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National Credit Union Administration
Office of General Counsel
1775 Duke Street
Alexandria, VA, 22314
Fax: 703- 518-6569
Email: FOIA@ncua.gov

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National Credit Union Administration

May 20, 2013

SENT BY E-MAIL

RE: FOIA 13-FOI-00078

This letter responds to your Freedom of Information Act (FOIA) request received by our office on April 22, 2013. You requested a copy of written responses from the NCUA to congressional committees from 2012 to April 22, 2013.

Your request is granted in part. Attached are 21 pages, six of which include some redactions. The withheld information qualifies for protection under the FOIA exemptions at 5 U.S.C. § 552(b)(8) meaning as follows:

- Subsection (b)(8) protects matters that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

If you are not satisfied with our response to your request, you may file an administrative appeal. An appeal must be in writing and filed within 30 days from receipt of this initial determination. If you file an appeal, please note "FOIA-APPEAL" in the letter and on the envelope and address your appeal to: National Credit Union Administration, Office of General Counsel - FOIA APPEAL, 1775 Duke Street, Alexandria, VA 22314-3428.

Sincerely,

A handwritten signature in blue ink that reads 'Regina Metz'.

Regina Metz
Staff Attorney

GC/CS,RM
13-FOI-00078
Attachment



National Credit Union Administration

Office of the Chairman

January 5, 2012

The Honorable Spencer Bachus
Chairman
Committee on Financial Services
U.S. House of Representatives
2129 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Bachus:

Thank you for your letter of December 12, 2011, about the effect of Section 1064 of the Dodd-Frank Wall Street Reform and Consumer Protection Act on the National Credit Union Administration (NCUA). Section 1064, among other things, directs the Consumer Financial Protection Bureau (CFPB) and NCUA to jointly determine the number of NCUA employees that will transfer to CFPB.

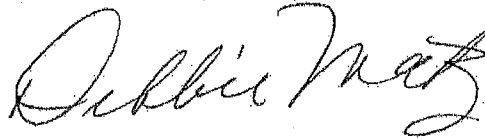
The Dodd-Frank Act requires the transfer of NCUA's consumer protection enforcement functions to CFPB for credit unions with more than \$10 billion in assets. Three credit unions currently exceed this threshold. One of these credit unions is a state-chartered credit union over which the chartering state previously had consumer protection authority. NCUA therefore transferred consumer protection oversight for the two covered federal credit unions to CFPB in 2011 as required by law.

In compliance with Section 1064 of the Dodd-Frank Act, NCUA and CFPB also jointly determined that NCUA would detail one employee to CFPB for six months in the first half of 2011. In addition, in November 2011 CFPB selected another NCUA employee who applied for a permanent position. Hence, from January 30, 2011, until July 30, 2011, Mr. Robert Suess, a consumer compliance examiner, temporarily worked for CFPB, and in November 2011, Mr. Gonletuo Ward, an examiner, began working permanently at CFPB.

Your letter further asks whether we have employees on NCUA's payroll who previously supported or performed consumer protection functions for credit unions that now fall exclusively within the CFPB's regulatory, examination, and enforcement authority on consumer protection matters. NCUA did not have any staff assigned exclusively or with a majority of their work dedicated to the review of consumer protection laws for the credit unions that CFPB now oversees. NCUA has therefore eliminated no positions and has not reassigned staff due to the transfer of consumer protection oversight to CFPB. NCUA has made the determination that our consumer protection staff continues to have a considerable workload overseeing the 4,496 other federally chartered credit unions.

Again, thank you for this opportunity to detail NCUA's actions related to the requirements of Section 1064 of the Dodd-Frank Act. Please let me know whenever I can provide assistance.

