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Mary Rupp, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428.
Sent by email to: regcomments@ncua.gov

Re: NACUSO's Comments to the Proposed Amendment to the Regulatory Flex Regulation

Dear Ms. Rupp:

I am writing this comment letter as General Counsel to the National Association of Credit Union Service Organizations. There are two (2) issues that I will address. The first is the approach of the Board in curtailing the Reg Flex powers. The concept of Reg Flex was to provide expanded authority to credit unions that demonstrated good management skills and had sufficient capital to take risks that might not be prudent for other credit unions to take. It was recognized by NCUA that a one size fits all regulatory approach was not appropriate and credit unions that demonstrate responsibility should not be restricted to the same degree that other credit unions are restricted.

When Reg Flex was passed, a minimum capital ratio of 9% was required to qualify a credit union for Reg Flex status. The Board subsequently reduced the minimum capital ratio to 7%. Rather than reduce the powers of a Reg Flex credit union, we recommend consideration of increasing the minimum capital requirement. Perhaps the minimum capital requirement would differ depending on the power provided. That will preserve the regulatory framework and provide well run and very well capitalized credit unions the business flexibility to take advantage of opportunities presented to the credit union.

The second point is concern over the elimination of the exemption for personal guarantees in business lending. In the vast majority of small business loans, personal guarantees are prudent and expected. We understand that the overwhelming majority of business loans made by Reg Flex credit unions have personal guarantees. However, for the very best credit, personal guarantees are not expected or given. For example, if a business is a long standing on-going profitable concern and collateral provided by the business has a very favorable loan-to-value ratio, the reasonable commercial expectation of the borrower is that personal guarantees are not required. Banks will issue these loans all day long without personal guarantees. The effect of not permitting the Reg Flex credit union to do likewise is to remove the very best credits from considering credit unions as lenders. The unintended consequences of the Board's proposed action is to push the super A credit from credit unions and force credit unions to play exclusively in the lesser credit worthy market, creating a distinct competitive disadvantage for credit unions and potentially more risk.

We understand that waivers of personal guarantees can be obtained but even if an application for a wavier is successful, the waiver can take up to forty-five (45) days to obtain and the time to obtain waivers can kill a deal. We doubt that any Regional Directors will be inclined to grant any waiver requests in this regulatory climate no matter how strong the deal.

The message of the Board's proposal is that no credit union is capable of determining when it is prudent to waive a personal guarantee in a business loan. Clearly there are many credit unions that are capable of good prudent underwriting and have demonstrated that by having well performing business loans. By penalizing the well run commercial loan programs for the sins of the poor performing credit unions, the Board has chosen regulatory expediency at the cost of stifling opportunities for well run credit unions to serve members.

If Reg Flex status alone is not enough criteria to justify more flexibility in underwriting decisions, then we suggest that the Board add some measurements that demonstrate expertise in business lending (e.g., more experienced lenders, low delinquency rate). We ask that the Board take advantage of this opportunity to foster growth by rewarding performance and not take the expedient approach of saying no to all. The Board can make a very positive step in permitting well run credit unions to provide loans to members that will enable our country and the credit union industry to make a faster economic recovery. We cannot earn our way out of this economic situation without taking prudent business risks.

While these economic times are very difficult, we ask that NCUA not start down a path where NCUA handcuffs well run credit unions because some credit unions were not responsibly managed. Credit unions must have the ability to successfully compete in the financial marketplace. We ask that NCUA fashion its regulations to foster that end goal.

Very truly yours,

Guy A. Messick
NACUSO General Counsel