The National Voice of the State Credit Union System

June 29, 2020
Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street & Constitution Avenue NW
Washington, DC 20551

Re: NASCUS Comments - Docket No. R–1715; Regulation D: Reserve Requirements of Depository Institutions (RIN 7100-AF 89)

Dear Secretary Misback:

The National Association of State Credit Union Supervisors (NASCUS)[1] submits the following comments in response to the Board of Governors of the Federal Reserve System (the FRB) request for comments on the Interim Final Rule (IFR) related to Regulation D and transfer limits on certain "savings deposits."[2] The IFR amends the § 204 definition of "savings deposit" by eliminating the six-per-month limit on so-called "convenient" transfers. The rule also allows depository institutions to immediately suspend enforcement of the six-transfer limit and allow their account holders to make an unlimited number of convenient transfers and withdrawals from savings deposits.[3]

NASCUS appreciates the opportunity to submit comments on the FRB's changes to Regulation D. The FRB notes in the IFR's preamble that when the reserve requirements were eliminated on all transaction accounts the retention of Regulation D's distinction between reservable "transaction accounts" and non-reservable "savings deposits" became unnecessary. In addition, the FRB states in the preamble that the financial dislocation resulting from the COVID-19 pandemic has caused many depositors to have a more urgent need for access to their funds by remote means, particularly in light of the closure of many depository institution branches and other in-person facilities.[4] We agree.

NASCUS supports these changes and commend the FRB for taking the initiative to help consumers and depository institutions manage their finances during the COVID-19 pandemic. However, the changes to Regulation D are not without challenges for financial institutions. We respectfully submit the following recommendations for the FRB's consideration.

Knowing the Permanency of the Change is Essential for Credit Unions

[1] NASCUS is the professional association of the nation's 45 state credit union regulatory agencies that charter and supervise over 2,100 credit unions.
[2] Board of Governors of the Federal Reserve System, Reserve Requirements of Depository Institutions, 85 Fed. Reg. 23445 (April 28, 2020).
[3] 12 C.F.R. § 204.
[4] 85 Fed. Reg. 23446 (April 28, 2020).

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The changes enacted by the IFR are optional for financial institutions, which retain the authority to enforce transaction limits and classify accounts. Because a credit union's decision regarding treatment of deposit accounts carries with it numerous implications, it is important for credit unions to know if it is the FRB's intent that this change be permanent.

Credit unions considering a change to their treatment of deposit accounts will need to adjust their core systems, re-write internal policies and procedures, absorb a loss in revenue (in some cases), and likely issue notices to their members. As discussed below, credit unions will also likely have to consult counsel to determine applicability of other regulations to reclassified accounts as well as whether UDAP risks must be considered.

As promulgated, the IFR has no sunset provision, therefore reversing the elimination of the transaction limit would require a future notice and comment by the FRB. Furthermore, the FRB has indicated it has no current plans to reinstate the limit. However, that it would take future rulemaking to return to the status quo (or some variation thereof) is by no means a certainty. We recommend the supplemental material of a final rule contain an extended discussion of the FRB's views on the permanence of the changes to provide greater context to credit unions evaluating a change to their treatment of savings deposit accounts.

<u>The Final Rule Must Clarify the Application of Regulation CC to Deposit Accounts</u>

The IFR amends the definition of a "transaction account" in § 204.2(e)(2) to include a deposit account.[5] Credit unions now have the flexibility as to how they report these accounts. However, it is unclear how this change affects funds availability pursuant to Regulation CC.[6] While Regulation CC excludes deposit accounts, after the IFR there is no significant difference between a deposit account or § 204.2(e) transaction account. The FRB should clarify the applicability of Regulation CC to deposit accounts from which unlimited transaction are allowed.

Thank you again to the opportunity to submit comments in response to the Interim Final Rule amending Regulation D. NASCUS, state credit union regulators, and the state credit union system remain committed to working to ensure credit union members are served in a safe and sound manner during the COVID-19 crisis and beyond. We are available at your convenience to discuss our recommendations at your convenience.

Sincerely,

- signature redacted for electronic publication -

Brian Knight
Executive Vice President & General Counsel

[5] 85 Fed. Reg. 23448 (April 28, 2020).
[6] 12 C.F.R. 229.