



May 28, 2002

Mr. John Morrall  
Office of Information and Regulatory Affairs  
Office of Management and Budget, NEOB  
Room 10235  
725 17<sup>th</sup> Street, NW  
Washington, DC 20503  
Filed via email: [jniorrall@omb.eop.gov](mailto:jniorrall@omb.eop.gov)

Re: OMB Draft Report to Congress on the Costs  
and Benefits of Federal Regulations

Dear Mr. Morrall:

Thank you for the opportunity to comment on the Office of Management and Budget's "Draft Report to Congress on the Costs and Benefits of Federal Regulations," which appeared in the *Federal Register* March 28, 2002. Under the Regulatory Right to Know Act, Congress requires OMB to submit an annual report on the costs and benefits of federal regulations and recommendations for improvement, and this report is designed to meet that requirement.

### **CUNA Commends OMB's Approach**

While credit unions support genuine consumer protections, such as full and fair account disclosures, financial privacy, and anti-predatory lending measures, the mounting burden of regulations on credit unions has become a real concern, particularly as it diverts credit unions from their primary statutory function – serving their members.

The Credit Union National Association, CUNA, which represents more than 90% of our nation's over 10,300 state and federal credit unions, applauds the efforts of OMB under the Bush Administration to improve the federal

regulatory process, particularly the agency's proactive approach to achieving more accurate costbenefit analysis of regulatory requirements. Credit unions, which serve more than 80 million consumers, are among the most highly regulated entities in the marketplace.

### **Major Rules of Independent Agencies**

One of the areas on which your draft report focuses is the rulemaking process at independent agencies. This is critical, as most of the rules under which credit unions operate are issued by such agencies, including the National Credit Union Administration, the Federal Reserve Board, the Federal Trade Commission and others. For example, the report indicates that the Federal Reserve Board did not provide information on monetized costs and benefits associated with implementing rules regarding financial privacy.

We encourage OMB to work with the General Accounting Office and independent agencies to develop an ongoing process that will ensure costs as well as benefits are accurately assessed and that there is accountability to the public for every new regulation adopted, including those promulgated by federal independent agencies.

One approach would be for OMB to establish an ombudsman within the agency who could review public challenges to the sufficiency and accuracy of regulatory costbenefit analyses and work with the agency in question to ensure the timeliness and veracity of such analyses.

We also encourage OMB to meet with the indepehdent agencies to provide a detailed briefing on OMB's draft report, including its improved approach to regulatory analysis, and to reinforce the importance of accurate cost-benefit analysis.

### **Cumulative Regulatory Burden**

One area on which we encourage the Administration to focus more attention is the total regulatory burden that business and industries must confront in their daily operations. While current laws require costbenefit analysis, paperwork assessments and other reviews for new proposals and regulations, it is the cumulative burden that is increasingly problematic, particularly for

smaller financial institutions (about 80% of credit unions have assets of under \$20 million.)

We urge OMB to work with agencies to develop a review mechanism that will require agencies to consider the total burden under which institutions and other regulated entities already operate before adding more regulatory requirements.

### **Specific Regulatory Issues**

The draft report asks for input on specific regulations that are problematic. For credit unions, there are a number of rules that fit that description so we will limit our comments to some of the most burdensome.

- **Monetary Policy Reserves, Regulation D**

Regulation D implements the Monetary Control Act of 1980 and imposes reserve requirements on depository institution transaction accounts and certain other accounts to facilitate the conduct of monetary policy by the Federal Reserve. Currently, all credit unions with more than \$5.5 million in deposits are subject to reporting. The rule also directs how institutions must calculate the amount of reserves that must be held and the methods for holding them.

In essence, Regulation D controls how financial institutions define terms and conditions of deposit accounts, since the characteristics of the account determines whether reserves will apply or not. For example, under the regulation, the number of withdrawals institutions may allow from nontransaction accounts a month is limited. While some of the distinctions that separate transaction from nontransaction accounts appear to be arbitrary, a broader issue with Regulation D is whether this rule is still important for the conduct of monetary policy. The OMB should encourage the Federal Reserve to review this regulation to determine its usefulness and at the very least, urge the Board to simplify the regulation.