Sincerely,



Debbie Matz
Chairman

cc: The Honorable Ron Paul
U.S. House of Representatives
203 Cannon House Office Building
Washington, DC 20515

The Honorable Randy Neugebauer
U.S. House of Representatives
1424 Longworth House Office Building
Washington, DC 20515

The Honorable Donald A. Manzullo
U.S. House of Representatives
2228 Rayburn House Office Building
Washington, DC 20515

The Honorable Patrick McHenry
U.S. House of Representatives
224 Cannon House Office Building
Washington, DC 20515

The Honorable Judy Biggert
U.S. House of Representatives
2113 Rayburn House Office Building
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The Honorable John Campbell
U.S. House of Representatives
1507 Longworth House Office Building
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The Honorable Gary G. Miller
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2349 Rayburn House Office Building
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The Honorable Michele Bachmann
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The Honorable Jeb Hensarling
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The Honorable Thaddeus G. McCotter
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The Honorable Scott Garrett
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The Honorable Stevan Pearce
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2432 Rayburn House Office Building
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The Honorable Bill Posey
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120 Cannon House Office Building
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The Honorable Lynn A. Westmoreland
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The Honorable Blaine Luetkemeyer
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The Honorable Bill Huizenga
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The Honorable Robert Hurt
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The Honorable David Schweikert
U.S. House of Representatives
1205 Longworth House Office Bldg.
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National Credit Union Administration

Office of the Chairman

January 5, 2012

The Honorable Shelley Moore Capito
Chairman
Subcommittee on Financial and Consumer Credit
U.S. House of Representatives
2443 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Capito:

Thank you for your letter of December 12, 2011, about the effect of Section 1064 of the Dodd-Frank Wall Street Reform and Consumer Protection Act on the National Credit Union Administration (NCUA). Section 1064, among other things, directs the Consumer Financial Protection Bureau (CFPB) and NCUA to jointly determine the number of NCUA employees that will transfer to CFPB.

The Dodd-Frank Act requires the transfer of NCUA's consumer protection enforcement functions to CFPB for credit unions with more than \$10 billion in assets. Three credit unions currently exceed this threshold. One of these credit unions is a state-chartered credit union over which the chartering state previously had consumer protection authority. NCUA therefore transferred consumer protection oversight for the two covered federal credit unions to CFPB in 2011 as required by law.

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Sincerely,



Debbie Matz
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The Honorable David Schweikert
U.S. House of Representatives
1205 Longworth House Office Bldg.
Washington, DC 20515

March 30, 2012

The Honorable Richard Shelby
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate
Washington, DC 20510

Dear Senator Shelby:

Thank you for your recent letter requesting information regarding the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act). Congress passed the Act in response to the worst financial crisis this country has experienced since the Great Depression. We are firmly committed to implementing those reforms in a careful, responsible, and effective manner.

Over the past two years, we and our respective agencies have been working diligently to implement the Act. Collectively and individually, we have sought input and feedback from the general public, private industry, public interest groups, and a broad range of stakeholders. We have also held numerous meetings with our international and state counterparts. In response to these efforts, members of the Financial Stability Oversight Council (Council) and other agencies have received many thousands of comments on our regulatory proposals. We and our respective agencies have carefully reviewed - and are continuing to review - these comments in the course of rulemakings and studies.

We agree with you that Council member and interagency coordination and cooperation is critical to this effort. We are committed to implementing the Act through close coordination and consultation between and among Council members and our respective agencies and staffs.¹ The members of the Council and other agencies such as the Department of Housing and Urban Development and the Federal Trade Commission are consulting extensively with each other both on a bilateral basis and through the Council itself. There has been an unprecedented level of interagency cooperation, which has helped us to implement reforms in a careful and effective manner. The interagency consultation process has included staff discussions during the initial policy development stage as well as during the rulemaking process itself. We have shared proposed and final rule text prior to issuance as well as draft studies. The level of consultation and coordination has gone well beyond the formal consultation requirements of the Act. Consultation is taking place at multiple staff and senior policy official levels with the intention of improving the consistency of regulation across the financial industry and of reducing the

¹ The Federal Trade Commission has very little rulemaking responsibility under the Act. The Federal Trade Commission and the Consumer Financial Protection Bureau are coordinating and fully cooperating on responsibilities either preserved or created in the Act. The two agencies entered into a Memorandum of Understanding, as required by the Act, on January 20, 2012 setting forth, among other things, how the agencies will coordinate and consult on law enforcement, rulemaking, and other activities.

potential for overlapping or inconsistent regulatory requirements. These consultations help highlight the interaction among different rules under development by agencies, as well as the interplay between proposed policy alternatives and existing regulations.

