

**Credit Union Committee
On
Declaration of Grievances**

March 4, 2011

House Financial Services Committee

2129 Rayburn House Office Building
Washington, DC 20515

RE: Declaration of Grievances – Regulatory Treatment of Credit Unions

Dear,

The undersigned credit union CEO's and senior managers representing many of the nation's credit unions would like to address several critical issues affecting the 7,400 credit unions and the 91 million American citizens and taxpayers they serve.

We have enclosed our **Declaration of Grievances** along with supporting information as representative of our complaints that are suppressing the financial condition of our taxpaying members and undermining the financial system that exist to serve them. Many of these grievances are in regards to the sufficiency of the National Credit Union Administration's actions in regulating the industry and the many federal agencies that are undermining our member citizens.

It is our desire and hope that you will affect the needed changes in the many areas we have addressed for the sake of millions of Americans that are feeling the results of recent actions by these agencies.

The attached list of credit union CEO's and senior managers have signed in agreement with this Declaration of Grievances and respectfully request attention to be given to each of these items.

We the undersigned committee are in support of this Credit Union Declaration of Grievances:

- ✦ Rick Mikels, CEO, ETMA Federal Credit Union, rmikels@etmafcu.net
- ✦ Rhonda Sanders, CEO, LMPCOCU, Impcocu@aeneas.net
- ✦ David Proffitt, CEO Alcoa Tenn Federal Credit Union, dproffitt@atfcu.com
- ✦ Dan Mitchell, SVP Alcoa Tenn Federal Credit Union, dmitchell@atfcu.com
- ✦ Ben Mauldin, VP Alcoa Tenn Federal Credit Union, bmauldin@atfcu.com
- ✦ Lois Profili, CEO First Eagle FCU, lprofili@firsteaglefcu.org
- ✦ Dan Sheetinger, CEO NeVista Federal Credit Union, dsheetinger@nuvista.org
- ✦ Max Griggs, CEO, Dixie Line Credit Union traindixie@aol.com
- ✦ Sandra Griffis, CEO, Illinois Central Employees Credit Union, sandragriffis@bellsouth.net
- ✦ Carter Ridgway, CEO Kemba Delta FCU, cridgway@kembadelta.org
- ✦ Gerd Henjes, CEO Countryside FCU, ghenjes@countryside.org
- ✦ Denise Cooper, CEO Upper Cumberland FCU, dcooper@ucfcu.org
- ✦ Brian Dever, CEO, PIAS Credit Union, bdever@piascu.org
- ✦ Pam Tenpenny, CEO Life Credit Union, pam@lifecu.org
- ✦ Cindy Beck, CEO KNSECU, cindy.knsecu@comcast.net
- ✦ Fara Hall, CEO Patriot Equity Credit Union, fhall@pecujax.org
- ✦ Jean Eason, Manager Parkridge Credit Union, prcu@bellsouth.net
- ✦ Mark Creech, CEO, Lowland Credit Union, bmontgomery@chcu.com
- ✦ Amy Webb, CEO, Sears Federal Credit Union, awebb@searsfcu.org
- ✦ Sherri Brooks, CEO Tennessee Employees Credit Union, sbrooks@tnecu.org
- ✦ Douglas Wilkerson, President RTP Federal Credit Union, Wilkerson@rtpfcu.org
- ✦ Lin Winkler, Shelby County Credit Union, lwinkler@shelbycountycu.com
- ✦ Becca Montgomery, CEO Covenant Health Credit Union, bmontgomery@chcu.com
- ✦ Cynthia Appling, CEO, DuPont Memphis Plan Employees Credit Union, cappling@dmpecu.com
- ✦ Linda Morris, CEO, Bulab Employees Federal Credit Union, lmorris@buckman.com
- ✦ Janet Tidwell, CEO Holston Methodist Federal Credit Union, jtidwell@hmfcu.org
- ✦ Lisa Hooper, CEO, McKee Credit Union, lisamckee@canturytel.net
- ✦ Sam Early, Oak Ridge Schools Federal Credit Union sdearly@bellsouth.net
- ✦ Judy Mills, CEO Foothills Federal Credit Union, jmills@foothillsfcu.org
- ✦ Lynne M. Boucher, CEO Community Focus FCU, LBoucher@communityfocusfcu.org
- ✦ Henry T. Flint, Board Chair, Columbus Metro FCU, trichey@columbusmetro.org
- ✦ Tim Richey, President, Columbus Metro FCU, trichey@columbusmetro.org

