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United States Government Accountability Office
Washington, DC 20548

November 30, 2006

The Honorable William M. Thomas
Chairman, Committee on Ways and Means
House of Representatives

Subject: *Corporate Governance: NCUA's Controls and Related Procedures for Board Independence and Objectivity Are Similar to Other Financial Regulators, but Opportunities Exist to Enhance Its Governance Structure*

Dear Mr. Chairman:

During recent congressional hearings and in public speeches, statements made by the National Credit Union Administration's (NCUA) Chairman and another board member raised congressional interest in the ability of NCUA to collect and objectively analyze data on credit union membership and executive compensation. More generally, these statements also raised issues about the agency's overall vigilance as a regulator and the independence and objectivity of NCUA's board and senior staff from the industry being regulated.

As a result, you asked us to expand upon our current work looking at the tax-exempt status of credit unions to include a review of governance policies and procedures for NCUA's board of directors and senior staff and more specifically how the policies and procedures address independence and objectivity issues.¹ This correspondence (1) compares controls and related procedures applicable to NCUA that help ensure the independence and objectivity of its board members with those of other federal financial regulatory agencies and relevant recommended management practices identified in academic and industry literature and (2) describes NCUA's use of Schedule C staff compared with that of other federal financial regulatory agencies.²

To address our objectives, we reviewed statutory criteria for the selection of board members and commissioners at NCUA and six other federal financial regulatory agencies: the Commodity Futures Trading Commission (CFTC), Farm Credit Administration (FCA), Federal Deposit Insurance Corporation (FDIC), Federal Housing Finance Board (FHFB), the Board of Governors of the Federal Reserve System (Federal Reserve), and the Securities and Exchange Commission (SEC). We selected these six agencies for our comparison because they are all financial regulators with either a board

¹See GAO, *Credit Unions: Greater Transparency Needed on Who Credit Unions Serve and on Senior Executive Compensation Arrangements*, [GAO-07-29](#) (Washington, D.C.: Nov. 30, 2006).

²Schedule C appointees, frequently called political appointees, generally are noncompetitive and noncareer; that is, they are appointed without regard to the rules for competition that govern career appointees. Schedule C appointments are not subject to Senate confirmation.

of directors or a commission as their governing structure, similar to NCUA. For each of the agencies, we analyzed and compared the statutory criteria for qualifications of board or commission membership, the backgrounds and experience of board members and commissioners, statutory requirements for board structure and composition, agency guidance and other related documents, and the agencies' use of Schedule C staff. We interviewed officials from the staff and board of NCUA, as well as officials from other federal financial regulatory agencies. We also analyzed academic and industry literature on recommended management practices as the literature relates to board composition, structure, and independence issues. We conducted our work in Washington, D.C., from June 2006 through November 2006, in accordance with generally accepted government auditing standards.

Results in Brief

Similar to the other regulators, NCUA is subject to statutory criteria and federal standards on the independence and objectivity of board members, but five of the six other regulators have additional controls and procedures relating to independence. More specifically, the primary criteria and standards addressing independence and objectivity of board members that we identified at NCUA and the other six regulators are based on (1) statutory criteria for individual qualifications and the composition of the boards and commissions we reviewed, and (2) rules promulgated by the Office of Government Ethics (OGE) setting forth ethical standards for employees in the executive branch.³ For example, the OGE regulations address ethics and financial conflicts of interest matters that apply to all federal employees, and the Federal Credit Union Act (FCUA), like the enabling legislation of five of the six other regulators, addresses board independence through such provisions as fixed term limits for board members and apportionment of political party representation.⁴ Unlike NCUA, five of the six other regulators have additional controls and procedures that address independence, including agency-specific rules that address conflicts of interest and independence, or the recognition of the importance of independence in the agency's mission statement or values written in their strategic plans. The qualifications for NCUA board membership, as written in FCUA, are similar to the qualifications for board members or commissioners at four of the six other agencies we reviewed in that they seek to ensure that nominees are suited by education or experience for the positions they are to serve. In addition, we compared the professional backgrounds and qualifications of current and prior NCUA board members and found them to be similar. Our review of available literature indicated that NCUA's board follows several recommended management practices for independence, many of which are included in FCUA. However, there is one notable exception. While NCUA's enabling legislation limits the NCUA board to three

³Executive branch employees are subject to OGE's *Standards of Ethical Conduct for Employees of the Executive Branch*. The *Standards* includes rules governing gifts from outside sources, gifts between employees, conflicting financial interests, impartiality in performing official duties, seeking other employment, misuse of position, and outside activities. See 5 C.F.R. Part 2635 (2006).

⁴The Federal Reserve Act does not contain a restriction on party affiliations of the Board of Governors. 12 U.S.C. § 241.

members, some academic and industry sources suggest there should be a minimum of five members on a board of directors to help maintain independence, retain needed expertise, and enable continuity of leadership. Further, some of NCUA's board members told us that having a three-member board sometimes made communicating among the members complicated because of the Government in the Sunshine Act, which largely limits nonpublic meetings of the majority of the board (in this case, two board members).⁵ Additionally, we recommended in 1991 that NCUA's board be expanded to five members, in part, to achieve a broader perspective on financial market regulatory and insurance issues.⁶

NCUA's use of Schedule C positions generally was similar to the practices at five regulators that we contacted that had Schedule C staff. The selection of Schedule C staff rests with the NCUA Chairman or individual board member, subject to White House approval, and does not require input from NCUA career staff. We reviewed the backgrounds of the seven NCUA Schedule C appointees and identified four who were formerly affiliated with the same credit union industry trade group (three were former employees and one held key positions in various committees of the trade group). Of the four NCUA Schedule C appointees with prior ties to the trade group, two are senior policy advisors to NCUA board members, one is the Director of Public Affairs and Congressional Relations, and one is a staff assistant to a board member. NCUA officials told us that Schedule C appointees that have trade group experience are viewed as beneficial to board members in discharging their regulatory responsibilities. In particular, the officials explained that the senior policy advisors that have come from credit union industry trade groups have brought an in-depth understanding of credit union issues as well as industry contacts.

