NASCUS
The National Association of State Credit Union Supervisors

August 21, 2024

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

Re: Regulatory Publication and Voluntary Review as Contemplated by the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA)

To the Office of General Counsel:

The National Association of State Credit Union Supervisors (NASCUS)[1] submits the following comments in response to the National Credit Union Administration's (NCUA's) notice of regulatory review and request for comments. The Agency's commitment to identifying and minimizing outdated, unnecessary, or unduly burdensome requirements is commendable.

Due to the unique circumstances of federally insured credit unions and their members, the NCUA Board (Board) has chosen to issue a separate request from the other federal banking agencies. With this Notice, the Board seeks comments on NCUA rules related to:

- Applications and Reporting; and
- Powers and Activities

NASCUS appreciates the opportunity to comment and offers the following for NCUA's consideration.

General Comments

The most significant reductions in regulatory burden the NCUA could enact for federally insured state credit unions (FISCUs) would be to reorganize NCUA Rules and Regulations to consolidate in a single section all rules applicable to FISCUs. NCUA's current organization of its rules, applying federal credit union rules located elsewhere in the Rules and Regulations to FISCUs by reference in Part 741, is confusing and burdensome. Examiners and compliance officers reviewing NCUA rules for FISCUs must spend an extraordinary amount of time hunting and pecking through all of NCUA's rules, many of which do not apply to FISCUs, in search of single sub-provisions referenced in Part 741 by citation but the body of text of which are located elsewhere.

[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.

The NCUA's practice of incorporation by reference is cumbersome and confusing. At a time when credit unions and regulators acknowledge the ever-increasing regulatory burden, reorganizing and streamlining its Rules and Regulations for ease of understanding would have a positive impact on credit unions improving transparency and comment ability to both deposit insurance and charter stakeholders.

There is simply no compelling justification for not consolidating all rules applicable to FISCUs within Part 741. Doing so would significantly reduce regulatory burden and eliminate confusion between federal credit union rules and FISCU rules.

NCUA has acknowledged the utility of consolidating rules in the past. Previously, when providing regulatory relief to federal credit unions by consolidating several lending rules, NCUA wrote:

Having the various maturity limits spread among numerous sections of the NCUA's regulations, often separated by large amounts of regulatory text unrelated to maturities, can be confusing to a reader and makes it more difficult to understand the lending regulations. To remedy this, in the proposed rule, the Board proposed to make the NCUA's loan maturity requirements more understandable and user-friendly by identifying in one section (§ 701.21(c)(4)), including cross citations and all of the maturity limits applicable to FCU loans.[2]

Considering that for FISCUs, ***virtually every one of NCUA's applicable regulations*** is dispersed in the same confusing manner as the FCU borrower limits NCUA remedied for FCUs, it is long past time NCUA co-locates and consolidates FISCU rules.

NCUA should reorganize its rules to consolidate and co-locate all National Credit Union Share Insurance Fund (SIF) rules for FISCUs in one section (or series of consecutive sections). Reorganizing the rules in this manner would provide significant regulatory relief to credit unions without increasing risk to the SIF.

Applications and Reporting

Mergers of Insured Credit Unions into Other Credit Unions; Voluntary Termination or Conversion of Insured Status, §708b and §741.208

As NASCUS has addressed in previous comments to the NCUA, the NCUA's merger rule remains problematic with respect to FISCUs. That the goals of NCUA's rule may be laudable does not outweigh the fact that the rule has only a tenuous connection to preserving the share insurance fund (SIF). As such, in mergers involving two FISCUs NCUA should defer to state law concerning governance issues. When two state-chartered credit unions merge, NCUA's sole concern should be mitigating risk to the Share Insurance Fund (SIF). Without any clear and compelling connection between the activity being regulated and risk to the SIF, NCUA should always defer to laws applicable to each state. NCUA's appropriate role is to ensure the continuing credit union is sufficiently capitalized and managed to absorb the merged credit

[2] NCUA Final Rule, Loans to Members and Lines of Credit to Members, 84 Fed. Reg. 57, at 10972 (March 25, 2019).

union without posing material risk to the insurance fund. If the continuing credit union is safe and sound, and risk to the SIF is minimized, NCUA's review should be concluded.