Declaration of Grievances

1. The members of federally-insured credit unions, 91 million taxpayers who are your constituents, are being drained by the recent actions of the National Credit Union Administration (NCUA) and the plethora of regulations passed by federal agencies with the delegated authority Congress has given to them (unregulated regulators). Recent actions of NCUA imposed on credit unions along with other unregulated regulators are harming each of the credit union depositors and borrowers in this country.
2. NCUA's clear failure to provide adequate supervision of the "wholesale" corporate credit unions has placed a considerable and long-term financial burden on the nation's 7,400 credit unions, which hold \$748 billion in deposits of 91 million member/taxpayers. In 2010, NCUA began charging credit unions for these losses with assessments equaling approximately 27 percent of the credit unions' net income. NCUA has told the credit unions it insures to expect the aggregate assessments in 2011 to range from \$1.5 to \$1.9 billion. NCUA expects similar charges to the nation's credit unions and their member/taxpayers to continue through 2021 – another ten years. Though these charges are applied directly to credit unions and not the American taxpayers as a whole, credit unions are cooperatives owned by our members and these charges will be borne by our member/taxpayers through reduced ownership capital, reduced savings rates, increased loan rates, increased fees, and decreased service quality. ^{ENDNOTE 1}
3. While charging the nation's credit unions and their 91 million members as much as \$1.9 billion in 2011, NCUA has increased its own 2011 budget by more than \$24 million, passing on the expenses to each credit union during a time of recession and sacrifice for all Americans. In reality it is not the credit unions funding this 12 percent budget increase, it is the individual member/taxpayers who use credit unions to finance their daily lives. This budgetary increase by NCUA follows a similar 13 percent, \$23 million budget increase in 2010. ^{ENDNOTE 2}
4. The NCUA has budgeted for 78 new staff in 2011 while federally insured credit unions are downsizing and reducing expenses. This equates to a seven percent staffing increase. In addition, the NCUA Board has approved pay increases of up to eight percent for 2011 when the credit unions' member/taxpayers are experiencing little or no raises and true unemployment remains near 10 percent. Congress should require NCUA to revise its 2011 budget to 2008 levels. ^{ENDNOTE 2}
5. There appears to be little or no oversight of the NCUA or any separation of powers to give balance to their actions. NCUA has closed door meetings on many occasions that are not open to the public or the scrutiny of the press. This lack of oversight has permitted NCUA to repeat past mistakes at the expense of the credit unions it regulates. ^{ENDNOTE 2}
6. The Durbin Interchange Amendment as implemented by the agency will further drain the monies of credit union member/taxpayers in the name of consumer protection. Implementation may be as soon as July 2011. The United States has the best financial payment system in the world that is being undermined by this new law. The financial services industry will lose an estimated \$3.6 to \$9.2 billion per year. To continue to provide efficient electronic debit and credit cards these costs will be passed on the member/taxpayer through increased cost of services. The Durbin amendment should be repealed. ^{ENDNOTE 3}
7. Excessive regulations that have unintended consequences are smothering member/taxpayers with redundant notices on privacy, consumer rights notices and loan notice compliance. The current stable of Federal regulations such as the FACT Act, the SAFE Act, BSA, OFAC (to name just a few) is an incubator for costly, redundant, and often questionable notification and reporting requirements. The costs of complying with the myriad federal, state and local laws, rules and regulations are passed on to the consumer by financial institutions through increased fees, reduced interest, and increased borrowing rates.

Congress and the various regulatory agencies should perform a full review of all current laws and regulations with the intent of amending or repealing those which are barriers to the free enterprise system on which this country was established and prospered.

It is incumbent upon governments comprised of the people to make certain that the laws and regulations enacted and enforced upon the public are absolutely necessary and do not result in unintended harm in excess of intended good.

ENDNOTE 1

NCUA's Failure to Adequately Supervise the Corporate Credit Union System

The Cost

The on going economic turmoil has had a significant impact on the financial services industry. At first, credit unions were largely immune to the more serious ramifications being felt by many of the nation's banks. Unfortunately and as a consequence of apparent mismanagement within the four largest corporate credit unions coupled with negligence on the part of the National Credit Union Administration (NCUA), this drastically changed in 2009. Due to significant loss projections within the investment portfolios of US Central Corporate and Western Corporate credit unions (both federally-chartered corporate credit unions), NCUA moved to conserve these institutions. In addition, projected losses in the investment portfolios at Southwest Corporate and Members United Corporate (also federally chartered credit unions) resulted in their conservatorship by NCUA in 2010.

