



NATIONAL CREDIT UNION ADMINISTRATION
OFFICE OF INSPECTOR GENERAL

REPORT OF INVESTIGATION

**Herbert S. Yolles /
State Employees' Credit Union**

May 1, 2012

REDACTION KEY

1. Headings (all pages): Law Enforcement/Information that would disclose techniques and procedures for investigations or prosecutions. Protected by FOIA Exemption (b)(7)(E)
2. Page 1/Signature Lines. Law Enforcement/Personal Identifying Information (PII). Protected by FOIA Exemption (b)(7)(C)
3. Pages 4-6. Examination information. Protected by FOIA Exemption (b)(8)
4. Pages 7-9. Law Enforcement/PII. Protected by FOIA Exemption (b)(7)(C)



NATIONAL CREDIT UNION ADMINISTRATION
Office of Inspector General
Investigations Division

REPORT OF INVESTIGATION

CASE NUMBER: [REDACTED]
CASE TITLE: Herbert S. Yolles
SUBJECT: Herbert S. Yolles, NCUA Regional Director, Region III-Atlanta,
7000 Central Parkway, Suite 1600, Atlanta, GA 30328
STATUS: Closed (05/01/12)
VIOLATIONS: N/A

PREDICATION:

The National Credit Union Administration (NCUA) Inspector General William DeSarno received a letter dated January 31, 2012 (**Exhibit 1**), from James C. Blaine, President, State Employees' Credit Union (SECU), Raleigh, North Carolina (NC), requesting that the Office of Inspector General (OIG) "undertake a review of statements made about SECU in a December 6, 2011 letter (**Exhibit 2**) from Mr. Herb Yolles, Region III Director of NCUA to Ms. Jerrie Jay, Administrator of the North Carolina Credit Union Division (NCCUD)." After a preliminary review of this matter, the OIG opened an investigation to determine whether Yolles made false statements when he wrote the following in the December 6, 2011, letter:

1. *As a secondary issue, at a joint conference with the full SECU Board on 9/19/2011, you [Jay] announced that NCUA had initiated the process of termination of NCUSIF insurance of SECU share accounts.*
2. *I am also very concerned about the leak of confidential examination documents. Specifically, at a meeting attended by your [Jay's] office on 7/28/10 Mr. Blaine*

DISTRIBUTION:

Executive Director
David M. Marquis

CASE AGENT:

[REDACTED]

APPROVED:

William A. DeSarno
Inspector General

produced a rough draft working copy of a DOR¹ which was being developed by NCUA.

To place the December 6, 2011, letter into context, Yolles presented the [post-dated] letter to Jay at the close of a meeting in Jay's office on December 5, 2011. In addition to Jay and Yolles, NCUA Executive Director David Marquis and NCUA General Counsel Michael McKenna were present at the meeting. In the first paragraph of the letter, Yolles advised the NCCUD that effective January 1, 2012, NCUA would conduct independent annual insurance reviews of all North Carolina (NC) state-chartered credit unions. Yolles also notified Jay that NCUA would no longer provide computers or training to the NCCUD and would begin directly processing quarterly call reports from NC state-chartered credit unions. The second paragraph of the letter cited Jay's authorization for the public release of the state-issued CAMEL rating for SECU as an unacceptable release of exempt records in violation of the NCUA Rules and Regulations, Part 792 and, consequently, the reason for NCUA's decision.

By letter to Marquis dated December 16, 2011 (**Exhibit 3**), Jay responded to the hand-delivered December 6, 2011, letter. Under subparagraph (b) of her letter, Jay referenced Yolles' statement in the December 6, 2011, letter, that she had "announced that NCUA had initiated the process of termination of NCUSIF share insurance of (SECU) share account." Jay wrote in the December 16 letter that, "[p]lainly stated, this assertion is false." Rather, Jay recounted, she "asked Herb Yolles more than once . . . whether or not NCUA—by its own written correspondence—was instituting the process of terminating the insurance status of the credit union."

Also in the December 16 letter, Jay referenced Yolles' statement that she leaked confidential examination documents. Jay asserted that "[c]ontrary to NCUA's assertion, the document (the DOR) was given to Mr. Blaine, CEO of (SECU), by NCUA examiner(s) at the NCUA's management/exit conference."

As noted above, Blaine contacted the OIG by letter dated January 31, 2012, seeking an OIG review based on his belief that Yolles' statements were false. The OIG limited its investigation to Yolles' statements that: (1) Jay announced that NCUA intended to terminate SECU's NCUSIF share insurance; and (2) Jay or someone in her office gave an early draft of a DOR to SECU prior to the exit conference date. The OIG did not review the issues of Jay's authorization for SECU to release its CAMEL rating, the NCUA's determination that the release violated NCUA Rules and Regulations, Part 792, or NCUA's ensuing decision to conduct separate examinations of NC credit unions.

