



August 7, 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 Secretary Conyers-Ausbrooks,

We are pleased to offer this Comment Letter in support of the National Credit Union Administration's ("NCUA") proposed Succession Planning Rule (the "Proposed Rule").

As a general matter, we support the NCUA Board's efforts to emphasize the importance of succession planning to the proper continuity of credit unions. However, we believe that the Proposed Rule is too ambitious. It is our goal for this Comment Letter to provide as much practical benefit as possible as the agency considers public comment. This is particularly important in light of the NCUA's lament that, with respect to the prior version of the proposed Succession Planning Rule (February 3, 2022), "[m]ost commenters opted to provide general comments rather than address the specific questions posed in the preamble."¹

To maximize its impact, this Comment Letter will proceed in the following manner. First, we offer a very brief history of our firm in order to provide context and establish our *bona fides* on these matters. Second, we summarize the requirements of the Proposed Rule, offering our viewpoint and some suggestions along the way. Here, we will make some general observations, particularly where our firm's perspective differs from that offered by the agency. We hope these sections will lay the proper framework for the final part of the Comment Letter which addresses specifically the questions posed by the NCUA, including the following:

- whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

¹ See *Succession Planning*, National Credit Union Administration, 89 FR 60329 (Jul. 25, 2024), at 60331, available at www.govinfo.gov/content/pkg/FR-2024-07-25/pdf/2024-16227.pdf.

- the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- ways to enhance the quality, utility, and clarity of the information to be collected; and
- estimates of capital or start-up costs and cost of operation, maintenance, and purchase of services to provide information;
- the inclusion of state-chartered credit unions within the scope of the regulatory amendments; and
- the viability of the proposed template, as well as other suggestions, to improve succession planning and reduce the proposal's burden for smaller credit unions.

About Olden Lane

Headquartered in Bridgewater, New Jersey, Olden Lane is a boutique investment bank, dedicated exclusively to credit unions. We operate a FINRA and SEC registered broker-dealer (Olden Lane Securities LLC), active in the share certificate market and recognized as the leader in the market for credit union subordinated debt. We also operate an SEC registered investment advisor (Olden Lane Advisors LLC) that assists credit unions with capital planning, balance sheet management, mergers and acquisition (M&A) related activities, hedging and investments. We regularly help credit unions to identify appropriate objectives for capital and in connection with the proper maintenance of safety and soundness. Since January 2019, our firm has assisted more than 50 clients in gaining approval for subordinated debt applications worth well over \$1 billion. We are proud that our subordinated debt transactions with credit union issuers include the largest, most complex and most creative structures in the market.²

With an acute set of challenges facing the industry, most recently, an increasing share of our firm's time and energies have been spent advising our credit union clients in respect of M&A opportunities.

General Thoughts on a Proposed Rule Addressing Succession Planning

Letter to Credit Unions 22-CU-05 (March 2022) provided that "succession planning for key management positions" is a key factor considered when assessing the management of a credit union. And Letter to Credit Unions 23-CU-01 highlighted succession planning as one of the NCUA's supervisory priorities for 2023. To date, however, there is no NCUA regulation requiring credit unions to implement a formal, written succession plan. The NCUA argues that this limitation leaves the agency without the full complement of regulatory tools, threatening the safety and soundness of institutions under the agency's charge. In the NCUA's view, the Proposed Rule fills that void, establishing "a needed, clearly articulated, and consistently enforceable set of succession planning standards."³

At the outset, as a philosophical matter, we are not opposed to the NCUA's rulemaking in this area, and we do not quibble with its legal authority. However, we note that its justification – based on "a compelling safety and soundness case" and, therefore, the overall protection of the National Credit Union Share

² For a list of our firm's significant transactions, see our website at www.olderlane.com.

³ *Succession Planning*, *supra*, note 1, at 60331.

Insurance Fund (NCUSIF) – is quite general and not the most persuasive case we have heard for continued regulatory creep.⁴

Regardless, we certainly agree with the NCUA’s statement that today’s credit union boards “are faced with a multitude of complicated challenges, such as meeting evolving member needs, fostering employee loyalty and trust, retaining, and developing necessary skills, and keeping pace with technological and industry changes.”⁵ And, we would not necessarily agree that “[a]mong this list of issues, succession planning is one of the most critical,”⁶ we, nonetheless, support the NCUA’s efforts and its assertion that the proposed rulemaking “will further strengthen FICU succession planning efforts.”⁷

We suspect that only in the rarest of instances has the lack of succession planning been the primary cause of a credit union failure. In fact, we are not aware of any instance where the NCUSIF has borne a loss directly attributable to a lack of succession planning at a failed institution. We only point this out to ensure that the Proposed Rule is considered within the proper context. While the NCUA proposal is admirable because it will assist credit unions as they confront important challenges, it is not an absolute necessity. Therefore, the proposal must be weighed against the burden of increased time and resources at credit unions already struggling to keep up with a panoply of regulations and requirements.

