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August 9, 2021

Michael Drayne
Acting Executive Vice President
Government National Mortgage Association
425 3rd Street SW
Washington, DC 20024

RE: Request for Input – Eligibility Requirements for Single Family MBS Issuers

Dear Acting Executive Vice President Drayne:

The Credit Union National Association (CUNA) represents America's credit unions and their more than 120 million members. On behalf of our members, we are writing in response[1] to the recent Request For Input (RFI) issued by the Government National Mortgage Association ("GNMA" or "Ginnie Mae") entitled Eligibility Requirements for Single Family MBS Issuers.[2]

Background

Ginnie Mae issuers are the last backstop if borrower payments, equity, and insurance fail to provide payment to investors of GNMA mortgage-backed securities (MBS). When issuers fail, Ginnie Mae is ultimately responsible for ensuring payment to investors pursuant to the government's unconditional guarantee. Ginnie Mae recognizes the changing risk characteristics of its issuers, and, in an effort to protect itself and the American taxpayer, Ginnie Mae is assessing its MBS Guide requirements to minimize risk to the government's unconditional guarantee.[3]

In the RFI, Ginnie Mae explains its intentions to establish requirements that address each issuer's mortgage banking activity and financial profile, introduce risk-based capital requirements, align Ginnie Mae with other government bodies, and make requirements easy to calculate and integrate into an issuer's capital planning.[4] The RFI goes on to propose net worth and liquidity requirements for all issuers and risk-based capital ratio requirements solely for nonbanks.[5]

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[1] Voluntary response provided to HUD in response to an RFI. This is not a required submission for participation in a federal program.
[2] Ginnie Mae, Request for Input – Eligibility Requirements for Single Family MBS Issuers (Eligibility RFI) (July 12, 2021), available at https://www.ginniemae.gov/newsroom/publications/Documents/Financial%20Requirements%20RFI_v2.pdf.
[3] Eligibility RFI, p. 3.
[4] *Id.*
[5] *Id.* at 5.

Counterparty Risk for Credit Union Issuers and True Nonbanks Is Not Comparable

While not explicitly stated anywhere in the RFI, Ginnie Mae has long excluded credit unions from the definitions of "depository institutions "and "banks."[6] This treatment has no statutory basis and Ginnie Mae has not publicly offered any policy explanation for this treatment. In light of Ginnie Mae's focus on aligning its eligibility requirements for issuers with the actual risks and activities taken on by its mortgage lenders, it is time for Ginnie Mae to reassess this approach. Credit unions should be treated as the insured depository institutions they are. Requirements for the eligibility of credit unions to become Ginnie Mae issuers should be determined on the basis of their unique structure, activities, and risks, not those of nonbank mortgage lenders. Grouping credit unions with nonbank mortgage lenders directly contravenes Ginnie Mae's stated principles in the RFI and is simply inappropriate if its ultimate goal is to align its requirements with the actual counterparty risk issuers pose to Ginnie Mae and American taxpayers.

Credit unions are not-for-profit financial cooperatives with a statutory mission to promote thrift and provide access to credit for provident purposes. Unlike other financial institutions, credit unions do not issue stock or pay dividends to outside stockholders. Instead, earnings are returned to members in the form of lower interest rates on loans, higher interest on deposits, and lower fees. Each credit union member has equal ownership in the credit union and one vote—regardless of how much money a member has on deposit.

Credit unions exist only to serve their members, and the relationship between credit unions and their members is fundamentally stronger than the relationship other financial services companies have with their customers. As a result, credit unions' interest in their members' financial well-being and advancing the communities they serve takes on paramount importance. While banks may have retreated from the mortgage market since the 2008 financial crisis, credit unions have not. Credit unions originated 1.9% of mortgages in the U.S. in 2007.[7] In 2020, credit unions originated about 8% of the nation's mortgages.[8] Accordingly, a fast-growing number of this nation's millions of credit union members rely upon their credit union to help them purchase, renovate, or refinance their home.