As you know, the various rulemakings required by the Act raise a number of important and complex issues. Moreover, the work on many of the implementing rules is not yet complete. We are working diligently to address these issues and to improve the various proposed implementing rules in light of the comments we have received and are receiving from the public. As you note in your letter, the Act – like all pieces of legislation – is not perfect. While some provisions could be clarified or improved, we have identified none that would impact the core areas of reform that are essential to strengthening the global financial system. Accordingly, we have thus far been able to work to appropriately implement the Act without legislative adjustments. Once the rulemaking process has concluded and we have had an opportunity to work through the implementation issues, we will be in a better position to address whether to recommend changes that might make the core statutory framework more effective.

Thank you for your interest in this important issue. We look forward to working with you in the future.

Sincerely,



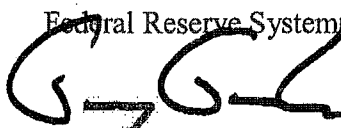
Timothy F. Geithner
Secretary of the Treasury



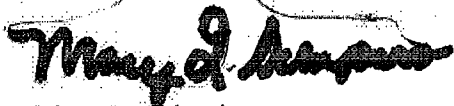
Ben S. Bernanke
Chairman of the Board of Governors of the
Federal Reserve System



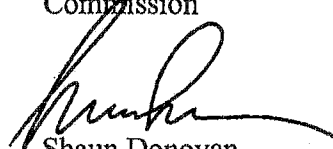
Richard Cordray
Director of the Consumer Financial Protection
Bureau



Gary Gensler
Chairman of the Commodity Futures Trading
Commission



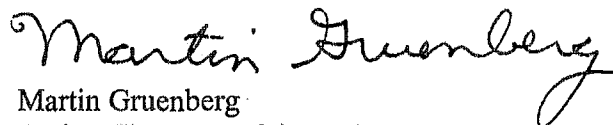
Mary L. Schapiro
Chairman of the U.S. Securities and Exchange
Commission



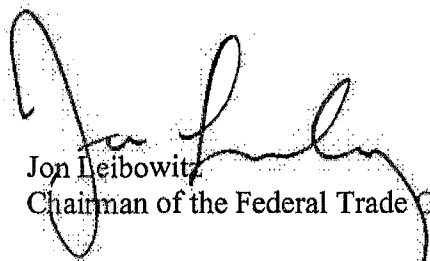
Shaun Donovan
Secretary for Housing and Urban Development



Edward DeMarco
Acting Director of the Federal Housing
Finance Agency



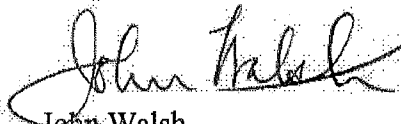
Martin Gruenberg
Acting Chairman of the Federal Deposit
Insurance Corporation



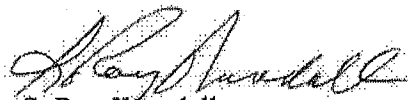
Jon Leibowitz
Chairman of the Federal Trade Commission



Debbie Matz
Chairman of the National Credit Union
Administration



John Walsh
Acting Comptroller of the Currency



S. Roy Woodall
Independent Member with Insurance Expertise



National Credit Union Administration

Office of the Chairman

November 15, 2012

The Honorable Spencer Bachus
Chairman
House Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Bachus:

Thank you for your October 25, 2012, letter requesting information about the proposed rule on the definition of troubled condition recently issued by the National Credit Union Administration (NCUA). We also appreciate learning of your support for any action that NCUA can take to mitigate losses to the National Credit Union Share Insurance Fund (NCUSIF).

