



**America's  
Credit Unions**

September 23, 2024

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

**RE: Notice of Proposed Rulemaking – Succession Planning (Docket ID NCUA–2024–0037)**

Dear Ms. Conyers-Ausbrooks:

On behalf of America's Credit Unions, I am writing in response to the National Credit Union Administration's (NCUA) notice of proposed rulemaking regarding succession planning.<sup>1</sup> America's Credit Unions is the voice of consumers' best option for financial services: credit unions. We advocate for policies that allow the industry to effectively meet the needs of their over 140 million members nationwide.

We agree with the NCUA that succession planning is an important component of a credit union's overall strategic plan. Succession planning is important for credit unions of all sizes. It helps to ensure that the appropriate personnel are available to execute the credit union's strategic plan and mission. Further, we support the overall objective of the proposed rule, as we agree it is important to have a plan in place to reduce any interruption of service to members.<sup>2</sup> However, for the reasons discussed below, the provisions included in the proposed rulemaking are wholly inappropriate as regulation; though, they may be helpful to some credit unions in the form of guidance. In addition to guidance on establishing an effective succession plan, other general resources on how a credit union can ensure its longevity would be helpful. Further, as described below, it is important to remember that examiners are already reviewing a credit union's succession planning as it is a part of the management component of the CAMELS rating system, making this rulemaking redundant.

More broadly, rather than focusing on a rule to mandate succession planning, the NCUA should focus on promoting credit unions' ability to effectively run their organizations in a way that allows them to serve their members without introducing any unnecessary risk to the National Credit Union Share Insurance Fund (NCUSIF). While succession planning may be a helpful tool, as detailed below, we disagree with the NCUA as to its efficacy in preserving small credit unions, due in part to the fact that a lack of succession planning is not shown to be the catalyst for most small credit union mergers. It is critical that the NCUA not pursue regulation that would

---

<sup>1</sup> 89 Fed. Reg. 60,329 (July 25, 2024).

<sup>2</sup> America's Credit Unions recognizes the importance of succession planning, as evidenced by the comprehensive resource guide we developed by our Small Credit Union Committee in 2020. The *Small Credit Union Succession Planning Guide* offers a nine step process credit unions can consider to make sure they have the necessary pieces in place to ensure their continuation of operation.

essentially micromanage credit unions; credit must have sufficient flexibility and autonomy to successfully operate.

### **Proposed Succession Planning Requirements**

Expanding on a 2022 proposal,<sup>3</sup> the proposed rule would require credit unions to establish and adhere to processes for succession planning. Unlike the 2022 proposal, the current proposed rule also applies to state-chartered credit unions and includes a broader scope of credit union individuals that must be covered in the succession plan. According to the NCUA, extending the proposed requirements to all federally insured credit unions (FICU) is appropriate to protect the NCUSIF from undue risk associated with mergers. As proposed, the plan—which would need to be reviewed at least annually by the FICU board—would need to address a number of positions, including board members, certain loan officers, and management officials and assistant management officials.<sup>4</sup> The complexity of the succession plan would be based on the size of the FICU and the complexity and risk of its operations.

As detailed below, we vigorously push back against the need for and appropriateness of a succession planning mandate by the NCUA. Despite the proposed language that the complexity of a succession plan be commensurate with the FICU's size, complexity, and risk of operations, the mere mandate for a succession plan will result in an unworkable one-size-fits all approach that simply will be of no benefit to some FICUs while introducing additional risk to others. It is necessary to understand that the systemic risk established by a lack of a succession planning mandate—as proffered by the NCUA—simply does not exist.

#### *Rationale for Succession Plan Mandate*

According to the NCUA, the proposal is intended to be of most benefit to smaller FICUs,<sup>5</sup> which we agree are more likely to experience challenges in the area of succession planning. However, smaller credit unions are often the most burdened by new regulatory requirements. Thus, we believe the benefits of a succession plan requirement (*e.g.*, informing the industry on the value and component parts of a succession plan) can generally be achieved through guidance, without the accompanying burden associated with regulation.

In addition, there has been a trend in recent years of the NCUA continually adding to the list of policies that credit union boards must review, understand, and approve; almost to the point where entire board meetings must be dedicated to annual review and approval of policies, leaving no time for actual substantive discussion. Smaller federal credit unions, in particular, have stressed this concern.

