

BOARD ACTION MEMORANDUM

TO: NCUA Board

DATE: July 15, 2009

FROM: Office of General Counsel

SUBJ: Revisions to Temporary Corporate Credit Union Liquidity Guarantee Program (TCCULGP) Agreement

DATE ACTION REQUESTED: July 16, 2009.

ACTION REQUESTED: Board approval of revisions to TCCULGP Agreement.

OTHER OFFICES CONSULTED: Office of Examination and Insurance and Office of Corporate Credit Unions.

VIEWS OF OTHER OFFICES CONSULTED: Concur.

SUBMITTED TO THE INSPECTOR GENERAL FOR REVIEW: Yes.

BUDGET IMPACT, IF ANY: None.

RESPONSIBLE STAFF MEMBERS: Trial Attorney Dianne Salva, Office of General Counsel.

SUMMARY: NCUA staff is recommending revisions to the TCCULGP agreements to refine and clarify the claim process and align the agreements more closely to those currently used in financial markets. The revisions will enhance Corporate Credit Unions (CCUs) ability to maintain stable liquidity by enabling them to access funds through public offerings of senior unsecured debt obligations. The revision will also implement the Board's order to legally obligate the Temporary Corporate Credit Union Stabilization Fund (TCCUSF) for payments required by the TCCULGP.

BACKGROUND: On October 16, 2008 the NCUA Board established the TCCULGP to provide a NCUSIF guarantee for newly issued senior unsecured debt obligations of federally insured corporate credit unions (CCUs). On May 21, 2009, the NCUA extended the terms and conditions of the TCCULGP and revised the fees charged to CCUs participating in the program. On June 18, 2009 the NCUA Board also ordered the Executive Director and the Director OCCU, with assistance from the General Counsel, to legally obligate the TCCUSF for any liability arising from the TCCULGP.

The proposed revisions to the TCCULGP agreement identify the TCCUSF, rather than the NCUSIF as the source of funds for the TCCULGP guarantee. This will implement the Board's June 18 order to legally obligate the TCCUSF for any liability under the TCCULGP. The revised agreement specifies that it is intended to amend, revise and supplement any earlier agreements, so that the liability under the TCCULGP is transferred to the TCCUSF from the NCUSIF.

Additional proposed revisions to the TCCULGP agreements are intended to address the needs of CCUs that are considering raising funds through public offerings to large investors. Large investors are particularly interested in ensuring timely payment of scheduled payments of principal and interest with minimal credit risk. Any perceived delay in timely payment of principal and interest, despite the guarantee, makes the debt less attractive and tends to increase the cost to CCUs. Also, to the extent that investors are confident that, in the event of default, the process for obtaining guaranteed payments will be quick, smooth and unfettered by excessive technical requirements, they will find TCCULGP debt attractive for investment.

Banks have already successfully used the FDIC Debt Guarantee Program to raise funds through public offerings. Investors and credit ratings agencies are now familiar with the structure of the FDIC program and comfortable with the language of the agreement it has used. The TCCULGP is similar to the FDIC program, but because the FDIC program more clearly defines the claim process and includes other provisions that strengthen investor confidence, there is a concern that CCUs will be at a disadvantage compared to banks conducting public offerings. The proposed changes more closely align the language of the TCCULGP agreement to that of the FDIC Debt Guarantee Master Agreement, and include approved forms that may be used in the claim process. By doing so, we intend to favorably impact the cost and marketability of CCU debt offered in public markets.

The proposed changes will permit claims to be filed either by individual debt-holders or by an authorized representative of debt-holders, and require the CCU to notify the TCCUSF within one business day of any default in the payment of principal or interest due on a guaranteed debt. The proposed new TCCULGP agreements include approved Proof of Claim and Assignment forms that may be used upon default. They also clarify that if NCUA terminates a CCU from the TCCULGP due to false or misleading statements, such termination will operate prospectively, and would not affect guarantees issued prior to the termination. Finally, they include additional terms to specify venue, severability, and governing law in the event of a legal dispute. A copy of the proposed TCCULGP Agreement is attached.

Staff also recommends that the Board authorize publication of a Notice in the Federal Register to inform the public about the approved Proof of Claim and Assignment forms. Copies of the proposed Federal Register Notice and forms are attached. Finally, to give full public access to the terms of the TCCULGP program, staff recommends that a sample TCCULGP agreement be made available on the Corporate Stabilization page of the NCUA website.

RECOMMENDED ACTION: Staff recommends that the Board: 1) approve the revisions to the TCCULGP agreement as outlined in this memorandum; (2) delegate to the Executive Director the authority to implement and oversee the revised TCCULGP, including the authority to make minor changes to the attached TCCULGP agreement and to execute the revised Agreement with each participating CCU; (3) publish a notice in the Federal Register, together with the authorized Proof of Claim and Assignment forms to announce the changes, and place a sample TCCULGP Agreement on the Corporate Stabilization page of the NCUA Website.

Attachments