California CREDIT UNION LEAGUE NEVADA CREDIT UNION LEAGUE

September 23, 2024

Ms. Melane Conyers-Ausbrooks
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428

Re: Comments on Succession Planning Proposed Rule: RIN 3133-AF42

Dear Melane Conyers-Ausbrooks:

I am writing on behalf of the California and Nevada Credit Union Leagues (Leagues), whose combined strength makes up one of the largest state trade associations for credit unions in the United States, representing the interests of approximately 285 credit unions and their more than 13.6 million members.

In February 2022, the National Credit Union Administration (NCUA) issued a proposed rule ("Original Proposed Rule") that would have required federal credit union (FCU) boards of directors to establish succession plans for key positions. Based on the comments received in response to the 2022 proposed rule, and upon further consideration of the issues involved, the NCUA board issued a second proposed rule in July 2024 ("Second Proposed Rule"). While the Second Proposed Rule is based on the Original Proposed Rule, the Second Proposed Rule includes several changes that the board believes will further strengthen succession planning efforts for all federally insured credit unions (FICUs).

The California and Nevada Credit Union Leagues appreciate the opportunity to provide feedback on the NCUA's Second Proposed Rule. While we support the concept of succession planning as a critical component of sound governance, we have significant concerns about the current proposal's prescriptive nature and its potential impact on credit unions, particularly smaller institutions.

General Comments

We believe that the NCUA should offer guidance rather than impose a rigid regulatory mandate. The diverse nature of credit unions, especially smaller ones, means that a one-size-fits-all approach is impractical and potentially burdensome. The proposal's granularity also introduces challenges and potential legal risks. For instance, requiring succession plans to address diversity considerations can be highly subjective and may lead to inconsistent examiner interpretations. We urge the NCUA to instead provide best practices, customizable templates, and access to succession planning experts, rather than enforcing a detailed rule. This would empower credit unions to develop succession plans tailored to their specific needs and constraints, fostering more effective and practical solutions.

Below are our specific comments and concerns for your consideration.

a. The Inclusion of FISCUs and Collaborating with State Regulators

The Original Proposed Rule applied exclusively to federal credit unions (FCUs). However, the Second Proposed Rule expands the regulatory amendments to include federally insured state-chartered credit

unions (FISCUs), thus covering all consumer FICUs. The NCUA has invited public comment on the inclusion of FISCUs within this scope.

The Leagues are concerned about the potential for regulatory overreach, particularly as it pertains to FISCUs. While we understand the NCUA's intent to safeguard the National Credit Union Share Insurance Fund (NCUSIF) from potential risks associated with mergers, we believe the proposed rule oversteps into areas traditionally governed by state regulators.

The NCUA acknowledges that many FISCUs may already be subject to state-specific succession planning requirements and, while the proposal allows for deference to state law in case of conflict, this approach can undermine the authority of state regulators. State-chartered credit unions operate under a dual regulatory framework, where state agencies are responsible for implementing governance requirements tailored to their unique jurisdictions. Imposing a broad federal rule on all consumer FICUs, regardless of charter or size, risks creating unnecessary regulatory redundancy for credit unions already complying with state mandates.

We urge the NCUA to collaborate closely with state regulators to ensure that any federal requirements complement, rather than conflict with, existing state frameworks. A cooperative approach would better support the credit union industry and avoid the inefficiencies of duplicative regulatory requirements. Rather than enforcing prescriptive rules, we encourage the NCUA to provide guidance and best practices that allow FISCUs to align their succession planning with state regulations while addressing the NCUA's concerns about risks to the NCUSIF.

While we support the goal of ensuring credit unions are prepared for leadership transitions, we strongly recommend that the NCUA reconsider the scope of the proposed rule as it applies to FISCUs. By working in partnership with state regulators, the NCUA can promote effective governance without overstepping its authority or placing undue burdens on state-chartered credit unions.

b. Small Credit Union Considerations

The proposed rule asserts that "…[s]maller FICUs may be more likely to merge, and data indicates the lack of succession planning is a significant cause of mergers. Accordingly, smaller FICUs may be the most likely to benefit from the proposed rule. The Board recognizes, however, that these FICUs may lack the resources or expertise to develop succession plans."