Let me assure you that as administrator of the NCUSIF, the NCUA Board continually takes proactive steps to protect the fund. NCUA is also uniquely positioned to observe national trends in the credit union industry that can affect the NCUSIF. In recent years, we have seen an increase in the number of federally insured credit unions with assets less than \$500 million experience some degree of financial stress in both federally chartered and state-chartered institutions.

As Chairman of NCUA, I am working through my Regulatory Modernization Initiative to keep the credit union industry safe and sound while relieving credit unions of unnecessary regulatory burdens. The initiative follows the spirit of President Obama's Executive Order 13579, which asked independent agencies to examine their regulations, eliminate outdated or insufficient rules, and create more effective regulatory programs better suited to the post-recession environment.

NCUA also respects the rights and responsibilities of state regulators. We place great value on a cooperative partnership, and we view our role as one that augments and supports the mission of our state counterparts. For example, NCUA consistently maintained and supplemented state examination programs in recent years when state budget constraints prevented adequate examination and supervision staff to continue robust state examination programs.

As the credit union industry has emerged from the serious financial crisis of the last several years, one lesson we learned is that NCUA must be able to respond quickly when problems are discovered in the credit unions which we insure. In some instances, we could not do this to the extent we thought appropriate because our CAMEL rating differed from the state regulator's.

As a result the NCUA Board has proposed a rule on troubled condition credit unions. The primary purpose of the proposed rule is to permit NCUA to better protect the NCUSIF in those situations where a discrepancy exists between NCUA and the state supervisory authority (SSA) over the CAMEL rating for a federally insured, state-charted credit union (FISCU). We

proposed amending this definition so that CAMEL ratings would default to the lowest CAMEL rating between NCUA and the SSA. Thus, if the SSA concludes that the CAMEL rating is a 3 and NCUA rates it a 4, the four would prevail. This is significant because a CAMEL rating of 4 would permit NCUA to approve changes in management, an authority not granted in supervision of CAMEL 3 credit unions. We believe this change could help to mitigate losses.

However, before taking any action resulting from the proposed rule change, NCUA would follow its usual practice of consulting with and seeking concurrence from the SSA with any changes in management under consideration by NCUA. By policy we always consult with the SSA on any anticipated actions involving a FISCO in advance of taking them.

The following are answers to the six specific questions about the proposed troubled condition rule that you raised in your letter:

1. How will the proposal affect a FISCO's choice to operate under the guidance of its state regulator?

The proposed rule will not affect the choice of a FISCO to operate under the guidance of their primary regulator. Rather, it affects only the existing requirement to seek NCUA approval along with that of the SSA for any planned changes in management in the event NCUA or the SSA has designated the institution in troubled condition (CAMEL 4 or 5). I would like to point out that in situations in which the SSA rating is lower than NCUA's, the SSA's rating prevails. So this proposed change is, in fact, leveling the playing field.

The FISCO must still comply with all the requirements set forth by their primary regulator. However, the proposed language expands on the existing statutory requirement for notice and approval of a change in official to include either the NCUA's or the SSA's determination that a FISCO is in troubled condition.

The proposed rule does not diminish any state authority; rather it amends the definition of troubled condition to permit either NCUA or the SSA to confidentially declare the risk in a FISCO and notify NCUA prior to adding or replacing any individual serving as a member of the board of directors or of a committee, or employed as a senior executive officer. For all other purposes as primary regulator of FISCOS, the SSA's own CAMEL rating stands unaffected.

2. NCUA determined that the proposal would not have federalism implications for the purposes of Executive Order 13132. Given the proposal's effect on the distribution of power and responsibility between state regulators and NCUA, how did NCUA reach this conclusion?

