



September 28, 2012

Mary Rupp  
Secretary to the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314

Re: NASCUS Comments on Notice of Proposed Rulemaking for Part 741, Maintaining Access to Emergency Liquidity

Dear Ms. Rupp:

The National Association of State Credit Union Supervisors (NASCUS)<sup>1</sup> provides the following comments in response to NCUA's Notice of Proposed Rulemaking for Part 741, Maintaining Access to Emergency Liquidity. State regulators agree that liquidity planning, including contingency or emergency liquidity planning, is fundamental to risk management and essential for the safe and sound operation of any financial institution. We note that state regulators participated in the development of the Federal Financial Institution Examination Council (FFIEC) liquidity guidance issued in March, 2010.<sup>2</sup>

The aforementioned guidance provides an excellent blueprint for credit unions updating liquidity risk management policies. In NASCUS' view, the FFIEC guidance is sufficient and obviates the need for this proposed rule. Considering the proposal, NASCUS submits the following comments.

#### Refining the proposal's asset tiers

NCUA proposes establishing three tiers for the application of liquidity rules. Federally insured credit unions (FICUs) with less than \$10 million in assets would be required to maintain a basic written liquidity policy that establishes a credit union board-approved framework for managing liquidity and a contains a list of contingent liquidity sources for adverse circumstances. FICUs with assets between \$10 million and \$100 million would be required to have a comprehensive written liquidity plan that includes contingency funding sources and establishes strategies for addressing liquidity shortfalls in emergency situations, identifies lines of responsibility within the credit union for implementing the plan, and addresses testing and updating of the plan. The third tier would include FICUs with assets of \$100 million or more, requiring those institutions have a comprehensive written liquidity plan as well as have access to a backup federal liquidity source for emergency situations.

The first tier, FICUs under \$10 million in assets corresponds to NCUA's current definition of a small credit union. In July, 2012, NCUA Chairman Matz indicated NCUA was considering

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<sup>1</sup> NASCUS is the professional association of the nation's state credit union regulatory agencies.

<sup>2</sup> 75 Fed. Reg. 13656 (Mar. 22, 2010).

raising the definition of small credit union.<sup>3</sup> Anticipating the changing definition, NCUA should raise the first tier threshold. Raising the first tier would also remain consistent with the emergency liquidity ratio (ELR) as presented in the proposed rule.<sup>4</sup>

Should NCUA raise the first tier, we would recommend adjusting the remaining tiers upward as well. In particular, the asset requirement for the third tier should be at least \$250 million. This adjustment would be consistent with NCUA's current examination program classification of a larger credit union.

#### The Central Liquidity Facility as a required federal liquidity source is problematic

Under NCUA's proposal, FICUs with assets in excess of \$100 million would be required to maintain access to either the Central Liquidity Facility (CLF) or the Federal Reserve Bank Discount Window (Discount Window). The emphasis placed on the CLF as one of the two acceptable forms of emergency liquidity under the rule for larger credit unions seems problematic. The CLF is not set up to fund a credit union quickly in a true emergency. The limited borrowing capacity of the CLF also raises questions as to its ability to provide funding in a systemic crisis. Finally, the CLF's own policy statements, while clearly establishing it as a liquidity provider for the credit union system, seems to indicate that the CLF is a lender more analogous to the Federal Home Loan Banks (minus the collateral) than as a true emergency backstop lender of last resort.<sup>5</sup>

If NCUA is going to place an emphasis on the CLF as a required liquidity provider, the agency should first seek statutory changes to the CLF to allow it to serve a role on par with the Discount Window.

#### Exclusion of the Federal Home Loan Banks as acceptable emergency liquidity source

The proposed rule does not include the Federal Home Loan Bank (FHLB) as an acceptable source of federal backstop liquidity as required for tier three credit unions (in excess of \$100 million in assets). NASCUS understands NCUA's reasoning and we do not disagree nor do we make a specific recommendation for FHLB inclusion or exclusion. However we do note the extent to which the FHLBs have made funds available to the credit union system in the past. In particular, the availability of the FHLB funding as compared to the CLF presence in the marketplace reinforces concerns that the rule as proposed may be too specific and too narrow.

We encourage NCUA to consider carefully the implications of the rule as proposed with respect to the realities of the credit union marketplace.

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<sup>3</sup> See *Credit Union Times*, "Onsite Coverage: NCUA to Consider Raising Small CU Asset Definition Above \$10 Million," July 26, 2012. Available at <http://www.cutimes.com/2012/07/26/onsite-coverage-ncua-to-consider-raising-small-cu>.

<sup>4</sup> 77 FR 44503 (July 30, 2012) p. 44505.

<sup>5</sup> See NCUA Interpretive Ruling and Policy Statement (IRPS) 2001-2, 12 CFR Part 725 (2001). Available at <http://www.ncua.gov/Legal/Documents/IRPS/IRPS2001-2.pdf>

### Clarifying applicability to the corporate credit union system

NCUA's publication of the proposed rule caused confusion as to its applicability to corporate credit unions. Eventually NCUA clarified that the proposal would not apply to corporate credit unions. NASCUS agrees that applying the proposal to corporate credit unions was unworkable, and commends NCUA for reconsidering that issue. In the event NCUA proceeds to final rulemaking we recommend the agency make clear in the final rule its limited applicability to natural person credit unions.

### BASEL III liquidity requirements

Credit union regulators world-wide have been discussing the adoption of BASEL III banking principles for credit union systems. As NCUA considers BASEL liquidity rules for very large federally insured credit unions, NASCUS urges caution. As NCUA is aware, there are numerous issues regarding implementation of BASEL III for banking systems, let alone attempting implementation for the credit union system. Before considering rulemaking related to BASEL liquidity requirements, NCUA should work with its state regulator partners and leverage their expertise and experience with banking liquidity rules.

NASCUS and state regulators remain committed to working with NCUA to mitigate material risk throughout the credit union system, and appreciate the opportunity to submit comments on this proposed rulemaking. We would be pleased to discuss these comments at NCUA's convenience.

Sincerely,

- signature redacted for electronic publication -

Brian Knight  
SVP Regulatory Affairs & General Counsel