This correspondence includes a recommendation that the NCUA Chairman consider adopting practices that the other financial regulators use to enhance NCUA controls for independence and objectivity. Further, consistent with our 1991 report, we believe that consideration should be given to exploring the potential benefits and costs associated with increasing the number of NCUA board members.

We provided a draft of this report to the Chairman, NCUA, and the heads or designees of CFTC, FCA, FDIC, FHFB, the Federal Reserve, and SEC for their review and comment. NCUA provided written comments which are discussed at the end of this correspondence and are reprinted in enclosure 1. NCUA, FCA, FDIC, and the Federal

⁵The Government in the Sunshine Act, 5 U.S.C. §552b, declares that the public is entitled to the fullest practicable information on the decision making processes of the federal government. The act applies to agencies headed by a collegial body of two or more individual members appointed by the President and confirmed by the Senate. Accordingly, the act requires those agencies to open their meetings to public observation, except in instances where the agencies find that disclosure of information discussed at the meetings could be detrimental to the public interest. Agencies must maintain a complete transcript, electronic recording, or minutes (as specified in the act) of meetings closed to the public, in accordance with the act. These records are publicly available, unless the agency determines under exemptions provided in the act that the information should not be disclosed.

⁶GAO, *Credit Unions: Reforms for Ensuring Future Soundness*, [GAO/GGD-91-85](#) (Washington, D.C.: Jul. 10, 1991), 197.

Reserve provided technical comments that we incorporated into the report, as appropriate. With respect to our recommendations, NCUA stated it was not opposed to adopting agency-specific ethics guidelines or including independence and objectivity as part of its values and mission in future versions of its strategic plan. In this regard, NCUA stated that it explicitly included the concept of independence and objectivity in its 2007 Annual Performance Budget. NCUA also stated that it did not agree that Congress should increase the size of the NCUA board. NCUA stated that in its view, the costs and reduced efficiencies outweigh any potential benefits. Specifically, NCUA estimated that the cost of salaries, benefits, and other expenses for two additional board members and their staff would be at least \$1.1 million annually. Moreover, NCUA stated that increasing the size of the board would make agency processes more time-consuming and less efficient. While we acknowledge there would be some financial and potential efficiency costs associated with increasing the board size at NCUA, we continue to believe it would be worthwhile to review the potential benefits an expanded board may provide. NCUA has sometimes experienced lengthy board vacancies, which resulted at times in a board of less than three active members, potentially offsetting the full benefits of a multimember board structure. The benefits of a larger board could include, among other things, continuity of expertise and decision making on the board, improved communication among board members, and greater parity with the other regulatory agencies. Consistent with the literature on corporate governance practices, we believe the size of the board should be periodically reviewed to ensure that the agency has the most appropriate board size for its current resources and responsibilities.

Background

NCUA is an independent agency of the executive branch and has oversight authority for federally chartered credit unions. FCUA requires federal credit unions to obtain federal share (deposit) insurance from the National Credit Union Share Insurance Fund. This fund, administered by NCUA, also provides share insurance to most state-chartered credit unions, and NCUA shares oversight responsibilities for safety and soundness issues with state regulators in these cases. As of December 2005, there were 958 employees at NCUA and the agency oversaw nearly 8,700 federally insured credit unions—about 5,400 federally chartered and 3,300 state-chartered—with about \$679 billion in total assets.⁷

FCUA was amended in 1978 to create a three-member board of directors to manage NCUA.⁸ According to NCUA representatives, the change in leadership structure from a single administrator was in response to the more complex and increasing responsibilities of NCUA and to make NCUA's governing structure more like those of other federal

⁷According to NCUA's Web site, there are currently fewer than 500 non-federally insured state-chartered credit unions. Non-federally insured credit unions are not subject to NCUA regulation.

⁸Pub. L. No. 95-630 (Nov. 10, 1978).

regulators of financial institutions.⁹ FCUA specifies that the President, with the advice and consent of the Senate, appoint each of the NCUA board members to 6-year staggered terms. In appointing the members of the board, the President also designates the chairman. Additionally, the act specifies that not more than two members of the board be members of the same political party. Further, FCUA specifies that members shall be chosen to represent the public interest and consideration be given to individuals with education, training, or experience relating to a broad range of financial services, financial services regulation, or financial policy. Finally, according to the act, not more than one board member may be appointed who, at the time of appointment, was or had recently been involved with any insured credit union as a committee member, director, officer, employee, or other institution-affiliated party.

Controls Addressing NCUA Board Member Independence Generally Are Similar to Those of the Other Federal Financial Regulators, with Some Notable Exceptions

As is the case with the other regulators we reviewed, provisions in NCUA's enabling legislation and OGE's rules on independence guide NCUA independence and objectivity standards. NCUA's current board members have professional experience and knowledge that were generally similar to the experience and knowledge of past NCUA board members. NCUA follows several of the recommended management practices for board independence that we identified in our review of relevant literature and research, although some sources, including GAO, recommended a larger board size.

Controls over Board Independence and Objectivity at NCUA and the Other Regulators Primarily Are Based on the Agency's Enabling Legislation and Executive Branch Ethics Rules

Standards and regulations addressing the independence and objectivity of NCUA board members generally are similar to those at other financial regulatory agencies, but NCUA officials stated they have no additional policies or controls outside of what is provided in law. Most of the policies applicable to NCUA and these other agencies that address board member independence are established in law specific to the agencies, specifically each agency's enabling legislation. Table 1 shows the controls in place at NCUA and the six other agencies we reviewed. For example, FCUA addresses independence of NCUA's board members from political pressures by creating fixed term limits for board members and limiting the number of board members who are members of the same political party. In the enabling legislation of the other agencies we reviewed, all six include fixed term limits, and five of the six limit the number of board members or commissioners who are members of the same political party. NCUA and the six other agencies identified OGE's rules for ethical conduct as another authority for addressing board independence and objectivity. In addition to the controls listed in table 1, FCUA addresses the

⁹In support of this statement, NCUA representatives referred to a report by the Senate Committee on Banking, Housing and Urban Affairs issued in connection with a bill from the previous Congress that contained language replacing an administrator with a board. See S. Rep. No. 94-751.

independence of NCUA’s board members from professional associations by limiting the number of board members who have recent credit union experience.

