



August 2, 2012

Regulatory Review (2012)
Office of the General Counsel
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314

Via e-mail to ogcmail@ncua.gov

To Office of the General Counsel:

The National Association of State Credit Union Supervisors (NASCUS)¹ appreciates the opportunity to offer comments and suggestions regarding NCUA's Rules and Regulations pursuant to the 2012 Rule Review.

Consolidate Insurance Rules

NASCUS would like to take this opportunity to encourage NCUA to consolidate insurance rules into one section of NCUA's Rules and Regulations.

As currently organized, Part 741 consists of two sections. 741.0-741.11 is comprised of stand-alone insurance rules and Subpart B is comprised of other NCUA rules that are incorporated by reference. It has long been NASCUS' experience that identifying which rules incorporated by reference apply to federally insured state-chartered credit unions (FISCU) and which rules do not apply has caused confusion among credit unions and state and federal examiners.

NASCUS again recommends that NCUA re-organize its Rules & Regulations to consolidate all share insurance rules applicable to FISCU into a single chapter or consecutive chapters.

Recommended Changes to 701.21 - Loans to Members and Lines of Credit to Members

Currently, three NCUA rules applicable to FISCU provide for exemptions for states that promulgate similar rules subject to NCUA approval. In the case of member business loans (MBLs), §723.20 provides for a state exemption if the state's proposed rule "minimizes the risk and accomplishes the overall objectives of NCUA's member business loan rule in this part." Previously, the NCUA standard for approving a state MBL rule was that it must be "substantially

¹ NASCUS is the professional association of the 48 state and territorial credit union regulatory agencies.

similar" to NCUA's MBL rule. That language was changed, however, and "substantially similar" was removed from §723.20.

The remaining two rules are §701.21(c)(8), prohibited fees, and §701.21(d)(5), non-preferential loans. Both of these rules are incorporated into NCUA's FISCU rules by §741.203. Section 741.203 provides for state exemptions if the state promulgates "substantially similar" regulations as determined by the NCUA Board. To enhance dual chartering, NASCUS recommends the "substantially similar" standard should be replaced as it was previously in the MBL rule with the standard of "minimizing risk and accomplishment of NCUA's overall objectives." From a safety and soundness perspective, there is no reason to require a state rule be substantially similar to NCUA's rule. A state rule that minimizes risk and accomplishes the same overall objectives should be satisfactory to the share insurer regardless of whether the rule is "substantially similar" or not.

Recommended Changes to 701.22 - Loan Participation

Part 741.8 requires FISCUs to seek NCUA Regional Director approval before purchasing loans or assuming an assignment of deposits, shares, or liabilities from any entity other than another FISCU. This provision is more restrictive toward FISCUs than NCUA's provisions for federal credit unions (FCUs) found in §701.22 regarding FCU ability to participate in loans. As we mentioned in our 2010 Rule Review comment letter, there is no compelling reason for the different standards for state and federally chartered institutions with respect to participation loans. NASCUS recommends NCUA streamline the rules regarding loan participations to apply equally to state and federal credit unions. In doing so, NCUA should extend the exemption from Regional Director approval to all loans purchased from a bank or credit union. This will create parity for state and federal credit unions engaged in participation loans, alleviate unnecessary regulatory burden for state-chartered credit unions as well as free up state and federal examination staff resources.

Recommended Changes to 701.32 - Payments on Shares by Public Units and Nonmembers

Part 741.204 requires FISCU compliance with §701.32, mandating a written policy if public deposits exceed 20% of total shares. The provision also limits a FISCU's ability to receive secondary capital accounts without pre-approval of the Regional Director. Provisions limiting state authority to set thresholds for public deposits as well as limitations on secondary capital accounts are unnecessarily preemptive. With respect to public deposits, NASCUS recommends NCUA rules be changed to allow states to set the thresholds for acceptance of these deposits rather than require time consuming waivers. Likewise, state law should control whether FISCUs may issue secondary capital accounts. While such accounts do not count toward a FISCU's regulatory capital, the ability to offer the accounts is not inherently unsafe and unsound and therefore should be subject to state law.

Recommend Changes to 708a and 708b - Bank Conversions and Mergers and Mergers of Federally-Insured Credit Unions; Voluntary Termination or Conversion of Insured Status

Parts 708a and 708b address FISCUs converting to non-credit union status as well as to private insurance. Congress authorized NCUA to promulgate rules for federally insured credit unions conversions but did so in a limiting fashion. In the cases of a FISCU converting to a federally insured bank, NCUA's concerns with reputation risk are limited as the members will be covered by federal deposit insurance. Therefore, NCUA should defer to state rules governing FISCU conversion to federally insured non-credit union status and provide for an exemption under this provision. We would be pleased to work with NCUA on the exemption language.

NASCUS remains committed to working with NCUA to foster the partnership between state and federal regulators. Please do not hesitate to contact me to discuss our comments.

Sincerely,

/s/ signature redacted for electronic publication

Brian Knight
Senior Vice President and General Counsel