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[6] *See*, *e.g.*, Ginnie Mae MBS Guide, Ch. 3, Pt. 8, §§A(3), B(3), C(3), and D(3); *see also* Ginnie Mae Issuer Resources: Eligibility Requirements (last accessed Aug. 2, 2021), available at https://www.ginniemae.gov/doing_business_with_ginniemae/issuer_resources/how_to_become_an_issuer/Pages/eligibility_requirements.aspx/.

[7] Roger Hull, *Three Ways Credit Unions Can Boost Mortgage Market Share*, American Banker (October 23, 2019) available at https://www.americanbanker.com/creditunions/opinion/three-ways-credit-unions-can-boost-mortgage-market-share.

[8] Jim DuPlessis, *Credit Unions Kept Pace with Mortgages in 2020*, CUTimes (February 24, 2021) available at https://www.cutimes.com/2021/02/24/credit-unions-kept-pace-with-mortgages-in-2020/?slreturn=20210706123623.

Comparative Quality of Credit Union Mortgages

Ginnie Mae has stated that nonbank underwriting is more relaxed than bank underwriting. Certainly this is true about true nonbanks, however, credit union underwriting is more conservative than bank underwriting. According to data for the first quarter of 2021, FDIC banks report a 0.50% delinquency rate for real estate loans between 30-89 days past due and a 1.61% rate for real estate loans more than 90 days past due.[9] During the same period, the total delinquency rate[10] for credit union real estate loans is 0.32%.[11] Overall, credit union asset quality is high, with a total delinquency rate of 5.4%.[12]

Credit union mortgage loans have long shown to be high in quality and low in risk. By grouping credit unions with nonbanks, Ginnie Mae may be underestimating the actual risks associated with nonbank underwritten loans. Mortgage loans underwritten by credit unions are simply not comparable in terms of risk with those underwritten by nonbanks, which, again, begs the question of why Ginnie Mae would group credit unions with nonbanks when establishing risk-based issuer requirements.

Comparative Safety and Soundness of Credit Unions

Credit unions are subject to extensive capital, liquidity, and risk management standards, regular reporting requirements, and frequent examination. Federal credit unions are both chartered and insured through the National Credit Union Share Insurance Fund (NCUSIF) administered by the National Credit Union Administration (NCUA). Credit unions can also be chartered by a state authority and the vast majority of these are also insured by NCUA. Credit unions with assets over $10 billion are additionally examined by the Consumer Financial Protection Bureau (CFPB). As a member of the Federal Financial Institutions Examination Council (FFIEC), NCUA participates in the creation and use of regulatory processes and examination standards across all federally-examined financial institutions on topics such as cybersecurity, the Bank Secrecy Act and Office of Foreign Assets Control (BSA/OFAC) requirements, appraisal standards and more.

In its role as prudential regulator, the NCUA examines federally-insured credit unions[13] regarding credit risk, interest rate risk, liquidity risk, transaction risk, compliance risk, strategic risk, and

[9] FDIC Quarterly, Banking Profile, First Quarter 2021 (June 17, 2021), available at https://www.fdic.gov/analysis/quarterly-banking-profile/qbp/2021mar/.

[10] NCUA Call Report Instructions state a loan should be reported as delinquent in relation to its contractual repayment terms and does not break down delinquency by the number of days past due. *See*, NCUA Call Report Form 5300 Instructions (Mar. 31, 2021), available at https://www.ncua.gov/files/publications/regulations/call-report-instructions-march-2021.pdf.

[11] NCUA Quarterly Credit Union Data Summary 2021 Q1, p. 1 (Mar. 31, 2021) (March 2021 Credit Union Data), available at https://www.ncua.gov/files/publications/analysis/quarterly-data-summary-2021-Q1.pdf.

