/ inclusiv /

October 8, 2025

Ms. Melane Conyers-Ausbrooks
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

RE: 2025 Regulatory Publication and Voluntary Review (Docket NCUA-2024-0014-0009)

Dear Board Member:

Thank you for the opportunity to respond to the National Credit Union Administration's (NCUA's) request for comment on the 2025 Regulatory Review concerning "Agency Programs," "Capital," and "Consumer Protection." Our comments chiefly focus on (1) subordinated debt as it pertains to capital adequacy, (2) credit union chartering and field of membership, and (3) the MDI preservation program.

About Inclusiv

Inclusiv is the leading network of credit unions with a primary mission of promoting community development and financial inclusion. The Inclusiv network represents more than 500 credit unions and cooperativas serving more than 20 million people in predominantly low-income urban, rural, and reservation-based communities across the United States, including Puerto Rico, Guam, and the U.S. Virgin Islands. Inclusiv is a certified CDFI that channels capital to and builds the capacity of community development credit unions to serve low-income people and disinvested communities that mainstream financial institutions fail to serve. More than 70% (315) of CDFI credit unions are members of Inclusiv. Inclusiv has raised and reinvested more than $500 million in community development credit unions and currently holds balances of more than $100 million on balance sheet.

Subordinated Debt and Capital Adequacy

Inclusiv appreciates the opportunity the NCUA Board has extended to share feedback toward our common mission of advancing financial inclusion in underinvested communities through access to subordinated debt instruments. Subordinated debt plays a critical role in helping community development credit unions grow their lending and development services and strengthen the financial health and well-being of all communities. The regulatory change from secondary capital to subordinated debt has resulted in far fewer transactions at larger amounts. To illustrate this shift, in the final year of secondary capital (2020-21) Inclusiv lent $42MM primarily from our Southern Equity Fund directed to high-impact CDFI CUs throughout the South from DC-Texas. Loan sizes were as low as $150,000. After the rule change, our investments in 2022-2023 slowed to $6.25MM. By 2024, we were able to restart our program, investing $6.45MM in subordinated debt as we worked through new processes and documents. To date in 2025, we have made $5.65MM in subordinated debt investments and commitments, but the process can take as long as 12-18 months as the process remains complex and costly for credit unions.

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Below, we offer some immediate and straightforward process recommendations that, if adopted by NCUA, could make interest in and access to subordinated debt easier for community development credit unions. We also offer longer term recommendations related to NCUA 's subordinated debt rule, which we look forward to discussing in greater detail.

<u>Process Recommendations</u>

1. *Recognize the Use of Templates Developed with Qualified Counsel as Satisfying the Qualified Counsel Requirement*

As the NCUA is aware, Inclusiv developed templates for the subordinated debt note and offering document in consultation with Qualified Counsel – specifically a team of attorneys from Davis Polk. For some of our members, hiring Qualified Counsel to produce these documents can be cost prohibitive, effectively excluding credit unions that cannot justify or afford this burden for simple transactions. To promote access to flexible capital and streamline the subordinated debt application process, we request that the NCUA recognize the use of templates developed with Qualified Counsel as satisfying the requirement of engaging Qualified Counsel. Adopting this decision would clarify the NCUA's expectations for this requirement, promote standardization, and enable a more efficient review and approval process for NCUA examiners.

2. *Establish New York as the Default Choice of Law for Subordinated Debt Templates*

In addition to the cost barrier, it can be difficult to locate counsel in any given jurisdiction with expertise in subordinated debt transactions. To address this issue, and to promote consistency and efficiency in these transitions and NCUA's review thereof, we suggest offering New York (NY) as the default choice of law jurisdiction in subordinated debt templates. Other federal agencies have done so in similar circumstances—for example, the U.S. Treasury used New York as the default choice of law jurisdiction in the Emergency Capital Investment Program (ECIP) securities purchase agreements. New York has a trusted body of precedent around general securities law and contracts, and credit unions would have greater likelihood of finding qualified counsel, if needed, with securities law experience admitted to the NY State Bar.