Table 1: Comparison of Agency Controls and Procedures Addressing Board Member Independence and Objectivity

Control	NCUA	CFTC	FCA	FDIC	FHFB	Federal Reserve	SEC
Board members / commissioners serve a fixed term	•	•	•	•	•	•	•
Have political party affiliation rules	•	•	•	•	•		•
Undergo White House nomination and Senate confirmation process	•	•	•	•	•	•	•
Subject to OGE ethical standards and federal ethics rules	•	•	•	•	•	•	•

Source: GAO.

According to officials at NCUA and the six other financial regulatory agencies, they relied on OGE rules and ethics guidance on financial and personal conflicts of interest to address board member independence. Among other things, OGE’s *Standards of Ethical Conduct for Employees of the Executive Branch* prohibit federal employees from having financial and personal conflicts of interest that conflict with their official duties. OGE also prohibits federal employees from accepting gifts worth more than \$20 that are presented to the employees because of their position or by prohibited sources, which for NCUA would be a regulated credit union or its representatives. During our interviews, NCUA officials focused on the importance of identifying potential financial conflicts of interest; as required by the Ethics in Government Act, NCUA requires board members to file a financial disclosure statement annually with the agency-designated ethics officer.¹⁰ NCUA’s ethics officer serves as the primary contact for board members for guidance on ethics matters, and frequently interacts with board members. The officer also reviews gifts and invitations sent to board members for any possible conflicts or to determine prohibitions. When financial conflicts of interest arise, board members either must recuse themselves from any matter involving their financial interest or divest the asset. When we spoke with officials at the six other agencies, they all pointed to the same OGE financial disclosure policy as their primary tool for monitoring and enforcing independence from financial conflicts of interest.

According to NCUA officials, NCUA exclusively relies on standards contained in FCUA and OGE ethics rules to monitor board member independence, while officials from five of the six other agencies we reviewed stated their agencies are subject to some additional rules, some of which are designed to maintain independence from the industry they regulate. For example, SEC had established a “Canons of Ethics,” which the agency uses in addition to OGE’s guidance. FHFB has adopted written standards of conduct addressing, among other things, relationships and communications between FHFB directors and employees and entities subject to FHFB supervision. CFTC, FCA, and the Federal Reserve also have additional rules for their board members and agency employees regarding asset holdings specific to the industries they regulate.

¹⁰See 5 U.S.C. Appendix - Ethics § 101.

In its 2006-2011 strategic plan, NCUA did not include the terms “independence” or “objectivity” either as a value or as part of its mission statement, but two of the six other financial regulatory agencies included independence in their strategic plans as part of mission and value statements. Generally, agencies write and adopt value and mission statements in their strategic plans to guide the organization with clear goals and operating principles. FHFBS listed independence as its first value, stating that “the Finance Board is the arm’s length regulator of the FHLBanks [Federal Home Loan Banks] and OF [Office of Finance].”¹¹ In another example, the Federal Reserve included “independence of views” as one of its guiding values.

NCUA board members said NCUA has no controls or procedures in place that directly addressed objectivity. Although NCUA has no official guidance, the board members stated that when considering issues related to objectivity, they rely on OGE’s rules and guidance, NCUA’s strategic plan, and FCUA to guide their regulatory policy decisions. Specifically, one board member stated that objectivity, as well as independence, had been a central theme of the White House interviews during the nomination process, and that although NCUA has no written guidance for objectivity, the obligation to be objective was well understood among board members.

NCUA Board Member Qualifications and Professional Backgrounds Generally Are Similar to Those for Other Financial Regulators

The professional qualifications of board members at NCUA and at four of the six other financial regulatory agencies are determined statutorily, but are broadly similar. NCUA and the other agencies have no authority in deciding who constitutes the board of directors or commission, as this authority rests solely with the President and the Senate. FCUA specifies that when appointing NCUA board members, the President shall give consideration to individuals who have education, training, or experience relating to financial services, financial services regulation, or financial policy. These qualifications are similar to those at four of the six other financial regulatory agencies we reviewed. Table 2 presents board member qualifications and restrictions as stated in each agency’s enabling legislation. For example, both NCUA and FCA list experience with and knowledge of financial regulation as one possible qualification for board membership. NCUA’s statute also states that no more than one member of the board may have recent involvement with an insured credit union as a committee member, director, officer, employee, or other institution-affiliated party, although including an individual with recent credit union experience on NCUA’s board is not a requirement. FDIC’s statute requires that one of the three appointed members must have state bank supervisory experience. Of the six other agencies, the Federal Reserve and SEC did not have specific language regarding prior professional experience.

¹¹FHLBanks are the 12 Federal Home Loan Banks that, along with the Office of Finance, constitute the Federal Home Loan Bank System.

Table 2: Statutory Appointment Considerations for Board or Commission Members, Including Professional Experience, by Selected Agencies

Regulator (number of board members)	Considerations regarding education, knowledge, professional experience, and public interest served, or other qualifications
NCUA (3)	<ul style="list-style-type: none"> • In considering an appointment to the NCUA board, the President shall consider individuals who are specially qualified to serve on the board by virtue of their education, training, or experience relating to a broad range of financial services, financial services regulation, or financial policy. • Not more than one member of the board may be, or have recently been, involved with any insured credit unions as a committee member, director, officer, employee, or other institution-affiliated party.
CFTC (5)	<ul style="list-style-type: none"> • The President shall select for nomination persons who have demonstrated knowledge in futures trading or its regulation, or the production, merchandising, processing, or distribution of one or more of the commodities or other goods and articles, services, rights, and interests covered by the Commodity Exchange Act. • In nominating persons for appointment, the President shall seek to ensure that the demonstrated knowledge of the commissioners is balanced with respect to the areas listed above.
FCA (3)	<ul style="list-style-type: none"> • The board shall consist of three members, who shall be citizens of the United States and broadly representative of the public interest. • The President shall appoint members of the board who are experienced or knowledgeable in agricultural economics and financial reporting and disclosure; experienced or knowledgeable in the regulation of financial entities; or have a strong financial, legal, or regulatory background.
FDIC (5)	<ul style="list-style-type: none"> • Three members shall be appointed by the President, from among individuals who are citizens of the United States, one of whom shall have state bank supervisory experience. • One shall be the Comptroller of the Currency. • One shall be the Director of the Office of Thrift Supervision.
FHFB (5)	<ul style="list-style-type: none"> • The appointed directors shall be among persons with extensive experience or training in housing finance or with a commitment to providing specialized housing credit. • Not more than one appointed director shall be from any single district of the Federal Home Loan Bank System. • At least one director shall be chosen from an organization with more than a 2-year history of representing consumer and community interests on banking services, credit needs, housing, or financial consumer protection. • One director shall be the Secretary of Housing and Urban Development.
Federal Reserve (7)	<ul style="list-style-type: none"> • In selecting members of the board, not more than one shall be selected from any one Federal Reserve district. • The President shall have due regard to a fair representation of the financial, agricultural, industrial, and commercial interests, and geographical divisions of the country.
SEC (5)	None. ^a