The OIG obtained information relevant to the allegations from a variety of sources, including interviews, documents, and audiotapes obtained from NCUA, SECU, and NCCUD, and a review of the audiotape transcripts for the two meetings between NCUA,

¹ Document of Resolution.

NCCUD, and/or SECU officials on September 19, 2011, and December 5, 2011, respectively.² Moreover, on March 28, 2012, the RA met with Blaine and several other SECU Board members, on-site at SECU administrative offices in Raleigh, NC. At that time, the RA formally interviewed Blaine in connection with this investigation.

SUBJECT(S) INFORMATION:

Herbert S. Yolles, NCUA Regional Director, Region III-Atlanta, 7000 Central Parkway, Suite 1600, Atlanta, GA 30328

DETAILS:

The OIG investigated whether Yolles made false statements in the December 6, 2011, letter to Jay when he stated that:

1. Jay *announced*, at a joint conference with the full SECU Board on September 19, 2011, that NCUA had initiated the process of termination of NCUSIF insurance of SECU share accounts; and
2. Jay or someone in the NCCUD leaked a confidential examination document (a rough draft working copy of a Document of Resolution (DOR)) to Blaine prior to or at the time of a July 28, 2010, meeting in Jay's office.

(Emphasis added.)

Allegation 1:

The September 19, 2011, meeting took place at SECU administrative offices in Raleigh, NC. Several NCUA representatives, including Yolles, met with Blaine, Jay, and the full SECU Board of Directors to discuss the most recent NCUA insurance review. This was the third special meeting the SECU Board had called with NCUA officials over the previous 15 months. Both SECU and NCUA separately made audio-recordings of the meeting. The OIG acquired copies of both the SECU and NCUA audio-recordings, and confirmed that they were complete and matching recordings (**Exhibit 4**).

Both Blaine and Jay have maintained that Yolles' assertion—as set forth in the December 6 letter-- that Jay *announced* to the SECU Board at the September 19 meeting that NCUA had initiated the process of termination of NCUSIF insurance of SECU share accounts, was false. (Emphasis added.) In letters to the OIG and NCUA, as well in interviews with the Reporting Agent (RA), both stated that at that meeting, Jay was inquiring---not announcing--whether or not NCUA was initiating the process of terminating SECU's insured status. Jay referred specifically to a letter from Yolles to

² The OIG contracted with Veritext (www.veritext.com) for transcription services.

Blaine, dated July 14, 2011 (**Exhibit 5**), wherein Yolles stated that “SECU [REDACTED]” Jay stated that her reading of the provisions of the Federal Credit Union Act led her to conclude that when NCUA notified SECU in writing that the credit union [REDACTED], the NCUA was, in effect, likewise notifying SECU that NCUA had taken the first step in the process of terminating the SECU’s insured status. According to Jay, given NCUA’s declaration that SECU [REDACTED], “it would have been imprudent for me [Jay] not to ask that question.” (Emphasis in original.)

Alternatively, in interviews and written exchanges with the OIG, Yolles maintained unequivocally that the statements Jay made at the September 19 meeting--linking his declaration in the July 14, 2011, letter that SECU [REDACTED] to NCUA’s process for termination of insurance status--were tantamount to an announcement that NCUA had in fact initiated the share insurance termination process.

Given Jay and Yolles’ decidedly differing perceptions of Jay’s statements at the September 19 meeting, the OIG listened to the audio-recordings of the meeting, and perused the relevant portions of the transcript. In pertinent part, the transcript of the discussion between Jay and Yolles on this issue was as follows:³

JJ: . . . You did write a letter, didn’t you, that said this institution [REDACTED] [REDACTED]?

HY: I believe so.

. . .

JJ: . . . So does your—here’s my question. As a regulator to an insurer, does your saying, as the representative of NCUA [REDACTED] [REDACTED] are you putting—do you speak for the Board in that you represent the Board?

HY: Yes.

JJ: Okay. So that puts us on the track of the Board having declared this credit union [REDACTED].

HY: I haven’t seen the NCUA Board declare anything regarding State Employees Credit Union.

JJ: You just said that you spoke for and it was—

³ Punctuation represented is identical to that provided by Vertitext.

HY: I speak as a representative of NCUA.

JJ: . . . What I'm trying to get you to tell me is, have y'all put this credit union on track to withdrawal (sic) the insurance because the first thing you have to do is say this credit union [REDACTED] and that's what you did.