NCUA determined that the proposal would not have federalism implications for purposes of Executive Order 13132 primarily for two reasons.

First, the distribution of power and responsibility between state regulators and NCUA in this case was decided by Congress when it applied to both state-chartered and federally chartered

credit unions in troubled condition the requirement to give NCUA notice and an opportunity to disapprove a change in officials,¹ yet directed NCUA alone to define the term troubled condition for that purpose.²

Second, the proposal has only an incidental effect on the distribution of power between state regulators and NCUA because it permits NCUA to rely on its own CAMEL rating of a FISCO only for a single purpose—to identify the credit union as troubled condition, requiring the credit union to give NCUA notice and an opportunity to disapprove a change in officials. As mentioned above, the SSA's own CAMEL rating stands unaffected for all other purposes as the primary regulator of state-chartered credit unions.

3. In NCUA's experience, have disagreements between state regulators and NCUA on CAMEL ratings contributed to increased losses to the NCUSIF?

(b)(8)

4. The proposal states that disagreements between the state regulator and NCUA on a CAMEL rating that would determine whether a FISCO is in "troubled condition" are rare, occurring in less than 4% of all cases. How many joint examinations of FISCOs have resulted in only one agency categorizing a FISCO as in "troubled condition"?

(b)(8)

¹ 12 U.S.C. 1790a(a)(2)

² *Id.* §1790a(f)

(b)(8)

5. To the extent that NCUA and a state regulator disagree on a FISCU's CAMEL rating, how does NCUA work with the state regulator to resolve the differing assessments?

NCUA goes to significant lengths to resolve differences with the SSA's assessment.

(b)(8)

(b)(8)

6. Will the proposal result in NCUA conducting more frequent onsite examinations of FISCUs?

The proposed change in definition of a troubled condition credit union by itself generally will not result in NCUA conducting more frequent onsite examinations of natural person FISCUs or corporate FISCUs. Our current criteria for an onsite contact in any FISCU is as follows:

(b)(8)

Supervision of any federally insured credit union is dependent on the CAMEL rating as well as any risks identified at the particular institution, not solely on the label of troubled condition. The amount of supervision will apply whether NCUA and SSA agree on the CAMEL rating or not. Our goal is to ensure the safety and soundness of the NCUSIF and the credit union industry.

In sum, I appreciate your concerns about our recent rulemaking on troubled condition credit unions. NCUA considers our SSA counterparts to be valuable partners in fulfilling our mission to protect the NCUSIF and promote stability in the credit union industry. We continue to make changes to our systems, policies and regulations in an effort to modernize the regulatory environment and leverage lessons learned to help ensure a healthier and stronger credit union industry. Please do not hesitate to contact me if you should have additional questions or concerns.

Sincerely,



Debbie Matz
Chairman



National Credit Union Administration

Office of the Chairman

December 4, 2012

The Honorable Spencer Bachus
Chairman, House Financial Services Committee
2129 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Bachus:

Thank you for your October 2, letter about credit union investments in variable annuity contracts (VACs). Specifically, you have asked if federal and state credit unions are permitted to invest in VACs under the Federal Credit Union Act (FCU Act) and National Credit Union Administration (NCUA) regulations. I am pleased to provide the detailed response you requested.

Federal Credit Union Investments

A federal credit union (FCU) investing for its own account is subject to the investment provisions of sections 107(7), (8), and (15) of the FCU Act and Part 703 of NCUA's regulations.¹ There is no express authority in the FCU Act for FCUs to invest in VACs. However, as you have noted, Section 703.14(c) of NCUA's regulations provides that an FCU may invest in a registered investment company (RIC) or collective investment fund (CIF), but only if the prospectus of the RIC or CIF restricts the investment portfolio to investments and investment transactions that are permissible for FCUs.² Section 703.2 of NCUA's regulations defines a RIC as "an investment company that is registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a)."³

A VAC is a complex product that can take various forms. Generally, it is a product sold by an insurance company that often includes investments in stocks, bonds, mutual funds, and money market accounts. It is sometimes described as a mutual fund with an insurance "wrap," although not all VACs have the insurance component. Given the limited nature of permissible investments for FCUs, we believe the vast majority of VACs and their underlying RICs consist of impermissible investments for FCUs. However, it is possible that some VACs have no insurance wrap and their underlying RICs consist of permissible investments for FCUs.