3. *Provide Template that Satisfies Qualified Counsel Requirement for the Written Policy Governing Subordinated Debt*

Pursuant to 12 CFR 702.408(b)(10), credit unions are required to submit, inter alia, "a draft written policy governing the offer, and issuance, and sale of the Subordinated Debt, developed in consultation with Qualified Counsel." Credit unions have reported confusion around what must be included in these policies and what parameters will be used to evaluate the sufficiency of their policies. Furthermore, as with the offering document templates discussed above, the cost of engaging Qualified Counsel to create these credit union-specific policies can be prohibitive and, in many jurisdictions outside of New York our credit unions report that finding counsel comfortable advising on these policies is impossible.

This lack of clear guidance on the written policy, combined with challenges in locating Qualified Counsel in certain jurisdictions and justifying their associated costs, can deter credit unions interested in issuing subordinated debt. Offering a template for the written policy in the NSPM and clarifying that this template satisfies the requirement of consulting with Qualified Counsel would further streamline the subordinated debt application review process for both credit unions and examiners. This approach also aligns with standard practice from other federal regulators, such as the OCC, which like the NCUA, oversees federally chartered institutions.

4. Provide Functional Links to NCUA Legal Templates in the National Supervision Policy Manual
Pages 386-388 in the National Supervision Policy Manual (NSPM) list templates related to subordinated debt, which appear to be intended as links but are not active. We would like to request that NCUA update the Manual with working links to these templates to help credit unions comply with regulatory requirements. Access to the NCUA's templates would also enable Inclusiv to ensure consistency between our templates and those provided by the NCUA.

5. Offer Clear, Reasonable, and Objective Prepayment Approval Criteria
Credit unions and subordinated debt investors need greater clarity and certainty in the prepayment approval process for effective capital mobilization. However, the NCUA has removed the criteria for "streamlined" prepayment approval that was previously incorporated in the NSPM. Without clear, reasonable, and objective prepayment approval criteria made publicly available, investors cannot make large, long-term investments.

In addition, the NCUA's subordinated debt rule retains the provision that a credit union must receive prior approval and creates a 45-day timeframe for the NCUA to approve the application but has eliminated the provision for automatic approval if a credit union is not notified of a decision within 45 days. This change leaves credit unions in limbo should their decision take longer than 45 days, further eroding the certainty and consistency that subordinated debt investors require. Issuing written guidance on the objective criteria for evaluating credit unions' prepayment applications would help remedy this issue by restoring consistency in the prepayment approval process.

6. Disclose Factors that Impact Review Timeline for Subordinated Debt Requests in the NSPM
Some credit unions have reported waiting as long as six months for a determination on their subordinated debt request. Although 12 CFR 702 states that the NCUA must provide a credit union with a determination on their subordinated debt request within 60 calendar days, it appears that the NCUA may place a hold on the 60-day review timeline at any point without providing a definitive timeframe by which a credit union can expect a response.

To address this issue, we recommend that the NCUA provide greater transparency in the NSPM on factors that may introduce a delay in the review of a credit union's subordinated debt request and a timeframe by which credit unions can expect a response. The NSPM should also be updated with standardized regional review summaries as NCUA had included in the past for secondary capital plan reviews. Lastly, if there is a hold on the application review, the credit union should be promptly notified and informed of the reason for the hold.

Rule Recommendations

While we acknowledge that rule changes are longer-term and complex as compared with the process changes noted above, we offer these recommendations for NCUA's consideration in the long term.

1. Introduce Bifurcated Regulatory Requirements Based on Complexity of Transaction

To better align requirements with transaction complexity and maintain consistency with U.S. securities law, we encourage the NCUA to offer bifurcated regulatory requirements, reserving subordinated debt rules for credit unions pursuing complex transactions and public issuances while restoring secondary capital for credit unions seeking to enter into simple loan agreements (e.g. bilateral agreements, or a small number and/or small amount of issuances). In addition, the NCUA should allow credit unions offering small issuances to rely on the standard exceptions afforded to them by Congress under 3(a)(5) of the Securities Act of 1933, consistent with the Office of the Comptroller of the Currency's practice of allowing banks to rely on the 3(a)(5) exemption.