It's clear in black and white. You wrote it. Right?

HY: No. I disagree with you strongly.

JJ: In what comment?

HY: And so far I have not heard any discussion or any mention of termination of insurance.

JJ: You're the one who—it's in your letter.

HY: ---you raised that subject.

JJ: It was your letter.

HY: Can you show me where those words are in the letter, please?

JJ: Yes.

HY: On termination of insurance?

JJ: No. No. No. No. No. I can show you in the law where the first step is for the Board to [REDACTED].

HY: You know, you're raising that subject. I'm not.

JJ: Yes, I'm raising it. I'm the regulator.

HY: You are. You're not the insurer.

. . .

HY: We don't have a hidden agenda here of trying to find a way to terminate insurance. You're the one—

JJ: It's your letter, Herb.

HY: I don't see the words termination of insurance in any of my letters.

JJ: That's not what it said. That's the first step of it in your law.

HY: In your mind it might be.

JJ: Your general counsel is sitting right back there.

HY: In your mind it might be. I'm not even going there. I'm not even addressing that subject.

In listening to the audio-tape and reading the transcript, it is inarguable that Jay was propounding insistently and persistently her concern that Yolles' statement in the July 14, 2011, letter--that "[REDACTED]"--was linked inextricably to NCUA's rules for initiating the process of termination of share insurance status. Nevertheless, an objective consideration of Jay's voice inflection throughout the exchange with Yolles could also lead a reasonable listener to conclude that Jay was strategically attempting to extract from Yolles an admission that NCUA's intention—albeit unstated-- was to withdraw share insurance from SECU (if it had not already begun to do so). Consequently, in listening to the audio-tape exchange between Jay and Yolles and reading the transcript as a whole, rather than isolating each speaker's statements, Jay appears to be questioning Yolles about NCUA's actual or prospective intentions, much in the manner of a cross-examination, and not necessarily making an unequivocal pronouncement that NCUA had in fact initiated the termination process.

On Yolles' part, he insisted that Jay's statements during the September 19 meeting amounted to an announcement that NCUA had begun the process of withdrawing share insurance from SECU, and that she was not merely questioning him. In support of his interpretation of the exchange, Yolles pointed in particular to Jay's statements as follows:

JJ: . . . What I'm trying to get you to tell me is, have y'all put this credit union on track to withdrawal (sic) the insurance because the first thing you have to do is say this credit union [REDACTED] and that's what you did.

It's clear in black and white. You wrote it. Right?

In particular, Yolles based his interpretation of Jay's statements on the phrases ". . . that's what you did" and "[i]t's clear in black in white." However, in reading these phrases in the context of the entire exchange, it seems more likely that Jay was referring to Yolles' statement in his July 14, 2011, letter (that "[REDACTED]"), and not to an articulated NCUA decision to initiate the process to withdraw share insurance from SECU. Indeed, Jay admitted that the July 14 letter did not raise the issue of termination of the share insurance (" . . . No. No. No. No. No. . . .").

Allegation 1 Findings:

A careful consideration of the exchange between Jay and Yolles at the September 19 meeting indicates that Jay was inquiring whether NCUA had initiated the process of terminating SECU's share insurance status, not "announcing" it. However, given the leading nature of Jay's questions and the heatedness of their exchange, we can see how Yolles might have concluded that Jay's statements amounted to an announcement. Therefore, we cannot conclude that Yolles' statement in his December 6 letter, *viz.*, that Jay *announced* that NCUA had initiated the process of termination of NCUSIF insurance of SECU share accounts, meets the definition of a false statement under 18 U.S.C. § 1001.

Allegation 2:

In the same December 6, 2011, letter from Yolles to Jay, Yolles accused Jay or someone in the NCCUD of leaking a confidential examination document (a rough draft working copy of a DOR) to Blaine prior to or at the time of a July 28, 2010, meeting in Jay's office. According to Yolles, he and David Hibshman, NCUA Region III Associate Regional Director-Programs, noticed that Blaine was reading from an early draft of a DOR. Both Yolles and Hibshman told the RA that it was inappropriate for Blaine or any other SECU official to have access to or possession of a draft DOR. According to NCUA General Counsel McKenna, NCUA considers a draft DOR a confidential exam document which is only made available to a credit union once it is a final document. McKenna stated further that there is an understood expectation between NCUA and state regulators that draft DORs will remain confidential.

