



March 27, 2015

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

Re: NASCUS Comments on Proposed Rule – Capital Planning and Stress Testing – Schedule Shift

Dear Mr. Poliquin:

The National Association of State Credit Union Supervisors (NASCUS)¹ submits the following comments in response to the National Credit Union Administration's (NCUA's) proposed changes to NCUA Rules and Regulations Part 702, Capital Planning and Stress Testing. The proposed changes to the Capital Planning and Stress Testing rule would shift the schedules contained within the rule and amend several of the rule's definitions.

NASCUS supports NCUA's proposed changes to the rule and agree they improve the capital planning and stress testing framework. However, as we discuss in more detail below, NCUA should consider several other changes and clarifications to better refine the regulation.

Definitions

NCUA's proposal would add a new definition to §702.502, defining the term "Capital planning process" to reflect that NCUA intends the credit union's annual capital planning to be integrated with the requirement that a covered credit union maintain a capital policy.² The proposal also amends the definition of a "Covered credit union" to clarify that a credit union with assets of \$10 billion or greater as of March 31 of a given year will be subject to the requirements of the rule for the next calendar year.³

Both of these proposed changes make sense, improve the NCUA's rule, and have NASCUS' support. In addition, we recommend NCUA consider adding a definition for "Capital policy."

Section 702.503 of the existing rule contains a detailed description of NCUA's requirements for the required Capital policy, including numerous mandatory elements. However, the definitions provision of the rule, §702.502, is silent with respect to the Capital policy, despite the fact that it defines all the other major elements of the rule. We note that the term "Capital policy" is used in the proposed definition of "Capital planning process" with no corresponding context. By

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

² 79 FR 3918 (January 26, 2015).

³ Ibid.

providing a Capital policy definition in §702.502, NCUA would further clarify the distinct, but integrated, nature of the Capital plan, the Capital policy, and the Capital planning process.

Schedule Shift

NASCUS is concerned about the proposed rule's curtailment of time for covered credit unions to prepare capital plans.

Under current §702.506, NCUA is to publish the baseline, adverse, and severely adverse stress testing scenarios on December 1, and covered credit unions' capital plans must be submitted by the subsequent February 28 based on the previous September 30 data. This schedule provides covered credit unions five months/151 days from the "as of" September 30 date to prepare capital plans, including 3 months/90 days to consider and incorporate NCUA's stress testing scenarios into the capital planning.

Under the proposed schedule shift, NCUA would publish the three stress testing scenarios on February 28, and covered credit unions would have to submit capital plans no later than April 30, based on the previous December 31 data.⁴ This proposed schedule reduces the time covered credit unions have to prepare capital plans to four months/120 days from the "as of" date of December 31. The amount of time covered credit unions would have to evaluate and incorporate NCUA's stress testing scenarios is reduced to a mere two months/61 days.

We understand that the shifting of schedules by the federal bank agencies (FBAs) for release of bank stress testing scenarios, on which NCUA's credit union scenarios are based, necessitates a shift *in the publication of NCUA's scenarios*. However, while the shifting of the "as of" date makes sense given the scenario release date, that shift, as well as the other conforming proposed shifts, are within NCUA's discretion. We urge NCUA to reconsider such drastically reduced time frames within which covered credit unions prepare and submit capital plans. Of particular concern is that this is not the first time NCUA has reduced the available time for covered credit unions to prepare capital plans.

When NCUA issued the final capital planning and stress testing rule in April, 2014, the agency also truncated the time within which covered credit unions prepared capital plans. As originally proposed, NCUA would have given covered credit unions an additional month (March 31) to submit capital plans. NCUA reduced the time in the final (the current) rule to February 28.⁵ In so doing, NCUA noted concerns with the "slightly shorter" time frame but asserted that the burden of reducing the time to prepare the capital plans should be minimal.⁶ However, with the additional reduction in time to prepare capital plans as proposed, it is no longer a "slightly shorter" time frame and has more than a "minimal" impact on covered credit unions.

NCUA must reconsider whether it is providing enough time for a meaningful process of planning for covered credit unions. We note that the preamble to the proposed rule lacks a detailed discussion as to why NCUA could not adjust other time frames to preserve a meaningful period for capital planning that allows covered credit unions to incorporate the stress testing scenarios

⁴ 79 FR 3919 (January 26, 2015).

⁵ 79 FR 24314 (April 30, 2014).

