

September 23, 2024

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

**Re: NCUA Proposed Rule – Succession Planning, RIN 3133-AF42**

Dear Secretary Conyers-Ausbrooks:

The National Association of State Credit Union Supervisors (NASCUS)<sup>1</sup> submits the following comments on the National Credit Union Administration’s (NCUA) notice of proposed rulemaking and request for comment addressing Succession Planning.<sup>2</sup>

NASCUS appreciates the NCUA Board obtaining stakeholder input on this important proposal and offers the following comments for consideration.

***General Comments***

The NCUA has issued several publications discussing succession planning, including Letter to Credit Unions (LTCU) 22-CU-05<sup>3</sup>, which provides “succession planning for key management positions” which is a key factor considered when assessing the management of a credit union, and LTCU 23-CU-01<sup>4</sup> which highlights succession planning as one of the Agency’s supervisory priorities.

The NCUA discusses throughout the preamble and the proposed rule, that because no regulation requires credit unions to implement a formal, written succession plan, the Agency “lacks a full complement of regulatory tools to help address deficiencies in a Federally Insured Credit Union’s (FICU) succession planning process.” The Agency also believes the lack of regulation in this space is a matter of safety and soundness that could directly impact the National Credit Union Share Insurance Fund (NCUSIF).

NASCUS believes that succession planning is important in ensuring a credit union’s continuity of operations and maintaining member confidence in credit union leadership. Financial institutions must implement the necessary steps to mitigate management transition risks. Proactive succession planning requires that sufficient time and attention be given to the consideration of talent replacement.

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<sup>1</sup> 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.

<sup>2</sup> 89 Fed. Reg. 60329, July 25, 2024

<sup>3</sup> NCUA Letter to Credit Unions 22-CU-05, CAMELS Rating System, March 2022

<sup>4</sup> NCUA Letter to Credit Unions 23-CU-01, NCUA’s 2023 Supervisory Priorities, January 2023

Proactive succession planning also ensures that a credit union selects individuals who believe in the strategic goals and philosophy of the institution. Finding the “right” fit in terms of leadership is most often a daunting and time-consuming process. NASCUS believes these discussions are best had before a management team transition is needed.

However, NASCUS believes it would be more appropriate for the NCUA to address succession planning priorities through guidance and Letters to Credit Unions rather than prescriptive rulemaking that will ultimately add undue regulatory burden on an already heavily regulated industry.

### ***Deference to State Authority***

We applaud NCUA for the Agency's efforts to support dual chartering by providing for a carve-out for FISCUs in states where succession planning is addressed. Unfortunately, the proposed state carve-out provision is confusing.

In describing the carve-out for FISCUs, the preamble of the proposed rule states, “However, to the extent that a FISCU is subject to a State statutory or regulatory requirement that conflicts with the proposed rule, the NCUA will defer to the State requirement.”<sup>5</sup> This implies that if a state rule addresses succession planning, FISCUs in that state would be “exempt” from NCUA’s rule. In the actual proposed rule §741.228, NCUA states, “Any credit union that is insured pursuant to title II of the Act must adhere to the requirements in §701.4(b)(3) and (e) of this chapter, to the extent these regulatory provisions do not conflict with an applicable State requirement.” This seems to imply only a partial “exemption” from specific conflicting provisions in NCUA’s rule.

While a state may not have a specific statutory or regulatory requirement addressing succession planning, it may have different definitions from that of the NCUA or guidance for the industry.

For example, the proposed rule would require a written succession plan, at a minimum, to cover loan officers, management officials, and assistant management officials. In many instances, state-chartered credit unions, have “loan officers” who process loan applications for members, but who do not approve or deny the loans. The way the proposed rule is written, one could interpret that anyone with this title who processes a loan application would be covered and required to be included in the succession plan, as they are “involved in the daily review of loans.” Moreover, “executive officers” in state credit unions are those individuals who can set rates or make pricing decisions, and not necessarily those at the vice president or other managerial level.

In addition, neither the preamble nor the proposed rule uses the word “exempt” to describe the applicability of the rule to a FISCU in a state that addresses succession planning. Instead, the preamble uses “defer,” and the proposed rule is silent.

The conflicting construction and the absence of clarity as to the specific applicability of the proposed rule to a FISCU will not only lead to confusion but also practical difficulties among FISCUs and state and federal examiners.

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<sup>5</sup> 89 Fed. Reg. 60332, July 25, 2024

The best solution is for NCUA to narrow the applicability of this rule to exclude FISCUs as was the case in the 2022 proposal (that FISCUs did not comment on given the lack of notice that NCUA was considering including them). Absent that appropriate correction, NCUA should provide a simplified exemption provision that exempts FISCUs in a state upon notice from the state regulator to the Regional Director that the state supervises succession planning by rule, guidance, and/or through the examination process. This approach is a clear and effective way to reduce confusion, ease administration, and present no greater risk of material loss to the SIF.

