UNITED STATES OF AMERICA
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of

XXXX FEDERAL CREDIT UNION Docket BD-07-19

Appeal of Supervisory Review Committee Determination
To Affirm Regional Disapproval of Request to Accept
Secondary Capital

Decision and Order on Appeal

Decision

This matter comes before the National Credit Union Administration Board (Board) [1] as an administrative appeal under 12 C.F.R. Part 746, Subpart A. The appeal concerns the determination by the Supervisory Review Committee (SRC) to affirm the Regional Director for the XXXX Region's (Region) [2] denial of an application to accept secondary capital by XXXX Federal Credit Union (Petitioner).

Background. Petitioner, a low-income designated credit union (LICU), is appealing the SRC's decision to affirm the Region's determination to deny Petitioner's application to accept secondary capital accounts in the amount of XXXX. The Region initially denied Petitioner's secondary capital plan (SC Plan)[3] on December 19, 2018, and affirmed its denial upon reconsideration by letter of February 13, 2019. Petitioner appealed the Region's determination to the SRC, and an oral hearing before the SRC was held at the NCUA's headquarters on May 30, 2019. On June 24, 2019, the SRC issued a decision, affirming the Region's denial of Petitioner's SC Plan. Petitioner is seeking administrative review of that determination by the Board.[4] In connection with its appeal, Petitioner requested approval to present its case orally before the Board. The Board granted this request on August 8, 2019, and a hearing on the issues was held before the Board on September 24, 2019.

Standard of review. This appeal involves questions of regulatory interpretation that present issues of first impression for resolution through the administrative appeals process. Petitioner has raised issues of supervisory policy involving the interpretation of the NCUA's secondary capital rule. In general, where it is clear from an implementing statute that Congress intends for

[1] Chairman Hood and Board Member Harper considered this appeal. Board Member McWatters was recused from this matter.
[2] Due to the 2019 agency reorganization, the initial decision in this case was made by the Regional Director of XXXX and the decision on reconsideration was made by the Regional Director for XXXX. For the purposes of this Decision and Order, references to "Region" mean both former XXXX and the XXXX.
[3] Petitioner hired XXXX to prepare its application and SC Plan.
[4] XXXX assisted Petitioner in the preparation of its appeal.

the agency to prepare rules refining and implementing ambiguous statutory text, the agency's interpretation of the enabling statute will typically be upheld against challenge, provided the interpretation is not arbitrary, capricious, an abuse of discretion, or contrary to law.[5] The Board notes there is no specific statutory authority for secondary capital; however, the Federal Credit Union (FCU) Act permits LICUs to accept share deposits from nonmembers.[6] "When the construction of an administrative regulation rather than a statute is in issue, deference is even more clearly in order."[7] Indeed, where an agency is interpreting its own rules and regulatory schemes, well-established jurisprudence dictates that agencies will generally be given the highest level of deference in interpreting their own ambiguous regulations.[8] Unless "plainly erroneous or inconsistent with the regulation," an agency's reasonable reading of its own regulation will be controlling.[9] However, this heightened deference to an agency's interpretation of its own rule only applies if the regulation is "genuinely ambiguous."[10] Where there is no uncertainty as to the rule's meaning, the regulation is read plainly; that is, where there is no real ambiguity, then the rule "just means what it means."[11]

Regulatory text. The interpretation of the enabling statute is not at issue in this case; rather, the issue here regards the Region's interpretation and application of the secondary capital regulation to Petitioner's particular circumstances. The pertinent regulatory provisions that are central to this appeal follow.

For federal credit unions (FCUs):

> §701.34 Designation of low income status; Acceptance of secondary capital accounts by low-income designated credit unions.
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> (b) *Acceptance of secondary capital accounts by low-income designated credit unions.* A federal credit union having a designation of low-income status pursuant to paragraph (a) of this section may accept secondary capital accounts from nonnatural person members and nonnatural person nonmembers subject to the following conditions:
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> (1) *Secondary capital plan.* Before accepting secondary capital, a low-income credit union ("LICU") shall adopt, and forward to NCUA for approval, a written "Secondary Capital Plan" that, at a minimum:

