February 19, 2019

CC:PA:LPD:PR (REG-132881-17)
Internal Revenue Service, Room 5203
P.P. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Notice of Proposed Rulemaking

Regulations Reducing Burden Under FATCA and Chapter 3

Dear Sir/Madam:

World Council of Credit Unions (World Council) and Credit Union National Association (CUNA) appreciate the opportunity to file this joint comment letter on the Internal Revenue Service's Notice of Proposed Rulemaking on Regulations Reducing Burden under FATCA and Chapter 3 ("Proposed Rule").1 Credit unions are cooperative depository institutions and World Council is the leading trade association and development organization for the international credit union movement. Worldwide, there are over 89,000 credit unions in 117 countries with more than USD 2.1 trillion in total assets serving 260 million physical person members.2 In the United States, the Credit Union National Association (CUNA) represents America's credit unions and their 115 million members.

We strongly support many aspects of this rule that will reduce unnecessary regulatory burden for credit unions including the elimination of withholding on payments of gross proceeds from the sale or other disposition of any property of a type which can produce interest or dividends from sources within the United States.

The adoption of the Foreign Account Tax Compliance Act (FATCA) placed new and significant compliance costs on U.S. credit unions, especially those that engage in remittances and/or have members who are not U.S. citizens. As a result, Americans living and working abroad have had their bank accounts closed, as well as loans and mortgages recalled and denied. This is in large part because many financial institutions simply cannot justify serving these members and customers due to the high costs associated with FATCA compliance.

Under FATCA, U.S. credit unions are classified as "withholding agents" and are required to perform due diligence and withhold a 30% tax on some cross-border payments. Further, the enforcement of FATCA requires a network of intergovernmental agreements (IGAs). These

IGAs are essentially treaties but do not require Senate ratification. As a result, Financial institutions that fail to comply, either knowingly or not, face heavy fines and a ban on operating within the U.S. banking system.

Our specific comments on the proposed rule are as follows:

I. Elimination of Withholding on Payments of Gross Proceeds From the Sale or Other Disposition of Any Property of a Type Which Can Produce Interest or Dividends From Sources Within the United States

We strongly support the amendments in this section that will eliminate withholding on gross proceeds by removing gross proceeds from the definition of the term “withholdable payment”. We concur with the analysis that withholding on gross proceeds is no longer necessary in light of the current compliance with FATCA and that current withholding requirements under chapter 4 on U.S. investments already serve as a significant incentive for foreign financial institutions (FFIs) investing in U.S. securities to avoid status as non-participating FFIs.

II. Deferral of Withholding on Foreign Passthrough Payments

We support the deferral of withholding on any passthrough payments made to recalcitrant account holders. The time necessary to implement a system for withholding on foreign passthrough payments and the successful engagement of Treasury and partner jurisdictions to conclude intergovernmental agreements to implement FACTA largely render this requirement unnecessary. As such, we support the deferral of withholding as proposed.

III. Elimination of Withholding on Non-Cash Value Insurance Premiums Under Chapter 4

We support the elimination of withholding on Non-Cash Value Insurance Premiums under Chapter 4 as the burden on insurance brokers is significant and not necessary to further the purposes of chapter 4. Further the amendments included in the Tax Cuts and Jobs Act, Public Law 115-97 (2017), should mitigate the need for reporting on the U.S. owners of these companies under chapter 4.

IV. Modifications to Due Diligence Requirements of Withholding Agents Under Chapters 3 and 4

While we continue to be concerned with the regulatory burden imposed by this provision, including difficulties in obtaining new treaty statements for preexisting accounts, we support the amendments to this section to the extent that they will provide some measure of regulatory relief, including the extension of time to obtain treaty statements and the inclusion of the “actual knowledge” standard. We further support the amendment to the “hold mail” instruction that clarifies that requests to receive correspondence electronically.

V. Reporting of Withholding by Nonqualified Intermediaries

We support the amendments that address the case in which a nonqualified intermediary receives a payment for which a withholding agent has withheld at the 30-percent rate under chapter 4 and reported the payment on Form 1042-S as made to an unknown recipient. The amendment would permit substantiation of the credit even though the Form 1042-S furnished to it reports chapter 4 withholding and the corresponding forms 1042-S that the non-qualified intermediary issues reports chapter 3 withholdings. The change should assist account holders to claim foreign tax credits in their jurisdictions of residence.

VI. Reliance on Proposed Regulations

We support the provisions allowing reliance on the rules until such time as the rule is finalized. Allowing immediate implementation of this proposed rule will provide immediate regulatory relief for our credit unions.

In conclusion, we support many aspects of this rule and urge finalization to provide reduced regulatory burden for our member credit unions.

WOCCU and CUNA appreciate the opportunity to comment on the IRS's Notice of Proposed Rulemaking on Regulations Reducing Burden Under FATCA and Chapter 3. Please do not hesitate to contact me at bbranch@woccu.org or phone at (202) 638-0205 should you have any questions regarding our comments. Thank you.

Sincerely,

Jim Nussle
CUNA
President & CEO

Brian Branch
WOCCU
President & CEO