State regulators, as the prudential regulator, should retain their authority to evaluate governance issues related to their respective charters. Most states can, and do, collect compensation information over the course of reviewing a merger application. As the chartering authority, this is appropriate and essential to maintaining the intent and purpose of the dual charter authority.

Member-to-Member Communication Remains Problematic

The member-to-member communication component of the final rule remains problematic, overly burdensome, and unnecessary. It might help stakeholder evaluation of the efficacy of this rule were NCUA to publish data on the numbers of mergers completed since the implementation of the rule, the total number of members affected, and the total number of members that availed themselves of the portal.

The multitude of mailings the NCUA requires also proves problematic and costly to FISCUs as many states have statutory notice and timing requirements for communications. NCUA should NOT require the states, when two FISCUs are merging, to follow the Agency's notice and timing requirements on top of the NCUA's statutory requirements. This imposes double the costs of mailings to the respective institutions and confusion for the membership receiving the communications. We are unconvinced that the difference between NCUA's timing and a state timing requirement represents any serious risk to the share insurance fund.[3]

To reiterate, NASCUS and state regulators acknowledge, and welcome, NCUA's role in FISCU mergers as the administrator of the SIF. Unfortunately, the overreach of the 2018 Merger Rule not only weakens the dual chartering system, but it has also caused real-life complications involving the mergers of FISCUs that continue to frustrate state regulators, members, and credit unions alike. Whether the problems arise from a mismatch in state and NCUA timeframes for notices, state and NCUA assessment of the need to pay out net worth to the merging credit union, or any other governance-related issue, the root cause is the same: NCUA's rule reaches far beyond reasonable safety and soundness risks and impacts the intent of the dual charter.

Purchase of Assets and Assumption of Liabilities, §741.8

Under current 741.8, credit unions (state and federal) must receive approval from NCUA before purchasing loans or assuming liabilities from a federally insured non-credit union financial institutions. The same restriction does not apply to identical transactions with insured credit unions. Non-credit union financial institutions are strictly regulated for safety and soundness at the state and federal levels. In fact, the state regulator may be the primary prudential regulator for both the credit union and the other financial institution involved in the transaction. Many non-credit union financial institutions are also federally insured by a federal agency.

[3] Much of the rationale behind the NCUA's timing requirements is for members to provide comments on the proposed merger, however, a review of NCUA's dedicated website for comments on proposed mergers, identifies an immaterial number of comments on mergers since the rule was finalized in 2018. This begs the question as to whether this is even necessary given the amount of burden it has imposed upon merging credit unions, particularly mergers between two FISCUs.

Additionally, Part 741.8(c) stipulates that a credit union must request approval and submit documentation to the respective NCUA regional office. NCUA should defer to a FISCU's state regulator for approval of assets purchases or assumptions of liabilities, with a notice to the NCUA. As the primary prudential regulator for FISCUs, state regulators have principal responsibility to review FISCU transactions. Notice to NCUA would enable the NCUA, as insurer, to raise any safety and soundness concerns to the state regulator, while providing the state regulator the ability to make the final determination. These modifications would strengthen the delineation between NCUA's responsibilities as insurer and as a chartering authority.

Member Business Loans; Commercial Lending, §723 and §741.203

Part 741.203 explicitly states FISCUs are exempt from Part 723 if the state supervisory authority "adopts substantially equivalent regulations as determined by the NCUA Board *or*, in the case of the commercial lending and member business loan requirements, if the state supervisory authority administers "a state commercial and member business loan rule for use by FISCUs in that state that at least covers all the provisions in Part 723 and is ***no less*** restrictive, upon determination by NCUA."[4]

NCUA must ensure flexibility and permit states with state commercial and member business loan rules to maintain an alternate approach to the requirements of 723. States with their own rules should not be subject to NCUA examiner subjectivity as the current NCUA statute clearly provides flexibility for FISCUs, as previously stated.