[12] *Id.*

[13] The vast majority of credit unions are federally-insured. As of 2017, only 125 credit unions, representing 2 percent of credit unions in the United States, have private deposit insurance. All credit union deposits are insured to a minimum of $250,000 through either federal or private insurance. Government Accountability Office, Report to

reputation risk.[14] This includes separate examinations regarding a credit unions' information systems and cybersecurity maturity and preparedness. Assessments of these risks inform findings regarding the credit union's capital sufficiency, asset quality, management, earnings, liquidity, asset-liability management and sensitivity to market risk.[15] NCUA conducts these examinations as the prudential regulator. Further, credit unions over $10 billion in assets will undergo additional examinations by the CFPB and state-chartered credit unions will undergo additional examinations by state regulatory authorities.

Ginnie Mae has stated, "Unlike their bank counterparts, nonbanks are less stringently regulated and are subject to lower capital and liquidity requirements," however this is clearly not accurate with regard to credit unions. Credit unions are stringently regulated and subject to significant capital and liquidity requirements. Unlike nonbank mortgage servicers, credit unions are required to file call reports which provide details on the overall financial health of the credit union and are regularly examined for cybersecurity risk by their prudential regulator. The supervision and examination of credit unions already ensures that they are operating in a safe and sound manner. There is simply no basis to assert that safety and soundness of insured depository institutions like credit unions is in any way comparable to that of true nonbanks.

Comparative Access to Liquidity of Credit Unions

Whereas true nonbank mortgage lenders have limited access to funding sources which are likely to contract during a liquidity crisis, credit unions have broader and more stable access to liquidity. As previously described, credit unions are regularly examined by NCUA regarding liquidity risk. In fact, liquidity risk is an NCUA supervisory priority for 2021 considering the volatility related to the pandemic.[16]

First and foremost, credit union liquidity is supported by member deposits or "shares." As of March 31, 2021, the nation's credit unions have ample liquidity, reflected in a 68.8% loan-to-savings ratio and shares and deposits totaling $1.69 trillion.[17] The credit union system's net worth is $195.3 billion.[18] Credit unions, like all insured depository institutions, have experienced

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Congressional Committees – Private Deposit Insurance (March 2017), available at https://www.gao.gov/assets/gao-17-259.pdf.

[14] NCUA *Online Examiner's Guide*, *Risk-Focused Examination*, *Risk Categories* (last accessed Aug. 2, 2021), available at https://publishedguides.ncua.gov/examiner/Pages/default.htm#ExaminersGuide/Risk-Focused_Program/Risk%20Categories.htm.

[15] NCUA currently evaluates credit unions using the CAMEL rating system in which sensitivity to market risk and liquidity risk are both evaluated under the "L" component referring to liquidity. NCUA has proposed to align its rating system with other federal banking regulators' by separating the sensitivity to market risk evaluation as a stand-alone "S" component in the rating system. *See*, 86 Federal Register 13494 (Mar. 9, 2021). This change does not represent a substantive change in how credit unions are examined, only in the form in which examination findings are communicated. *Id.* at 13495.

[16] NCUA Letter to Credit Unions 21-CU-02 (Jan. 15, 2021), available at https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/ncuas-2021-supervisory-priorities.

[17] March 2021 Credit Union Data, *supra* 9, p. i-ii.

[18] *Id.* at page ii.

significant deposit growth throughout the pandemic and in particular as a result of fiscal stimulus payments.[19] Beyond member shares, credit unions also hold cash and equivalents assets with maturities of three months or less totaling $297.9 billion. This type of liquidity is simply unavailable to nondepository financial institutions.