⁶ *Ibid*, 24312.

into their policies and planning processes. Given the importance, and complexity, of capital planning, absent a compelling supervisory reason, NCUA should restore the five month capital planning window.

Credit Union-Run Tests

Section 702.506(c) of the rule provides covered credit unions the opportunity to apply to NCUA to conduct the regulatory stress tests themselves based on the published scenarios after NCUA has conducted three consecutive stress tests. NASCUS supports allowing covered credit unions to conduct the regulatory stress tests.⁷ As noted in NASCUS' comments on the original proposed Capital Planning and Stress Testing rule, we believe a more efficient, meaningful, and beneficial approach continues to be requiring the covered credit unions to conduct stress tests under regulatory supervision accompanied by third party validation.⁸ However, as NCUA has determined to conduct the stress tests itself, we recommend NCUA clarify the standards by which a covered credit union's request to conduct stress tests will be evaluated.

In the preamble to the April, 2014, final rule, NCUA discusses the criteria it will use to determine whether a covered credit union may self-conduct stress tests after NCUA has conducted three consecutive tests. Among the criteria identified are the covered credit union's previous stress test results, recent supervisory history, current financial condition, CAMEL codes, and management continuity.⁹ These criteria, absent from the final rule, should be established within §702.506. So doing would be consistent with §702.505, NCUA action on capital plans, where NCUA's criteria for rejecting a covered credit union's capital plan are expressly stated.

We anticipate that at the end of the initial three years of NCUA conducted stress testing, all of the covered credit unions are likely to apply for permission to conduct the regulatory tests themselves. We urge NCUA to provide additional clarity to the agency's expectations beyond that point. As established by the rule, the covered credit union must re-apply each year for the authority to conduct its own stress test. We recommend NCUA establish explicit criteria that allows covered credit unions not only to conduct the regulatory stress tests, but to invest with confidence in the infrastructure to conduct those tests in an ongoing manner. In other words, once a covered credit union is granted authority to conduct the regulatory stress tests itself, it should have some confidence that it may continue to do so barring a material change in condition.

The Role of the Covered Credit Union's Board of Directors or Designated Board Committee

A well informed and engaged board of directors is essential to good governance in any credit union. Therefore, it is appropriate that a board, or designated board committee, review and approve major policies, including implementation of regulatory capital planning and stress

⁷ The Federal Deposit Insurance Corporation (FDIC), the insurer of deposits for banks, issued a stress testing rule pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act that required stress testing for banks. Under the FDIC rules, the banks conduct their own stress tests which are then validated by the federal regulator. See 77 FR 624171 (October 15, 2012).

⁸ NASCUS Comments on Proposed Rule – Capital Planning and Stress Testing, December 31, 2013.

⁹ 79 FR 24312 (April 30, 2014).

testing. However, NCUA's rule as written is unnecessarily confusing. We recommend NCUA consider several changes to clarify the role of the credit union's board, or board committee.

NCUA's addition of a definition of "capital planning process" is intended to "[integrate] the development of a capital planning policy with the formation of a capital plan."¹⁰ As we read the rule, with the proposed changes incorporated, it appears to us that the "capital planning policy (or capital policy) is meant to serve as the overall coordinating policy that incorporates the guidelines to be followed by credit union staff in developing the "capital plan," and the limits, controls, policies and procedures for managing the credit union's capital. However, despite what appears to be an integrated process, both §702.503, Capital policy, and §702.504, Capital planning, require the credit union's directors to approve, independently, the capital policy and the capital plan.

Given that the Capital policy is the umbrella structure of the credit union's capital management structure, we recommend that the credit union board, or a board committee, be required to formally approve the Capital policy, upon which the capital plan is based, and the independent requirement to approve the capital plan be withdrawn.

At a minimum, NCUA should consider changes that facilitate a credit union director's ability to identify and understand her compliance obligations. NCUA could create a stand-alone section within the Capital Planning and Stress Testing provision specifically for directors that contains the director obligation to approve the capital policy.

We also urge NCUA to consider ways in which the regulatory stress testing process may be leveraged for the benefit of all credit unions. In particular, NCUA could share findings with credit unions regarding the performance of various product lines under the stress testing scenarios to facilitate non-covered credit unions' due diligence.

Thank you for the opportunity to provide comments on the proposed changes to the Capital Planning and Stress Testing rule. We would be pleased to discuss these comments in detail at NCUA's convenience.

Sincerely,

- signature redacted for electronic publication -

Brian Knight
General Counsel

¹⁰ 79 FR 3918 (January 26, 2015).