While we acknowledge that the lack of succession planning can contribute to mergers, NCUA's own data suggests it is not the primary reason for most mergers. From 2017-2021, there were 821 mergers, and although the inability to obtain officials was the third most common reason, it accounted for only 2.92% of all mergers. In contrast, mergers were overwhelmingly driven by the opportunity for expanded services (76%) and poor financial conditions (12.42%)[1].

[1] *See* NCUA: "Lessons Learned – Mergers," available at: https://ncua.gov/regulation-supervision/manuals-guides/lessons-learned-mergers.

Moreover, while succession planning is important and valuable, we believe it does not fully address the primary drivers of mergers among smaller credit unions, especially in California and Nevada. These mergers are more often driven by deeper challenges, such as increasing operational complexity, rising costs, shrinking margins, growing regulatory burden, and difficulties in recruiting qualified candidates at sustainable compensation levels. Although a succession plan plays a role, it does not resolve these broader issues.

For any regulatory approach to be effective, it is essential to understand these core challenges and offer meaningful support that helps smaller credit unions thrive. Smaller credit unions are the grassroots of the industry, yet they are increasingly burdened by operational demands such as IT security and regulatory compliance, where it may be especially difficult to attract and retain in-house expertise.

As a result, mergers are frequently driven by mounting operational pressures rather than solely a lack of succession planning. Even with a succession plan in place, many smaller credit unions simply do not have the staffing levels needed to meet existing and increasing responsibilities, let alone provide for additional personnel in the event of turnover. In situations where leadership transitions create immediate crises, succession planning alone may not be sufficient. Instead, a focus on strengthening policies, procedures, and business continuity planning would better address these challenges.

c. Scope of Covered Positions

As stated in the proposal, the written succession plan must, at a minimum, address key positions or their equivalents.

The Leagues believe that the proposed scope of covered positions is too prescriptive. We recommend that the rule focus on critical roles such as board members, supervisory committee members, the CEO, and senior management positions directly reporting to the CEO.

For other positions, a more flexible approach would be appropriate. Credit unions should have the discretion to determine which additional roles are essential based on their unique circumstances. Mandating specific roles like credit committee members and loan officers could impose unnecessary administrative burdens without adding meaningful value to succession planning.

d. Review and Update Frequency

Under the proposal, the board of directors would be required to review the succession plan in accordance with a schedule it establishes, but no less than annually.

We believe that an annual review of the succession plan may be excessive for many credit unions, especially those with stable leadership teams. We suggest that the rule allow for a biennial review, or a review triggered by specific events, such as the departure of a key leader or significant changes in the credit union's strategic direction. This approach would help credit unions manage their resources more efficiently and ensure that the review process is more substantive than performative.

e. Available Resources

The NCUA indicates that it offers various training and resources to help FICUs develop their succession plans, including an online video series on succession planning. Additionally, the NCUA provides the "Small Credit Union Support Program" as a resource for FICUs with less than $100 million in total assets, offering assistance in several areas, including succession planning. The NCUA also acknowledges that credit union trade associations may offer training and guidance in this area.

We agree with the NCUA's approach of providing resources for credit unions, particularly smaller credit unions, to focus on succession planning. To support this, the Leagues, in partnership with Humanidei, LLC, recently launched the Small Credit Union CEO Succession program, designed for credit unions with assets under $234 million. This 12-month program combines group learning and individual coaching, through both virtual and in-person formats, to help small credit unions develop effective succession plans. The program aims to prepare a cohort of well-qualified executives ready to step into CEO and other key roles, equipped with the necessary skills to lead small credit unions successfully.

We believe credit unions would be better served by facilitating additional resources and support to help them create effective succession plans, rather than mandating detailed plans as proposed. This could include offering model procedures, hosting workshops, and connecting credit unions with mentors or consultants for guidance. By emphasizing practical support instead of imposing strict requirements, the NCUA can help credit unions develop stronger and more effective succession plans without placing an unnecessary burden on them.