---

<sup>3</sup> 87 Fed. Reg. 6,078 (Feb. 3, 2022).

<sup>4</sup> *Supra* note 1, at 60,336.

<sup>5</sup> *Id.* at 60,330.

The NCUA has expressed that a succession planning requirement could slow the current pace of consolidation within the industry. However, a rulemaking that increases the regulatory burden and compliance costs for smaller institutions could have the unintended consequence of leading to further consolidation. Credit unions are best suited to make their own management decisions and will do so without regulation from the NCUA. The NCUA should not substitute its own judgment for that of credit union management, as only an individual credit union can determine the appropriate timing and extent of succession planning needed to preserve the health of the credit union and its members.

The proposed rule cites an NCUA study that analyzed an undefined random sample of recent merger activity, finding that poor succession planning was a primary cause of 18 percent of mergers in the sample and a secondary cause of 22 percent of mergers.<sup>6</sup> However, the analysis was conducted on data collected from 2003-2013. This analysis concluded over a decade before the publication of this proposed rule, and includes the years immediately following the financial crisis and passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which was undoubtedly a significant compounding factor in credit union consolidation. This suggests that increased succession planning may not address the issue the NCUA is seeking to resolve.

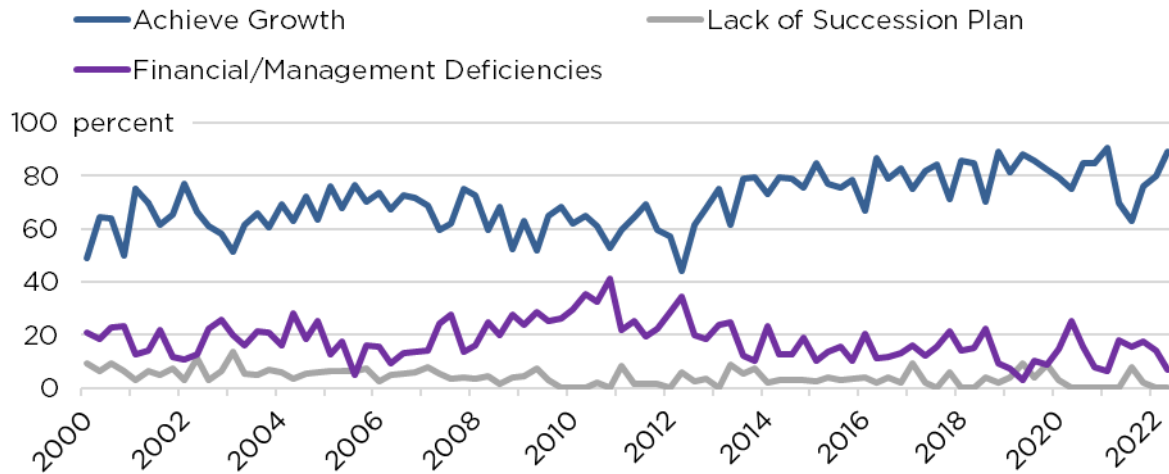
Rather than rely on such an outdated study, with questionable findings, the agency should look to a more recent and comprehensive NCUA analysis conducted on the full set of mergers between 2017 and 2021, which found that an “inability to obtain officials” was the primary cause for under 3 percent of mergers (the analysis does not list secondary causes).<sup>7</sup>

---

<sup>6</sup> NCUA, *Truth in Mergers: A Guide for Merging Credit Unions*, page 9, <https://www.ncua.gov/files/publications/Truth-In-Mergers.pdf>.

<sup>7</sup> NCUA, *Lessons Learned – Mergers*, <https://ncua.gov/regulation-supervision/manuals-guides/lessons-learned-mergers>.

### Share of Credit Union Mergers by Reason



Merger reason is the first one listed by the NCUA. "Achieve Growth" combines economies of scale, expanded services, and lack of growth; "Financial/Management Deficiencies" combines poor financial condition and poor management. Mergers for "lack of sponsor support" and "other" reasons not shown.

