

June 28, 2024

Office of General Counsel
National Credit Union Administration
1175 Duke Street
Alexandria, VA 22314

Re: Regulatory Review 2024

To the Office of General Counsel:

The National Association of State Credit Union Supervisors (NASCUS)¹ submits the following comments in response to the Office of General Counsel's (OGC) request for comments on the 2024 Regulatory Review.² NASCUS commends the Agency for the continued opportunity to provide comments and recommendations for improvement of NCUA's recommendations.

748 Security Program, Suspicious Transactions, Catastrophic Acts, Cyber Incidents, and Bank Secrecy Act Compliance

§748.1 Filing of reports

NCUA Rules and Regulations Part 748 mandates compliance with NCUA's Cyber Incident Notification Reporting Rule, the Bank Secrecy Act, and Anti-Money Laundering Laws, and requires the maintenance of a written security program for federally insured credit unions. Federally insured state-chartered credit unions (FISCUs) must comply with §748 by way of reference in Part 741.214.

§748.1(c) Cyber incident report

On February 16, 2023, the NCUA Board approved a final rule amending Part 748 of its regulations to require federally insured credit unions (FICUs) to report an incident to NCUA as soon as possible, but no later than 72 hours after a FICU reasonably believes it has experienced a reportable cyber incident.³ The effective date of the rule was September 1, 2023.

According to the NCUA's Annual Cybersecurity and Credit Union System Resilience Report issued June 25, 2024,⁴ from September 1, 2023, through May 1, 2024, credit unions reported 892 cyber incidents. It is unclear how many of these incidents were reported by FISCUs and whether that information was shared with the appropriate state supervisory authority (SSA).

¹ NASCUS is the professional association of the nation's forty-six state credit union regulatory agencies that charter and supervise over 1800 state-chartered credit unions. NASCUS membership includes state regulatory agencies, state-chartered and federally-chartered credit unions, and other important industry stakeholders. State-chartered credit unions hold over half of the \$3 trillion assets in the credit union system and are proud to represent nearly half of the 142 million members. The remaining states lack state-chartered credit unions.

² Available at <https://ncua.gov/regulation-supervision/rules-regulations/regulatory-review>

³ 12 CFR 748.1 (c) 1-2

⁴ <https://ncua.gov/files/publications/regulation-supervision/cybersecurity-credit-union-system-resilience-2024.pdf>

Unfortunately, the final rule did not address information sharing with the respective SSAs. From a systemic perspective, early warning of a coordinated or unusually sophisticated singular event could be vital in ensuring the adaptive hardening of cybersecurity protocols. Based on multiple conversations NASCUS has held with SSAs and representatives of NCUA there has been no clear communication channel or timeline identified for communication with SSAs when NCUA receives a notice of cyber incident. NCUA should review and consider issuing revised guidance through a letter to federally insured credit unions or other means to clarify this process and regulation.

§748.2 Procedures for Monitoring Bank Secrecy Act (BSA) Compliance

We reiterate the importance of the NCUA working with state regulators to develop regulations implementing the Anti-Money Laundering Act of 2020.⁵

The Financial Crimes Enforcement Network (FinCEN) is expected to issue guidance surrounding how credit unions will access the beneficial ownership database and the associated requirements should a credit union choose to access the information.⁶ FinCEN is also required to issue a new rulemaking amending the existing Customer Due Diligence (CDD) Rule identified in Part 748.2(b)(2) and codified in 31 CFR 1020.220.⁷ Accompanying these regulatory changes, FinCEN is also required to issue a proposed rulemaking addressing the implementation of Section 6101 – Establishment of National Exam and Supervision Priorities.⁸

NASCUS was pleased that NCUA acknowledged the need to work with state regulators on changes to the BSA/AML regulations as well as supervisory processes to implement the National Priorities.⁹ NCUA should create a working group of NCUA and state regulators to develop pending regulations as rulemaking and guidance is issued by FinCEN.

NCUA Title II Insurance Rules

We continue to urge NCUA to address the unnecessarily complicated organization of its rules and regulations applicable to FISCUs.¹⁰ The current organization is often confusing for credit unions and state and federal examiners. NCUA's practice of applying rules to FISCUs by incorporating references in Part 741 unnecessarily compliance because most substantive provisions applicable to FISCUs are dispersed throughout NCUA's rules for federal credit unions. One of the rules referenced is that of Part 748, which applies to FICUs and FISCUs by reference in Part 741.214.

We recommend that NCUA reorganize its rules to consolidate and co-locate all National Credit Union Share Insurance Fund (NCUSIF) rules for FISCUs in one section (or a series of

⁵ <https://www.govinfo.gov/content/pkg/BILLS-116hr6395enr/pdf/BILLS-116hr6395enr.pdf>

⁶ <https://www.federalregister.gov/documents/2023/12/22/2023-27973/beneficial-ownership-information-access-and-safeguards>

⁷ <https://www.ecfr.gov/current/title-31/section-1020.220>

⁸ <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=1506-AB52>

⁹ See <https://ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/interagency-statement-issuance-anti-money-laundering-counteracting-financing-terrorism>

¹⁰ See NASCUS Comments on NCUA Regulatory Review 2020-2023

consecutive sections). Reorganizing the rules in this manner would provide significant regulatory relief to credit unions without increasing risk to the NCUSIF.

Conclusion

NASCUS appreciates the opportunity to participate in the annual review of NCUA's Rules and Regulations. The Regulatory Review is a commendable undertaking with real value to the credit union system. We are happy to discuss our comments further at your convenience.

Sincerely,

-signature redacted for electronic submission –

Sarah Stevenson
Vice President, Regulatory Affairs
NASCUS