



October 13, 2011

Honorable Debbie Matz  
Chairman  
National Credit Union Administration  
1775 Duke Street  
Alexandria, Virginia 22314

Re: NCUA Regulatory Modernization Initiative

Dear Chairman Matz:

On behalf of NASCUS, I write to offer compliments and support for your Regulatory Modernization initiative as articulated before the National Association of Federal Credit Unions (NAFCU) Congressional Caucus and reiterated at the NASCUS Summit last month.

Your unequivocal pronouncement of NCUA's support for supplemental capital for credit unions was particularly heartening. The ability of credit unions to issue supplemental capital instruments to manage their net worth is critical to the viability of the credit union movement. Your leadership in seeking this authority is an essential first step in modernizing the American credit union system and putting it on par with virtually every other developed credit union system worldwide.

With respect to NCUA's review of specific regulations, I applaud the extension of six of the Reg Flex provisions to all federal credit unions (FCUs). State regulators are eager to work with NCUA to identify steps that NCUA can take to provide regulatory relief to federally insured state-chartered credit unions (FISCU) as well. To begin that process, I submit the following recommendations for your consideration.

**Create a Rules Review Task Force**

I urge NCUA to create a task force with NASCUS regulators to review NCUA rules applicable to FISCU to determine where relief may be provided. For example, wherever NCUA rules require submission for approval from a Regional Director (RD), provisions should be adopted to provide that the absence of a response from the RD within the stipulated time frame is akin to approval. This would provide greater certainty and allow for more efficient business judgments.

Pending a joint review of FISCU applicable rules, I recommend the following steps to begin modernizing NCUA supervision of FISCU and relieving regulatory burden.

**Consolidate Text of Insurance Rules in Part 741**

NASCUS has long urged NCUA to ease the regulatory burden on FISCU by changing the format of its rules in Subpart B of Part 741. Unlike Subpart A, Subpart B does not state the text of rules applicable to FISCU, but merely incorporates by reference rules outside of Part 741. At best, this format is cumbersome and confusing. We strongly recommend that the NCUA

incorporate the text of its insurance rules into Part 741, Subpart B in their entirety rather than by reference.

The complicated nature of NCUA's rules makes it difficult for FISCUs, as well as state and federal examiners and other interested parties, to easily discern which insurance rules, or in some cases portions of such rules, apply to FISCUs.

For example, take §741.203 (Minimum Loan Policy Requirements). In part, this subsection provides that any FICU must

“adhere to the requirements stated in ... Section 701.21(c)(8) of this chapter concerning prohibited fees ...”. See 741.203(a).

This reference is difficult to understand for a number of reasons:

- Simply locating subsection (c)(8) is difficult. Section 701.21 stretches over six pages online, in double column format.
- Once the reader locates the proper subsection, he or she must determine how it applies. Subsection (c)(8) prohibits certain officials and employees from receiving “any commission, fee or other compensation”... in connection with a loan made by the credit union. Because the Subpart B cross-reference is to “prohibited fees,” and (c)(8) speaks to commissions and compensation, as well as fees, it is uncertain whether the NCUA intended for the prohibition to apply merely to fees, or to commissions and other compensation as well.

Part 741's reference to §701.21 is one of dozens of such instances of incorporation by reference in Subpart B. By their nature, references cause confusion and ambiguity. A typical statement of the reference in Subpart B is that a FICU “must adhere to the requirements stated in” a given section outside of Part 741. Even the word “requirements” can be ambiguous.

Incorporation by reference creates a regulatory burden for FISCUs by causing unnecessary uncertainty, delay and, to the extent a credit union must resort to outside advice, expense. NCUA could easily alleviate this burden, and improve compliance with its rules, by incorporating the text of the referenced insurance rules in Subpart B.

Interested parties should be able to look to Part 741 of NCUA's rules as a stand-alone set of insurance rules. For the most part, state examiners already understand that if a rule is not stated or referenced in Part 741, the rule does not apply to FISCUs.

I recognize that reorganizing and re-publishing NCUA's Rules and Regulations is a large undertaking entailing expense. However, whatever costs may be incurred are more than outweighed by the relief such an undertaking would provide state-chartered credit unions and other interested parties. Of course, we would be pleased to assist NCUA by providing a draft of the Subpart B revision. Recently the Financial Crimes Enforcement Network (FinCEN) undertook a complete reorganization of its rules to group regulations by industry to ease compliance and the response has been uniformly positive.

A clear statement of insurance rules would also help credit unions and other interested parties appreciate more fully the different roles – as charterer and insurer - that NCUA plays.

### **Improve Web Access**

NCUA should also improve the format of its online rules. Currently, NCUA’s website provides the following headings to click on in this regard:

[“NCUA Regulations \(March 2010 edition\)](#)

For the most recent changes, check the [Recent Final Rules.](#)”

Under the first heading, NCUA provides a complete version of its rules in effect as of March 2010. In addition, readers must read 30 other final rules in order to understand the changes to NCUA rules since March 10, 2010.

To make matters more difficult, when the wording of a rule is changed, the Recent Final Rules do not restate the entire Part that has changed. In the case of rules changed since March 2010, the reader must go back and forth between the March 2010 version of the rule and the new rule to determine how the entire Part or section reads in its current state. NCUA should commit to a timeframe, say two weeks after a rule’s effective date, for incorporation of the new rule into its complete online version of its rules. This would greatly facilitate understanding by all interested parties of rule changes.

### **NCUA Examination of FISCUs**

NCUA could also relieve the burden on healthy FISCUs of multiple examination contacts in a single year by re-emphasizing reliance on state examinations. Last year, NCUA announced its intention to send federal examiners annually to every FISCU with assets in excess of \$250 million, regardless of the CAMEL rating or condition of the institution. When NCUA is unable to accompany the state regulator on the scheduled primary examination of the FISCUs, the agency has indicated its intention to schedule a separate federal onsite insurance review. This policy should be reconsidered. NCUA should rely on the state examination and spare the FISCUs the disruption of a second examination.

NASCUS and state regulators share your commitment to modernizing the credit union regulatory system. Working together, I am confident we can achieve this goal while maintaining rigorous and effective supervision to ensure the safety and soundness of the movement.

Sincerely,



Mary Martha Fortney  
President and CEO