The following are examples of instances where a VAC would and would not be a permissible investment for an FCU. If a VAC includes an insurance wrap, then it is not a permissible investment because FCUs may not invest in the obligations of insurance companies.⁴ If a VAC has no insurance wrap, but its prospectus fails to restrict the portfolio of underlying RICs to only permissible

¹ 12 U.S.C. §1757(7), (8), and (15); 12 C.F.R. Part 703.

² 12 C.F.R. §703.14(c).

³ 12 C.F.R. § 703.2.

⁴ 12 U.S.C. 1757(7).

investments and investment transactions for FCUs, then the VAC is impermissible for FCUs.⁵ If a VAC has no insurance wrap, and its prospectus properly restricts the portfolio of underlying RICs to only permissible investments and investment transactions for FCUs, then the VAC is a permissible investment for FCUs.

Even when permissible, however, a VAC might not be an appropriate investment for an FCU. VACs are generally designed to be long-term investments, and insurance companies may charge fees for early withdrawal of funds. Further, VACs generally have a tax-shelter feature associated with them. To the extent FCUs do not benefit from this feature, paying extra fees for it seems unnecessary and costly. Before purchasing a permissible VAC, an FCU should ensure that the investment is consistent with its liquidity, interest rate risk, and asset-liability management policies.

A different set of rules applies when an FCU is investing for its own account as discussed above and when it is investing for the purpose of funding employee benefit plan obligations. In order to enable FCUs to compete with banks to hire and retain quality employees, FCUs have more investment flexibility when funding an employee benefit plan obligation under Section 701.19 of NCUA's regulations. In that context, an FCU may purchase investments that are otherwise impermissible for FCUs.⁶ More specifically, in that instance, the investment restrictions in the FCU Act and Part 703 of NCUA's regulations do not apply. Of course, Section 701.19 imposes many limitations and safety and soundness restrictions on this type of investing. We mention Section 701.19 because an FCU may consider investing in a VAC in the employee benefit plan context and would have broader latitude provided it met all of the requirements in Section 701.19.

State-Chartered Credit Union Investments

The FCU Act and Part 703 of NCUA's regulations do not apply directly to the investment activities of state-chartered credit unions. These activities are governed by state law. However, the FCU Act and NCUA's investment regulations do apply indirectly to state-chartered credit unions that are federally insured. Specifically, NCUA's insurance regulations provide that federally insured, state-chartered credit unions are required to establish a special reserve for those investments that are permissible under their respective state laws but are not permissible under the FCU Act or NCUA's regulations.⁷

I hope this response answers your constituents concerns. If you or your constituent has any further questions or concerns, please do not hesitate to contact NCUA.

Sincerely,



Debbie Matz
Chairman

⁵ 12 C.F.R. §703.14(e)

⁶ 12 C.F.R. §701.19

⁷ 12 C.F.R. §741.3(a)(2)



National Credit Union Administration

Office of the Chairman

December 13, 2012

The Honorable Tim Johnson
Chairman
Senate Committee on Banking, Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Johnson:

Thank you for your letter of October 16, 2012, following up on the August 31, 2012, NCUA Office Inspector General (OIG) report entitled *Review of NCUA's Examination and Complaint Processes for Small Credit Unions*. I appreciate this opportunity to update you about our progress in implementing the recommendations contained in the OIG's report and to respond to your additional questions about our appeals process and examination program.

