

September 28, 2017

National Credit Union Administration
Gerald Poliquin, Secretary of the Board
1775 Duke Street
Alexandria, VA 22314-3428

RE: Comments on Proposed Rule 701, In Danger of Insolvency Definition

Dear Mr. Gerald Poliquin,

I am writing on behalf of the California and Nevada Credit Union Leagues (Leagues), one of the largest state trade associations for credit unions in the United States, representing the interests of more than 250 credit unions and their approximately 10 million members.

The Leagues welcome the opportunity to provide comments to the National Credit Union Administration (NCUA) on its proposal to amend the definition of the term “in danger of insolvency” for emergency merger purposes. The Leagues support the proposed rule and offer the following comments.

Background

Under the emergency merger provision of Section 205(h) of the Federal Credit Union Act (FCU Act), the NCUA may allow a credit union that is either insolvent or in danger of insolvency to merge with another credit union if the agency finds that:

- a) An emergency requiring expeditious action exists;
- b) No other reasonable alternatives are available; and
- c) The action is in the public interest.

Under these circumstances, the NCUA may approve an emergency merger without regard to common bond or other legal constraints, such as obtaining the approval of the members of the merging credit union. To take such action, NCUA must first determine that a credit union is either insolvent or in danger of insolvency. The FCU Act, however, does not define when a credit union is “in danger of insolvency.”

The NCUA proposes to amend the definition of the term “in danger of insolvency” for emergency merger purposes. The current definition requires a credit union to fall into at least one of three net worth categories over a period of time to be “in danger of insolvency.”

Proposed Rule

Lengthen Forecast Horizons

The NCUA proposes to lengthen by six months the forecast horizons for two of the three categories, resulting in the following changes:

1. The credit union's net worth is declining at a rate that will render it insolvent ***within 30 months*** (previously 24 months).
2. The credit union's net worth is declining at a rate that will take it under two percent (2%) net worth ***within 18 months*** (previously 12 months).

The third category of the current definition, in which a credit union is significantly undercapitalized and NCUA determines there is no reasonable prospect of the credit union becoming adequately capitalized in the succeeding 36 months, would remain unchanged.

The Leagues support extending the forecast horizons and believe it will allow the NCUA to act more timely to preserve credit union services and assets and protect the National Credit Union Share Insurance Fund (NCUSIF). We agree that acting more timely will help improve merger prospects as the struggling credit union will not continue to deteriorate to the point where they are no longer viable merger partners. We support the amended definitions as it will help NCUA's efforts in finding appropriate merger partners, protecting NCUSIF and, most importantly, providing for continued service (and often expanded services) to the membership.

Section 208 Assistance

The NCUA also proposes to add a fourth category to the definition. Specifically, a credit union would be considered in danger of insolvency if it had been granted or received assistance under Section 208 of the FCU Act in the 15 months prior to the Region's determination that the credit union is in danger of insolvency. Section 208 allows the NCUA to provide special assistance to credit unions to avoid liquidation.

In analyzing credit union Call Reports and other internal NCUA data, NCUA reports that a high percentage of credit unions that received Section 208 assistance eventually left the credit union system. Between the first quarter of 2001 and the fourth quarter of 2016, 181 credit unions received at least one type of Section 208 assistance. Since then, 165, or 91.2%, of these credit unions have stopped filing Call Reports. Further, the data shows that 152 of the 165 credit unions, or 92.1%, stopped filing Call Reports prior to or within 15 months of receiving the Section 208 assistance.

The Leagues support adding this fourth category to the definition based on NCUA's analysis that 84% of applicable credit unions (152 of 181 credit unions) stopped filing Call Reports prior to or within 15 months of receiving the Section 208 assistance.

We recommend NCUA conduct further analysis of the 16 credit unions who continued to survive after receiving Section 208 assistance to determine what factors contributed to their success and whether more stringent criteria is warranted when

receiving the Section 208 assistance to help ensure the success of future recipient credit unions.

Conclusion

The Leagues support the proposed amendments to the definition of “in danger of insolvency.” In addition, we recommend the agency review the successes of credit unions that have received Section 208 assistance and determine whether improvements are needed to the Section 208 assistance process that will help other credit unions remain viable and achieve success.

We thank you for the opportunity to comment on the proposal and for considering our views. If you have any questions regarding our comments, please contact me.

Sincerely,

Diana Dykstra
President and CEO
California and Nevada Credit Union Leagues

cc: CCUL