



August 15, 2022

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

**Re: Comment Letter – NCUA Regulatory Review**

To Whom It May Concern,

The Ohio Credit Union League (OCUL) represents the collective interests of Ohio's 231 credit unions and their more than three million members. Of those 231 credit unions, 126 are federally chartered; 60 state-chartered, federally-insured; and 45 state-chartered, privately-insured, with an average asset size of \$185 million. OCUL appreciates the opportunity to comment on the National Credit Union Administration's (NCUA) annual regulatory review.

OCUL believes people, families, businesses, and community needs are best served when there is a balance between the impact and cost of regulation and the benefits it provides consumers. NCUA's ongoing consideration of impact, public insight, and organizational feedback on various regulations is helpful to sharpen the balance between operational efficiency and safety and soundness. Open communication lines between the regulator (NCUA) and the regulated (credit unions) fosters change, innovation, and flexibility, allowing member-owned financial institutions to better respond to member needs.

OCUL offers the following commentary on select provisions of the Federal Credit Union Act pursuant to the NCUA's request for comment.

**Review of Parts 700 - 710 of NCUA's Regulations**

**701.1: Federal Credit Union Chartering, Field of Membership Modifications, and Conversions / Appendix B to Part 701: Chartering and Field of Membership Manual**

Consumers, businesses, and communities need greater ability to partner with federally chartered credit unions to meet their unique financial needs. To that end, federal credit union boards of directors should have the ultimate authority to determine fields of membership, based upon the credit union's ability to serve members while maintaining overall safety and soundness. While NCUA has made strides in unburdening credit unions from antiquated, rigid field of membership restrictions, OCUL believes additional changes will better enable credit unions to compete in a fast-paced, ever-evolving financial services market. Competition among financial institutions provides optionality, spurs innovation, and ensures access to safe and affordable financial services.

The NCUA could alleviate one barrier to credit union services by updating the population limits applicable to community charters, specifically the definition for a "well-defined local community" (WDLC).<sup>1</sup> OCUL recommends amending WDLC by either eliminating the current 2.5 million population limit, or increasing the population limit to 10 million, as doing so would provide credit unions necessary flexibility to meet shifting population needs. According to the U.S. Census Bureau,

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<sup>1</sup> V.A.2 of Appendix B to part 701

Ohio's population increased from 11.5 million to 11.7 million residents, a 1.3% increase between the 2010 decennial census and 2019 census estimate and is projected to continue growing by an additional 110,000 or more residents by 2050.<sup>2</sup> Given dynamic population considerations, OCUL believes it is appropriate for the NCUA to revolutionize hard-wired population limitations hindering community chartered credit unions from serving more people, families, businesses, and communities with the resources they need to meet their goals and achieve their dreams.

## **701.2: Federal Credit Union Bylaws / Appendix A to Part 701: Federal Credit Union Bylaws**

People, families, businesses, and communities need access to safe, reliable, and affordable financial services. In turn, credit unions focus on prioritizing member needs while providing affordable access to credit. For consumers to financially flourish, public policy must encourage member-owned, not-for-profit financial cooperatives to serve and grow through flexible and evolving regulation. Recent FCU Act updates to empower credit union boards of directors with the ability to expel unruly members is an example where evolving regulation can benefit from additional flexibility. More specifically, as amended, the FCU Act provides that a member may be expelled for cause by a two-thirds vote of a quorum of the federal credit union's board of directors.<sup>3</sup> Following such vote, the member has 60 days to request a hearing. If requested, the board of directors shall provide the member with a hearing.<sup>4</sup>

Pursuant to the statute, NCUA is required to promulgate rulemaking to implement this expanded authority. While promulgating the expulsion rule, OCUL asks NCUA to consider a balance between the execution of the member appeal process and board and employee safety. Instances where the expulsion resulted from "a substantial or repeated disruption, including dangerous or abusive behavior" could pose a threat to board and staff safety should the meeting occur in-person. Recent updates to the Ohio Revised Code currently allow a state-chartered credit union member who has their membership terminated or services suspended to simply appeal the action to the board of directors within 90 days after the termination or suspension. The board may affirm, disaffirm, or modify the action, and its decision is final.<sup>5</sup> Ohio law does not require an in-person hearing, but retains the ability for the member to appeal the decision. Mirroring this additional regulatory flexibility would enable NCUA to better empower federal credit unions to execute an expulsion appeals process tailored to their needs.