Sources: Commodity Exchange Act, 7 U.S.C § 2a(2); Farm Credit Act, 12 U.S.C. §2242; Federal Deposit Insurance Act, 12 U.S.C. § 1812; Federal Home Loan Bank Act, 12 U.S.C. § 1422a; Federal Reserve Act, 12 U.S.C. § 241; Federal Credit Union Act, 12 U.S.C. § 1752a; Securities Exchange Act, 15 U.S.C. § 78d.

^aThe Securities Exchange Act and the Federal Reserve Act do not specify professional background or knowledge requirements for SEC commissioners and Federal Reserve governors.

We also reviewed the professional experience of NCUA’s current board members and compared their experience with that of the 14 former NCUA board members. The current board members fulfill FCUA’s guidelines for experience. Specifically, one member has recent credit union experience, one has financial policy experience, and the third has financial services experience. We also found that current and past board members had similar professional experiences and qualifications. For example, current board members previously worked as lawyers, state senators, and non-credit union

bankers. Of NCUA's 14 prior board members, 3 had been lawyers, 3 had been state or federal legislators, and 3 had been non-credit union bankers.

NCUA Board Follows Several Recommended Practices for Independence, but Its Size Does Not Reflect Recommended Practices and May Hinder Communication among Board Members

Our review of available literature indicated NCUA's board follows several recommended management practice standards, many of which are written into law. We reviewed literature specific to recommended management practices for independence at federal regulatory agencies and were able to identify some management practices applicable to NCUA.¹² Practices and policies for independence at federal regulatory agencies build upon the following characteristics and structures:

- a multimember commission helps ensure consistency and continuity of decision making over time and would be less likely to be influenced by the views of any one individual;
- separation of regulatory and operations functions;
- freedom from direct political pressure;
- fair and transparent procedures; and
- an arm's length relationship with regulated firms, consumers, and other private interests.

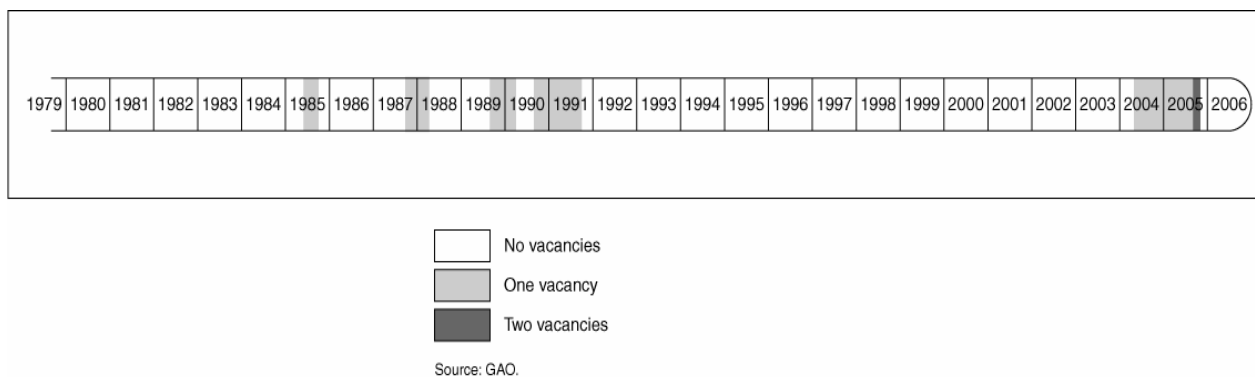
FCUA provides for the multimember board by requiring a three-member board of directors, and addresses freedom from direct political pressure by having board members serve fixed terms and limiting the number of members who may be members of the same political party. As provided for in the statute, NCUA Delegations of Authority separate the regulatory and operations functions by making the board responsible for regulatory policy functions and field examiners and staff responsible for operational functions. Further, the Government in the Sunshine Act helps ensure transparency by requiring that complete transcripts, electronic recordings, or minutes (as specified in the act) of board meetings closed to the public be made publicly available, unless the agency determines under exemptions provided in the act that such information should not be disclosed. NCUA also allows for and encourages public comment on credit union policy decisions before they are finalized. NCUA board members stated that their relationships with member credit unions and trade groups are important for understanding the issues affecting the credit union industry, but that NCUA gathers information from all sources before making any policy decisions and weighs the information from NCUA examiners and career staff more heavily than information from other sources.

¹²Warrick Smith, "Utility Regulators – The Independence Debate," The World Bank Group, *Public Policy for the Private Sector*, Note no. 127 (October 1997). Marc Quintyn and Michael W. Taylor, "Regulatory and Supervisory Independence and Financial Stability," *CESifo Economics Studies*, 49 (February 2003). Federal Communication Commission, *Connecting the Globe: A Regulator's Guide to Building a Global Information Community* (Washington, D.C.: June 1999).