Source: NCUA, America's Credit Unions

Further, the NCUA states that this data has been corroborated by industry participants.<sup>8</sup> While the NCUA cites an industry article that does note succession planning as a reason credit unions have merged, it includes information on only ten mergers, and only a few of those credit unions cited a lack of succession planning as a factor, and none of them indicated it was the sole or even a primary factor. It is imperative that a rulemaking of this magnitude be supported by adequate data showing the need for such a burdensome regulatory requirement. The data cited by the agency simply does not provide such support and is therefore unwarranted at this time.

### *Scope of Covered Individuals*

If the NCUA moves forward with a rulemaking on this topic—whether in the form of regulation or guidance—it is imperative that the scope of covered positions be greatly narrowed. Specifically, we strongly disagree with the notion that loan officers and assistant management officials be mandatory in a succession plan.

While we have stressed the challenges this proposal would impose on smaller credit unions, it is important to understand the burden it will impose on all FICUs, including some of the largest in the industry. For example, some of America's Credit Unions' largest members, that have hundreds of loan officers involved in the daily review of loans, expressed concerns about the prescriptive nature of this proposed rule. While many of these credit unions utilize a credit committee to review and approve loans, the succession planning rule would have unique

<sup>8</sup> CUToday.info, A Look at What Members, Mgmt. Get in Mergers (Nov. 16, 2021), [www.cutoday.info/THE-feature/A-Look-at-What-Members-Mgmt.-Get-in-Mergers](http://www.cutoday.info/THE-feature/A-Look-at-What-Members-Mgmt.-Get-in-Mergers).

implications on institutions of their size and complexity. The challenges of planning for the vacancy of a board director or CEO are greatly compounded when attempting to assess the future of such a large group of individuals. Given the decentralized lending structure of many large FICUs, there is likely minimal risk to the continuity of operations or ability to serve their members if a loan officer vacancy occurs. Similarly, there is even less of a risk of continuity in the context of assistant management officials, who, while important, are not necessarily crucial to a credit union's ability to provide uninterrupted service to its members. Further, the proposal's requirement to identify an anticipated vacancy date, such as the incumbent's retirement eligibility date, is also problematic. With the rise of defined contribution plans, the concept of retirement has evolved significantly and is no longer tied to a specific pension eligibility date. Defining retirement eligibility in this context would be challenging.

Ultimately, a succession plan is intended to ensure the ongoing operation of a credit union following a change in personnel, whether expected or unexpected. As such, it is appropriate to include the members of the board, certain officials, and even members of the supervisory committee. However, including individuals beyond these clearly runs the risk of impeding a credit union's ability to manage its operations and ultimately serve its members. Such overreach is inappropriate and arguably beyond the agency's scope as regulator and insurer. The NCUA's primary mandate is to ensure the safety and soundness of credit unions. While the agency has broad authority to regulate and supervise credit unions,<sup>9</sup> such authority does not necessarily extend to dictating exactly how credit unions should manage their operations.

#### *Additional Burden Associated with the Proposed Rule*

Compliance with rulemakings can often be burdensome for smaller credit unions; if this proposed rule becomes final, credit unions will have to create a succession plan that fits the final rule's requirements by a mandatory effective date. Smaller credit unions will likely have to find outside resources to assist them in compliance with the proposed rule. Smaller credit unions may only have a few employees in total, and the time it takes to draft succession plans could be better spent serving their communities.

America's Credit Unions' members have expressed that creating a succession plan will require extensive work from their employees and, in some cases, they may be required to bring in a third party to help them comply. The agency's burden estimate of 10 hours may be reasonable for some credit unions but certainly not all. In particular, those smaller credit unions that must redirect already stressed resources for compliance will likely require much more to establish such a plan, which, contrary to the NCUA's assumption, is much more than simply filing out a form. The process for credit unions to closely evaluate their pool of management to identify key individuals, then develop a comprehensive succession plan will generally take days, if not weeks or longer, to finalize. The contention that a smaller credit union would have a simple succession plan ignores the complexity and sensitivity involved in developing a succession plan. In fact, a smaller credit union would be more susceptible to having to execute an emergency succession from a smaller

---

<sup>9</sup> 12 U.S.C. § 1756.

pool of potential candidates. Further, there may be additional limitations depending on location and market dynamics. The goal should be to develop an environment where credit unions can thrive by eliminating costly rule requirements, minimizing and streamlining examination processes, and supporting business judgment. Such efforts would do more to achieve successful succession planning than a rule requiring a written document to be evaluated by examiners.