## **701.4: General Authorities and Duties of Federal Credit Union Directors**

People, families, businesses, and community needs are best served when there is a balance between regulation and its efficacy. OCUL cautions NCUA from prescribing rules that dictate a credit union's strategic direction, which must be exclusively reserved for individual boards of directors to determine through executive and regulatory consultation. While the FCU Act grants NCUA broad authority to issue regulations governing both federal credit unions and federally insured credit unions, that broad authority is not meant to dictate how a credit union executes its strategic vision and operations.<sup>6</sup> The

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<sup>2</sup> *A Snapshot of Ohio's Population in 2018*, Ohio Legislative Service Commission. <https://www.lsc.ohio.gov/documents/reference/current/ohiofacts/2020/Demographics.pdf>

<sup>3</sup> 12 U.S.C. § 1764(c)(1)

<sup>4</sup> 12 U.S.C. § 1764(c)(3)(C)(i)

<sup>5</sup> ORC 1733.051

<sup>6</sup> 12 U.S.C. 1752-1775. Section 120 of the FCU Act is a general grant of regulatory authority and authorizes the Board to prescribe rules and regulations for the administration of the FCU Act.

FCU Act specifically vests the general direction and control of an federal credit unions to its board.<sup>7</sup> Even further, Section 113 of the FCUA provides that the board of directors shall have general direction and control of the affairs of the FCU.<sup>8</sup>

Recently, NCUA's proposed changes to section 701.4 would require federal credit union boards of directors to establish and adhere to processes for succession planning.<sup>9</sup> OCUL appreciates the non-prescriptive nature of this proposed rule but cautions NCUA that this rule does not sufficiently consider the individual nature of credit unions and places an additional burden on smaller credit unions already struggling to meet growing regulation and compliance demands. Succession planning is an important component of a credit union's overall strategic plan as it helps ensure appropriate personnel are available to execute the credit union's strategic plan and mission in perpetuity. While credit union safety and soundness properly remain a quintessential focus for NCUA, the current regulatory realities are in direct contrast to NCUA's intended regulatory environment. OCUL is concerned that prescriptive succession planning could lead into future NCUA oversight of additional credit union operational business practices. As member-owned, democratically controlled financial institutions, credit unions should not be governed, managed, and operated by government rule. OCUL requests NCUA consider the Federal Deposit Insurance Corporation's (FDIC) succession planning approach through guidance rather than in the form of regulation.<sup>10</sup>

### **701.21: Loans to Members and Lines of Credit to Members**

People and their communities need access to financial services, and credit unions are uniquely positioned to serve them. As not-for-profit, member-owned financial cooperatives, credit unions are built to provide people, families, businesses, and communities with the resources they need to meet their goals and achieve their dreams. This includes customized lending options and services that credit unions offer members to meet kitchen table realities. In turn, NCUA can adopt necessary policy changes to better facilitate superior member service through rules connected to credit applications and overdrafts.

#### *Credit Applications and Overdrafts (§ 701.21(c)(3))*

This section provides that a federal credit union can advance money to a member to cover an account deficit without having a credit application on file if the credit union has a written overdraft policy.<sup>11</sup> The written overdraft policy must: (1) set a cap on the total dollar amount of all overdrafts the credit union will honor consistent with the credit union's ability to absorb losses; (2) establish a time limit not to exceed 45 calendar days for a member either to deposit funds or obtain an approved loan from the credit union to cover each overdraft; (3) limit the dollar amount of overdrafts the credit union will honor per member; and (4) establish the fee and interest rate, if any, the credit union will charge members for honoring overdrafts.<sup>12</sup>

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<sup>7</sup> 12 U.S.C. 1761b; 12 CFR 701.4, and Article VI, section 6 of the Federal Credit Union Bylaws codified in Appendix A of 12 CFR part 701.