Credit unions also have the option[20] of joining the Central Liquidity Facility (CLF) within the NCUA.[21] The CLF is a quasi-government corporation created to improve the financial stability of credit unions by serving as a lender in the event of unexpected liquidity shortfalls.[22] It is owned by member credit unions and backed by the credit of the U.S. government. The CLF borrows from the U.S. Treasury's Federal Financial Bank to make loans to its member credit unions.[23] As of April 30, 2021, CLF membership included 349 credit unions and 11 corporate credit unions, which offer CLF access to their members.[24] Based on this membership, 4,110 credit unions or 81% of all federally-insured credit unions have access to borrow from the CLF directly or through their corporate credit union.[25]

Further, credit unions can become members of the Federal Home Loan Banks. Of credit unions with outstanding mortgages on the books, 39% are members of the Federal Home Loan Banks (FHLBanks).[26] A full quarter of all FHLBank members are credit unions.[27] As depository institutions under section 19(b) of the Federal Reserve Act, credit unions are legally eligible to obtain Federal Reserve accounts and financial services, including the Federal Reserve Discount Window.[28] In combination, credit unions have multiple stable, superior routes to liquidity compared to nonbank mortgage lenders. Access to liquidity for credit unions and nonbank mortgage lenders are simply not comparable, and therefore neither is their liquidity risk.

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[19] NCUA Chairman Todd M. Harper's Written Testimony before the U.S. Senate Committee on Banking, Housing, and Urban Affairs (Aug. 3, 2021), available at https://www.ncua.gov/newsroom/testimony/2021/ncua-chairman-todd-m-harpers-written-testimony-us-senate-committee-banking-housing-and-urban-affairs#ftn_3.

[20] Credit unions must subscribe to the CLF capital stock in the amount of one-half of one percent of the credit union's six-month average of paid-in and unimpaired capital and surplus (that is, the total of shares and deposits and undivided earnings). Credit unions only have to remit to the CLF one-half of the subscription amount (one-quarter of one percent of paid-in and unimpaired capital and surplus), and hold the remaining half (which is callable by the NCUA Board). *See*, NCUA Letter to Credit Unions 20-CU-08 (May 20, 2020), available at https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/enhancements-central-liquidity-facility-membership-and-borrowing-authority.

[21] 12 USC § 1783(f).

[22] NCUA Letter to Credit Unions 20-CU-08, *supra* 18.

[23] *Id.*

[24] NCUA Chairman Harper's Written Testimony before the U.S. House of Representatives Committee on Financial Services (May 19, 2021), available at https://www.ncua.gov/newsroom/testimony/2021/ncua-chairman-todd-m-harpers-written-testimony-us-house-representatives-committee-financial-services.

[25] *Id.*

[26] FHLBank Membership (Mar. 31, 2021), available at https://www.fhfa.gov/DataTools/Downloads/Pages/Federal-Home-Loan-Bank-Member-Data.aspx and March 2021 Credit Union Data, CUNA Analysis.

[27] FHLBank Membership, CUNA Analysis.

[28] 12 USC § 461(b)(1)(A)(iv).

Comparative Concentration Risk of Credit Unions

Credit unions offer their members a variety of products and services beyond mortgage lending. While real estate loans represent the largest area of concentration for credit union assets, less than one-third of credit union assets are in loans secured by 1-4 family residential properties. Credit unions are especially active in meeting their members' needs for auto loans. Below is a table of credit union assets split by type.

Credit Union Assets[29]	
Cash and Equivalents	15.3%
Investments	20.3%
Loans secured by 1-4 family residential properties	26.2%
All other real estate loans	0.1%
Credit cards	3.0%
Auto loans	19.5%
Private Student Loans	0.3%
Commercial Loans	5.0%
Personal and Other Loans	5.6%
Other Assets	4.6%

While credit unions do sell real estate loans and retain mortgage servicing rights (MSRs), they do so at a far lower level than true nonbanks which are far more reliant on MSRs as an asset. As of March 31, 2021, approximately 566 federally-insured credit unions held mortgage servicing rights, representing 11.1% of the industry.[30] Credit unions simply do not have the same categorical concentration risks as nonbank mortgage lenders, and it is inappropriate to categorize them as if they do.