The investigation found that on June 16, 2010, at 4:18 p.m., NCUA [REDACTED] NCCUD, copies of the draft DOR for SECU, as well as a document entitled "Examiner's Findings." The investigation found further that, by email dated June 16, 2010, (4:52 p.m.), [REDACTED] sent an email to Jay forwarding as attachments the documents [REDACTED] had provided [REDACTED] that afternoon. While the OIG was able to obtain a copy of the email from [REDACTED] to Jay, wherein [REDACTED] stated "[REDACTED] provided me these draft documents before leaving today," that copy did not reflect an "Attachments:" line or include the referenced documents. However, in an email dated June 18, 2010 (7:59 a.m.), Jay forwarded to Mike Lord, SECU Senior Vice President of Finance, [REDACTED] email and two attachments identified as 66310EF(2).doc and SECU DOR Draft 6-16-2010.doc. In response to the RA's request, on March 30, 2012, Lord sent copies of these attachments to the RA via email (**Exhibit 6**). The RA verified that the attached documents, identified as 66310EF(2).doc and SECU DOR Draft 6-16-2010.doc, were the Examiner's Findings document and the draft DOR, respectively.

On June 17, 2010 (10:01 a.m.), [REDACTED] further emailed [REDACTED] a document entitled "NCUA Contact Items" (**Exhibit 7**). [REDACTED] indicated that through another individual, [REDACTED] also routed the NCUA Contact Items document to Lord. The RA reviewed the draft DOR and the NCUA Contact Items document and found that while the formatting was different, the Contact Items document contained information identical to information in the DOR.

On March 20, 2012, the RA interviewed Yolles regarding the unauthorized disclosure allegation. The RA asked Yolles if he had actually seen the draft DOR in Blaine's possession at the July 18 meeting. At that time, Yolles stated he did not remember exactly, but was 50/50 certain that Blaine was reading from the DOR. The RA informed Yolles that a document (NCUA Contact Items) given to SECU by [REDACTED] contained information identical to what was in the draft DOR, and asked Yolles whether it was possible that Blaine was reading from the Contact Items document rather than the DOR. Yolles stated he was still pretty certain Blaine was reading from the draft DOR. Yolles explained further that based on an inquiry his office conducted, he concluded that no one at NCUA provided the draft DOR to SECU; rather, the only way SECU could have obtained it would have been from someone at the NCCUD.

On April 10, 2012, the RA re-interviewed Yolles at his request. Yolles indicated that he wished to discuss statements he had made in his earlier interview. He stated that after rethinking those statements, he was now 100% positive that Blaine had the draft DOR in his possession at the July 28, 2010, meeting. The RA asked why he changed his previous statement that he was only 50/50 certain that the document Blaine was reading from was the draft DOR, rather than the NCUA Contact Items document. Yolles stated he originally answered as he did to "err on the side of caution." He stated that after reconsidering, he now had no doubt that the document Blaine possessed was a draft DOR. Yolles further recalled asking Blaine during that meeting what he (Blaine) was reading from. He stated that Blaine showed both him and Hibshman a marked up version of a NCUA draft DOR. Yolles stated his memory was now "crystal clear" with regard to what he saw in Blaine's possession.

On April 10, 2012, the RA interviewed Hibshman. Hibshman stated he was in attendance at the July 28, 2010, meeting in Jay's office. He stated this meeting was extremely short and was meant to deal with issues between NCUA and SECU. Hibshman stated that during the meeting, Blaine was quoting from a document which mentioned several issues dealing with exam requirements. He recalled Yolles asked Blaine what he was reading from and Blaine showed them (Yolles and Hibshman) a draft DOR. Additionally, Hibshman stated Blaine referred to the document as a DOR. He recounted that Yolles explained to Blaine that several of the issues on the draft DOR were already resolved, since it was an early draft. Hibshman stated he saw the draft DOR in Blaine's possession. He stated it was not the NCUA Contact Items document given to SECU by [REDACTED].

On April 17, 2012, the RA spoke with Jay about the email she sent to Lord on June 18, 2010 (**Exhibit 8**). Jay stated she was unable to find this email because her computer system had been changed since 2010, and older emails were purged. She stated that, given what Lord provided the RA, she had no reason to doubt that the draft DOR was an attachment to her email to Lord. She indicated that she did not recall attaching the DOR to the email and, if she did, it was unintentional. Jay pointed out that the NCUA Contact Items document (provided to SECU by [REDACTED]) and the draft DOR were virtually the same document and contained the exact same information. Jay told the RA that she would have discussed this information with SECU in order to prepare for the meeting with NCUA, SECU, and herself. She stated this is standard procedure for the regulator (**Exhibit 9**).

Allegation 2 Findings:

The investigation substantiated that Jay attached a copy of the draft DOR to her email to Lord on July 18, 2010. Consequently, the evidence does not support a finding that Yolles' statement in the December 6, 2011, letter was false.