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[5] *Chevron U.S.A. Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984). The Board takes the view that the secondary capital regulation is reasonable, and notes that Petitioner does not dispute this characterization in its appeal materials.
[6] 12 U.S.C. §1757(6). The statute provides federal credit unions with the authority to accept nonmember deposits, in the form of shares issued to other credit unions or public units within limitations prescribed by the Board.
[7] *Udall v. Tallman*, 380 U.S. 1, 16–17 (1965).
[8] *Auer v. Robbins*, 519 U.S. 452, 461 (1997).
[9] *Id.* (citing *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 359 (1989) (quoting *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410, 414 (1945))).
[10] *Kisor v. Wilkie*, 139 S. Ct. 2400, 2414 (2019) (noting that the text, structure, history, and purpose of a regulation must be considered before concluding the regulation is genuinely ambiguous).
[11] *Id.*

> (i) States the maximum aggregate amount of uninsured secondary capital the LICU plans to accept;
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> (ii) Identifies the purpose for which the aggregate secondary capital will be used, and how it will be repaid;
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> (iii) Explains how the LICU will provide for liquidity to repay secondary capital upon maturity of the accounts;
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> (iv) Demonstrates that the planned uses of secondary capital conform to the LICU's strategic plan, business plan and budget; and
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> (v) Includes supporting pro forma financial statements, including any off-balance sheet items, covering a minimum of the next two years.[12]

For federally insured, state-chartered credit unions (FISCUs):

> §741.204 Maximum public unit and nonmember accounts, and low-income designation.
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> Any credit union that is insured, or that makes application for insurance, pursuant to title II of the Act must:
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> . . .
>
> (c) Receive secondary capital accounts only if the credit has a low-income designation pursuant to paragraph (b) of this section, and then only in accordance with the terms and conditions authorized for Federal credit unions pursuant to §701.34(b)(1) of this chapter and to the extent not inconsistent with applicable state law and regulation. State chartered federally insured credit unions offering secondary capital accounts must submit the plan required by §701.34(b)(1) to both the state supervisory authority and the NCUA for approval. The state supervisory authority must approve or disapprove the plan with the concurrence of NCUA.[13]

At the outset, the Board notes that Petitioner is a federal credit union; therefore, §701.34 is the operative provision here. In the present case, §741.204 does not apply.[14]

Petitioner's arguments. Through counsel, Petitioner argues that the secondary capital rule provisions are clear and unambiguous from a plain reading of the rule: "If a federally chartered LICU submits a secondary capital plan that meets the criteria in §701.34(b)(1), the LICU must receive the [requested] capital under §741.204(c)."[15] Petitioner's central argument relies, in part, on its interpretation that the "must receive" language in §741.204(c) mandates that a low-income designated federal credit union that submits a secondary capital plan that includes the

[12] 12 C.F.R. §701.34(b).
[13] 12 C.F.R. §741.204(c).
[14] The Board notes that §741.204 is included in the section of the agency's regulations that apply to FISCUs.
[15] Petitioner's Notice of Appeal, p. 14.

components enumerated in §701.34(b)(1) "must receive" secondary capital accounts (*i.e.*, must receive approval from the NCUA to accept secondary capital accounts). However, as stated above, Petitioner is a FCU, not a FISCU. Therefore, at the outset, the Board takes the view that Petitioner's reliance on the regulatory language in §741.204 is wholly misplaced as it is inapplicable to FCUs. Indeed, §701.34 solely governs in this case.[16]

In its oral and written arguments, Petitioner goes to great lengths parsing words in the statutory, regulatory, and preamble text to support its contention that the SRC erred in concluding that a secondary capital plan can be denied by a regional director even if the plan includes the five components set out in §701.34(b)(1).[17] The crux of Petitioner's argument is that the rule sets out a secondary capital application process with the expectation that regional directors will assess, critique, and evaluate plans, but that such evaluation must be made within the parameters of the five criteria enumerated in the rule. Petitioner frames the central issue as such: "The real issue [is] whether a regional director must actually follow the criteria of §701.34(b)(1) in making his/her determination, or whether the regional director is free to make his/her decision for any reason that is in some way related to the Rule. The first alternative incorporates an *objective standard*. The second alternative represents a *subjective standard*. The [Region] has consistently argued that the latter applies."[18] Petitioner, on the other hand, argues that the former applies.

