

January 27, 2011

Mary Rupp, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Re: NCUA's Proposed Assessment of non-FICUs for Losses Sustained by TCCUSF
Federal Register November 29, 2010 (FR 73000 Vol. 75 No. 228 Section 704.21)

Dear Ms. Rupp:

The NCUA has proposed an amendment to the final corporate rules adopted in September 2010, which, if included in the final amendment to the corporate rules, would dramatically affect privately insured credit unions that are members of a corporate credit union. In this rulemaking NCUA seeks to force "voluntary" contributions to the Temporary Corporate Credit Union Stabilization Fund (TCCUSF) from all non-federally insured credit unions (non-FICUs) that are corporate credit union members. However, the "voluntary" is definitely in quotes because if the non-FICUs do not pay their assessments, the amendment requires the involved corporate credit union to call a membership meeting within 90 days for the purpose of its members voting on the expulsion of each of non-FICU "voluntary" contributors.

The NCUA lacks authority for rulemaking of this nature and is attempting to broaden the powers afforded it under the enabling federal legislation. Federal law clearly instructs the NCUA to charge only federally insured credit unions (FICUs) for any assessment due the TCCUSF (Section 217(d) of the Helping Families Save Their Homes Act of 2009 (S.896)). I believe this is why the NCUA is making its attempt at "Putting lipstick on a pig" by calling the assessments "voluntary". With repercussions, "voluntary" is definitely not an option.

Losses sustained by the TCCUSF are no different than any other losses sustained by the National Credit Union Share Insurance Fund (NCUSIF), which are statutorily not the responsibility of non-FICUs. If this amendment passes as proposed, it allows NCUA to assess privately insured credit unions for any and all losses incurred by the NCUSIF because it will set a precedent for this action.

The obligations of non-FICUs are equal to those of FICUs, but their rights to future dividends are non-existent. All credit unions, whether federally or privately insured, lost money with the failure of the corporates. However, non-FICUs could not recover any of their "voluntary" contributions because that vehicle, dividends, is not paid to non-FICUs. This is reminiscent of a war fought in this country in the late 1700's that had a slogan "No taxes without representation". In this case the slogan would be "No assessments without dividends."

Federal law requires privately insured credit unions to conspicuously disclose that they are "not backed by the full faith and credit of the US government." Since non-FICUs are not receiving government backing, why should they be required to pay for losses of a government agency? Corporates are backed

by the US government, not their investors or customers. TCCUSF was created to help federally insured credit unions only. This amendment gives non-FICUs status as backers of FICUs since their “voluntary” contributions would help ease the financial burden on FICUs, just as the US government does. How can non-FICUs be expelled from their corporate by not paying a “voluntary” contribution to a fund that gives them no benefits, services or protection?

Non-FICUs have no contractual or statutory obligation to pay such assessments to the NCUA. This is effectively taxing the non-FICUs with a “voluntary” contribution. Again this is reminiscent of that late 1700’s war slogan “No taxation without representation”. Non-FICUs are not required by any statute, either federal or state, to pay for federal share insurance losses while being privately insured. This therefore means that the NCUA has no regulatory or contractual authority over non-FICUs.

How can a non-FICU be expelled when it has made its required capital contribution(s) to a corporate credit union and has otherwise honored its obligations under its membership agreement with such corporate credit unions? As a full investor in their corporate, non-FICUs should have the same rights to participation and membership. Non-payment of a “voluntary” contribution cannot be grounds for expulsion since it has no legal affiliation with or responsibility to pay. Again, this makes “voluntary” a fairy tale. Also, expulsion of a non-FICU must be based on good faith and the exercise of fiduciary duties. Is it not the fiduciary duty of the non-FICUs to protect their members’ assets? Wouldn’t a payment schedule of 11 years of a “voluntary” contribution be a bad use of members’ money?

The NCUA currently has no official authority to force a corporate to call a special meeting for the purpose of expelling a member. This proposed amendment would give that authority to the corporate. Currently, corporates call special meeting at the request of 5% of their members, not at the demand of the NCUA. Also, if expelled by the corporate with subsequent financial harm to the non-FICUs is found illegal at a later date by either federal or state courts, this opens legal ramifications for the non-FICUs voluntary Board members. As one of these voluntary Board members, on a non-FICU, I do not accept this illegal and high handed imposition by NCUA, upon me personally. A federal agency that imposes statutes on anything without going through all legislative avenues, in this case directly around the legislation, is not to be tolerated.

I hope that my concerns will be considered when this amendment is deliberated and acted upon. If there are any concerns or questions, I can be reached at rdemeter@mctcu.org. Thank you for your time and consideration.

Very truly yours,

Rebecca M. Demeter

Board Member MCTCU