We also reviewed literature on corporate governance that related to recommended management practices for board structure and size, which generally suggests boards of directors have a minimum of five members.¹³ Corporate governance literature typically is targeted to publicly traded corporations or nonprofit organizations and not federal regulatory agencies, but we identified some elements of the recommended management practices that are applicable to NCUA. Among the sources we reviewed, several stated that board size is not one-size-fits-all and should be based on the needs and complexity of the organization, and some also suggest a minimum of five members on a board of directors would be needed to maintain independence and retain needed expertise. Furthermore, a board that is too small may allow for one member to exert greater influence over the other members. The literature also suggests the size of the board should be reevaluated periodically to ensure that it remains appropriate for the organization. Situations that could potentially detract from a larger board's effectiveness include increased difficulties in reaching consensus on issues and the ability of the board to act expeditiously on matters needing its attention.

Although FCUA provides for a multimember board, the board has not always experienced continuity in full membership. Figure 1 shows the periods during which the NCUA board had fewer than three active members. When a board has a vacancy, it could potentially offset the benefits of a multimember board structure, such as a diversity of perspectives, experience, and political party representation among board members. Since 1990, there have been two periods of 12 or more consecutive months when NCUA's board had two active members, and in a recent 45-day period, NCUA has had one active board member.

Figure 1: NCUA Board Membership Vacancies, 1979-2006



According to two of the three NCUA board members, communication among the board members is sometimes complicated by the small size of the board and Government in the Sunshine Act disclosure provisions that require that a meeting involving deliberation regarding official agency business be made public if it is attended by a majority of board members (for NCUA, two members). Because any discussion among NCUA board members would involve a minimum of two people, members are not allowed to discuss

¹³Holly J. Gregory, *Comparison of Corporate Governance Guidelines and Codes of Best Practice* (New York: Weil, Gotshal & Manges, LLP: January 2006).

and deliberate official agency business outside of monthly board meetings unless they release a transcript of the discussion. To comply with such rigorous disclosure requirements, NCUA board members instead communicate with each other through their senior policy advisors, which one board member mentioned was “particularly challenging.” One board member noted that the three-member board structure makes it easier to schedule meetings. However, with five or more members, a board gains the ability to create subcommittees and distribute tasks among these subcommittees and, for agencies covered by the Government in the Sunshine Act, allows for flexibility in communicating among members. Officials at FDIC and the Federal Reserve noted that their boards have subcommittees that work independently and report to the full board. Of the six other federal financial regulatory agencies we reviewed, only FCA has fewer than five members.

Although FDIC had a three-member board in 1979, Congress expanded it to five members in 1989 in response to the increased responsibilities FDIC assumed from absorbing the Federal Savings and Loan Insurance Corporation. NCUA also has had an increase in responsibility, particularly in the last decade. Over this time, the credit union industry has changed substantially, and credit unions now compete more directly with similarly sized banks and thrifts. For example, recent charter conversions have greatly increased the number of federal credit unions that have geographic-based fields of membership (community charter credit unions). The movement away from the more traditional occupation- or employer-based fields of membership (single- and multiple-bond credit unions) has resulted in credit unions being in more direct competition with banks for members in those geographic areas included in the credit union’s field of membership. Additionally, the overall number of federally chartered credit unions has declined, but larger credit unions, in terms of total assets, have emerged. The larger credit unions offer products traditionally associated with banks and thrifts such as real estate and business loans, which has further blurred the distinctions between credit unions and banks.

In 1991, we recommended that NCUA’s board size be increased, in part to bring to the board a broader perspective on financial market regulatory and insurance issues.¹⁴ We made this recommendation to reflect changes in credit union activities, such as the introduction of real estate lending and the increase in membership and assets held at credit unions.¹⁵ In its comments on our 1991 report, NCUA disagreed with our recommendation, stating that it would be difficult to hold board meetings with all members present and that frequent vacancies among the appointed membership would mean the agency could face disproportionate influence from the ex officio members.

¹⁴GAO/GGD-91-85, 197.

¹⁵NCUA’s oversight responsibilities, in terms of total credit union assets and insured share deposits, have continued to increase substantially. As of December 2005, federally insured credit unions held \$678.7 billion in assets and had \$515.6 billion in insured share deposits compared to \$195.3 billion in assets and \$178 billion in insured share deposits in June 1990.

NCUA's Use of Schedule C Appointees Was Similar to That of the Other Federal Financial Regulators

The use of Schedule C appointees at NCUA generally was similar to that of the other federal regulators that we reviewed that had Schedule C appointees.¹⁶ NCUA's Schedule C appointees are subject to the previously mentioned OGE ethics and conflict of interest regulations that focus primarily on ethics and independence matters. Of NCUA's seven Schedule C appointees, four had been previously affiliated with one specific credit union trade group. NCUA officials noted that the industry knowledge that the Schedule C appointees gained from their trade group experiences have been beneficial to board members.

Schedule C appointments generally are made without regard to the rules for competition that govern career appointments. Schedule C appointees receive noncompetitive appointments to positions graded GS-15 and below that involve determining policy or other key close, confidential relationship with the agency head or other key appointed officials of the agency. Agency heads or key appointed officials may dismiss Schedule C appointees at any time, and such appointees generally leave their positions at the end of an administration. The Office of Personnel Management (OPM) reviews and authorizes agency applications for use of Schedule C positions. However, OPM does not review the qualifications of a Schedule C appointee, and final authority rests with the appointing officials.

Similar to board or commission members at four of the other five regulators with Schedule C positions, NCUA board members have the authority to select Schedule C personal staff, while the chair has additional authority to select individuals for positions allocated to staff offices. NCUA and three agencies allot Schedule C positions to head similar staff offices. For example, NCUA, CFTC, FCA and FDIC each have a Schedule C appointee as the director of their respective public or external affairs offices. Table 3 presents information on the Schedule C positions at the financial regulators.

¹⁶The Federal Reserve did not have Schedule C positions.

