



March 20, 2022

Ms. Melane Conyers-Ausbrooks
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

Re: Succession Planning; RIN: 3133-AF42

Dear Ms. Conyers-Ausbrooks,

The Ohio Credit Union League (OCUL) represents the collective interests of Ohio's 234 credit unions and their more than three million members. Of those 234 credit unions, 127 are federally-chartered; 61 state-chartered, federally-insured; and 46 state-chartered, privately-insured, with an average asset size of \$172 million. OCUL appreciates the opportunity to comment on the National Credit Union Administration's (NCUA) proposed succession planning rule.

NCUA's proposed succession planning rule is intended to ensure that both federal credit unions (FCU) and federally insured credit unions (FICU), regardless of asset size, have a viable succession plan in place to fill key positions, such as officers of the board, management officials, executive committee members, supervisory committee members, and (where provided for in the bylaws) the members of the credit committee to provide continuity of operations.¹

First, OCUL cautions NCUA from prescribing rules that dictate any credit union's strategic direction. While the Federal Credit Union Act (FCUA) grants NCUA broad authority to issue regulations governing both FCUs and FICUs, that broad authority is not meant to dictate how a credit union executes its strategic vision and operations.² The FCUA specifically vests the general direction and control of an FCU to its board.³ Even further, Section 113 of the FCUA provides that the board of directors shall have general direction and control of the affairs of the FCU.⁴ Thus, succession planning should be controlled by the credit union directors themselves.

Second, OCUL appreciates the non-prescriptive nature of this proposed rule but cautions NCUA that this rule does not sufficiently consider the individual nature of credit unions and places an additional burden on smaller credit unions already struggling to keep up with growing regulation and compliance demands. In crafting this rule proposal, NCUA sought to protect credit unions without overburdening them, stating that it should not take more than "thirty minutes" to develop a compliant succession plan. As NCUA Board Member Rodney Hood stated, "any succession plan that takes only thirty minutes to complete is either a check the box endeavor or a woefully underestimated regulatory

¹ *Succession Planning*, National Credit Union Association. Proposed rule: RIN 3133-AF42. <https://www.ncua.gov/files/agenda-items/succession-planning-proposed-rule-20220127.pdf>

² 12 U.S.C. 1752-1775. Section 120 of the FCU Act is a general grant of regulatory authority and authorizes the Board to prescribe rules and regulations for the administration of the FCU Act.

³ 12 U.S.C. 1761b; 12 CFR 701.4, and Article VI, section 6 of the Federal Credit Union Bylaws codified in Appendix A of 12 CFR part 701.

⁴ 12 U.S.C. 1716b.

burden."⁵ We are confident that the latter consideration by Board Member Hood is the likely regulatory and supervision outcome of this rule initiative for most smaller credit unions.

Third, while credit union safety and soundness properly remains a quintessential focus for NCUA, the current regulatory realities are in direct contrast to NCUA's intended regulatory environment. OCUL is concerned that prescribing succession planning could ignite a regulatory foray into credit union operational business practices. Specifically, former NCUA Chairman Dennis Dollar noted rulemaking of this nature is a slippery slope toward NCUA regulating the hiring, compensation, and benefits of the credit unions they are responsible for regulating.⁶ Hypothetical rulemakings of this nature, on paper, appear to be in line with protecting the safety and soundness of a credit union, but "[these] issues are up to the member-owners to address and know their rights, duties and obligations in a transparent and clear way; it is [the NCUA's] responsibility to supervise these credit unions to keep the system safe and sound, not to micromanage."⁷ Credit unions should not be governed, managed, and operated by government rule. With this unnecessary rule in place, seemingly motivated to address one factor in credit union consolidation, what other unnecessary rules will be needed for which additional factors in credit union consolidation?

Lastly, OCUL respectfully requests NCUA to consider the unintended consequences connected to broad rulemaking as the impact will vary from credit union to credit union. The NCUA cites increased consolidation as a driving factor for a rule of this nature.⁸ However, as NCUA Board Member Rodney Hood stated in his opposition to this rule, "[this] proposed rule will be counter-productive, and it will produce the exact opposite result of its intended effect. The smallest credit unions are struggling to stay open, so today's rule could actually accelerate mergers, in my view."⁹ While credit union consolidation through merger activity is indeed a notable industry trend, NCUA need not impose its judgment on whether such market trends are positive or negative. Specifically, over the same time span that the NCUA notes an increase in mergers and consolidations, credit union membership and total assets continue to rise.¹⁰ Additionally, mergers often allow credit unions to expand consumer reach and upgrade member services. To put a finer point on this, it is inappropriate and unnecessary for NCUA to target one market trend (consolidation) by creating a specific rule for one element of management (succession planning), thereby creating a new compliance burden and supervision lever, in a way that further supplants board of directors' authority with government prescription. Finally, we remind NCUA that it already has extraordinary influence in credit union direction and operations through its powerful and far-reaching supervision role, where safety and soundness, not merger-rate suppression, should be addressed.

⁵ NCUA Board Member Rodney E. Hood Statement on Proposed Rule, Part 701, Succession Planning. <https://www.ncua.gov/newsroom/speech/2022/ncua-board-member-rodney-e-hood-statement-proposed-rule-part-701-succession-planning>

⁶ *Succession Planning Proposal Raises Issue*, Ray Birch. <https://www.cutoday.info/THE-feature/Succession-Planning-Proposal-Raises-Issue>

⁷ Supra, note 5.

⁸ Supra, note 1.

⁹ Supra, note 5

¹⁰ *Membership Growth At Slowest Pace in 6 Years as 2020 Was Nearing End; Forecast for 2021 Offered*, CUToday.info, Feb. 02, 2021. <https://www.cutoday.info/Fresh-Today/Membership-Growth-At-Slowest-Pace-in-6-Years-as-2020-Was-Nearing-End-Forecast-for-2021-Offered>; *U.S. credit unions - statistics & facts*, F. Norrestad, Aug. 26, 2021. <https://www.statista.com/topics/7633/credit-unions-in-the-us/#dossierKeyfigures>.



OCUL appreciates the opportunity to comment on this proposed rule. While we generally encourage every credit union to implement effective succession planning in a manner customized to their circumstances and needs, we do not support NCUA mandating a broad, one-size-fits-all succession planning rule. If you have further questions or would like to discuss OCUL's comments in more detail, please feel free to contact us at (800) 486- 2917.

Respectfully,

A handwritten signature in black ink, appearing to read "Paul L. Mercer".

Paul L. Mercer
President

A handwritten signature in black ink, appearing to read "Sean M. Brown".

Sean M. Brown, Esq.
Director, Regulatory Affairs