Petitioner refutes the Region's purported inference that Petitioner "assumes that the criteria in §701.34(b)(1) merely equates to a 'checklist' that, if addressed, guarantees approval by the regional director,"[19] and insists that, in fact, the regulatory scheme for secondary capital creates an "objective standard for approval." Petitioner contends that safety and soundness is achieved when a secondary capital plan includes the five enumerated regulatory components, by virtue of that very fact. Petitioner argues that because the Region's determination cited safety and soundness deficiencies, which Petitioner asserts is "a subjective concept that only the regional director can understand," the SRC erred in its finding a regional director has no obligation to approve an uninsured secondary capital plan that includes the five components. Petitioner cites, as one example, the Region's determination that its submitted pro forma financial statements reflect unsafe and unsound practices because they do not detail "proposed loan portfolio composition throughout the life of the plan." Petitioner contends this concern "pertain[s] to information within the pro formas, [but] it has nothing to do with whether the pro forms *support the plan.*"[20] Petitioner argues that this example demonstrates that the Region incorrectly focused on subjective criteria relative to the pro formas under the "pretext of safety and soundness," in contravention to §701.34(b)(1).[21]

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[16] In any event, even if §741.204 applied in this case, read plainly and in context, the Board disagrees with Petitioner's assertion that the language "must receive" equates to "must approve."
[17] Petitioner's Notice of Appeal, p. 12.
[18] *Id.* at 17. (Emphasis in original).
[19] *Id.* at 8-10.
[20] *Id.* (Emphasis in original).
[21] *Id.*

Petitioner argues that the SRC's conclusion that three deficiencies cited by the Region in denying its application represented a reasonable interpretation of the criteria in §701.34(b)(1) is incorrect. On this point, Petitioner contends that the three deficiencies discussed in the SRC decision are based upon subjective conclusions that are outside the scope of the rule. Petitioner further asserts that none of the three issues cited constitute a valid basis for denial of the SC Plan because they are based on information irrelevant to Petitioner's stated purpose for the capital[22] and/or based upon opinion and not upon fact,[23] and therefore, those reasons should be disregarded.[24]

Region's arguments. The Region argues that the secondary capital regulation is clear and unambiguous and under a plain reading of the rule the five enumerated criteria in §701.34(b)(1) provide for the components of a written SC Plan that, "at a minimum," are required to be included in a secondary capital application forwarded to the NCUA for approval. The Region argues that Petitioner's interpretation of the regulation is unsupportable as it necessarily infers that the five regulatory criteria in §701.34(b)(1) equates to a meaningless checklist whereby a regional director must essentially automatically approve any application that superficially checks off each of those criteria. The Region's position is that Petitioner's interpretation is clearly contradictory to the rule's stated purpose of "strengthening supervisory oversight," by "requir[ing] prior approval of a plan for the use of uninsured secondary capital before a credit union can begin accepting the funds."[25] In further support of its position, the Region points to the 2006 final rule preamble's repeated references to the regional director's duty to assess, evaluate, and critique those criteria in determining whether to approve or disapprove a credit union's secondary capital application. Moreover, the Region argues that the FCU Act imposes a broad congressional mandate on the NCUA to protect the safety and soundness of all insured credit unions and, thus, the Region's consideration of the underlying safety and soundness of Petitioner's SC Plan is proper. The SRC found ample support for the Region's assessments that Petitioner's SC Plan is not sound, and concluded the denial of the plan was reasonable. The Region points to multiple, reasonable safety and soundness concerns regarding Petitioner's plan, and the SRC affirmed that those concerns are both reasonable and within the scope of the rule.

Conclusion. Both Petitioner and the Region appear to agree that the secondary capital rule is unambiguous and under a plain reading of §701.34(b)(1) the rule establishes five criteria upon which a regional director will consider a federal credit union's application to accept secondary capital accounts. However, the parties disagree on the relative subjectivity allowed within the scope of that provision. Petitioner argues that the five enumerated criteria represent the sole objective criteria upon which the Region's decision must be based. Petitioner asserts the Region's consideration of safety and soundness is a subjective standard that is outside the scope of the regulation and, further, pretext for the denial. The Region, on the other hand, argues that the five enumerated criteria provide for the minimum components that are required to be included in a secondary capital application. The Region contends, and the SRC agrees, that

[22] *Id.* at 29.
[23] *Id.* at 30.
[24] *Id.*
[25] 71 FR at 4234. The rule was also modified to allow LICUs to begin redeeming the funds in those accounts when they are within five years of maturity.

based on its assessment and evaluation of those five criteria, there are multiple, valid reasons to conclude Petitioner's SC Plan is unsafe and unsound, and to deny Petitioner's application on that basis.

