



The National Voice of the State Credit Union System

April 26, 2019

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

Re: NASCUS Comments on Notice of Proposed Rulemaking- Supervisory Committee Audits & Verifications

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) request for comments on proposed changes to NCUA's rule Part 715, Supervisory Committee Audits and Verifications. NCUA proposes the changes to provide federally insured credit unions (FICUs) greater flexibility. NASCUS supports efforts to provide FICUs greater flexibility in managing operations. In general, we support the changes proposed by NCUA. As discussed below, we do not believe the proposed Appendix A audit requirements should include audits of BSA or pay and benefits. We also strongly recommend NCUA consider further refining the organization of its rules and regulations to clarify which provisions of Part 715 apply to state-chartered credit unions and which do not.

Applicability of NCUA's Supervisory Committee Rules to Federally Insured State Credit Unions

Federally insured state credit unions (FISCUs) must comply with some (but not all) of Part 715 by way of reference in Part 741.202. Specifically, Part 741.202 requires FISCUs to obtain annual audits and requires that those audits meet the more stringent audit requirements of Part 715 or state law. Part 741.202 also requires FISCUs to comply with Part 715.8's requirement that accounts and passbooks be verified at least once every two years.

Part 715.7 Supervisory Committee Alternatives to a Financial Statement Audit

NASCUS supports retiring the NCUA Supervisory Committee Guide and replacing that audit option with the option to obtain an audit that meets stipulated requirements to be included in a new Appendix A to Part 715. We agree this change would simplify the compliance burden for credit unions utilizing this audit option.

- NCUA Request for Comments: Other Areas to be Included in Proposed Appendix A

¹ NASCUS is the professional association of the nation's 45 state credit union regulatory agencies that charter and supervise over 2,100 credit unions.

NCUA specifically solicited comments on whether it should include as mandatory Appendix A audit requirements a review of loans to insiders, pay and benefits, regulatory compliance and compliance of Bank Secrecy Act, and other topics. NASCUS is not convinced that adding these subject areas to the Appendix A audit requirements would produce enough supervisory value to justify the increased cost for credit unions. With respect to pay and benefits, it is unclear exactly what including those reviews in an audit would accomplish, although it should be noted that if the intent is to provide some transparency or review of executive compensation, FISCUs already file IRS Form 990 reporting such information. There is no compelling reason to include FISCUs in a requirement for an audit of executive compensation.

Including Bank Secrecy Act/ Anti-money Laundering (BSA/AML) in an audit would be redundant. Credit unions are already required to obtain periodic independent testing of their BSA/AML compliance program by the BSA/AML statutes and Part 748 of NCUA's Rules and Regulations.

➤ NCUA Issuance of Reference Material

NCUA intends to publish reference material on how to conduct procedures that would meet the minimum requirements to be established by Appendix A. While NASCUS supports NCUA's providing credit unions resources to meet supervisory expectations, we caution against promulgating regulation through guidance. We strongly encourage NCUA to work with state regulators, accounting professionals and credit union stakeholders to cooperatively develop reference material. We believe so doing will not only provide valuable perspective that will enhance the value of the reference material, but also mitigate the risk that the reference material will be treated as regulation by NCUA examiners.

Part 715.9 Assistance from Outside Compensated Persons

NCUA proposes changes to Part 715.9(c)(6) that would eliminate the existing 120-day delivery date requirement for outside audits. NCUA would replace the prescriptive 120-day deadline with a requirement that the credit union stipulate a delivery date in the engagement letter. NASCUS agrees with NCUA that removing the 120-day prescriptive requirement provides credit unions greater flexibility and we support this change.

NCUA Should Provide Greater Clarity to FISCUs With Respect to Audit Requirements

NCUA's efforts to provide credit unions greater flexibility, and clarity, are commendable. As noted by our comments herein, we support the propose changes to Part 715. We urge NCUA to consider further improvements to the regulatory structure of the agency's audit requirements for FISCUs.