- **Truth-in-Lending, Regulation Z/RESPA**

Consumers as well as financial institutions have found that the overlapping requirements in regulations under the Truth-in-Lending Act and the Real Estate Settlement Procedures Act often result in confusion in the mortgage

lending process. In the past, the Federal Reserve Board and others have attempted to review duplicative requirements under these regulations but greater simplification in mortgage loan disclosures without the loss of important information about loan rates and terms would be beneficial to consumers and financial institutions alike.

- **Delivery of Disclosures**

Under several regulations, including Regulation B, Equal Credit, Regulation E, Electronic Fund Transfers, Regulation M, Consumer Leasing, Regulation Z, and Truth-in-Savings, financial institutions are permitted to provide required disclosures to consumers electronically. However, institutions must notify consumers through e-mail when disclosures are available, causing institutions to monitor delivery of emails, maintain address databases and incur other costs in connection with providing disclosures. It would be more cost-effective if institutions were allowed to use their websites to provide disclosures to consumers.

## **Regulatory Guidance**

- **Small Business Administration's Interpretation Regarding Credit Unions**

Last month, CUNA hosted a Small Business Summit, first envisioned by Rep. Paul Kanjorski, and sponsored by CUNA's Small Business Committee. The summit brought together House Small Business Committee Chairman Manzullo, Rep. Kanjorski, Federal agency representatives with programs to support small businesses, including Dr. Phillipa Malmgren from the White House, the National Credit Union Administration and CUNA President Dan Mica.

The purpose of the summit was to identify regulatory barriers that preclude small businesses from utilizing credit unions to obtain business loans. One major area of concern in the area of small business lending by credit unions has been with the Small Business Administration. The agency has taken the view that generally limits credit union participation in its basic loan guarantee program to those with a community charter.

The **SBA** requires financial institutions to be open to the public, and the agency's present policy toward credit unions, reversing a long-standing

previous policy, holds the view that if a credit union is not community-based (or does not include a low-income group) it is not open to the public. This view does not reflect statutory changes, which allow credit unions to include different associational and occupational groups, thus providing most credit unions with broad fields of membership, consistent with Congressional intent under the Federal Credit Union Act.

CUNA wants to ensure that any credit union that wants to participate in SBA programs and meets other reasonable SBA eligibility requirements should be able to participate. In that connection, CUNA representatives have met with senior SBA officials on several occasions since last fall, including the acting general counsel, the executive director and others. Officials at the National Credit Union Administration have also met with SBA to encourage to support broader credit union participation.

In February, CUNA President Dan Mica and senior staff met with the administrator, Hector Barreto. Following that meeting, Administrator Barreto spoke to CUNA's Governmental Affairs Conference and announced SBA wants to work with credit unions to allow much wider participation by credit unions in SBA lending programs.

While we certainly appreciate the positive indications from SBA, credit unions are still waiting for the agency to rescind its current policy. If there are further delays in reinstating wider eligibility for credit unions, we feel such a result would be not only unfortunate for credit unions but also detrimental to the very group SBA was chartered to support – small businesses. That is because, as was stated at our Summit, many small businesses need loans of \$100,000 or less that financial institutions -- other than credit unions -- are unwilling to originate.

We urge OMB, under its Memorandum of Understanding with SBA's Office of Advocacy, to encourage **SBA** to reinstate its previous policy that held credit unions are eligible to participate in SBA lending programs, including those without a community charter.

In closing, the OMB's approach to regulatory cost-benefit analysis is highly commendable, and we appreciate the opportunity to share our views on regulatory concerns of importance to credit unions.

Sincerely,

A handwritten signature in black ink that reads "Mary Mitchell Dunn". The signature is written in a cursive, flowing style.

Mary Mitchell Dunn  
Associate General Counsel