



3138 10th Street North
Arlington, VA 22201-2149
703.522.4770 | 800.336.4644
F: 703.524.1082
nafcu@nafcu.org

National Association of Federal Credit Unions | www.nafcu.org

October 9, 2014

The Honorable Debbie Matz, Chairman
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

RE: The National Credit Union Administration's (NCUA) Examinations

Dear Chairman Matz:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents federal credit unions, I am writing to you to highlight a number of ongoing issues credit unions face during examinations and express concern that there is still no independent appeals process for credit unions.

NAFCU commends NCUA for its work over the past few years to improve the exam process including modernizing examinations, making the National Supervision Policy Manual (Manual) publicly available and providing better coordination in the pre-exam process. We also greatly appreciate the ongoing discussions that NAFCU has had with NCUA regarding the challenges that credit unions face with respect to examinations. Furthermore, NAFCU supports and applauds NCUA's initiatives such as Chairman Matz's recent listening sessions, which produced a robust dialogue on examination issues. All of these are great first steps toward making the exam process as smooth as possible. Still, NAFCU has concerns regarding ongoing issues credit unions face during examinations. As NAFCU has previously brought to the attention of the

NCUA Board, there remain issues with improper use of Document of Resolutions (DOR), lack of consistency in examinations and the need for adequate notice before examinations are conducted.

Recently, Julie Anderson Hill, associate professor of law at the University of Alabama School of Law, highlighted issues that echo some of NAFCU's concerns regarding the NCUA appeals process in a paper entitled "When Bank Examiners Get It Wrong: Financial Institution Appeals

The Honorable Debbie Matz

October 9, 2014

Page 2 of 4

of Material Supervisory Determinations.” In her paper, Professor Hill discusses the fact that between 2002 and 2012, NCUA’s Supervisory Review Committee has issued only six decisions as compared with 63 for the FDIC’s Supervision Appeals Review Committee, 25 for the Federal Reserve, and 157 decisions issued by the OCC Ombudsman. In all six of those cases, the committee upheld the examiners decisions. NAFCU acknowledges that the figures cited in this paper may not reflect the true number of appeals handled by NCUA because the agency encourages credit unions to resolve exam disputes informally by communicating with their examiners. While we fully recognize that the numbers of this study may not tell the whole story, NAFCU and its members believe the structure and execution of NCUA’s examination process still needs to be improved. NAFCU strongly encourages the agency to address the concerns outlined below in this letter.

Use of Documents of Resolution

As we have stated previously, NAFCU has concerns about the continued use of DORs when they are not necessary or are used in place of open and honest conversations about examiner concerns. According to a recent NAFCU “Economic & CU Monitor,” nearly 40 percent of credit unions who received DORs during their last exam felt it was unjustified and nearly 15 percent of credit unions said their examiners appeared less competent than in the past.

NAFCU supports effective exams that are focused on safety and soundness and stem from clear regulatory directives. However, we believe that Examiner Findings Reports should be used in place of DORs for less serious and less urgent issues. That would allow management to use its own discretion to determine the timeframe and approach for correcting those less urgent problems.

Consistency

NAFCU continues to hear from members that NCUA examiners apply regulations inconsistently. Further, NAFCU’s members have found that some examiners treat the NCUA guidance as if it were part of the regulation itself, and consider failure to comply with the guidance as something roughly equal to failing to comply with the regulation. While we fully recognize that examiners must have a certain degree of discretion, as we have previously communicated to the agency, inconsistent examinations and application of regulations create unnecessary confusion and are costly.

NAFCU believes that NCUA should ensure that its regulations are consistently applied from one examiner to another. We encourage the agency to do more to ensure that all examiners treat both regulations and guidance consistently and for the purpose each was issued. Inconsistent application of laws and regulations among examiners increases uncertainty. This increased

uncertainty adds another unnecessary layer of difficulty for credit unions to maintain the highest levels of compliance.

Unfortunately, if examinations are not conducted consistently, compliance with the ever-growing number of regulations will be ever more difficult. A significant percent of examiners are new to the process. And with a large number of experienced examiners retiring, NCUA will no doubt be continuing to hire new examiners. Thus, NAFCU believes that this is a critical juncture, as well as a great opportunity, for the agency to appropriately train and educate examiners so that examinations are conducted consistently. With this goal in mind, NAFCU encourages NCUA to take any and all measures it deems appropriate to achieve this goal.

Independent Appeals Process

As NAFCU has proposed in its five-point plan for credit union regulatory relief, NCUA should enact new examination fairness provisions to help ensure clear guidance, timeliness of results and an independent appeals process free of examiner retaliation. When designing an independent appeals process, it is important that the structure includes appeals to non-interested parties that do not have an opportunity to retaliate against individual credit unions that make appeals.

Under the existing process, if an examiner makes a determination to take action against the credit union, the credit union must first address the issues with the examiner. The second step is to contact the supervisory examiner, who evaluates the facts and reviews the analysis. If the issue is still not resolved, the credit union may then send a letter to the regional director.

After the previous steps have been taken, if the appeal concerns a material supervisory determination, the credit union may also appeal to the NCUA Supervisory Review Committee. Material supervisory determinations are limited to: (1) composite CAMEL ratings of 3, 4 and 5 and all component ratings of those composite ratings; (2) adequacy of loan loss reserve provisions; and (3) loan classifications on loans that are significant as determined by the appealing credit union. The NCUA Supervisory Review Committee consists of three regular members of the NCUA's senior staff appointed by the NCUA Chairman and serves a one year term.

NAFCU suggests creating an independent Office of Examination Ombudsman in the Federal Financial Institutions Examination Council (FFIEC), while also expanding the right to appeal all actions to an administrative law judge (ALJ). Doing so will help promote consistency and eliminate the current conflict of interest inherent in the process. The Office of Examination Ombudsman should be able to receive and investigate complaints from financial institutions, including credit unions, concerning examinations, examination practices or examination reports. They should also be able to review examination procedures from the individual agencies, such as

The Honorable Debbie Matz

October 9, 2014

Page 4 of 4

the NCUA, to make sure they are consistently applied. This independent eye on examinations and view of appeals will help to discourage the inherent conflict of interest in the current system.

While NAFCU acknowledges that some of these changes require Congressional action, we respectfully request that NCUA support an independent appeals process free of conflicts of interest that prohibits retribution based on appeal. One bipartisan example that NCUA should support is *H.R. 1553/S. 727, The Financial Institutions Examination Fairness and Reform Act*.

We hope that the agency will take the steps necessary to address these concerns and we look forward to working with you in that effort. Thank you for your attention to this matter. Should you have any questions or would like to discuss these issues further, please contact me by telephone at (703) 842-2244 or by email at mcoleman@nafcu.org.

Sincerely,

A handwritten signature in black ink that reads "Michael J. Coleman". The signature is written in a cursive style with a large initial "M".

Michael Coleman
Director of Regulatory Affairs
National Association of Federal Credit Unions

cc: Richard Metsger, Vice Chairman
Mark McWatters, Board Member
Larry Fazio, Director of the Office of Examination and Insurance