Upon consideration of all the available facts and the parties' oral and written arguments, the Board concludes there is no uncertainty as to the secondary capital rule's meaning. Read plainly, the Board sees no ambiguity in the rule text, which clearly states, "[b]efore accepting secondary capital, a [LICU] shall adopt, and forward to NCUA for approval, a written [SC Plan] that, at a minimum," includes five specific components.[26] Indeed, the rule just means what it means:[27] to seek approval to accept secondary capital, a LICU must submit to the NCUA a written plan that at a minimum includes five things. The rule then states, in subpart (b)(2), that the applicant will be notified within 45 days of receipt of the SC Plan that the plan is "approved or disapproved."[28] In the Board's view, there is no genuine ambiguity that in determining whether to approve or disapprove a submitted SC Plan, the Region must conduct a meaningful assessment, evaluation, and critique of the contents of the submitted SC Plan, including its underlying safety and soundness. To deny the Region the ability to exercise reasonable discretion in assessing, evaluating, and critiquing the contents of a submitted SC Plan would be to render the rule's pre-approval requirement essentially meaningless.

In concluding that the regulation is not genuinely ambiguous, the Board looks not only to the text and structure of the rule itself, but also the history and purpose of the regulation.[29] By way of background, the secondary capital rule was first promulgated in 1996[30] to authorize credit unions serving predominantly low-income members to raise secondary capital, to enable these credit unions to make more loans and improve other financial services for the limited income groups and communities they serve.[31] Recognizing that LICUs face difficulties in accumulating capital in view of the limited resources of its members, the rule authorized LICUs to accept secondary capital accounts to supplement statutory reserves.

The initial rule to authorize secondary capital accounts was fairly lenient. Under the 1996 rule, a credit union offering secondary capital accounts was required to, among other things, adopt a written plan addressing how the credit union would use the funds and how it would meet liquidity needs to repay the funds upon maturity. The plan was required to be submitted to the appropriate NCUA regional director; however, the submission was for the "purposes of notice to NCUA; the credit union need not await NCUA approval."[32] In short, the rule required submission—but not approval—of a credit union's secondary capital plan.

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[26] 12 C.F.R. §701.34(b)(1).
[27] *See Kisor*, 139 S. Ct. at 2414.
[28] 12 C.F.R. 701.34(b)(2). More specifically, the provision states that if a LICU is not notified within 45 days of receipt of the SC Plan that the plan is approved or disapproved, the LICU may proceed in accepting secondary capital accounts pursuant to its plan.
[29] *See Kisor*, 139 S. Ct. at 2414.
[30] 61 FR 50696 (Sept. 27, 1996).
[31] *See* 61 FR 3788, 3788 (Feb. 2, 1996).
[32] 61 FR at 3789.

The secondary capital rule was subsequently amended in 1999,[33] 2006,[34] and 2010.[35] In 2006, the rule was substantively modified, specifically to "require prior approval of a plan for the use of uninsured secondary capital before a credit union can begin accepting the funds."[36] In the preamble[37] to the 2006 final rule the Board repeatedly reiterated that the newly adopted pre-approval requirement was intended to address a "pattern of lenient practices,"[38] and to "discourage the misuse" of secondary capital by "requir[ing] prior approval, *not just submission*, of a [secondary capital plan] . . . before a LICU can accept [secondary capital]."[39] Indeed, the 2006 final rule represented an express departure from the pre-2006 notice requirement. In adopting the 2006 amendments, the NCUA Board clearly contemplated enhanced supervisory oversight and critical review of submitted secondary capital plans, noting that "[r]equiring prior approval of a [secondary capital plan] will strengthen supervisory oversight and detection of lenient practices . . . the approval requirement will ensure that [secondary capital plans] are evaluated and critiqued by the Region before being implemented."[40]

In addition, the Board notes the FCU Act grants the agency broad safety and soundness authority. Generally, the underlying goals of the NCUA's regulatory system are protection of the credit union system and safety and soundness of the National Credit Union Share Insurance Fund (NCUSIF).[41] Section 106 of the FCU Act states "each Federal credit union shall be subject to examination by, and for this purpose shall make its books and records accessible to" the NCUA.[42] Section 204 provides the Board with authority to appoint examiners who "have power, on its behalf, to examine any insured credit union, any credit union making application for insurance of its member accounts, or any closed insured credit union" whenever it is necessary to determine the condition of a credit union for insurance purposes.[43] The Board has delegated authority to examine and supervise federal credit unions in assigned regions to the regional directors.[44] If it is determined a federal credit union is engaging, has engaged, or is about to engage in an unsafe or unsound practice, the regional director has broad supervisory authority to