Further, unlike nonbanks, credit unions are regularly examined regarding concentration risk. NCUA does not prescribe a fixed, maximum percentage of mortgage loans in a credit union's lending portfolio that is applicable to all credit unions. However, it does prohibit credit unions for continuing an inherently high risk strategy when measures of fair value indicate net worth is approaching dangerously low positions as measured for plausible interest rate scenarios.[31] Credit union management is required to collect and maintain comprehensive and accurate data to permit it to assess and identify concentration risk.[32] Credit unions must develop and establish concentration limits that align with safety and soundness and the overall strategic plan of the credit union with regard to each portfolio, loan type, share type, and more.[33] NCUA expectations also

[29] March 2021 Credit Union Data, *supra* 9, p. 5.
[30] March 2021 NCUA Call Report Data, available at https://www.ncua.gov/analysis/credit-union-corporate-call-report-data/quarterly-data, CUNA Analysis.
[31] NCUA, Letter to Credit Unions 2003-15
[32] NCUA, Letter to Credit Unions 2010-03, p.4, available at https://www.ncua.gov/files/letters-credit-unions/LCU2010-03Encl.pdf.
[33] *Id.* at p. 6.

require routine portfolio-level scenario and sensitivity tests to quantify the impact of changing economic conditions to ensure credit unions are resilient in the face of simultaneous negative events on a portfolio.[34]

Given the diversity of credit union products and services, the diversification of credit union assets, and the supervisory expectations for concentration risk management at credit unions, it is simply not reasonable to treat credit unions as having the same "unique business profile of independent mortgage banks."[35] As such, it is inappropriate to establish the same capital requirements for credit unions as these nonbanks.

Appropriate Capital Requirements for Credit Unions

In the second calendar year of this pandemic and its related economic fallout, credit unions remain in a strong position. The credit union system's net worth was $195.3 billion, establishing a system wide net worth of 10.01%.[36] This system-wide net worth ratio has been on the decline as the result of increased share growth throughout the pandemic, which relates in part to fiscal stimulus payments in the first quarter of 2021.[37] Nonetheless, NCUA has determined that the credit union system is well capitalized.[38]

Credit union capital requirements are different than bank requirements in several respects, including that only retained earnings count as Tier I capital for credit unions and thresholds for credit union capital levels are hardwired into statute.[39] Further, credit union capital requirements are in the midst of a shift to a risk-based framework which becomes effective on January 1, 2022.[40] Under that framework, complex credit unions[41] will be required to comply with the new risk-based capital framework. NCUA has worked on fine-tuning this capital rule for many years to, according to the NCUA, strike a balance between protecting the NCUSIF and not overburdening smaller credit unions for which this type of framework is clearly inappropriate.[42]

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[34] *Id.* at p. 7.
[35] Eligibility RFI, *supra* 2, p. 5.
[36] March 2021 Credit Union Data, *supra* 9, p. ii.
[37] NCUA Chairman Todd M. Harper's Written Testimony before the U.S. Senate Committee on Banking, Housing, and Urban Affairs (Aug. 3, 2021), available at https://www.ncua.gov/newsroom/testimony/2021/ncua-chairman-todd-m-harpers-written-testimony-us-senate-committee-banking-housing-and-urban-affairs#ftn_3.
[38] *Id.*
[39] 12 USC § 1970d(o).
[40] 84 FR 68781 (Dec. 17, 2019).
[41] This largely refers to credit unions with total assets greater than $500 million. *Id.*
[42] NCUA is in the process of collecting input on a proposed rule that would modify NCUA's capital adequacy regulation and provide a simplified measure of capital adequacy that complex credit unions can opt into. The new Complex Credit Union Leverage Ratio (CCULR) gives complex credit unions that maintain a minimum net worth level and meet other qualifying criteria a streamlined framework to manage their capital. As long as a credit union in the CCULR framework maintains the minimum net worth ratio, it would be considered well capitalized. The new CCULR is comparable to the Community Bank Leverage Ratio that went into effect in January 2020. NCUA, Proposed Rule, *Capital Adequacy: The Complex Credit Union Leverage Ratio, Amendments to Risk-Based Capital, and Other Technical Amendments* (not yet published in the Federal Register) (July 22, 2021) available at https://www.ncua.gov/files/agenda-items/AG20210722Item2b.pdf.