➤ Acknowledge that not all FISCUs have Supervisory Committees

Throughout Part 715, NCUA couples its audit requirements for all FICUs with the concept that the audit is managed by the credit union's Supervisory Committee. However, while Supervisory Committees are a mandatory element of federal credit union governance, not all

states require credit unions have a Supervisory Committee. In some states, the mandatory audit functions of the credit union are overseen by an Audit Committee, and in others it is left to the credit union's board to determine how best to oversee the annual audit. We recommend NCUA incorporate neutral language in Part 715 and Part 741.202, replacing "Supervisory Committee" with references to a credit union's responsibility to obtain (or conduct) an audit.

We recognize that certain provisions of Part 715, such as Part 715.3, speak directly to the responsibilities of a FCU's Supervisory Committee and in those instances use of the term is appropriate. However, given that provisions such as Part 715.3 do not apply to FISCUs, we recommend NCUA consider re-locating that provision (or conversely the provisions applicable to FISCUs) for clarity or otherwise re-organizing their rules and regulations.

- Enumerate the Specific Provisions of Part 715 that Apply to FISCUs in Part 741.202

NCUA should reorganize their rules and regulations to clarify which rules apply to FISCUs and which rules are FCU only requirements. Part 741.202 directs FISCUs to comply with the audit provisions of Part 715. However, Part 715 contains more than just audit provisions. For example, Part 715.3 establishes the responsibilities of the Supervisory Committee. However, as discussed above, there is no NCUA requirement that FISCUs have a Supervisory Committee. Therefore, Part 715.3 does not apply to FISCUs. Part 715.10 establishes requirements for member access to the audits and internal governance requirements related to the audit. We do not believe these provisions apply to FISCUs. Likewise, Part 715.12 "Statutory audit remedies for Federal credit unions" seems on its face to apply only to FCUs, especially given that some provisions of Part 715 are likewise titled for FCUs and others for FISCUs.

It would not be difficult for NCUA to obviate any confusion related to applicability of audit provisions to FISCUs. By so doing would provide meaningful regulatory relief to 40% of federally insured credit unions by eliminating the unnecessary burden of trying to figure out which rules apply, and which do not.

Ideally, NCUA would reorganize its rules to incorporate FISCU specific audit requirements in their entirety in Part 741. This would allow credit unions, and examiners, to have a consolidated reference of applicable rules and regulations. At a minimum, NCUA should incorporate specific citation references in Part 741.202 clearly identifying the provisions of Part 715 that apply to FISCUs.

In clarifying the applicability of Part 715 to FISCUs, NCUA must be careful to preserve the ability of state-specific audit rules to be submitted for approval of a state-wide exemption for FISCUs from NCUA's audit rules.

Report of Examination of Internal Controls Over Call Reporting and Balance Sheet Audits

NASCUS would support the elimination of these audit alternatives on the grounds that both options are of limited utility. We agree that inherent limitations in a Balance Sheet Audit,

NASCUS Comments on Notice
of Proposed Rulemaking - Supervisory Committee Audits
& Verifications
April 26, 2019

such as the lack of review of the income statement and limited ability to detect theft offer minimal supervisory value. However, we also recognize that for some more modest-sized credit unions, the third-party Balance Sheet Audits serve as pathway from self-conducted Supervisory Committee audits to more robust (and expensive) full third-party audits. We are sensitive to concerns that eliminating this option might prove burdensome some to those credit unions. We encourage NCUA to consider whether there might be limited circumstances where providing for an alternative might be appropriate.

Thank you for the opportunity to provide comments on NCUA's proposed revisions to Part 715. We support the proposed changes and submit our additional recommendations for NCUA's consideration to further refine, and balance, its share insurance related rules and regulations. We would be happy to answer any questions, and work with NCUA on developing and implementing changes to Part 715 and Part 741.

Sincerely,

- signature redacted for electronic publication -

Brian Knight
General Counsel