[33] 64 FR 72269 (Dec. 27, 1999).
[34] 71 FR 4234 (Jan. 26, 2006).
[35] 75 FR 57841 (Sept. 23, 2010).
[36] 71 FR at 4234. The rule was also modified to allow LICUs to begin redeeming the funds in those accounts when they are within five years of maturity.
[37] The Board notes that while review of preamble language may inform its understanding of the history and purpose of the regulation, courts have held that a preambular statement will be held to have binding legal effect only if it marks the final consummation of the agency's decision-making process and it is "one by which rights or obligations have been determined, or from which legal consequences will flow." *American Petroleum Institute v. EPA*, 684 F.3d 1342, 1353 (U.S. App. D.C. 2012) (citing *Bennett v. Spear*, 520 U.S. 154, 178 (1997)).
[38] *See* 71 FR at 4236-4237 (noting the rule addresses "an emerging pattern of lenient practices" that include: "(1) Poor due diligence and strategic planning in connection with establishing and expanding member service programs such as ATMs, share drafts and lending (e.g., member business loans ("MBLs") real estate and subprime); (2) Failure to adequately perform a prospective cost/benefit analysis of these programs to assess such factors as market demand and economies of scale; (3) Premature and excessively ambitious concentrations of USC to support unproven or poorly performing programs; and (4) Failure to realistically assess and timely curtail programs that, in the face of mounting losses, are not meeting expectations).
[39] 71 FR at 4235-4237 (emphasis added).
[40] 71 FR at 4237.
[41] OGC Op. 91-0401 (Apr. 9, 1991).
[42] 12 U.S.C. §1756.
[43] 12 U.S.C. §1784(a); *see also* 12 U.S.C. §1766(d).
[44] *See* Delegation of Authority SUP 1.

take action against the credit union, including ordering it to cease and desist from unsafe and unsound practices or take affirmative action to correct unsafe and unsound practices.[45] The regional director also has authority to place limitations on any unsafe or unsound activities or functions of the credit union.[46] The authority to ensure safety and soundness is distinct from the authority to enforce violations of law or regulation. Thus, even if all legal requirements are met, a credit union's activities are subject to safety and soundness review by the regional director and objectionable on these grounds.[47]

In the Board's view, Petitioner's core argument is unpersuasive. Petitioner argues the Region's decision on a submitted SC Plan "must be based," objectively, on the five criteria in §701.34(b)(1), yet challenges the notion that the Region may cite deficiencies with the information and data provided in support of those five plan components, and to deny a SC Plan on those grounds. Stated differently, Petitioner acknowledges that the Region has discretion to consider safety and soundness in assessing a submitted plan, yet at the same time insists the Region cannot take into account the reasonableness of the assumptions and projections underlying that plan. The Board finds it shortsighted to interpret the secondary capital regulatory scheme as establishing a pre-approval requirement, but precluding the Region from exercising reasonable discretion in carrying out that requirement, while simultaneously granting the Region broad authority to take administrative action for unsafe and unsound practices. Indeed, taken to its natural extension, Petitioner's interpretation of the rule would mean the Region must essentially rubberstamp an unsafe and unsound SC Plan that nevertheless addresses the required minimum plan components, only to impose a statutory duty on the Region to take subsequent administrative action against the credit union to correct or halt an unsafe and unsound (but approved) plan. This would be an unreasonable, inefficient, and narrow result.

Considering the plain wording of the rule, the Board's expressly stated purpose of strengthening supervisory oversight in 2006, and the agency's broad safety and soundness mandate, the Board finds it clear and unambiguous that the regulation sets forth the minimum content requirements for what an FCU must submit in a secondary capital plan that is forwarded to the NCUA for approval. The rule does not go further to impose a mandatory duty on the regional director to approve secondary capital plans that include the five minimum components in §701.34(b)(1).