Low Usage of the Formal Appeals Process

In your letter, you asked why credit unions make infrequent use of NCUA's formal appeals process. We believe the use of SRC appeals is infrequent because the vast majority of differences between credit unions and NCUA are settled through the first four levels of appeals outlined below:

Examiner. For most matters, the appeals process begins with a credit union approaching the examiner. This is the most effective method of resolving disagreements. Credit unions have the right to question or disagree with an examiner's conclusions and to receive support for the conclusions.

Supervisory Examiner. For concerns about an examiner's actions or when a credit union and NCUA examiner cannot resolve differences about an examination report, we advise the credit union to contact the supervisory examiner. The credit union's supervisory examiner will conduct an objective review to evaluate the facts, check the examiner's analysis, and work with the credit union to resolve differences.

Regional Director. In the event differences cannot get resolved by the supervisory examiner, a credit union may contact the Regional Director within 30 days of receiving a final examination report. The Regional Director will conduct an objective review of the facts and formally respond in writing. This third review level can take into account a more global perspective of the issues of concern to the credit union.

Office Examination and Insurance and Office of General Counsel. Credit unions may additionally appeal specific issues to NCUA's Office of Examination and Insurance or NCUA's Office of General Counsel. These offices can provide authoritative guidance on examination policy and regulatory compliance, respectively, in order to resolve differences relating to policy, examination procedures, specific risk issues, or legal matters.

Supervisory Review Committee. The most formal and definitive, but least used, step in the appeals process is the SRC. Created to comply with Section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994, the SRC is an independent, intra-agency appellate body comprised of three senior NCUA professionals, none of whom is involved in the day-to-day examination process. The SRC reconsiders and makes recommendations on material supervisory determinations related to CAMEL ratings, the adequacy of loan loss reserve provisions, and classifications on loans that are significant to an institution.

Additionally, in instances when an examiner has behaved unprofessionally, NCUA instructs credit unions to directly contact our OIG. NCUA also has a zero-tolerance retaliation policy to protect credit unions from reprisals. Examiners may not take action against a credit union for using any formal or informal appeal channel.

NCUA strives to minimize examination complaints and appeals through the comprehensive training of our examiners. In addition to technical coursework and instruction on credit union rules and operations, our examiners receive extensive communications training. This training emphasizes the need for examiners to remain objective and respectful at all times. Effective communication between examiners and credit unions reduces conflict, instills greater trust, and encourages cooperative working relationships.

NCUA's examination process emphasizes an open dialogue with credit union management. Our findings, action plans, and risk ratings are all communicated at the earliest possible time, and examiners cooperatively develop resolution plans with credit union management whenever possible.

Enhancing Awareness of the Appeals Process

You also asked whether NCUA ensures institutions are routinely made aware of the ability to appeal examination results at the examination exit meeting. We regularly alert credit unions to their appeal rights through a variety of mechanisms.

The examination report cover letter issued to each credit union provides an overview of the appeals process.

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In addition, *The NCUA Report*, a monthly newsletter distributed widely to credit union industry managers and boards of directors, has featured two articles within the last twelve months detailing the appeals process and encouraging credit unions to pursue available options as needed for the review of legitimate complaints. In the near future, *The NCUA Report* will also feature an article about how the SRC conducts its work and what a credit union should do to file an effective appeal.

During the last ten years, NCUA's SRC has decided only five cases. However, the SRC has recently experienced an uptick in the number of appeals filed and presently has three cases pending. This increase in appeals may have come as a result of NCUA's efforts to better communicate information about the appeals process to credit unions in public speeches, town hall meetings, and articles and columns in *The NCUA Report*.

Ensuring Deadlines Are Communicated

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NCUA's Interpretive Ruling and Policy Statement 11-1 (as amended) on the SRC's operations also details the timeframes for credit unions to file appeals. The statement is available on NCUA's website.

