



August 7, 2017

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

Re: NASCUS Comments on Supervisory Review Committee: Proposed
Procedures for Appealing Material Supervisory Determinations

Dear Secretary Poliquin:

The National Association of State Credit Union Supervisors (“NASCUS”), the professional association of the state credit union regulatory agencies and the nation’s state credit union system, submits the following comments in response to the National Credit Union Administration’s (“NCUA”) proposed changes to its procedures for a credit union seeking to appeal a material supervisory determination made by NCUA. The current process is governed by Interpretive Ruling and Policy Statement (IRPS) 11-1.¹ NCUA’s proposed changes, would, among other things, create a pool of candidates from which specific Supervisory Review Committee (SRC) members would be empaneled to hear an appeal, expand the subjects eligible for appeal to an SRC, codify the appeals process within NCUA’s rules rather than as an IRPS, and create an intermediate optional review for petitioners.²

NASCUS supports the proposed changes to NCUA’s appeals process. We recommend the following modest changes to NCUA’s proposal to further enhance the review and appeal process related to NCUA supervisory determinations.

- 1) Clarify that the Review Process as Codified Applies to NCUA Supervisory Determinations

Of course, this is an NCUA rule. But given the overlapping jurisdictions of NCUA and the prudential state regulator of a federally insured state chartered credit union (FISCU), it is not uncommon for confusion to arise from time to time as to applicability of rules. In this instance, it is foreseeable that some parties could mistake the review process as applicable to the supervisory determination made by a state regulator. We recommend NCUA emphasize the applicability of these review procedures exclusively to NCUA actions by amending proposed §746.101(b) to read:

¹ 76 FR 23871 (Apr. 29, 2011).

² 82 FR 26391 (Jun. 7, 2017).

The purpose of this subpart is to establish an expeditious review process for federally insured credit unions to appeal material supervisory determinations **made by NCUA staff** to an independent supervisory panel and, if applicable, to the NCUA Board.

- 82 FR 26399 (Jun. 7, 2017) (*emphasis added*)

2) Enhance Transparency with Additional Reporting

NASCUS has often urged NCUA to improve the appeals process by incorporating an annual reporting requirement into the SRC procedures.³ We applaud NCUA for proposing to report the determination made by the SRC in each case. We recommend that NCUA expand the reporting established by proposed 746.107(e) to include publication of decisions to reject a petition for review. Allowing stakeholders to determine the number of petitions granted review or rejected enhances their ability to evaluate the efficacy of the enhanced SRC process and could serve to instill even more confidence in the process.

3) Codify the Supervisory Review Committee (SRC) Process within Part 741

We support the codification of the SRC process within NCUA rules and regulations. However, rather than creating new § 746 as proposed, we recommend NCUA codify the new rule as a Subpart C of § 741 rather than as a new section. The SRC process applies to all federally insured credit unions. For FISCUs, NCUA's Part 741 is supposed to contain all of the rules that apply to them. To the extent that the SRC review process contains deadlines and instructions for FISCUs, those provisions should appear in the share insurance rules section where a FISCU would know to look for them.

Thank you for the opportunity to comment on changes to NCUA's SRC process. We would be happy to discuss our comments in more detail at your convenience.

Sincerely,

- signature redacted for electronic publication -

Brian Knight
Executive Vice President and General Counsel

³ NASCUS Comments on NCUA Exam Flexibility Initiative (Aug. 1, 2016). Available at <http://nascus.org/regulatory-resources/08.01.16%20Comment%20exam%20flexibility%20initiative.php>.
NASCUS Comments on 2016 Regulatory Review (Aug. 8, 2016). Available at <http://nascus.org/regulatory-resources/08.08.16%20Comment%20Regulatory%20Review%202016.php>.
NASCUS Comments on Interim Final Interpretive Ruling and Policy Statement (IRPS) No.: 11-1 (Feb. 22, 2011). Available at <http://nascus.org/Regulatory/RegCommentLetters/2-22-11-NASCUS-comments-Interim-Final-IRPS-11-1.pdf>.