Given the complexity of the business environment over the past several years and the pressures on the industry’s business model in general, the NCUA should tread lightly in adding to the list of requirements at the credit unions under its charge. Assuming credit unions have already allocated their time and resources to existing tasks, the additional burden will either steal time or attention from a higher order consideration at the institution or it will require additional expense at a time when the profitability of the industry is at a decade-long low.⁸

Nonetheless, succession planning is critical to an organization’s overall strategic plan, as it appropriately anticipates a significant risk, and helps to ensure continuity of service and a consistent presentation to member-owners in the event of a personnel disruption. After all, qualified and engaged personnel are a necessary component to the proper functioning of a credit union and are integral to the execution of an institution’s strategic plan and mission.

Interestingly enough, the NCUA’s Proposed Rule comingles the issues surrounding vacancies in elected and appointed positions, offering that both “could come with high costs.”⁹ As the agency notes, an unexpected interruption runs the risk of creating a leadership vacuum, disrupting operations and potentially jeopardizing the credit union’s ability “to adequately manage liquidity risk, address cybersecurity threats, or ensure continued compliance with consumer protection, bank secrecy, and other

⁴ The NCUA also offers the less convincing justification that “Board action is also consistent with the guidance issued by the other banking agencies to address succession planning.”

⁵ See *Succession Planning*, *supra* note 1, at 60329

⁶ *Id.*

⁷ *Id.*, at 60334.

⁸ According to Callahan & Associates data, only Q1 2020 (0.53%) and Q2 2020 (0.57%) — during the throes of the pandemic — were lower in terms of overall Return on Assets for the industry.

⁹ *Succession Planning*, *supra* note 1, at 60330.

critical responsibilities.”¹⁰ Poor planning in this realm can also result in increased costs, the inability to recruit and retain top talent and negatively impact relationships with member-owners and vendors. Finally, a disruption can also jeopardize future business opportunities.

In our experience, board succession issues differ greatly from those related to management succession. As a general matter, the former should be far less disruptive, as boards are not involved in day-to-day affairs and most often have duplication of roles and talents. That said, the unexpected departure of a key board member with a particular responsibility or a unique talent can be quite disruptive. When it comes to board succession, however, we think that board members staying too long is at least as important an issue as unexpected departures. In this regard, we would welcome NCUA efforts that encourage boards to perform an honest assessment at regular intervals, matching the talents of existing board members with the needs of the credit union. In our estimation, encouraging a healthy calendar of strategic replacements of longer-tenured board members in favor of new board members, offering a fresh perspective and a set of relevant talents, would be a welcome improvement across the industry. Of course, credit unions themselves can encourage such an environment by instituting term limits or enforcing an environment of extreme accountability.

Like the NCUA, we appreciate and respect the importance of the board election process in credit union governance. As such, we are encouraged by the NCUA concession that “the proposed rule is meant to complement and not supplant the vital role member-owners play in FICU governance.”¹¹ In our experience, the best credit union boards, whether formally or informally, regularly employ a succession strategy that includes the identification and development of a pool of talented candidates to potentially stand for election to the board, to fill temporary board and committee vacancies by appointment, and to fill appointed positions, including the supervisory committee. To the extent the Proposed Rule makes any specific requirements in this area compulsory, we are concerned that it adds to an already heavy compliance burden for a voluntary board. Of course, any such burden would have the greatest effect on the smaller credit unions, many of which already struggle to keep up with the full panoply of existing requirements.

A credit union board must also consider how best to fill vacancies that arise in senior management positions. The departure of a chief executive officer or chief financial officer can be very disruptive to the workings of a credit union. Here, credit unions should certainly be encouraged to (1) establish an order of succession among existing employees for temporarily filling senior management roles, and (2) develop strategies to identify and retain employees capable of filling these senior positions. Because of the likely disruption to the day-to-day management that results from a high-level departure, the management vacancy is typically a higher priority matter than a board vacancy. Again, however, in designing a compulsory program, the NCUA must remain cognizant of the strain on organizations to comply with a growing menu of regulatory requirements.