Credit unions pursuing simple loan agreements have reported being less likely to apply for subordinated debt products because the regulatory requirements can be unduly burdensome for the risk and complexity of the transaction. Under the current structure, private, small issuances are subject to the same extensive requirements as complex transactions and public issuances, mimicking the requirements of federal securities laws despite their status as exempt securities transactions in U.S. securities law.

In addition to being unnecessary and out of step with other federal prudential regulators, the NCUA's securities disclosures requirement increases the cost of subordinated debt markedly. As described earlier, the new subordinated debt rules require credit unions to engage Qualified Counsel with specialized securities backgrounds, introducing additional costs as well as challenges in locating Qualified Counsel with this expertise in certain jurisdictions.

To avoid dissuading credit unions seeking to pursue simple transactions, we recommend that the NCUA revise its regulatory framework to distinguish between simple and complex transactions, ensuring that smaller, exempt issuances are not subject to disproportionate regulatory burdens.

2. Use Initial Aggregate Principal Amount in Lieu of Outstanding Amount in the Discounting of Amount Treated as Regulatory Capital

The updated rule's approach to calculating Regulatory Capital during the last five years of a subordinated debt loan term effectively shortens the term of loans. This change harms credit unions, their lenders, and the NCUA by increasing net worth volatility and transaction costs to credit unions. Instead, the NCUA should revise the rule to reduce Regulatory Capital based on the original loan balance rather than the outstanding loan balance.

The previous secondary capital rule reduced Regulatory Capital by 20% of the *original loan balance* each year, which let credit unions step down from 100% Regulatory Capital to 0% over the last five years of the loan, avoiding any shocks to the capital ratio of the borrower at maturity. However, the current rule reduces Regulatory Capital by 20% of the *outstanding loan balance* each year, accelerating the reduction of Regulatory Capital when credit unions prepay the balance of their loan.

The current rule penalizes prepayment and strongly incentivizes credit unions to fully refinance the loan or repay it in full with five years left in the term, costing credit unions more in transaction fees and increasing net worth volatility for credit unions that do not refinance or repay early. Reducing Regulatory Capital based on the original loan balance rather than the outstanding loan balance would restore stability to credit unions' capital planning and reduce unnecessary transaction costs.

Federal Credit Union Chartering (12 CFR 701.1, Appendix B to Part 701)

Process Recommendations

1. Provide Clearer and More Specific Guidance on Business Plan Requirements

Many charter applications are returned based on inadequate business plans. Since de novo credit unions are new to working with the NCUA and are developing their first business plan, they require more structural support and resources to understand the NCUA's expectations. De novo credit unions have reported engaging in prolonged back-and-forth with the NCUA with repeated rounds of revisions and ambiguity around business plan expectations, expending considerable time and resources on both ends. Consequently, credit unions ready to serve underbanked communities can take years to charter.

While the Chartering and Field of Membership Manual contains a bulleted list of items to include in a charter application's business plan, many items do not provide enough detail to guide applicants (e.g. "plans for operating independently" and "written policies"). Clearer criteria and standards for how to develop and present the business plan, coupled with enhanced application assistance, would help minimize the need for repeated revisions and improve efficiency in the chartering process. For example, the NCUA should provide a business plan template for the charter application, as it already does for mergers. A more detailed FAQ document could also provide much needed specificity around what types of information credit unions should include and any targets they need to meet.

Providing specific guidance on requirements, benchmarks, and minimums would have the added benefit of promoting consistency in application evaluation across regions. Chartering can be unnecessarily difficult for credit unions if reviewers in different regions hold different interpretations of what meets NCUA standards for the business plan. Transparently stating NCUA's expectations and evaluation criteria upfront would help credit unions achieve their charters expeditiously and start serving communities that need better financial access.

2. Publish a Clear Chartering Pathway for Fully Virtual Credit Unions

De novo credit unions seeking to operate 100% virtually have encountered significant challenges in chartering, because the NCUA's existing chartering process is built around brick-and-mortar institutions. Being evaluated under expectations designed for physical credit unions creates unnecessary obstacles and confusion for applicants that plan to operate exclusively on virtual platforms.