Table 3: Allotment of Schedule C Appointees at Financial Regulators, as of September 15, 2006

Financial regulatory agency (total agency employees) ^a	Positions allocated to the chair and board (number of appointments if greater than one)	Positions allocated to program offices	Total ^b
NCUA (958)	<ul style="list-style-type: none"> Chief of staff to the chair Staff assistant to the board members (2) Senior policy advisor to the board members (2) 	<ul style="list-style-type: none"> Director, Office of Public and Congressional Affairs Associate Director of External Affairs 	7 ^c
CFTC (485)	<ul style="list-style-type: none"> Chief of staff Administrative assistant to chief of staff Administrative assistant to the commissioner (2) Special assistant to the commissioner (2) Attorney advisor 	<ul style="list-style-type: none"> Chief Economist Director, Office of External Affairs General Counsel 	10
FCA (254)	<ul style="list-style-type: none"> Chief of staff Executive assistant to board member (2) 	<ul style="list-style-type: none"> Director, Office of Congressional and Public Affairs 	4
FDIC (4514)	<ul style="list-style-type: none"> Chief of staff 	<ul style="list-style-type: none"> Director, Office of Public Affairs and Deputy Chief of Staff 	2
FHFB (147)	<ul style="list-style-type: none"> Staff assistant to chair Counsel to chair Special assistant to board member (2) 	N/A	4
Federal Reserve (1,858)	N/A ^d	N/A	N/A
SEC (3,865)	<ul style="list-style-type: none"> Chief of staff Senior advisor to the chair Confidential assistant to the chair Confidential assistant to the commissioners (4) 	<ul style="list-style-type: none"> Speechwriter Director, Legislative Affairs Legislative affairs specialist (2) Investor advocate Confidential assistants to the division directors (4) 	16

Source: GAO.

^aFigures refer to either total staff members, full time equivalents, or average number of personnel. Employee figures are from most recent information available at the time of our review.

^bNumber reflects positions filled at the time of our review.

^cOPM has authorized a total of nine NCUA Schedule C appointments. At the time of our review, the Public Affairs Specialist (Media Manager) position was not filled. Additionally, while the NCUA chairman is authorized a Schedule C staff assistant position, an NCUA career employee currently holds the position.

^dNot Applicable. The Federal Reserve did not have any Schedule C appointees.

According to NCUA officials, the decision to select Schedule C staff rests with the individual board member, subject to White House approval, and requires no input from NCUA career staff. Board members told us that Schedule C staff generally have been identified through personal or White House referrals. Board members supervise and evaluate Schedule C staff. In addition, all of the board members stressed the importance of having staff who would complement the board member’s knowledge, skill, and abilities through knowledge of the credit union industry or politics.

NCUA's Schedule C staff are subject to the OGE ethics rules. As mentioned previously, OGE's *Standards of Ethical Conduct for Employees of the Executive Branch* focuses primarily on ethics and conflict of interest rules and disclosure.¹⁷ Similar to board members, Schedule C staff complete financial disclosure reports, receive ethics training, and seek advice and guidance from NCUA's ethics officer on matters involving potential conflicts of interest.

We reviewed the backgrounds of NCUA's seven Schedule C appointees and identified four Schedule C appointees who have been associated with the same credit union industry trade group. Of these four Schedule C appointees, two are Senior Policy Advisors, one is the Director of Public Affairs and Congressional Relations, and one is a staff assistant to a board member. NCUA officials told us that Schedule C appointees that have trade group experience are viewed as beneficial to board members in discharging their regulatory responsibilities. The officials explained that in particular, the senior policy advisors that have come from credit union industry trade groups have brought an in-depth understanding of credit union issues as well as industry contacts. A board member further added that it is difficult to attract and retain staff from outside of the Washington, D.C., area. We reviewed available Schedule C background information at four other agencies and found a few examples of trade group experience.¹⁸ For instance, out of the four Schedule C appointees at FCA, two appointees had prior trade group experience but came from different trade groups.

Conclusions

NCUA has a number of controls and procedures in place that address independence and objectivity of board members that are similar to those at the six other financial regulatory agencies we reviewed. Generally, the primary controls for addressing independence and objectivity at all of the agencies are based on the statutory criteria for individual qualifications and composition of the boards and commissions as well as rules promulgated by the Office of Government Ethics. For example, to address political independence of board members and commissioners, NCUA and the six other agencies have multimember boards or commissions and the board/commission members are subject to Senate confirmation and have fixed term limits. Additionally, NCUA and five of the other agencies have restrictions on the number of board or commission members

¹⁷OGE's *Standards of Ethical Conduct for Employees of the Executive Branch* contains provisions addressing impartiality in performing official duties. Under 5 C.F.R. § 2635.502, unless they receive prior authorization, employees should not participate in a particular matter involving specific parties that they know is likely to affect the financial interests of a member of their household, or in which they know a person with whom they have a covered relationship is or represents a party, if they determine that a reasonable person with knowledge of the relevant facts would question their impartiality in the matter. Under 5 C.F.R. § 2635.503, employees who have received an extraordinary severance or other payment from a former employer prior to entering government service are subject, in the absence of a waiver, to a 2-year period of disqualification from participation in particular matters in which that former employer is or represents a party.

¹⁸Of the six other agencies we reviewed, four provided information on the professional backgrounds of their Schedule C appointees, one did not provide information, and one did not have any Schedule C appointees.

that can be of the same political party. Moreover, NCUA's board and staff, like other federal employees, are required to adhere to the Office of Government Ethics' *Standards of Ethical Conduct for Employees of the Executive Branch*, which sets standards for maintaining impartiality as well as avoiding conflicts of interest.

However, opportunities exist for NCUA and policy makers to address, at least in part, perception issues regarding its impartiality as a regulator. In particular, NCUA could consider adopting, with appropriate modifications, one or more of the additional practices identified by officials of five of the six other financial regulators that address regulatory independence and objectivity. For example, NCUA could adopt additional independence and objectivity guidance similar to FHFBS Standards of Conduct that required FHFBS employees, including its board, to maintain an arm's length relationship with the regulated industry. Similarly, NCUA could consider including independence and objectivity as core values in the agency's strategic plan, similar to FHFBS and the Federal Reserve. By adopting one or more of the practices that the other regulators use, NCUA would reinforce the message that independence and objectivity are enduring and achievable values and goals for all staff, whether they are board members, career staff, or Schedule C appointees.