¹⁰ *Id.*

¹¹ *Id.*, at 60329.

Data Supporting the Increased Relevance of Succession Planning

The Proposed Rule's data, offered regarding credit union consolidation and the aging of credit union executives and board members alike, are compelling. However, at Olden Lane, we regularly resist the simplistic reaction that romanticizes the unquestioned perpetual continuation of poorly performing credit unions or reflexively views all credit union consolidation as harmful. Instead, we work with our clients, large and small, to identify, implement and improve a reliable and sustainable business model. Often, our most difficult conversations are with those credit union clients that cannot surmount this high bar. Those conversations involve a deliberate but respectful reminder of Herb Stein's maxim, that "if something cannot go on forever, it will stop."

While the number of credit unions continues to decline at a pace "largely attributable to the long-running trend of consolidation across all depository institutions," which "has remained relatively constant across all economic cycles for more than three decades," the fact remains that – as the NCUA admits in the Proposed Rule's Release – "voluntary mergers can be used to create economies of scale to offer more or better products and services to [credit union] members."¹²

In support of the Proposed Rule, the Board highlights analysis suggesting that poor succession planning was cited for almost a third of industry mergers in recent years. It is unclear, however, whether the cited poor planning would be cured by the rule – especially in mergers of smaller institutions where we expect some of the factors weighing on the institution's continued success are just too acute.

It is noble that the NCUA Board is interested in helping credit unions reduce the number of mergers resulting from the lack of succession planning, we are just not sure how realistic it is.

Requirements of the Proposed Rule

The NCUA proposes to establish the new succession planning requirements by amending part 701 to add a new paragraph (e) to § 701.4. More specifically, the proposal would require that a credit union board of directors (1) establish a written succession plan addressing specified positions and containing certain information, and (2) review the succession plan in accordance with a schedule it establishes, but no less than annually.

In relying on the list of senior officials established in the FCU Act, the Proposed Rule establishes that the written succession plan must, at a minimum, cover an expansive list of credit union positions, including the following titles:

- Members of the board of directors;
- Members of the supervisory committee;
- Members of the credit committee, where such a committee, if involved in the daily review of loans;

¹² *Id.*, at 60330.

- Loan officers, where provided for in the FICU's bylaws in lieu of a credit committee and the loan officers are involved daily in the review of loans;¹³
- Management officials and assistant management officials; and
- The FICU's "senior executive officers"¹⁴ and any other FICU personnel the board of directors deems critical given the FICU's size, complexity, or risk of operations.

The Proposed Rule also establishes certain required contents for a written succession plan, requiring: (1) the identification and title of the incumbent for each covered position, the expiration of the incumbent's term or other anticipated vacancy date, and (2) the description of the general plan or strategy for temporarily and permanently filling vacancies for each of the positions, including vacancies due to unexpected circumstances. The Proposed Rule also requires that the succession plan summarize the strategy for recruiting candidates with the potential to assume each of the positions.

Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility

The Proposed Rule invites comment on the board responsibilities expected in the development of succession plans. More specifically, the NCUA seeks guidance on:

- whether the succession planning process would be better served by restricting or prohibiting deviations from the stated succession plan in between the mandated regular review period; and
- how the NCUA can provide better support to credit unions in developing succession plans and attracting new talent to the credit union system.

In our experience, the insistence of a precise schedule or the requirement of exact adherence to a policy established without the benefit of an actionable situation needlessly saddles a credit union board and limits its flexibility when such a situation presents itself. With this in mind, we do not see the benefit of a rigid rule insisting that any deviation from a succession plan in between mandated regular review periods is verboten. While we can see the benefit of requiring boards to consider succession before a live case is upon them, we are not persuaded that there is any benefit in allowing process decisions made in the abstract to control live decisions. As Mike Tyson once noted "[e]veryone has a plan 'til they get punched in the mouth."

As the NCUA specifically welcomes comment on the list of covered positions, we will offer our perspective. Again, in the interest of balancing the rule's utility with the cost of adherence, we suggest that the NCUA consider limiting its scope to the CEO and CFO (or equivalent). First, as we discussed above, boards or directors should not be covered by the rule, as they are not involved in the day-to-day affairs of a credit union. Boards traditionally act as a collective unit and the loss of an individual board member – even a key one – can be more easily absorbed for a period of time, without disrupting the daily operations of a credit

¹³ Because the NCUA is concerned with those individuals responsible for day-to-day management, under the Proposed Rule, succession plans must address credit committee members and loan officers only if such personnel are involved in the review of loans on a daily basis. Therefore, credit committee members and loan officers with duties limited to periodic review or specific lending decisions are beyond the reach of the Proposed Rule.