Moreover, collaboration with the NCUA is crucial. Given the NCUA's previous creation of a "merger partner registry," we recommend developing a similar tool to connect potential leaders with credit unions seeking new CEOs or managers. This tool could play a vital role in attracting and developing new talent within the credit union system.

f. Diversity Considerations

The proposed rule specifies that the succession plan would be required to address the FICU's strategy for recruiting candidates with the potential to assume each of the positions. Importantly, as noted above, the strategy must consider how the selection and diversity among the employees covered by the succession plan collectively and individually promotes the safe and sound operation of the FICU.

The Leagues believe that, while well-intentioned, the diversity requirements can indeed be a highly subjective area, leaving considerable room for interpretation. The NCUA's proposal does not specify which aspects of diversity should be prioritized, which could lead to several ambiguities and challenges, especially when considering how limited fields of membership can impact diversity.

Instead, the NCUA should focus on high-level requirements and leave the specifics of diversity and other details to individual credit unions.

The following addresses our further concerns.

1. **Lack of Specificity in Diversity Definition**

Without clear guidance, credit unions are left to interpret what "diversity" means in the context of succession planning. Is the NCUA looking for diversity based on: age, gender, ethnicity/race, work experience and background, educational background?

Moreover, given the lack of specific criteria, the Leagues are concerned that different NCUA examiners could have varying interpretations of what constitutes adequate diversity within a credit union's succession plan or the extent to which the credit union's field of membership may be a factor in that analysis.

The lack of a clear framework can also increase the risk of legal challenges. Absent clear direction and parameters under applicable law and regulation, credit unions could face claims of discrimination from employees or applicants who feel that diversity criteria unfairly affected their opportunities for promotion or hiring. The lack of clarity could make it difficult for credit unions to defend their practices in court or before other regulators.

2. Challenges in Measuring Diversity Impact on Safety and Soundness

The proposal requires consideration of "how the selection and diversity among the employees covered by the succession plan collectively and individually promotes the safe and sound operation" of the credit union. Aside from the general vagueness of this statement, there is a significant challenge in demonstrating how different types of diversity (such as age, gender, ethnicity, or work experience) might directly correlate with operational safety and soundness. Credit unions will likely struggle to quantify the impact of diversity on traditional risk metrics, such as capital adequacy, asset quality, or liquidity. The regulatory expectation needs to be more fully vetted, analyzed, and explained before credit unions can be held to comply with it.

g. Additional Concerns

While smaller credit unions often face significant challenges due to limited resources, similarly, mid-sized credit unions also experience difficulties in attracting and retaining qualified talent, especially when it involves relocation. The disparities in salary and responsibility expectations between mid-sized and larger credit union personnel further complicate this issue. As a result, the need for mergers is often driven more by these broader economic pressures than by a lack of succession planning.

Most credit unions, regardless of size, do not have the capacity to maintain "extra" staff to cover critical roles in the event of unexpected turnover. While mid-sized credit unions may have more personnel who can manage day-to-day operations temporarily if a C-suite team member departs, they still often face the necessity of conducting an external executive search to fill key positions.

Many credit unions already have succession plans and individual development programs in place to cultivate future leaders. However, while such plans can help credit unions and their boards assess their readiness, the reality is that these plans may have limited impact when an executive departure occurs. Addressing the broader economic and operational challenges facing credit unions is likely to be more effective than focusing solely on succession planning requirements.

Conclusion

Thank you for the opportunity to comment on the proposed rule and for considering our views and recommendations. While we support the goal of ensuring that credit unions are prepared for leadership changes, we urge the NCUA to consider a more flexible approach. Providing guidance and resources rather than imposing detailed rules would better support credit unions in effectively managing succession concerns while addressing their diverse needs and constraints.

We look forward to continuing to work with the NCUA to develop practical solutions that support the health and stability of credit unions. If you have any questions regarding our comments, please contact me.

Sincerely,

Scott Simpson
President and CEO
California and Nevada Credit Union Leagues