Following these conservatorships, there was an immediate cascading of losses through the corporate network and, eventually, to most of the nation's 7,400 federally-insured credit unions who, under NCUA's rules and regulations, provided the majority of the corporates' capital through uninsured capital deposits. Ultimately, the majority of the corporate credit unions became insolvent and charges of more than \$2.5 billion were absorbed by their member credit unions' uninsured capital deposits.

Added to these direct and immediate charges to the nation's credit unions, NCUA's loss projections will place an additional \$8.3 to \$10.5 billion in charges on the nation's credit unions. Credit unions have already absorbed \$1.3 billion of these charges through assessments from the National Credit Union Share Insurance Fund (NCUSIF) and the remaining \$7.0 to \$9.2 billion will be absorbed by credit unions through 2021.

Missed Opportunities

NCUA was clearly aware of the investment activities at these corporate credit unions for a considerable period of time. In fact, NCUA had "resident examiners" assigned to these corporates with offices on-site. These examiners were charged with monitoring all activities at the respective corporates and had full, complete and uninterrupted access to all actions, documents, records, analyses, and reports governing their investment portfolios and transactions. Even so, NCUA allowed these corporates to fail which placed a significant and long-term burden on the nation's 7,400 federally-insured credit unions and the 91 million American citizens and taxpayers who comprise their membership.

Déjà vu

This situation is not new to NCUA. In 1994, Capital Corporate (also a federally-chartered credit union) failed due to losses within its investment portfolio. These losses were, in part, also absorbed by that corporate's member credit unions. In its testimony before the Senate's Committee on Banking, Housing, and Urban Affairs in 1995, the General Accounting Office reported that

"NCUA's supervision of Cap Corp was ineffective on several fronts. For four years, NCUA essentially tolerated weaknesses in Cap Corp's internal controls; also, examiners who lacked investment expertise evaluated individual securities rather than securities portfolios."

Specific concerns reported to the Committee by GAO representatives included the finding that NCUA

". . . failed to take prompt action to correct clear weaknesses in Cap Corp's risk management system. NCUA not only let Cap Corp take on substantial investment risk without sufficient controls, it also failed to evaluate the risk of Cap Corp's entire portfolio or to reflect that risk in assigning CAMEL ratings for Cap Corp."

The GAO testimony also included the conclusion that

"Had NCUA focused earlier on the overall portfolio decline and required proper recognition of losses in Cap Corp's financial results, the impending liquidity crisis might have been recognized earlier."

In closing comments, the GAO offered eight recommendations to NCUA. It should be noted that NCUA did, in fact, take steps to address most of these recommendations (including the recommendation to “increase the expertise of staff overseeing corporate credit unions”); however, there were two critical recommendations which NCUA ignored. The seeds of the current corporate credit union debacle can be seen in NCUA’s failure to address these recommendations.

The first of these recommendations was to

“Establish a tripwire system which would require prompt corrective action before a failing credit union’s capital is exhausted.”

Though subsequent regulatory revisions to Part 702 of NCUA’s Rules and Regulations did address prompt correct actions a “natural-person” credit union (one of the 7,400) would be required to follow if its capital dropped below certain levels, the provisions for corporate credit unions contained in Part 704 were “window dressing” with overdependence on paid-in capital from the corporate credit unions’ members. Therefore, NCUA’s Regulations failed to impart a sense of urgency to corporate credit unions in regard to net worth growth and failed to provide adequate protection to the corporates’ member credit unions. As a result, both risk and capital were not adequately addressed within the corporate credit union network.

The second is seen to be the more serious of the two. GAO recommended that NCUA

“Delay implementing any policy that would allow corporates to compete with each other for membership until necessary regulatory reforms, including adequate capital standards, are established and in force.”

Not only did NCUA not delay such implementation, the NCUA Board continued to aggressively approve national charters for corporates which significantly contributed to the on-going competition among corporate credit unions. This continued increase in competition among corporates for credit unions’ deposits quickly led to the sacrifice of safety for yield – often for gains of only one or two basis points in yield. Over the intervening 15 years, the most competitive corporates chased yields into excessive credit concentrations, private mortgage-based securities and their derivatives, CDOs, and other high-risk structured securities.

NCUA’s on-going laissez faire approach to competition within an undercapitalized segment of the credit union movement is a significant contributing factor to the loss of as much as \$13 billion by credit unions and their member/taxpayers as projected by NCUA.

Lack of Accountability

Management at the failed corporate credit unions have paid and, for some, continue to pay a heavy price for their decisions and, in some cases, apparent neglect; however, the equally culpable professionals at NCUA have, to date, been untouched and have not yet been held accountable by Congress for their part in the corporate credit union losses. This disparity in accountability is unacceptable.