¹⁴ As defined in 12 CFR 701.14.

union. In many well-run credit unions, new board members can be promoted from an existing supervisory committee, which already serves as a farm team for the larger board. Finally, given the nature of the commitment, the potential pool of board members is larger than the potential management pool.

We also think it worthwhile for the NCUA to consider excluding credit committee members and loan officers from the scope of the Proposed Rule. While such a key departure would be unwelcomed, we are not sure that it would upset the typical credit union's day-to-day functioning so as to require the planning expected by this proposal.

The accuracy of the NCUA estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used

Again, we think the NCUA proposal is too ambitious in terms of its scope. Frankly, we see little that the agency might learn from collecting information about succession from participating credit unions. Moreover, we worry that, in an effort to abide by the Proposed Rule's requirements without expending much time and expense, many credit unions will adopt a policy that speaks in generalities and offers enough boilerplate to satisfy the NCUA. If this turns out to be the case, little will be gained from the exercise.

In crafting the proposal, the NCUA seeks plans that "provide sufficient detail and use language that is reasonably understandable"¹⁵ in describing the credit union's strategy for filling vacancies and for recruiting, developing, and retaining employees. While the agency seeks plans that are clearly and concisely written, with everyday language, we have a difficult time anticipating what a credit union might say in such a plan to distinguish itself from general open-ended statements. This concern is only heightened if the agency adopts a stance which prohibits adjustments to the policy other than at review periods pre-established by the credit union's board.

One of our favorite parts of the Proposed Rule is the amendment to § 701.4(b)(3), setting forth certain education requirements for credit union boards of directors and requiring a working familiarity with the succession plan.¹⁶ We believe it is quite appropriate for boards to maintain a working knowledge of the latest developments in all of the areas of risk that the credit union confronts. And, as is discussed at length in both the Proposed Rule and this Comment Letter, poor succession planning is certainly an area of potential exposure. Additionally, requiring a credit union board to consider succession should have the added benefit of stimulating a broader examination of available mentorship programs, educational opportunities, internships, staff development plans, and other similar efforts at the credit union.

Ways to enhance the quality, utility, and clarity of the information to be collected

As we describe in the balance of this Comment Letter, we think the best way to enhance the quality, utility and clarity of the information to be collected is to limit the scope of the Proposed Rule to the most important day-to-day functionaries at the credit union. In a sense, by limiting the requirements, the NCUA

¹⁵ *Succession Planning*, *supra* note 1, at 60333.

¹⁶ These amendments would be made applicable to state-chartered credit unions through proposed new § 741.228.

can encourage an increase in the quality of the adhering credit union’s presentation. We are confident that additional attention to each of these areas will bring a benefit all its own.

Maintaining a high-quality set of publicly available materials will also go a long way toward ensuring that credit unions are more likely to have high quality succession plans. As such, we expect a real benefit to the extent the NCUA maintains such a library and encourages other market participants – including trade associations and other industry groups – to do the same.

Estimates of capital or start-up costs and cost of operation, maintenance, and purchase of services to provide information

In adhering to the new regulations in this area, we expect that credit unions will fall in one of two categories. First, the larger and more sophisticated credit unions will rely on outside advisors – existing or new – to assist with the crafting of a compliant policy. Here, we do not anticipate the incremental expense to be significant. We expect that a second cohort – likely the less sophisticated or more expense conscious – will try to go it alone, relying on publicly available resources to support their efforts. For this group, the quality of available resources will be quite important in driving a successful process.

As part of the Proposed Rule, the NCUA emphasizes that succession plans should include an estimate of the budgetary impacts of execution. While the agency expects that these estimates should include the costs associated with new hires, including the hiring of recruitment firms and any increased compensation packages for new hires, we note that any such estimates could vary significantly from reality. And we expect that the widest variance will occur for those credit unions least able to absorb it – namely, smaller credit unions.