To address these challenges, the NCUA should publish a clear and detailed chartering pathway for fully virtual credit unions that includes a checklist of required documentation, examiner guidance, risk management expectations, examples of acceptable technology and cybersecurity controls, and identification of any areas where governance will differ from a traditional charter. Providing this information will not only make the chartering process more efficient but also enable fairer, risk-based assessments for digital-first applicants.

Field of Membership (12 CFR 701.1, Appendix B to Part 701)

Process Recommendation

Provide Status Updates on CURE Process Automation and Include Data Analysis Tool for Concentration of Facilities Test

The NCUA's 2025-2026 operating budget includes $1 million for CURE Process Automation (Attachment 1, page 10). In November 2024, NCUA shared that the process automation would result in a public-facing portal for credit unions to submit their field of membership (FOM) and new charter requests. The portal was expected to include forms for submission of information and data, a visible timeline for applicants to track the status of their submission, and a tool for submitting FOM expansion requests.

We are eager to better understand NCUA's next steps, what the FOM tool will look like, and how credit unions can use it. In particular, we hope the tool will include a data analysis function to help credit unions easily determine if an area passes the concentration of facilities test. The concentration of facilities test typically requires sophisticated data analysis, so offering a tool that would allow credit unions to select their geographies of interest (down to the Census tract level) would significantly reduce the burden of application preparation for small credit unions and increase their approval chances. In addition, we recommend offering training on the tool once it becomes available, and we would welcome the opportunity to participate in order to better assist our members in utilizing it.

Rule Recommendation

Expand Eligibility to Immediate Family Members of Decedents

The NCUA FOM manual currently only permits a deceased credit union member's surviving spouse to retain or establish membership. This outdated restriction presents an unnecessary obstacle for grieving families trying to manage their finances after a loved one's passing. Accordingly, the agency should expand the current exemption to allow all immediate family members of a deceased member to be eligible for membership. Though NCUA initiated a rulemaking in February 2023 that would have introduced this change, the proposed rule was never finalized despite receiving widespread support.

Minority Depository Institution (MDI) Preservation Program Interpretive Ruling and Policy Statement

In September 2024, following a previous request for comment (Docket NCUA-2023-0070) on the MDI Policy Statement, NCUA reached out to Inclusiv seeking feedback on the revised Policy Statement. We continue to value collaboration with the NCUA to promote MDI preservation, but we have not yet received an update following that second round of feedback, and the current MDI Policy Statement was last updated in March 2024. Our comments were as follows:

Process Recommendation

Offer TA Request Form for the MDI Support Program and Consider Targeted TA to Very Small MDIs

In our previous comments, we suggested ways to make the MDI Support Program more accessible. Currently, MDIs must contact their examiner or regional office to access technical assistance (TA). In addition to these two pathways, we recommend the NCUA create a technical assistance request form on the MDI webpage and clearly list a phone number and email address for the staff member responsible for these requests.

We also propose that NCUA consider targeted TA to very small MDIs and those managing significant challenges, as identified during their examinations. This would ensure that TA resources are utilized where they are most needed. Examiners should also be able to make recommendations for TA during examinations.

Rule Recommendation

Expand Benefits of MDI Designation to Mirror Those of the Low-Income Designation

NCUA should expand the benefits of the MDI designation to mirror those of the low-income designation and give MDIs in good standing the ability to expand their field of membership (FOM) to other MDI communities and/or groups with ease. MDIs often have narrow FOMs that limit their ability to grow. Creating a straightforward pathway for expanding their FOM would enhance MDIs' long-term viability and success. While we recognize the limitations posed by the Federal Credit Union (FCU) Act, we encourage the NCUA to focus on ways to allow for credit union expansion within the boundaries of the Act.

Thank you for the opportunity to comment. Inclusiv looks forward to engaging with the NCUA to improve credit union regulatory efficacy and amplify CDCU impact. For any questions regarding these comments, please contact Alexis Iwanisziw, SVP Policy & Communications, Inclusiv (aiwanisziw@inclusiv.org).

Sincerely,

Cathleen A. Mahon
CEO/President, Inclusiv