Credit unions that issue for Ginnie Mae are dismayed at the imposition of a separate risk-based capital calculation solely for the purpose of issuing for Ginnie Mae. The creation of a separate GNMA-created capital framework places an unnecessary burden on credit unions which already have a formal regulatory requirement from NCUA. Further, as credit unions are already examined with regard to their capital needs and the risks related to loan buybacks, it is a burden that is simply not necessary.

Further, an additional capital framework for credit unions could create internal competition for capital that might result in the selling of loan servicing rights. Credit union members strongly appreciate that credit unions retain mortgage servicing rights. Credit unions find that servicing retention is a primary mechanism for maintaining a strong relationship with members and ensuring their financial health. Credit unions are extremely reticent to have that threatened by the significant weights placed on these activities under this framework.

According to our analysis, an estimated 24% of mortgage-issuing credit unions would not be eligible to issue for Ginnie Mae under the risk-based capital ratio described in the RFI.[43] If finalized as written, Ginnie Mae's capital ratio eligibility requirement will absolutely result in a reduction of the number of credit unions that issue for Ginnie Mae, and make many credit unions ineligible to become issuers in the future.[44] Neither capital requirements established for banks, nor capital requirements intended for nonbank mortgage lenders are appropriate for credit unions.

CUNA urges Ginnie Mae to establish separate requirements for credit unions. The requirements should simply defer to NCUA's capital requirements by requiring that all credit union issuers for Ginnie Mae be adequately capitalized as defined by NCUA regulations at a minimum.[45] This would align Ginnie Mae's capital requirements with NCUA, reducing additional burden on credit unions while also ensuring that credit union issuers for Ginnie Mae are sufficiently well capitalized to protect Ginnie Mae and American taxpayers from loss. Further, this would align Ginnie Mae's capital requirements with those of Federal National Mortgage Association, which requires that its depository institution seller/servicers meet the minimum capital requirements of their primary regulators in order to maintain eligibility.[46]

Conclusion

As insured financial institutions joined by a core philosophical belief in the cooperative ownership model and a mission to support the financial welfare of their membership, many credit unions find Ginnie Mae's grouping of credit unions with uninsured nonbank financial institutions strange,

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[43] December 2020 NCUA Call Report Data, available at https://www.ncua.gov/analysis/credit-union-corporate-call-report-data/quarterly-data, CUNA Analysis calculated using the Risk-Based Capital Ratio as defined by Ginnie Mae.
[44] *Id.*
[45] 12 CFR § 701.102(a)(2).
[46] Fannie Mae, Single Family Selling Guide, Pt. A, A4-1-01, Maintaining Seller/Servicer Eligibility (Dec. 16, 2020), Minimum Financial Requirements

nonsensical, and impertinent. CUNA urges Ginnie Mae to view this issue not only through the lens of risk management, but also through the lens of its relations with its current and potential issuers. Our members are proud of the credit union difference and would like Ginnie Mae to understand and acknowledge that difference in the spirit of partnership.

On behalf of America's credit unions and their more than 120 million members, CUNA urges Ginnie Mae to recognize credit unions as insured depository institutions that operate under significant prudential oversight. We offer our assistance to provide information or data to assist Ginnie Mae in transitioning away from this policy. If you have questions or if we can be of any assistance, please do not hesitate to contact me at (202) 503-7184 or elaberge@cuna.coop.

Sincerely,

Elizabeth M. Young LaBerge
Senior Director of Advocacy & Counsel