The inclusion of state-chartered credit unions within the scope of the regulatory amendments

The Proposed Rule would make the proposed amendments embedded in the new paragraph (e) of 701.4 applicable to state-chartered credit unions through an amendment to 12 CFR part 741, subpart B. More specifically, the NCUA will add a new § 741.228 to address succession planning. Like the agency, we support the application of the Proposed Rule to all consumer FICUs. We agree that any similar rule for corporate credit unions is unnecessary, as the Federal Credit Union Act already imposes ample requirements. With respect to state-chartered credit unions, we too recognize the importance of State law in internal governance. Additionally, we appreciate the delicate nature of a new rule where a state-chartered institution is already subject to State-specific succession planning requirements. Here, the NCUA’s suggested solution makes sense:

“to the extent that a FISCU is subject to a State statutory or regulatory requirement that conflicts with the proposed rule, the NCUA will defer to the State requirement.”¹⁷

For clarity, we suggest that the Proposed Rule might be enhanced by an additional affirmative statement from the NCUA similar to the following:

¹⁷ *Succession Planning*, *supra* note 1, at 60332.

“In applying such deference, the NCUA agrees that to the extent that a State statutory or regulatory requirement requires a lesser standard than that imposed by this Rule, such lesser standard will control and the NCUA will not insist on the application of its higher standard.”

The viability of the proposed template and other suggestions to improve succession planning and reduce the proposal’s burden for smaller credit unions

The NCUA suggests that smaller credit unions are the most likely beneficiary because data suggest that these firms are more likely to merge, and lack of succession planning is often a cause of mergers. We think this logic is tenuous at best. We are more concerned, as the Board concedes, that smaller credit unions “may lack the resources or expertise to develop succession plans.”¹⁸ While the NCUA has made efforts to offer these credit unions appropriate resources, and certain trade associations and industry groups also offer tools for additional support, in our estimation, the issue is less about the availability of resources than it is about the availability of time and attention from the credit union’s leaders. In our experience, the typical small credit union (if there is such a thing) already struggles mightily to run its business effectively and comply with the web of requirements already in place.

While the Proposed Rule allows for smaller credit unions to have “a simple succession plan that only addresses a few key leadership positions,”¹⁹ because they are “likely to have less expansive employee recruitment, development, and retention strategies,”²⁰ we question whether such an allowance will result in a plan that ultimately amounts to little more than a “check the box” exercise with boilerplate language to adhere to the rule. If that turns out to be the case, the exercise will simply be of no utility.

We have little to say directly with respect to the NCUA’s proposed “Succession Planning Template for Small Credit Unions.” As proposed, the document does little more than suggest a framework for the response to the requirements of the Proposed Rule in tabular form for those credit unions with under \$100 million in assets. While the structure will certainly suffice as a roadmap for compliance with the Proposed Rule, the proposal’s effectiveness will be measured by the quality of thought that produces the responses in each of the chart’s boxes.

The NCUA also suggests that, in developing and implementing succession plans, smaller credit unions might benefit from the assistance of their larger and more sophisticated credit union brethren. While we agree in theory, again, the practical reality is that the time and attention of the proper decisionmakers at the smaller credit union is the bottleneck on the throughput of a good plan – not the willingness of a larger credit union to assist. This is especially true in an industry that continues to distinguish itself by the collegiality and sharing instincts of its participants.

There is an additional consideration when it comes to smaller credit unions. Because resources are at a premium – particularly in the most recent environment where profitability has been under significant pressure – these firms are often not well equipped to compete for top talent. Moreover, it is less likely

¹⁸ *Id.*, at 60334.

¹⁹ *Id.*, at 60333.

²⁰ *Id.*, at 60334.

that they can monitor the available professionals on the market with any regular frequency. In essence, this means that some susceptibility to the unexpected departure of a key manager or board member is simply an inevitability that the smaller firm will likely confront.

Finally, the protection of a small credit union's time and resources takes on additional importance when one considers that parts of what might be addressed by compliance with the Proposed Rule are already encouraged by the agency. As the NCUA observes, under the guidelines codified in 12 CFR part 749, appendix B, the nation's credit unions are already encouraged to develop a program to prepare for a catastrophic event. Among other items, the existing guidelines suggest that credit unions address elements including (1) a "business impact analysis to evaluate potential threats," (2) the determination of "critical systems and necessary resources," and (3) the identification of the "[p]ersons with authority to enact the plan."²¹

Conclusion

We thank the NCUA Board and Staff for the consideration of this Comment Letter. And, we are grateful for the opportunity to share our views on the proposed regulatory change. While we look forward to the adoption of the Proposed Rule, we respectfully request that the NCUA give serious thought to the additional improvements we have summarized above.

Should you have any questions regarding our comments, please feel free to contact the undersigned at 908 432-6819 or mmacchiarola@oldenlane.com.

All the best,

/s/ Michael C. Macchiarola

Chief Executive Officer
Olden Lane Inc.

²¹ *Id.*