<sup>8</sup> 12 U.S.C. 1716b.

<sup>9</sup> 87 Fed. Reg. 6,078 (Feb. 3, 2022)

<sup>10</sup> FDIC Supervisory Insights (Oct. 2018), *available at* <https://www.fdic.gov/regulations/examinations/supervisory/insights/sise16/si-se2016.pdf>.

<sup>11</sup> 12 C.F.R. § 701.21(c)(3)

<sup>12</sup> *Id.*

NCUA has an outstanding proposed rule to amend the requirements for a written overdraft policy.<sup>13</sup> Specifically, the proposal would modify the requirement that the written overdraft policy establish a time limit not to exceed 45 calendar days for a member to cure each overdraft. Instead, the proposed rule would remove the prescriptive limit and replace it with a requirement that the written policy establish a specific time limit that is both “reasonable and applicable to all members.” However, it should be noted that the amended overdraft policy would still require the federal credit union to establish a specific time limit to cure the overdraft that may not exceed 45 days.

Overdraft programming protects a consumer purchasing goods and services, permitting a transaction that exceeds an available balance to be processed. In accordance with Regulation E compliance, a consumer has opted-in to the service for convenience and protection. OCUL believes limiting the ability for credit unions to work with members impacted by inflation and ongoing pandemic challenges through hard-wired timeframes is counterintuitive to the credit union mission of meeting unmet financial needs. While section 701.21(c)(3) should be reviewed for regulatory relevance, the pandemic and its resulting financial disruption present a clear opportunity for NCUA to consider adopting long-overdue policy changes without inhibiting current services necessary for people and families to make life work.

#### *Loan Interest Rates (§ 701.21(c)(7))*

Federal credit unions are generally barred from extending credit to members at an interest rate exceeding 15 percent.<sup>14</sup> However, the NCUA Board is authorized to establish a temporary higher maximum rate, given certain conditions are present.<sup>15</sup> The current 18 percent ceiling has remained in place since May 1987, applying to all federal credit union lending except originations made under NCUA’s Payday Alternative Loan program, which are capped at 28 percent.<sup>16</sup>

Regulatory rigidity inhibits credit unions from serving unmet financial needs, especially in uncertain economic conditions. Competitive and alternative lending options foster better consumer costs and opportunities, increasing access to financial services. With rising and intensive consumer credit need, and the additional risk to safety and soundness their financial inclusion demands, NCUA should consider adopting a floating interest rate cap to replace a fixed rate limitation. A flexible federal credit union loan rate, tailored to mitigate risk, will foster financial services innovation, and drive greater access to consumer-friendly financial services available through well-regulated and established credit unions.

#### **702: Capital Adequacy**

Managing risk to the National Credit Union Share Insurance Fund (NCUSIF) must serve as NCUA’s priority, ensuring institutional safety and soundness while maintaining financial integrity across the credit union industry. Reforming NCUA’s adequate capital posture to fully consider the cooperative structure, leverage ratios relevant for other federally insured depositories, and capital standards that account for credit risk will better empower credit unions to respond to consumer and market needs without adding intensive risk to NCUSIF stability.

#### *Temporary PCA relief*

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<sup>13</sup> 86 Fed. Reg. 3,876 (Jan. 15, 2021)

<sup>14</sup> 12 C.F.R. § 701.21(c)(7)(i)

<sup>15</sup> 12 C.F.R. § 701.21(c)(7)(ii)(A)

<sup>16</sup> <https://www.ncua.gov/newsroom/news/2017/board-extends-18-percent-interest-rate-cap>

OCUL applauds the NCUA's issuance and extension of the interim final rule regarding Temporary Regulatory Relief in Response to COVID-19—Prompt Corrective Action (“PCA”). Specifically, the current interim final rule<sup>17</sup> (IFR) made two temporary changes to the NCUA's PCA regulations to help ensure credit unions remain operational and liquid during the COVID-19 pandemic. These temporary modifications are in place until March 31, 2023. The current IFR is substantially like IFRs the NCUA published on May 28, 2020 (2020 IFR), and April 19, 2021 (2021 IFR). OCUL supports NCUA's temporary change to the Section 702.201 earnings retention requirement, as it allows credit unions more flexibility if capital falls to PCA adequately capitalized levels due to historical, abnormal share deposit influxes. This amendment modifies existing requirements for an adequately capitalized credit union to increase the dollar amount of net worth by a specified amount until the credit union becomes “well capitalized,” and instead, provides a blanket waiver by the NCUA of the earnings retention requirement for all adequately capitalized credit unions.

