National Credit Union Administration

Office of the Chairman

August 8, 2017

The Honorable Ann Wagner
Chairman
House Subcommittee on Oversight and Investigations
Committee on Financial Services
435 Cannon House Office Building
Washington, DC 20515

Dear Chairman Wagner:

I am writing to you to address and clarify some assertions in an August 3 letter from Camden R. Fine, President and CEO of the Independent Community Bankers of America. The letter was ostensibly concerned with the legal recoveries and attorneys' fees associated with the NCUA's lawsuits on behalf of five failed corporate credit unions. Because the letter contained some inaccuracies, I feel compelled to set the record straight.

Foremost is Mr. Fine's statement that, "In effect, over $1 billion in taxpayer money was channeled through the NCUA into inflated legal fees." This is not correct.

I have made it clear I regard the fees paid to outside counsel to be excessive, and NCUA has endeavored to re-negotiate those contracts. Neither my fellow NCUA board member Rick Metsger nor I were involved in either vetting outside counsel or negotiating the terms of the corporate-credit-union-related legal services agreements. The agency should continue its efforts to negotiate a fair and transparent modification of these legal services agreements, where outside counsel has received, to date, over $1.1 billion in fees. These fees are regrettably excessive, yet our good faith efforts to reach an equitable accord with the recipient law firms have not succeeded. While the fees paid under these contracts may be subject to debate, their source is not. No taxpayer funds were lost through the restructure of the corporate credit unions and no taxpayer money was spent on attorney's fees, either directly or indirectly. Instead, the funds to pay the legal fees came from the approximately $5 billion in recoveries and were paid from the proceeds of each of the settlements.

As conservator and liquidating agent for each of the five failed corporate credit unions, the NCUA Board has a fiduciary responsibility to collect debts and obligations owed those corporate credit unions. That duty includes using reasonably available legal means to seek recoveries from parties that contributed to the corporate credit unions' losses. To fulfill this duty, the Board filed many lawsuits, primarily against entities that sold faulty residential mortgage-backed securities to the five failed corporates. The NCUA was the first federal financial institution regulator to pursue this type of litigation. The agency's efforts in obtaining legal recoveries were very successful.

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The NCUA's approach to resolving the corporate crisis, part of the much larger financial crisis at the time, shielded taxpayers from loss. During the crisis, Congress created the Temporary Corporate Credit Union Stabilization Fund (Stabilization Fund) to accrue the losses from the five failed corporate credit unions and assess insured credit unions to pay for such losses over time. The Stabilization Fund is funded from two primary sources: $4.8 billion in assessments paid by insured credit unions and borrowings on the NCUA's $6 billion line of credit with the U.S. Department of the Treasury. The Federal Credit Union Act and NCUA regulations require that net proceeds from these recoveries be used to pay claimants against the liquidated corporate credit unions, including the Stabilization Fund. These payments, in the form of assessments and legal recoveries to the Stabilization Fund, have permitted the NCUA to responsibly and prudently meet its obligations as set by Congress. On October 24, 2016, NCUA repaid the U.S. Department of Treasury in full with interest, ensuring no loss to U.S. taxpayers.

Finally, in addition to helping mitigate further assessments on credit unions, these legal recoveries contributed to the Board's action in July to propose closing the Stabilization Fund in 2017. Closing the Stabilization Fund this year could result in a distribution made to insured credit unions in 2018 projected to range from $600 to $800 million.

I hope this information provides some clarity on the NCUA's legal recoveries and how its litigation costs are paid for. Please don't hesitate to contact me with questions or concerns.

Sincerely,

J. Mark McWatters
Chairman

cc: House Committee on Financial Services