Finally, consistent with our 1991 report, we continue to believe that consideration should be given to exploring the potential benefits and costs associated with increasing the number of NCUA board members. We made this recommendation, in part, as a reflection of the increasing involvement of credit unions in activities traditionally associated with banks and thrifts. These changes are more evident today as credit unions have expanded their fields of membership and compete more directly with similarly sized banks and thrifts. Further, NCUA has sometimes experienced board vacancies, which resulted at times in a board of fewer than three active members, potentially offsetting the full benefits of a multimember board structure. Additionally, some NCUA board members have noted that the public meeting restrictions of the Government in Sunshine Act effectively at times constrain communication and collaboration between board members, since any meeting involving two of the board members to deliberate official agency business must be public. As we noted in 1991, a larger board would help provide a broader perspective on financial market regulatory and insurance issues. A larger board also could offer opportunities to enhance continuity of expertise and decision making on the board, improve communication between board members, and achieve greater parity with the other regulatory agencies. As part of these deliberations, it would be important to consider the potential costs of an expanded board, including the potential for greater difficulties in reaching consensus on issues or the board's ability to act expeditiously on matters needing its attention.

Recommendations for Executive Action

To address perception issues regarding NCUA's independence from and objectivity about the industry being regulated, we recommend that the Chairman of NCUA consider adopting practices that other financial regulators use to enhance their independence and objectivity. These practices include drafting agency-specific rules to maintain an arm's length relationship with the regulated industry and including independence and objectivity as core values in the agency's strategic plan.

Agency Comments and Our Evaluation

We provided a draft of this report to the Chairman, NCUA, and the heads or designees of CFTC, FCA, FDIC, FHFB, the Federal Reserve, and SEC for their review and comment. NCUA provided written comments that are reprinted in enclosure 1. NCUA, FCA, FDIC, and the Federal Reserve provided technical comments that we incorporated into the report, as appropriate.

In its response, NCUA stated it was not opposed to our recommendation to consider adopting agency-specific ethics guidance. NCUA further indicated that it will consider including the concepts of independence and objectivity as part of its values and mission in its future strategic plans and in its 2007 Annual Performance Budget. NCUA indicated that adopting agency-specific ethics standards may not in practice result in more rigorous standards than those imposed by the Office of Government Ethics rules. NCUA stated that the general OGE rules prohibiting participation in any matter that would have a direct and predictable effect on an employee's financial interest would prohibit the conduct proscribed by the agency-specific rules, and are sufficient to assure independence and objectivity of NCUA board members and staff. Our recommendation is not limited to adopting agency-specific ethics standards, and the report points out practices of the other regulators, such as adopting rules that require an arm's length relationship with the regulated industry that could enhance NCUA's controls for independence and objectivity and help address perception issues associated with its impartiality as a regulator.

NCUA also stated in its comment letter that our characterization of the Government in the Sunshine Act as prohibiting any discussions between two NCUA board members unless a transcript is produced and released was not accurate. We changed the report text to clarify that because of the current size of the board, the Government in the Sunshine Act effectively prohibits deliberations of official agency business between any of the NCUA board members outside of board meetings unless they release a transcript of the discussion in accordance with the act's open meeting procedures.

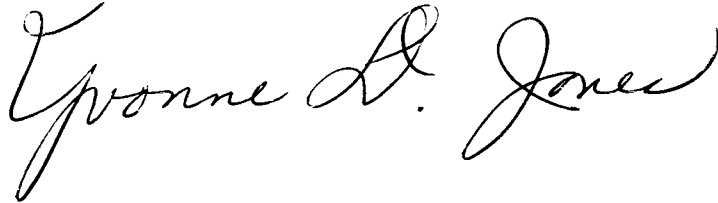
NCUA also stated that it did not agree that Congress should increase the size of the NCUA board. NCUA stated in its view the costs and anticipated reduced efficiencies involved would outweigh any potential benefits, estimating the cost of additional board members and their staff to be at least \$1.1 million annually. NCUA also stated that the increasing size and complexity of the credit union industry was being addressed through its focus on maintaining an adequate expert field staff, and that the three-member board

was more than adequate to perform the board's role in establishing safety and soundness regulations and policy. While we acknowledge there would be some financial and potential efficiency costs associated with increasing the board size at NCUA, we continue to believe it would be worthwhile to review the potential benefits an expanded board may provide. We note that other financial regulatory agencies with broadly similar duties have operated for many years with boards having five or more members. As we noted in our report, vacancies on NCUA's board have sometimes been lengthy, leading the board to operate with two or fewer members, potentially offsetting the benefits of its multimember board structure, such as diversity of perspectives, experience, and political party representation among board members. Additionally, the benefits of a larger board could include, among other things, enhanced continuity of expertise and decision making on the board, improved communication among board members, and greater parity with the other regulatory agencies. We agree that maintaining an adequate field staff is essential to protecting the safety and soundness of the credit union industry, but believe that it is the responsibility of a balanced board to bring a diversity of perspectives and experience to board deliberations and to provide a broader perspective on financial market regulatory and insurance issues. Although Congress did not adopt our 1991 recommendation to expand NCUA's board, we believe that, consistent with the literature on corporate governance practices, the size of the board should be periodically reviewed to ensure that the agency has the most appropriate board size for its current resources and responsibilities.

As we agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution of it until 30 days from the date of this letter. At that time, we will send copies of the report to the Ranking Member, House Committee on Ways and Means; other interested congressional committees and subcommittees; the Chairman, NCUA; and the Chairmen of CFTC, FCA, FDIC, FHF, the Federal Reserve, and SEC. We will make copies available to others upon request. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you have any questions concerning this report, please contact me at (202) 512-8678. Contact points for our Office of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this assignment were Harry Medina, Assistant Director; Janet Fong; Danielle Novak; Barbara Roesmann; and Paul G. Thompson.

Sincerely yours,

A handwritten signature in black ink that reads "Yvonne D. Jones". The signature is written in a cursive style with a large, prominent "Y" and "J".