Even if the regulation were genuinely ambiguous, the Board finds the Region's interpretation and application of the regulation reasonable and supportable.[48] As discussed above, in such cases, unless plainly erroneous or inconsistent with the regulation, the agency's reasonable reading of its own regulation will be controlling. The agency's interpretation will be accorded deference even where it is possible to reach an alternate interpretation of ambiguous regulatory language.[49] Courts have found deference is particularly appropriate where the interpretation is

[45] 12 U.S.C. §1786(e)(2), (3).
[46] 12 U.S.C. §1786(e)(4).
[47] *See, e.g.*, OGC Ops. 92-0731 (Aug. 4, 1992); 03-0105 (Feb. 6, 2003); 10-1038 (Dec. 3, 2010).
[48] Courts generally defer to an agency's interpretation so long as it is "reasonable" or "sensibly conforms to the purpose and wording of the regulations." *Raymond Proffitt Found. v. U.S. E.P.A.*, 930 F. Supp. 1088, 1104 (E.D. Pa. 1996) (citing *Martin v. Occupational Safety and Health Review Comm'n*, 499 U.S. 144, 150–51 (1991) (quotations omitted)).
[49] *See Martin*, 499 U.S. at 149 (citing *Dole v. Occupational Safety and Health Review Comm'n*, 891 F.2d 1495, 1500 (1989)).

technical.[50] For example, where a case involves a great deal of facts and financial analysis of performance, courts have found that substantial deference should be paid to the agency "in the case of technical expertise and informed predictions about the likely course of future events."[51] Further, courts have determined that significant weight should be given to the recommendations of expert bank (or credit union) examiners because predictive judgments made by examiners are the kind of agency function that are "primarily a question of probabilities, and thus peculiarly subject to the expert experience, discretion, and judgment of the [agency]."[52]

This case presents a circumstance in which the Region, charged by regulation with making a judgment concerning whether to approve or disapprove a secondary capital application, properly relied on its technical knowledge and expertise in interpreting and applying the regulation. In effect, the Region has determined that Petitioner's SC Plan is not safe and sound and therefore approval of its application to accept secondary capital is not appropriate. The SRC affirmed this determination. Under the circumstances, the Board is not inclined to substitute its judgment for that of the SRC, whose panel has a collective 84 years of experience with credit unions, or for that of the Region, a team of competent and experienced professionals responsible for making informed predictive judgments like the one under appeal in this case.

Accordingly, upon review of the written record in this case, as supplemented by the arguments presented by the parties at the oral hearing, the Board finds that the Region's denial of Petitioner's application for secondary capital, which was affirmed by the SRC, is reasonable and well supported, and sees no sound legal basis on which to overturn it. Before granting approval for a low-income designated federal credit union to accept secondary capital accounts, the FCU Act and applicable NCUA regulations mandate that the agency consider a credit union's secondary capital plan, including its underlying safety and soundness, which must meet minimum content requirements and be forwarded to the NCUA for approval per §701.34(b). In this case, the Region has legitimate safety and soundness concerns, well documented in the record, about Petitioner's SC Plan. The SRC found ample support for the Region's assessments that Petitioner's SC Plan is not sound, and concluded that the denial of the plan was reasonable. The Region points to multiple, reasonable safety and soundness concerns regarding the SC Plan, and the Board takes the view that the SRC was correct in affirming that those concerns are both reasonable and within the scope of the rule.

The Board emphasizes that this Decision and Order does not preclude Petitioner from submitting to the Region a new or subsequent application and SC Plan. As the SRC stated in its decision, and the Board reiterates here, should Petitioner choose to reapply for secondary capital, the agency encourages ongoing dialogue with the Region to address deficiencies discussed in previous denials.[53]

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[50] *Dorris v. F.D.I.C.*, No. CIV.A. 93-1659 (RCL), 1994 WL 774535, at *5 (D.D.C. Oct. 27, 1994) (citing *National Fuel Gas Supply Corp. v. Federal Energy Regulatory Comm'n*, 811 F.2d 1563, 1570 (D.C. Cir.1987)).
[51] *Id.* (citing *Sunshine State Bank v. F.D.I.C.*, 783 F.2d 1580, 1582 (11th Cir.1986)).
[52] *Sunshine State Bank*, 783 F.2d at 1582.
[53] *See* SRC-05-19, fn. 1.

Order

For the reasons set forth above, it is ORDERED as follows:

The Board upholds the decision by the Supervisory Review Committee and denies the appeal of XXXX.

The Board's decision constitutes a final agency determination and is subject to judicial review in accordance with Chapter 7 of Title 5 of the United States Code.

So **ORDERED** this 11th day of October, 2019, by the National Credit Union Administration Board.

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Gerard Poliquin
Secretary of the Board