The proposal also requires credit union boards of directors to conduct an annual review of the succession plan, which likely will not have significant year-to-year changes. This part of the proposal is also burdensome, excessive, and a waste of credit unions' and examiners' time. Succession plans are not a dynamic and ever-evolving document and, therefore, should only be reviewed as needed. Credit unions have proven trustworthy and able to make that decision on their own and the proposed rule has not demonstrated severe deficiencies in current succession plans that would necessitate an annual review by boards of directors, who are already time-constrained to meet other regulatory compliance requirements.

### **Parity with Bank Succession Planning Requirements**

The NCUA should consider the approach of the federal banking regulators in this area. Bank regulators have issued guidance instead of a rule on succession planning, and this guidance provides greater certainty to institutions based on their size and complexity than the NCUA's proposed rule. This guidance on corporate governance from the Office of the Comptroller of the Currency (OCC)<sup>10</sup> and the Federal Deposit Insurance Corporation (FDIC)<sup>11</sup> suggests that succession planning should be a regular topic of discussion among the financial institution's board of directors.

The OCC describes the benefits of succession planning as “stability in tumultuous financial times” and a way to “lessen the influence of dominant personalities and behaviors.” The OCC suggests different ways of succession planning for smaller and larger institutions. It suggests that smaller banks consider increasing the formality of management training programs, development, and talent identification; while suggesting that larger institutions develop a talent pool of employees who have the necessary qualifications, skills, experience, and exposure to the board and senior management. Some of America's Credit Unions' members have expressed that rather than a succession plan, their credit unions have adopted a talent review process that serves to highlight and develop team members so that they are creating more real value over time.

In its guidance, the FDIC explains that a succession plan is “a valuable tool to build bench strength and maintain continuity” in key management positions, as well as a means of

---

<sup>10</sup> Corporate and Risk Governance, Comptrollers Handbook (July 2019), <https://www.occ.treas.gov/publicationsand-resources/publications/comptrollers-handbook/files/corporate-risk-governance/pub-ch-corporate-risk.pdf>.

<sup>11</sup> Supervisory Insights: Special Governance Edition (Apr. 2016, Revised Oct. 2018), <https://www.fdic.gov/regulations/examinations/supervisory/insights/sise16/si-se2016.pdf>.



“identifying potential successors from outside the organization, when necessary.” The OCC and FDIC each provide banks with suggestions that may benefit them, but do not specify any mandatory requirements. We suggest the NCUA follow the lead of the FDIC and OCC and issue similar guidance that will assist credit unions, if needed, but leave the decision of creating a succession plan to the credit unions themselves.

Additionally, examiners should already be doing a high-level evaluation of a credit union’s succession planning as it is a part of the management component of the CAMELS rating system, which makes this rulemaking redundant. Similarly, the OCC and FDIC also require their examiners to do a high-level assessment of banks’ succession planning in their rating of the capability and performance of management, as well as the risk management component of their rating system. According to Appendix A of the NCUA’s CAMELS Rating System, when assessing the management of a credit union, examiners should consider the succession planning for “key management positions.”<sup>12</sup> That the existence of succession planning is already being evaluated in a credit union’s CAMELS rating further obviates the need for this proposed rule.

### **Alternatives to a Succession Planning Regulation and Additional Clarifications**

While we agree with the NCUA that succession planning is helpful for credit unions, we steadfastly maintain that a rulemaking requiring such planning is not. We urge the NCUA to issue guidance to aid FICUs in developing and maintaining effective succession plans. An additional benefit of guidance over regulation is the ability of the NCUA to easily make changes to guidance in response to observed issues or economic forces without the time-consuming notice and comment requirements under the Administrative Procedure Act associated with formal regulation.<sup>13</sup>

Further, we suggest the NCUA develop a broad range of resources to assist all credit unions in developing succession planning, not limited to small credit union specific resources. We appreciate the list of available resources included with the proposal<sup>14</sup>—as well as the small credit union compliance template—but ask the agency focus on guidance specific to succession planning as contemplated in this proposal.

