September 27, 2005

Ms. Mary Rupp, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314

Re: Comments on Proposed Rule Part 741.8

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 proposed revisions to Part 741.8.

Part 741.8 Purchase of assets and assumption of liabilities

NASCUS supports NCUA's proposed revision of Part 741.8 clarifying that transactions involving the sale or purchase of loans or other assets between federally insured credit unions do not require NCUA approval. NASCUS agrees with the NCUA that these transactions "do not materially increase risk to the NCUSIF" and should not "unduly affect the safety and soundness" of federally insured credit unions. 70 FR 43794.

In recent years, NCUA has undertaken initiatives to relieve unnecessary regulatory burdens on credit unions. NASCUS commends NCUA on these initiatives. As is the case with Part 741.8, when there is no identifiable material risk to the insurance fund or undue effect on safety and soundness, additional insurance regulation is unnecessary.

However, NCUA's proposed revisions raise several questions. From a technical standpoint, proposed 741.8(b)(3) excludes mergers from the general exception to NCUA approval for purchase of loans or assumption of liabilities from a federally insured credit union. In the case of a merger, would credit unions be required to seek approval pursuant to both Part 708 and 741.8?

The requirement for approval when the purchase is from a non NCUSIF insured entity seems to be irreconcilable with a risk-based focus on examination and insurance regulation. Presumably, the broad exception for purchases from a NCUSIF insured institution derives from the fact that the selling institution is examined by state and federal credit union regulators. Given that basis for the exception, it would seem that privately insured credit unions and federally insured banks should be considered equal to purchase from a NCUSIF credit union from a risk perspective.

[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.

Request for comments on Part 741.3

NCUA also seeks comments on nonconforming investments and reserve requirements for federally insured state-chartered credit unions and on the extension of certain CUSO rules to state-chartered credit union CUSOs. Specifically, NCUA proposes eliminating the special reserve requirement for nonconforming investments and limiting federally insured state-chartered credit unions to investment grade investments. NCUA also proposes extending Parts 712.3 and 712.4 of NCUA's CUSO rule to state-chartered federally insured credit unions. NASCUS objects to these proposals.

NCUA's proposals to revise investment and CUSO rules for state-chartered federally insured credit unions set aside longstanding state authority in these areas. The proposals are unsupported by any specific evidence of material risk to the insurance fund or undue safety and soundness concerns raised by the current regulatory and statutory separation of state and federal authority, and weakens the dual chartering system.

State-chartered credit union investment and CUSO authority have traditionally derived from state law and regulation. Currently NCUA's Part 703, Investments and Deposit Accounts and Part 712, Credit Union Service Organizations, apply only to federal credit unions. Part 741.3(a)(2) acknowledges state authority, expressly noting the ability of state credit unions to invest pursuant to state law and requiring establishment of a special reserve. Before NCUA proposes to preempt state law and regulation, the agency should set forth compelling reasons for the rule making. In this case, NCUA's proposal cites conflict with GAAP and unspecified safety and soundness concerns. 70 FR 43795.

These reasons alone do not support preemption of state law.

Conforming to GAAP is not a compelling justification for the change. Given that in many cases the use of reserves to offset the nonconforming investment may even be more conservative than GAAP, the use of regulatory accounting principles (RAP) should be allowed to continue. Furthermore, an AICPA glossary of terms acknowledges RAP and "encourages consistency between GAAP and RAP." It is not clear that requiring a reserve for nonconforming investments is entirely inconsistent with GAAP and AICPA's own definition encourages consistency but does not discount the use of RAP.

NCUA's request for comments on Part 741.3 states simply "these investments raise safety and soundness concerns" without enumerating those concerns, including, how the reserve requirement of Part 741.3 fails to mitigate those concerns, citing examples of losses incurred, or articulating whether those concerns present a material risk to the insurance fund. The proper threshold for NCUA regulation of federally insured state-chartered credit unions should be mitigation of material risk to the insurance fund. Identifying material risk should be "data driven," supportable by a demonstration of losses that raise concerns. In the absence of compelling evidence of material risk, states should retain statutory and regulatory authority over their state-chartered institutions. Furthermore, the broad repudiation of non-conforming investments seems to assume that states allowing such investments do lack the regulations, and the expertise to mitigate the

risk that approved nonconforming investments may pose through standard examinations. NASCUS believes that safeguards are in place at the state level. No compelling evidence has been presented to the contrary.

The proper balance between insurance regulation and chartering regulation is reflected in the status quo of Part 741.3, with states determining investment authority and the federal insurance regulator requiring a reserve for nonconforming investments.

As an alternative to prohibiting state authority to approve non-conforming investments, NCUA could analyze summary information on such investments as captured on the Call Report and work with state regulators to deal specifically with particular investments and credit unions that raise concerns.

NCUA's proposal to extend Parts 712.3 and 712.4 to federally insured state-chartered credit unions and their CUSO relationships raises similar concerns about federal preemption of state authority.

Many state regulators agree, and NASCUS concedes, that corporate separateness between a CUSO and its credit union owners is good corporate governance. In fact, requiring corporate separateness as defined by Part 712.4 is not foreign to state law and regulation. However, to preempt state law over CUSO regulation by broad stroke is not supported by any showing of material risk to the insurance fund. Rather, NCUA should work with NASCUS and state regulators to increase state emphasis on separateness issues in credit unions if a specific problem has been identified. Likewise, NCUA's proposed application of Part 712.3 to federally insured state-chartered credit unions and their CUSOs is unsupported by identifiable material risks to the insurance fund. Furthermore, provisions of Part 712.3, such §713.3(b), restricting individuals served by the CUSO, seem devoid of even tangential relationship to material risk to the insurance fund.

In commenting on the lack of discussion of specific material risk to the insurance fund posed by the status quo of state credit union nonconforming investment and CUSO authority, NASCUS understands that NCUA's proposal with respect to these issues was an initial request for comments and not a proposed rule itself. These comments are submitted with the hope NCUA reconsider its approach to the issues in question and dialogue with state regulators regarding specific concerns.

In conclusion, NASCUS urges NCUA to consider the importance of diversity to the dual chartering system. No doubt, the concept of uniformity throughout the credit union system is appealing to some. However, homogenization of the credit union system is misguided. While material risk to the insurance fund, real threats to safety and soundness, and inequities threatening to render one charter or the other impractical are issues that should be addressed by regulation or statute. Simple differences in authorized activities should not be addressed through restrictive measures. In order to maintain a viable dual chartering system, state authority must be given deference in the absence of material risk to the insurance fund. To appreciate the value of the dual chartering system, one need look no farther than the recent amendments to Part 723 or the redefined fields of

membership allowed by the Credit Union Membership Access Act, to name several examples of the value of dual chartering.

NASCUS appreciates the opportunity to comment on NCUA's Proposed Rule Part 741 and to offer our views on Part 741.3.

Please do not hesitate to contact NASCUS if you wish to discuss our comments.

Sincerely,

Brian Knight
Vice President, Regulatory Affairs