### ***Regulatory Burden on Small Credit Unions***

In the preamble to the proposed rule, NCUA cites concern regarding the ongoing consolidation of modestly sized credit unions as a concern supporting this rulemaking. Regulatory burden is also a significant driver of consolidation. It would be unfortunate if a rule intended to ease consolidation contributes to a driving factor in consolidation: the aforementioned regulatory burden.

One unfortunate and unnecessary element of the proposed rule is NCUA's continued insistence on making FISCUs access NCUA's FCU rules to determine their compliance obligations rather than consolidating all applicable FISCU rules in one place. In this case, a FISCU references part 741 and is then redirected to numerous, non-contiguous provisions of Part 701 FCU rules. And those rules use the term FCU throughout.

The NCUA acknowledges the proposed rule will have an impact on all credit unions, and further suggests that smaller credit unions are more likely to feel the burden. The proposed rule allows for smaller credit unions to have "a simple succession plan that only addresses a few key leadership positions,"<sup>6</sup> because they are "likely to have less expansive employee recruitment, development, and retention strategies."<sup>7</sup> The issue with this statement is many small credit unions may only have a minimal number of employees who wear multiple hats. The way the proposal is currently written, the requirements could extend to every employee of a smaller institution due to their various roles and responsibilities. A small credit union may have less expansive recruitment development and retention strategies but will be required to enhance these strategies to meet the requirements of the proposed rule, potentially placing significant burden on them.

The proposal also suggests a smaller credit union may benefit from the assistance of a larger, more sophisticated credit union. In theory, this may be beneficial, but if NCUA is trying to dial back the number of mergers and retain small credit unions, primarily because these smaller institutions serve many niche markets, a small credit union may only have the option for succession planning of merging into the larger credit union they have partnered with rather than recruitment and retention strategies.

The NCUA must also consider, when it comes to smaller credit unions, that resources are at a premium, and small credit unions can often not afford to pay for top talent. NCUA should work with SSAs to develop recruitment strategies and resources to assist credit unions, especially

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<sup>6</sup> Id. 60333

<sup>7</sup> Id.60334

smaller credit unions. Working with local colleges and universities in potential career fairs, internship programs, etc., to obtain and develop new talent.

It is also important to note that credit unions of all sizes are encouraged to develop and maintain appropriate disaster recovery and business continuity plans.<sup>8</sup> Additionally, Part 749, appendix B, codifies FICUs are encouraged to develop a program to prepare for a catastrophic event. As a part of this planning and program development, credit unions distinguish the roles of the credit union leadership and the board of directors, as well as backup personnel for various roles.

It may seem a minor detail, but it results in confusion and inefficiency for many credit unions as they sift through FCU rules to determine what may apply to their state credit union.

There remains no compelling argument against consolidating FISCO rules together.

### ***Format of Succession Plans and Availability to Members***

The proposed rule states that succession plans...“should provide sufficient detail and use reasonably understandable language to the FICU’s member-owners in describing its strategies for filling vacancies and recruiting, developing, and retaining employees.” The proposal further states...“that succession plans be clearly and concisely written, use everyday language to the extent possible, and avoid ambiguous phrasing open to differing interpretations.”

This language is concerning, implying that succession plans will be publicly available. Succession plans may include retirement information for senior credit union management, which should not be made public. In addition, if succession plans are expected to be made available to the public, what would stop another financial institution from gaining access to the information for potential merger opportunities? Succession planning is often included in the long-term strategy and planning for a credit union. It should not be readily accessible to those outside the credit union or the regulators.

### ***Alternative Approach***

As previously stated, NASCUS concurs that succession planning, commensurate with an institution’s size, complexity, and resources, is critically important for the continuity of a credit union operations safely and soundly. We also appreciate the complications of addressing safety and soundness concerns exclusively through guidance and the supervisory process.

- If, after careful consideration of stakeholder comments, NCUA believes the Agency must establish a formal rule addressing succession planning, we recommend adopting a concurrent rule and guidance approach. NCUA could incorporate into Part 741, Share Insurance Rules, a requirement that a credit union Board annually discuss succession planning and review existing plans, documented in the minutes of the meeting and commensurate with the size and complexity of the institution. The NCUA could then expand on supervisory expectations through guidance.

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<sup>8</sup> NCUA LTCU 01-CU-21 Disaster Recovery and Business Resumption Contingency Plans, December 2001 and NCUA Risk Alert 06-RISK-01 Disaster Planning and Response

This approach, less prescriptive, but flexible to better calibrate to a specific credit union's circumstance, would mirror many long-accepted approaches to regulation and supervision of critical functions that do not lend themselves to detailed prescriptive rules. As but one example, the Bank Secrecy Act and Anti-Money Laundering rules require written risk assessments commensurate with the complexity of the covered entity. Those rules are then buttressed by guidance issued by agencies and contained within the FFIEC Exam Manual.

If, after taking this more calibrated approach, NCUA determines in consultation with state regulators that more prescriptive rules are needed, additional rulemaking could address perceived shortcomings.

In closing, NASCUS appreciates the opportunity to comment on this proposed rule. We are happy to discuss our comments further, at your convenience.

Sincerely,

-signature redacted for electronic submission –

Sarah Stevenson  
Vice President, Regulatory Affairs  
NASCUS