



January 23, 2014

Mr. Gerard Poliquin  
Secretary to the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314

Re: NASCUS Comments on Proposed Rulemaking for Part 701 - Requirements for Contacts with Federal Credit Unions

Dear Mr. Poliquin:

The National Association of State Credit Union Supervisors (NASCUS)<sup>1</sup> submits the following comments in response to the National Credit Union Administration's (NCUA's) proposed changes to NCUA Rules and Regulations Part 701 regarding contacts with federal credit unions (FCUs). As proposed, the rule would only affect NCUA's interaction with FCUs and NASCUS generally does not comment on matters between NCUA and its federal charters. However, NCUA has specifically asked for comments on whether the proposed provision related to where the examination of a home based FCU may take place should be extended to include federally insured state-chartered credit unions (FISCUs).

Over a half dozen states have home based FISCUs. In the preamble to the proposed rule, NCUA acknowledges that the authority to permit, or prohibit, a FISCU being operated from within a private residence is that of the chartering authority: in these cases the state. NCUA also acknowledges that the determination of the time, manner and place of the primary examinations of a home based FISCU is that of its state regulator as well. We commend NCUA for recognizing that these decisions are inherently those of the chartering authority.

The sole question presented by NCUA for the state system in the proposed rule is whether NCUA should prohibit its examiners from conducting on-site contacts in a home based FISCU, as it proposes doing for home based FCUs. NCUA has framed this issue in the context of examiner work conditions and safety. As discussed in more detail below, the question of extending NCUA's proposed rule regarding off-site examinations of home based FISCUs presents a bit more complex issue than NCUA's determinations with respect to its FCUs.

As the administrator of the National Credit Union Share Insurance Fund (NCUSIF) NCUA does have limited regulatory authority over FISCUs, including the authority to examine a FISCU for share insurance purposes. See 12 U.S.C. §1784. While NCUA is required to rely on state examinations in determining a FISCU's condition for insurance purposes, it has the authority to conduct insurance reviews of FISCUs on its own behalf if needed. We agree that a regulatory agency has discretion, within bounds of reasonableness, to determine the conditions of its

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

examination process. This is true for NCUA acting as an insurer of FISCUs just as it is for the state as primary regulator. However, when NCUA is determining examination policy with respect to its FCUs, it is both insurer and primary regulator and in a position to equally weigh all considerations. When NCUA is making this determination with respect to its role with FISCUs, it must also weigh considerations and concerns of the primary state regulator and seek reasonable accommodation when appropriate.

Rather than prescribe a blanket prohibition against its examiners conducting on site contacts at a home based FISCU, NCUA's policy should be to discuss the matter on a case-by-case basis with the state regulator. While we generally do not see this issue as a preemption issue per se, the ambiguity in the proposal regarding the "alternate public location," the existence in most states of protocols that might address NCUA's concerns, and the concerns of some state regulators as to the appropriateness of conducting an examination of confidential information in a public space suggest more discussion between NCUA and its state regulator peers would benefit any final rulemaking.

NCUA's contacts with home based FISCUs are historically limited. As the insurer, NCUA relies primarily on the examinations conducted by state regulators to determine a FISCU's condition. For the most modest sized FISCUs, it would not be unusual for NCUA to have relied solely on state examinations for several years. Therefore, given the limited nature of NCUA's interaction with most of the remaining home based FISCUs, NCUA could easily consult with the state regulator to determine if state protocols for on-site contacts with a home based FISCU are sufficient to address NCUA's concerns with regard to the safety of its federal examiners. For example, in some states it is protocol to send at least two examiners to every on-site contact (regardless of whether the credit union is home based or not). Of course, NCUA continues to have the option of relying solely on the state examination of the home based FISCU.

As noted above, some state regulators have also expressed concerns about the selection of an appropriate public location. NCUA would have to consult with the state regulator to ensure that whatever alternate location was being considered is compatible with the state regulator's expectations for the proper handling of confidential information. Care must be taken to ensure that NCUA does not put a home based FISCU in conflict with state laws and policy in this regard. Furthermore, given the prevalence of data security issues today, a more comprehensive discussion of the appropriateness of transporting and handling such records in locations suggested by the proposal such as libraries and restaurants is warranted.

We are also concerned the rule as proposed may be confusing. Proposed §701.40 would prohibit all NCUA physical contacts in "an office maintained in a home or on the premises of a residential address." In the event NCUA seeks to extend this rule to FISCUs, we seek clarification as to how NCUA would treat a mixed use property, one licensed both residential and commercial. It is also unclear how NCUA would define "premises" in terms of an extended property, such as a farm, where the credit union might be operated from an out building, albeit one on the residential property.

NCUA's proposed rule notes that the public location is to be designated by NCUA staff, but stops short of clearly allocating responsibility for securing the designated location and covering

any costs associated with the location such as fees for use of a hotel conference room. The proposed rule also lacks a discussion of possible burden on the home based credit union of transporting the records to a location. Particularly given that a home based credit union will effectively be closed to its members while records are being transported to NCUA's chosen site, the rule should discuss steps that would be taken to mitigate the burden on these mostly modest sized credit unions. This is especially so in the event the home based FISCU is rural with no readily available library, restaurant or hotel. NCUA should consider and address these issues before extending any final rule to FISCUs.

Resolving the issues discussed above might be less critical for NCUA with respect to its FCUs in light of the agency's intention to eliminate home based FCUs within two years. For home based FISCUs, these issues are of utmost importance. As NCUA acknowledges in the preamble to the proposed rule, and as we reiterate here, the decision to permit the ongoing existence of home based FISCUs is the prerogative of the state regulator. Therefore, home based FISCUs would have to manage these burdens as an ongoing matter to the extent NCUA seeks physical contacts should this provision in question of the proposed rule be extended to cover state-chartered credit unions.

NCUA raises concerns in its proposed rule that are not likely to be popular, but have merit and are deserving of discussion. Nothing in our comments should be construed to be dismissive of very real issues. Many states with home based credit unions have wrestled with similar issues and concerns, but have managed to find solutions that balanced those concerns against the needs of a modest, but important, constituency in the state system: the home based credit union. We are confident that working together NCUA and state regulators will likewise be able to resolve both the concerns prompting this proposal, and those raised by it. We would be pleased to discuss these comments at NCUA's convenience.

Sincerely,

- signature redacted for electronic publication -

Brian Knight  
General Counsel