



April 24, 2006

Mary F. Rupp, Esq.
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Re: Supervisory Committee Audits Advance Notice of Proposed Rulemaking

Dear Ms. Rupp:

The National Association of State Credit Union Supervisors (NASCUS)¹ submits comments in response to the National Credit Union Administration's ("NCUA") request for comments on Advanced Notice of Proposed Rule Making ("ANPR") Part 715 – Supervisory Committee Audits. NASCUS agrees that developing financial reporting and accountability standards serves the interests of credit union members and aides regulatory oversight. However, NCUA's ANPR raises several questions that the agency should address prior to any proposed rule making. NASCUS' comments will focus on those questions, as they relate to the separation of state and federal regulatory authority over state-chartered federally insured credit unions. In response to the ANPR's specific questions, NASCUS will comment on asset size thresholds and requirements for volunteers. Responses to the other questions posed by the ANPR are more appropriately left to industry to address at this time.

Prior to any proposed rule making, NCUA should clarify the need for, and purpose(s) to be served by amending Part 715, Supervisory Committee Audits and Verification. The ANPR cites the Government Accountability Office ("GAO") reports of 2005 and 2003 recommending "making credit unions with assets of \$500 million or more subject to the FDICIA requirement that management and external auditors report on the internal control structure and procedures for financial reporting..." (GAO-04-91 at 83-84 and GAO-06-220T at 4). However, GAO's recommendation should not, absent additional findings, be determinative. NASCUS notes that GAO-04-91, while recommending such a change as cited above by the ANPR, makes that recommendation on the premise that "NCUA *might* gain an evaluation of an institution's internal controls..." (GAO-04-91 at 81)[emphasis added]. To NASCUS' knowledge, NCUA has not identified, and the ANPR does not cite, any systemic shortcomings or failings resulting from the current regulatory environment encompassed in existing Part 715, as well as from existing examination authority.

¹ NASCUS is the professional association of the 48 state and territorial credit union regulatory agencies that charter and supervise the nation's 3,800 state-chartered credit unions.

The need for greater clarity on NCUA's part on what requiring "attestation on internal controls" would achieve is important to evaluating NCUA's statutory authority for promulgating such a requirement. "Attestation on internal controls" generally serves two broad goals: to improve transparency for investors/stockholders and to facilitate regulatory examination. Both goals are laudable, however each has distinct issues implicating the division between state and federal regulators. The shareholders of a credit union are its members. If the goal of revising Part 715 is to create greater transparency for credit union members, that is a goal to be considered by the regulatory entity responsible for chartering the credit union. As the insurer, NCUA's primary concern with respect to a state-chartered credit union is risk of loss to the insurance fund. Concern for the member's ability to fully evaluate the credit union's performance is the concern of the state regulator.

The ANPR states that NCUA believes, and GAO "acknowledges" that statutory authority exists for rulemaking. The ANPR NCUA cites 1782a(a)(2) and 1789(a)(8) and (11) as its statutory authority. The sections cited refer to NCUA's authority to call for "for such other reports as it may from time to time require" [1782a(a)(2)]; "make examinations of and require information and reports from insured credit unions, as provided in this title..."; and to "prescribe such rules and regulations as it may deem necessary or appropriate to carry out the provisions of this title." [1789(a)(8) and (11) respectively] NASCUS notes that both referenced sections refer specifically to Title II of the Federal Credit Union Act ("FCUA") which would indicate that NCUA's authority under those cited provisions was intended for the purpose of safety and soundness evaluation, not necessarily to increase transparency for members. Even under a safety and soundness evaluation, questions linger as to the extent of express statutory authority. Given that Congress expressly established audit requirements for large credit unions in 1782a(6)(D), and declined to extend attestation requirements when extending them to banks, a more detailed analysis of statutory authority should be presented before any additional rulemaking. Finally, GAO's "acknowledgement" of NCUA's authority does not further the analysis of this issue. It reads:

However, NCUA believed that legislation was not necessary because NCUA has the authority to implement regulations requiring credit unions to provide these reports should it become necessary. While we acknowledge NCUA's authority to issue regulations on this issue, we note that regulations can be changed unilaterally by the agency...

Accurate and complete audits of credit unions are essential for evaluating an institution's safety and soundness. State-chartered federally insured credit unions operate in a robust regulatory environment with oversight by qualified state examiners and thorough review of state examinations by the federal regulator. Should NCUA determine that shortcomings in the regulatory system raise serious concerns, the agency should dialogue with the state regulatory system before unilaterally imposing new regulations that in some cases would preempt existing state regulations. At the very least, NCUA should more clearly present the case for the changes and the statutory authority before any proposed rule making.

If Part 715 is to be amended, “attestation of internal control” requirements should contain asset size thresholds comparable to banks. As discussed above, there is no indication of any systemic weakness that would seem to require this change, and likewise no indication of a rationale for applying a proposed change to credit unions with less than \$1 billion in assets. To do so may imply a deficiency in the credit union system or its regulatory oversight that requires a higher level of scrutiny than their banking and bank regulator counterparts. To NASCUS’ knowledge, no such deficiency exists.

Requiring specified expertise on a credit union’s Supervisory Committee certainly could benefit the credit union. Obviously, requiring certain expertise would exclude some credit union members from serving on the committee and therefore raises other issues not addressed in this ANPR. However, the need for expertise, and the related issues of exclusion, are not limited to the Supervisory Committee of a credit union. While the Supervisory Committee qualifications are relevant to this ANPR, NASCUS recommends that NCUA consider addressing qualifications in their entirety rather than piecemeal. Furthermore, volunteer requirements implicate state and federal chartering authority issues, and it would be appropriate for NCUA to work with state regulators in developing additional policy on this issue.

NASCUS appreciates the opportunity to comment on this ANPR. Please do not hesitate to contact me to discuss NASCUS’ comments.

Sincerely,

[signature redacted for electronic publishing]

Brian Knight
NASCUS VP Regulatory Affairs