ENDNOTE 2

NCUA’s Lack of Sound Budgetary Management

NCUA’s Budgetary Approach

At the same time credit unions are facing austere measures to meet the assessments levied by the NCUA, maintain positive earnings, and protect their reduced capital levels, the NCUA board has approved an operating budget for 2011 which includes a 12 percent (\$24 million) increase over their 2010 budget. The 2011 budget increases include:

- A five percent base salary increase for a significant number of NCUA employees with some staff receiving increases of up to eight percent. This is particularly galling considering the fact that
 - The corporate losses have forced many credit unions to forego pay increases for their staffs over the last two years,
 - A two-year pay freeze is in effect for other agencies, and
 - President Obama only approved a 1.4 percent increase for our military.
- An overall 12 percent increase in total employee salaries and benefits.

- The addition of questionable positions (within the current economic environment) including those in the Office of Minority and Women Inclusion, the Office of the Chief Economist, and the Office of Consumer Protection.
- \$2.5 million in capital acquisitions including \$1.2 million for “continuing renovation of the Agency’s 18-year old headquarters.”
- \$670 thousand to move the headquarters of the Agency’s Capital Region.
- \$555 thousand “for central office initiatives for replacing old furniture, painting, security and other minor building repairs and maintenance.”

The 2011 budget increase follows a 13 percent increase in its 2010 budget which included a less than helpful \$2 million public relations campaign featuring Suze Orman.

Shouldering the Cost

NCUA and NCUSIF expenditures are paid by the nation’s credit unions and their 91 million member/taxpayers through insurance premiums and assessments and add to the already burdensome \$8.3 to \$10.5 billion in charges being levied by NCUA as a result of the agency’s failure to adequately fulfill its supervisory responsibilities.

ENDNOTE 3

The Durbin Amendment to the Dodd–Frank Wall Street Reform and Consumer Protection Act

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Act) was signed into law by President Obama on July 21, 2010. The purpose of the Act was to

“Restore responsibility and accountability in our financial system to give Americans confidence that there is a system in place that works for and protects them. We must create a sound foundation to grow the economy and create jobs.”

Shortly before passage by Congress, the Durbin Amendment was attached which requires the Federal Reserve to promulgate rules to regulate the US debit card market. On December 16, 2010, the Fed released their proposed rules. The US has the premier financial payment system in the world; however, these proposals, if enacted, will have material, long-reaching and adverse impact on the financial services industry, the nation’s payment system, and the American citizens. It will not contribute to the stated purpose of the Act but will, in actuality, work against this purpose.

Debit Card Interchange Fees

Among the requirements contained in this rule is a \$0.12 hard cap on the per-transaction interchange fee charged by issuing institutions. Studies have shown that the median variable cost for a debit card issuer to perform a signature debit transaction is \$0.175 based on a narrow definition of “allowable costs” and only variable costs at that. Actual per transaction costs are much higher than the calculation allowed by the draft Fed rule.

Though institutions with assets less than \$10 billion are excluded, the market driven impact of this proposed Fed rule will rapidly encompass all financial institutions regardless of size, and both credit unions and community banks will not be immune. The impact on credit unions offering no-fee debit card services to their members will be significant with reductions in credit card-related revenue of as much as 75 percent. The result of this amendment will be a materially unprofitable debit card transaction service.

The intent of the Durbin amendment was to reduce the fees vendors pay to the issuing financial institutions which the vendors in turn would pass to the consumer through price reductions. It is very debatable whether this will be the result since the amendment contains no provision for such action by the merchant or any suggested framework to review and monitor the impact on merchants and their customers. The overall impact on the consumer will, at best, be “breakeven” as financial institutions are forced to generate replacement revenues through the increase of current fees, the implementation of new consumer fees, and the reduction of benefits associated with debit card transactions. This will make the forced restructuring of the debit card market as well as the increased reliance on prepaid cards the Durbin Amendment’s lasting consequences.

Issuer Participation

A second issue which the Fed is considering under the Durbin Amendment is the question of issuer participation in debit card networks. The Fed is considering one of two potential rules:

- All debit cards must participate in at least two unaffiliated debit card networks. In all likelihood, this will mean one network for signature debit and a different unaffiliated network for PIN debit.
- All debit cards must be in at least two different networks for each authentication method (i.e., two networks for signature debit, and two networks for PIN debit).

Regardless of which network rule is adopted, there will be significant operational upheaval and customer disruption for many issuers.