Another option for the NCUA to consider is to determine the existence of succession planning simply by asking the question on the 5300 Call Report Form. The Call Report is a way for credit unions to report to the NCUA a big picture of what is going on at their credit union and to document any potential risk areas. Since Call Reports must be submitted quarterly, the NCUA would always have up-to-date information on a credit union’s succession planning. The inclusion of a simple checkbox on whether a credit union has a succession plan could suffice.

---

<sup>12</sup> Appendix A – NCUA’s CAMELS Rating System (CAMELS), <https://www.ncua.gov/files/letters-creditunions/camels-rating-system-appendix-a.pdf>.

<sup>13</sup> Administrative Procedure Act, Pub. L. No. 79–404, 60 Stat. 2375 (codified at 5 U.S.C. § 555 (2006)).

<sup>14</sup> *Supra* note 1, at 60,334.

### *Additional Clarification*

Should the NCUA proceed with a rulemaking on succession planning, we request clarification on several critical issues. The proposed rule is vague about the idea of requiring a FICU's board of directors to have a "working familiarity" with the credit union's succession plan.<sup>15</sup> Unlike the 2022 proposal, the proposed rule eliminates language explaining that training is not mandated to meet this requirement. Thus, it is unclear what steps a board of directors would be expected to take to achieve a "working familiarity." A lack of clarification on this could result in inconsistencies in the examination process, leaving the door open for credit unions to have a different understanding than the examiners and examiners to have differing understandings from each other. This could result in inefficiencies for both credit unions and their boards of directors as well as NCUA examiners.

The proposed rule is also unclear about the potential impact on a credit union if an examiner determines a credit union's succession plan to be inadequate. America's Credit Unions urges the NCUA to be clear about what it expects of credit unions in terms of meeting requirements so that all examinations are consistent. Additionally, the rule should clearly identify a reasonable timeline for remediation should a credit union's succession plan be deemed inadequate.

Additionally, we emphasize that it is unrealistic to expect potential board members to attend twelve meetings a year, perform time-intensive functions such as reviewing and approving every policy and procedure issued by the credit union, and maintain the increasing level of education required by this portion of the proposed rule when these are volunteer positions and only one board member is allowed to be compensated for their time and effort.

Further, we ask the NCUA to ensure confidentiality of a credit union's succession plan given the potentially sensitive nature of these plans. Credit unions develop succession plans and related strategies to aid in their viability following expected and unexpected events. Even if a plan is consistent with any guidance or regulation the agency may pursue, public disclosure could bring about unnecessary, negative competition—counter to the "people helping people" philosophy.

Lastly, we ask for clarity on the steps a credit union should take if it is unable to adhere to its succession plan, which could happen under a number of circumstances. Plans may not always be able to be adhered to and new challenges or changing circumstances may arise before a plan can be made or before a credit union can adjust its formal plan to meet these changes. If the NCUA is to finalize a rule on succession planning, the rule should be very clear about what to do in unexpected situations.

---

<sup>15</sup> *Supra* note 1, at 60,336.



## **Planned Mergers**

Lastly, we ask the NCUA to consider that in some instances, a merger may be the best approach for a credit union and its members. We appreciate the NCUA's concern with unplanned or forced mergers, which often stress or suspend services to members, or potentially present safety and soundness risks that could ultimately lead to losses impacting the NCUSIF.

However, we believe there are situations where a—typically small—credit union has a merger plan as the key component of its succession plan. While a plan to merge would not comport with the elements of the proposed rulemaking, we ask the NCUA to consider that sometimes a plan to merge can be the best course to serve the FICU's members.

## **Conclusion**

America's Credit Unions appreciates the opportunity to comment on the NPRM regarding succession planning. Based on feedback from numerous member credit unions, we strongly urge the NCUA to not proceed with a rulemaking mandating a succession plan for all FICUs. Should you have any questions or require any additional information, please contact me, Regulatory Advocacy Senior Counsel at [LMartone@americascreditunions.org](mailto:LMartone@americascreditunions.org) or (202) 508-6743.

Sincerely,



Luke Martone  
Regulatory Advocacy Senior Counsel