Loans to Credit Unions (Subordinated Debt), §701.25 and §741.227

In a time in which sufficient liquidity sources for credit unions is top of mind, NCUA should consider the viability of subordinated debt as an additional tool for liquidity. The Federal Credit Union Act (FCUA) does not permit the inclusion of subordinated debt in a credit union's prompt-corrective-action capital ratio, only in the risk-based capital ratio. While NASCUS understands an amendment such as this would require Congressional approval to amend the FCUA, such an amendment would be of significant benefit to the industry.

Loan Participations, §701.22

NCUA's regulation of loan participations applies to FISCUs under 741.225. This regulation creates several documentation and structural requirements for loan participations that erode state regulatory authority but do little to strengthen the safety and soundness of credit unions. In the final rule, NCUA cites "the interdependence between or among borrowers" as an inherent risk to the NCUSIF that justifies the rule and the preemption of state regulation.

However, the rule does not provide the NCUA with a mechanism for identifying or tracking interdependence throughout the industry; instead, it sets aggregate limits on purchases from a single originating lender or single borrower and makes those limits waivable by the NCUA. To the extent the rule only serves to codify, in detail, the basic tenants of a safe and sound lending program (i.e., underwriting standards, concentration policies, and legally binding loan

[4] Part 741.203(a) Minimum Loan Policy Requirements

agreements) it is duplicative of existing safety and soundness regulations and infringes upon credit union management and state regulatory authority. Where states already have procedures in place to evaluate these safety and soundness concerns in loan participation programs, NCUA should defer to state regulation.

Credit Union Service Organizations (CUSOs), §712 and §741.222

CUSOs have long been strong partners for credit unions to meet their member's needs. CUSOs offer a range of services, including investments, marketing, insurance, mortgages, and more. Furthermore, CUSOs provide great value and assistance with minimal risk. One example is in the mortgage space.

NCUA has consistently stated that it lacks supervisory authority over CUSOs sufficient to confer "registration" status upon mortgage loan originators (MLOs) pursuant to the 2008 Safe Licensing Act.[5] We note that NCUA dictates the corporate relationship between CUSOs and their credit union owners, requires CUSOs submit to NCUA access to the CUSO's books and records, and requires CUSOs register with NCUA and annually submit data.

Despite this longstanding opinion from the Agency, credit unions and their CUSO partners conduct their relationships well within the agency's regulatory parameters and in accordance with applicable laws and regulations.

In view of these NCUA requirements, we recommend NCUA reconsider its finding that it lacks sufficient regulatory control over CUSOs to warrant registration of CUSO MLOs.

Designation of Low-Income Status, §701.34 and §741.204

NCUA Parts 701.34 and 741.204 address the coordination of and approval of a FISCUs low-income designation between the NCUA and the state regulator and indicates the state regulator shall make the low-income designation with the concurrence of NCUA. This is coupled with the requirement of a state regulator to make the designation on the same basis as that provided in 701.34 for federal credit unions.

NASCUS does not have concerns with the approval process, but rather would like to address communication breakdowns between the NCUA and state regulators. It is understood that NCUA reviews low-income designations every five years. If NCUA determines a low-income credit union no longer meets the criteria for designation, NCUA will notify the credit union in writing, and the credit union must, within five years, meet the criteria for designation or come into compliance with the regulatory requirements applicable to Federal credit unions that do not have the low-income designations.

NASCUS requests clarification on the process and communication among regulators should a FISCU no longer qualify for the low-income designation.

[5] NCUA Legal Opinion Letter 08-0843, October 2008j

Conclusion

NASCUS commends the NCUA for its willingness to undertake meaningful regulatory reform and appreciates the opportunity to comment. We look forward to continuing to work with NCUA to maintain and improve the safe, sound, and efficient regulation of the credit union movement.

Sincerely,

-signature redacted for electronic submission –

Sarah Stevenson
Vice President, Regulatory Affairs
NASCUS