

Open Board Meeting

April 30, 2015

**Board Member J. Mark McWatters  
Statement on the Credit Union Insurance Parity Act**

Although I will vote to approve the proposed Credit Union Share Insurance Fund Parity Act (Insurance Parity Act) regulations (Proposed Rule) before the Board today, I wish to offer my observations regarding additional regulatory relief for credit unions that is not currently before the Board.

The recently enacted Insurance Parity Act requires NCUA to provide enhanced, pass-through share insurance for “interest on lawyers trust accounts” (IOLTA) and “other similar escrow accounts.”

Under the Insurance Parity Act share insurance is available for client funds deposited at an insured credit union by an attorney administering an IOLTA account provided the *attorney* is a member of the credit union. The interests of the attorney's client in the deposited funds, regardless of the client's membership status in the credit union, are insured on a pass-through basis from the attorney. That is, the membership status of the attorney in the credit union passes through and affords the non-member client with share insurance on the funds deposited by the attorney in the IOLTA account for the benefit of the client. Prior to the enactment of the Insurance Parity Act, NCUA insurance coverage was limited to clients of the attorney who were also members of the insured credit union where the IOLTA account was maintained.

As noted in the Proposed Rule, the Insurance Parity Act defines “pass-through share insurance,” with respect to IOLTA accounts and “other similar escrow accounts,” as “insurance coverage based on the interest of each person on whose behalf funds are held in such account by the attorney administering the IOLTA or the escrow agent administering a similar escrow account, in accordance with regulations issued by [NCUA].”<sup>1</sup> In December 2014, NCUA announced that insured credit unions could immediately begin offering IOLTA accounts with share insurance coverage and that the Agency would propose regulations regarding the availability of share insurance to “other similar escrow accounts” as provided in the Insurance Parity Act.

In the Proposed Rule before the Board today the phrase “other similar escrow accounts” is interpreted to include “typical realtor escrow accounts” and “prepaid funeral expenses”<sup>2</sup> since “each of these kinds of account has a licensed professional or other individual serving in a fiduciary capacity and holding funds for the benefit of a client as

<sup>1</sup> Pub. L. No. 113-252, 128 Stat. 2893 (2014).

<sup>2</sup> I encourage members of the credit union community to comment on what constitutes “typical realtor escrow accounts” and “prepaid funeral expenses” as well as other items that should qualify as “other similar escrow accounts.”

part of some transaction or business relationship.”<sup>3</sup> Although I concur with the result—beneficiaries of “typical” realtor escrow accounts and prepaid funeral expense should receive share insurance protection under the Insurance Parity Act—the analysis and interpretation provided in the Proposed Rule are nonetheless too narrowly drawn and restrictive in application.

Along these lines, the Proposed Rule concludes that “prepaid card programs” do not generally qualify as “escrow accounts similar to IOLTAs for share insurance purposes because the characteristics that define an attorney’s relationship with, and the fiduciary duties owed to, the attorney’s clients are typically not present in the prepaid card scenario.”<sup>4</sup> I disagree with this perspective since prepaid card programs<sup>5</sup> and stored value products<sup>6</sup> create a relationship of trust and mutual expectations and, perhaps, evidence a legally enforceable duty and entitlement right between the holder of the credit union share account and the recipient of the prepaid card or stored value product that is *similar* to the relationship established between an attorney and his or her client.<sup>7</sup> It is reasonable to argue that the holder of a share account maintains deposited funds in trust for the benefit of the holder of a prepaid card or stored value product and that the holder may have a legally enforceable right to receive the funds evidenced by the card or product. When viewed from this perspective, prepaid card programs and stored value products do indeed appear “similar” to IOLTA accounts and “other similar escrow accounts.” In addition, it is worth emphasizing that Congress chose the phrase

<sup>3</sup> Credit Union Share Insurance Fund Parity Act Proposed Regulations, page 10.

<sup>4</sup> *Id.*, page 13.

<sup>5</sup> State Department FCU offers an example of a prepaid card, <https://www.sdfcu.org/emv-prepaid-card>.

<sup>6</sup> Navy Federal Credit Union offers an example of a stored value product, <https://www.navyfederal.org/products-services/cards/giftcards/gift-cards.php>.

<sup>7</sup> FFIEC offers a description of prepaid card programs and stored value products that is noted in the Proposed Rule:

The market for prepaid cards, sometimes called stored value cards, is one of the fastest growing segments of the retail financial services industry. While the terms prepaid cards and stored-value cards are frequently used interchangeably, differences exist between the two products. Prepaid cards are generally issued to persons who deposit funds into an account of the issuer. During the funds deposit process, most issuers establish an account and obtain identifying data from the purchaser (e.g., name, phone number, and etc.). Stored-value cards do not typically involve a deposit of funds as the value is prepaid and stored directly on the cards. Because its business model requires cardholders to pay in advance, it substantially eliminates the nonpayment risk for the issuing financial institution. The functionality of this product is leading to a wide range of card programs that operate in either closed or open-loop systems, and program innovation has resulted in the development of systems that operate in both structures. Closed-loop systems are generally retailer/issuer business models, while general-purpose cards issued by financial institutions tend to operate in open-loop systems. Open-loop system prepaid cards are processed using the same systems as the branded network cards—MasterCard, Visa, American Express, and Discover—and offer the same functionality. See, [http://ithandbook.ffiec.gov/it-booklets/retail-payment-systems/payment-instruments,-clearing,-and-settlement/card-based-electronic-payments/prepaid-\(stored-value\)-cards.aspx](http://ithandbook.ffiec.gov/it-booklets/retail-payment-systems/payment-instruments,-clearing,-and-settlement/card-based-electronic-payments/prepaid-(stored-value)-cards.aspx).

“other *similar* escrow accounts” and not “other *substantially similar* escrow accounts,” or “other *identical* escrow accounts.”

I look forward to hearing from the credit union community on the Proposed Rule and hope that the final rule, at a minimum, will expand the interpretation of “other similar escrow accounts” to include prepaid cards and stored value products so as to afford much needed regulatory relief to credit unions.

Thank you.