OCUL also supports NCUA's temporary change to section 702.206(c)—Net Worth Restoration Plans, which waives the net worth restoration plan content requirements for credit unions that become undercapitalized primarily due to share deposit growth. In such cases, a credit union may submit a significantly simpler net worth restoration plan to its respective NCUA Regional Director. This change is reasonable, as it reduces the burden on credit unions that have diminished net worth capital ratios primarily because of extraordinary share deposit growth during the pandemic. OCUL appreciates NCUA's willingness to provide PCA and capital adequacy flexibility. It is crucial that NCUA continues providing operational flexibility to credit unions during an ongoing and unpredictable economic environment.

### *Risk-Based Capital (RBC)*

Part 702 also describes how a complex credit union must calculate its risk-based capital (RBC), which can be done either by using the RBC ratio or by opting into the complex credit union leverage ratio (CCULR) framework. As detailed in section 702.104, the recently adopted<sup>18</sup> CCULR framework provides a simplified measure of capital adequacy for complex credit unions. Specifically, a complex credit union that maintains a minimum net worth ratio (of nine percent), and that meets other qualifying criteria, is eligible to opt into the CCULR framework.

OCUL supports the ability for credit unions to make independent decisions to drive better member service and outcomes. Generally, OCUL supports the objective behind CCULR (to provide a simpler option that credit unions can choose to adopt) because it gives complex credit unions the opportunity to comply with the current RBC rule or CCULR. Since complex credit unions are already required to calculate their net worth ratio, OCUL applauds NCUA's approach that does not require a unique ratio to opt into, or comply with, the CCULR framework. OCUL supports the idea of providing options without additional regulatory burdens. This progressive regulatory framework protects consumers and provides credit unions with operational independence without creating additional compliance concerns.

However, OCUL is concerned with the proposed eligibility capital thresholds; specifically, the rationale behind 10 percent being designated as well capitalized. This is a significant increase from the seven percent statutory obligation for adequate capitalization.<sup>19</sup> OCUL agrees with the NCUA on the importance of maintaining strong capital levels in the credit union system, ensuring safety and

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<sup>17</sup> 87 Fed. Reg. 10,944 (Feb. 28, 2022)

<sup>18</sup> 86 Fed. Reg. 72,784 (Dec. 23, 2021)

<sup>19</sup> 12 CFR 702.102



soundness, and providing appropriate regulatory burden relief to as many credit unions as possible, yet an increase beyond statute is inconsistent with other banking agencies. For example, even the NCUA acknowledges that under the optional Community Bank Leverage Ratio (CBLR) framework, a qualifying depository institution is only required to have a leverage ratio of at least nine percent.<sup>20</sup>

OCUL appreciates NCUA's commitment to improving the operating environment for credit unions through an annual regulatory review. OCUL believes that the agency has made great strides in modernizing its regulations which provides an improved member service experience. OCUL and Ohio's credit unions look forward to further collaborating with NCUA, which is a direct result of the current Board's openness and willingness to garner stakeholder involvement on all topics, including regulatory review. We highly value NCUA's efforts to serve as a progressive regulator and its commitment to being a transparent agency by better balancing regulation and its impact to consumer service.

Respectfully,

A handwritten signature in black ink, appearing to read "Paul L. Mercer".

Paul L. Mercer  
President

A handwritten signature in black ink, appearing to read "Sean M. Brown".

Sean M. Brown, Esq.  
Director, Regulatory Affairs

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<sup>20</sup> 85 FR 22930