the agency at any time, we believe a more formalized process will facilitate further enhancements of the RegFlex program.

We support the format changes to the regulation, which we believe will facilitate compliance.

In summary, RegFlex is a good program that is based on the fundamental principle that well-run credit unions should be subjected to less regulatory intrusion in their operations. Also, we appreciate the fact that under the proposal 3,919 credit unions would automatically meet RegFlex qualifications based on the year-end call report data, an increase of over 13% in the number that automatically qualify under the current rule. Another 462 institutions would be eligible to apply for RegFlex. We applaud NCUA's efforts to improve the program, such as by lowering the qualifying net worth ratio.

Nonetheless, we urge NCUA to consider further improvements as indicated above that enhance the program and assist credit unions in their efforts to serve their members even better.

Thank you for the opportunity to express our views.

Sincerely,

Mary Mitchell Dunn

Mary Mitchell Dunn
Senior Vice President and
Associate General Counsel