Implementing OIG's Recommendations and Examination Enhancements

The OIG's recent report on NCUA's appeals and complaint process for small credit unions found that NCUA has clear standards and policies for conducting examinations. The report also found that NCUA has an adequate appeals process, which allows credit unions to question examination results. Additionally, the report made four recommendations for improvement related to compliance monitoring, the regional determination process, SRC recordkeeping, and Ombudsman reporting channels. A summary of each of these recommendations and the agency's actions to date follows:

The OIG recommended that NCUA develop a Management Automated Resource System report to provide an exact number of days all outstanding examinations and supervision contacts have been open by a Supervisory Examiner group. NCUA agreed with this compliance monitoring recommendation and has already implemented the improvement to our systems.

The OIG recommended that NCUA establish a national reporting requirement for each regional office to provide specific details on disputed examination issues elevated by credit unions to the Regional Director in an appeal. NCUA agreed with this recommendation and is working to establish procedures to routinely collect specific details on disputed examination issues. We expect to implement the changes necessary for the collection of this data during the first half of 2013.

The OIG recommended that NCUA develop an electronic recordkeeping system for all SRC activities. NCUA agreed with this recommendation. The SRC has already moved its filing system to a paperless format using electronic scans of older documents with spreadsheets to track actions.

The OIG recommended that NCUA revisit the current Ombudsman reporting structure. NCUA agreed with this recommendation. On December 5, the NCUA Board approved the moving of the Ombudsman position to one reporting directly to the Board supervised by the Executive Director. Amongst other things, the Ombudsman receives, reviews and investigates external complaints of a regulatory nature (with certain exceptions) at the operational level.

NCUA consulted with our OIG at each step of these actions, and we are implementing these improvements with the approval of the OIG. We believe these changes will clarify the system and bring greater transparency to the process.

Calibrating Exams and Rules to Small Credit Unions

NCUA agrees with you about the need to ensure that examinations are well-calibrated to smaller institutions. In this regard, NCUA adopted the Small Credit Union Examination Program (SCUEP) on a national basis in January 2012 to better align examination resources with industry risks. Briefly, the SCUEP reduced the minimum required examination scope in CAMEL 1, 2, or 3 federal credit unions with less than \$10 million in total assets.

Through the SCUEP, NCUA now completes on-site examinations within 40 hours for small credit unions that are financially and operationally sound and present lower risk to the Share Insurance Fund. NCUA tailors the examination to the most pertinent areas of risk in small credit unions—lending, recordkeeping, and internal audit functions, among other matters. NCUA also issues more concise examination reports to small credit unions.

In September 2012, the NCUA Board voted unanimously to issue a proposed rule and interpretive statement updating the definition of a “small entity” under the Regulatory Flexibility Act. The proposal would increase the threshold for a small credit union from less than \$10 million to less than \$30 million. The proposed rule would decrease regulatory compliance costs for more than 1,600 federally insured credit unions and require NCUA to more thoroughly evaluate the effect of proposed rules to determine whether credit unions with less than \$30 million in assets should be exempted from some provisions of proposed rules or separately considered.

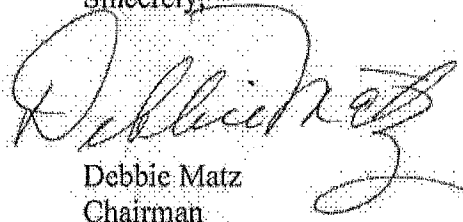
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The Honorable Tim Johnson
December 13, 2012
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In conclusion, NCUA recognizes that financial institution regulators must conduct examinations fairly and consistently, and we strive to achieve this standard. Our appeals process serves as an important set of checks and balances to ensure that we meet this standard. Moreover, NCUA remains committed to addressing legitimate concerns about the present examination process, minimizing regulatory conflicts, promoting procedural fairness, advancing examination consistency, and tailoring our examination procedures and rules to address the unique needs of small credit unions.

Please do not hesitate to contact me should you have additional questions or suggestions about these matters.

Sincerely,

A handwritten signature in cursive script, appearing to read "Debbie Matz".

Debbie Matz
Chairman