



August 2, 2012

Proposal to Expand NCUA's Authority to Declare State Credit Unions in "Troubled Condition"

Executive Summary

- NCUA has issued a proposal that would add a definition of "troubled condition" as that term relates to a natural person or corporate federally insured credit union. The definition would be added to the definition section in §700.2 of its rules as new §700.2(j).
- In short, this proposed language would allow NCUA to designate a state chartered credit union as one that is in "troubled condition" even if the state regulator does not agree. The new definition is a modification of a definition of "troubled condition" that NCUA has included or incorporated by reference in §701.41, Parts 711, 741, 747, and 650.
- Existing references to "troubled condition" would also reflect the new proposed definition.
- In particular, NCUA would repeat the proposed definition in §701.14 of its rules; that section addresses changes in officials or senior executive officers for credit unions that are newly chartered on in troubled condition.
- NCUA is also proposing to amend §741.205 regarding notifying the appropriate state regulator about NCUA's determination.
- Further, NCUA would amend its definitions under its rule on golden parachutes and indemnification payments at §750.1 to bring that rule in line with the proposal.
- The proposal would remove obsolete provisions that describe how to assign a CAMEL or CRIS rating when the state does not use these systems as all states do use these systems now.

Please send comments to CUNA by September 19. Comments are due to NCUA October 1, 2012. Comments may be filed via the [Federal eRulemaking Portal](#), [NCUA's Web Site](#), or via [email](#). If you email comments, please include "[Your name]—Comments on Notice of Proposed Rulemaking for Parts 700, 701, 741 and 750" in the subject line. You may also fax comments to (703) 518-6319 and use the subject line described above for email, or mail or hand deliver them to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428. Please send a copy of your letter to your league and [CUNA](#). Questions or comments about the proposal can be directed to CUNA's Deputy General Counsel and SVP, [Mary Dunn](#).

[Click here for the proposed rule.](#)

Further Information and Potential Impact of the Proposal

Currently, a state chartered credit union's safety and soundness rating provided by the state regulator (CAMEL for a natural person credit union or Corporate Risk Information System (CRIS) for a corporate credit union) determines whether the credit union is in "troubled condition."

This would change under the proposal, which would redefine a state credit union to be in "troubled condition" when **either** the state regulator or NCUA assigns it a 4 or 5 CAMEL or CRIS rating.

The impact of the modifications to NCUA's definition of "troubled condition" could be very negative and raise serious concerns in at least four areas:

- The proposal undermines the credit union dual chartering system by allowing NCUA to exercise ultimate control over the CAMEL and CRIS ratings of state chartered credit unions.
 - NCUA would be able to downgrade a state chartered credit union's CAMEL or CRIS rating even if the state regulator opposed the downgrade or otherwise disagreed with the move.
- A state chartered credit union that is downgraded by NCUA could, as a result, also be subject to a reclassification of its net worth category by NCUA.
- A state credit union that is downgraded would also be subject to additional reporting requirements to NCUA and its state regulator.
- A state credit union that is downgraded would also be subject to requirements under § 701.14 that require it to notify NCUA of upcoming changes to its board of directors, committee members or senior staff. NCUA may disapprove of any individual the credit union proposes to add.

NCUA Has Not Substantiated the Need for the Proposal

The Supplementary Information accompanying the proposed rule reinforces that the basis for the proposal is to meet an unrealized threat to the National Credit Union Share Insurance Fund, *NCUA Definition of Troubled Condition, Notice of proposed rulemaking, 77 Fed. Reg. 45286 (July 31, 2012)*.

The primary purpose of the proposal is to guard against ... ratings discrepancy as a precaution to protect the Fund. Expanding the definition of "troubled condition" as proposed enhances the likelihood that problems in a particular [state credit union] will be identified and corrected because it permits the full utilization of the resources of both the related [state regulator] and the NCUA.

NCUA states that as administrator of the NCUSIF, it is responsible for taking "proactive steps" to protect the Fund. It highlights the joint examinations that the agency has been conducting with state regulators for state credit unions with assets over \$250 million and notes that the number of hours spent on joint exams has nearly doubled. NCUA "emphasizes, however, that only the time spent on joint examinations has doubled, not the number of [state credit unions] experiencing difficulties." 77 Fed. Reg. 45286.

NCUA states that in 2-4% of all joint examinations, either the state regulator's rating was lower than NCUA's or the discrepancy in the ratings between the agencies indicated a troubled versus an untroubled credit union. NCUA does not provide the breakdown of how many of these joint exams resulted in a lower rating from the state. It also does not indicate how many of these examinations resulted in only one agency categorizing the credit union as "troubled" but does state that in some cases NCUA provided the lower rating.

While some states have experienced resource issues and will continue to do so for some time, nonetheless, the proposal would grant NCUA broad authority at the expense of state regulators, and the agency has not explained the need for this step in sufficient detail. Given the significance of the proposal, NCUA should have provided a much more thorough rationale to support the changes.

Moreover, under Executive Order 13132, with which NCUA has chosen to comply, the agency is directed to consider the impact of its actions on state and local interests. NCUA's analysis under the order states:

This proposed rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

Given the serious implications of the proposal on dual chartering, these statements indicate that the agency either did not assess the impact of the proposal on state issues or is ignoring that impact.

Questions to Consider

- 1) Is this proposal necessary at this time? Y_____ N_____
- 2) Has NCUA provided sufficient information for credit unions to know whether it is needed or not?
Y_____ N_____

3) What additional data would you like to see regarding the proposal?

4) Even if the proposal is not necessary, do you think that NCUA should adopt the proposal?
Y_____ N_____

5) Are you concerned about the proposal's impact on dual chartering? Y_____ N_____

6) Are there less intrusive means that NCUA could employ to address concerns about "troubled" credit unions? Y_____ N_____

7) If Yes, what actions should NCUA take?

8) Other questions or comments.