Yvonne D. Jones
Director, Financial Markets
and Community Investment

Comments from the National Credit Union Administration



National Credit Union Administration

November 15, 2006

Ms. Yvonne D. Jones
Director, Financial Markets
And Community Investments
Government Accountability Office
441 G Street, N.W.
Washington, DC 20548

Dear Ms. Jones:

Thank you for giving NCUA the opportunity to comment on your conclusions and recommendations set forth in NCUA's Corporate Governance Report (Report). We appreciate your detailed analysis of the issues. Our comments primarily address your suggestion that continued consideration be given to increasing the size of the NCUA Board and your observation that NCUA has not adopted ethics guidelines specific to our agency. We do not agree that Congress should increase the size of the NCUA Board. The three-member NCUA Board has a strong historical record as an independent and objective regulator, and the costs of increasing the size of the NCUA Board would far outweigh any possible benefits. We are not opposed to adopting NCUA-specific ethics guidelines, although in our experience adherence to Office of Government Ethics (OGE) rules more than adequately prevents conflicts of interest between NCUA officials and regulated credit unions. Similarly, we are not opposed to explicitly listing independence and objectivity as part of our values and mission in future versions of our strategic plan and have included these concepts in the 2007 Annual Performance Budget, which we anticipate the NCUA Board will soon consider.

Further comments on each issue are below, followed by some technical notes.

Increasing the Size of the NCUA Board is Unwarranted

Your Report recommends continued consideration, consistent with a 1991 GAO report, of amending the Federal Credit Union Act (FCU Act) to increase the size of the NCUA Board to five members. You also state that in deliberating this issue, Congress should analyze the potential costs and benefits associated with a larger Board. In our view, the costs and reduced efficiencies outweigh any potential benefits.

NCUA estimates the cost of salaries, benefits, and other expenses for two additional Board members and their staffs would be at least \$1.1 million annually. In addition, NCUA would incur significant other one-time costs associated with increasing the number of Board members. The costs of this proposal, however, extend far beyond the tangible, measurable monetary impact.

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The greatest cost would be a reduction in efficiency. Your report acknowledges that expanding the size of the Board could make it more difficult to reach consensus or act quickly when necessary. We agree that increasing the size of the Board would make decision-making more difficult and increase the time required for Board actions. We also note that simply scheduling matters would become more complicated. The current, three-member Board structure, in contrast, affords more interaction between career staff and Board members than would be possible with a five-member Board. NCUA, like other federal agencies, is continually in search of ways to streamline its processes and reduce bureaucracy. The three-member Board provides for maximum efficiency while still allowing for a variety of viewpoints. Increasing the size of the Board would make agency processes more time-consuming and less efficient.

We also doubt that increasing the size of the Board would address the concerns cited. You argue that one factor in favor of additional NCUA Board members is the increasing asset size and complexity of the credit union industry. While the credit union industry has grown in size and complexity, this challenge is best addressed by having adequate numbers of expert field staff. That is why, despite a continuing decrease in the number of insured credit unions, NCUA did not reduce field staffing in 2006 and does not anticipate a reduction in field staffing for 2007. Examiners, supervisory examiners and regional office staff are the first-line overseers of safety and soundness. The Board's role of establishing safety and soundness regulations and policy is more than adequately performed by a three member Board. We believe the significant cost of additional Board members would have little impact on NCUA's mission to protect the safety and soundness of the credit union industry.

You cite the Government in the Sunshine Act as another reason for increasing the size of the Board, suggesting at page 14 of the Report that the Sunshine Act prohibits any discussions between two Board members unless a transcript is produced and released because any such discussions would constitute a meeting under the Sunshine Act. Neither the Sunshine Act nor NCUA's rules, however, impose such a restriction. The Sunshine Act defines meeting as "the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of agency business." 5 U.S.C. §552b(a)(2). Informal, tentative, or background discussions that "clarify issues and expose varying views" are not deemed to be meetings under the Sunshine Act. S. Rep. No. 94-354 (1975), p. 19, cited in An Interpretive Guide to the Government in the Sunshine Act (2nd ed. 2005). Consistent with the Sunshine Act and its legislative history, NCUA's Sunshine Act regulation defines meeting as any **deliberations** by two or more Board members that determine or result in the joint conduct or disposition of official agency business. 12 C.F.R. §791.10(d). Thus, while members must take care not to engage in discussions that effectively determine official actions, it is not accurate to say that the Sunshine Act prohibits all

discussion between two Board members unless conducted according to open meeting procedures.

Finally, we observe that although Congress considered issues related to the structure of NCUA's Board more recently than 1978, and after GAO's initial recommendation to increase the size of the Board, Congress did not adopt GAO's suggestion. In 1998, as part of the Credit Union Membership Access Act, Congress added the restriction that no more than one NCUA Board member can have recent experience as a credit union officer. P.L. 105-219, §204(1), codified at 12 U.S.C. §1752a(b)(2)(B).

Adoption of NCUA-Specific Ethics Standards and Inclusion of Independence and Objectivity as Part of the NCUA's Strategic Plan May be Duplicative

Your Report notes that NCUA has not adopted agency-specific ethics guidelines and recommends that we do so. We would not oppose adopting such standards, but we do not think this action would, in practice, result in more rigorous standards than those imposed by Office of Government Ethics Rules.

The six other agencies you surveyed also reported that the OGE disclosure requirement as their "primary tool" for guarding against conflicts of interest. You also state that the agencies with agency-specific rules based their rules on the OGE rules. We believe that the general OGE rules prohibiting participation in any matter that would have a direct and predictable effect on an employee's financial interest would prohibit the conduct proscribed by the agency-specific rules, and is sufficient to assure independence and objectivity of NCUA Board members and staff. Our required, annual ethics training for all staff, including Board members and Schedule C appointees, provides further information about how this requirement applies in the context of the credit union industry, and to date we have not seen the need to adopt separate NCUA rules restating the OGE requirements. We are, however, open to adopting an NCUA version of the OGE rules, particularly if there are suggestions for provisions not covered by the OGE rules that should apply to NCUA Board members and staff.

We must clarify that the specific regulations imposing limitations on holding assets specific to regulated industries that some agencies have adopted are not directly applicable in the credit union context, since credit unions do not issue stock. NCUA does track information on credit union membership for Board members to ensure conflicts do not arise when matters concerning individual credit unions come before the Board. NCUA's Ethics Officer requires each Board member to list the credit unions where they maintain affiliation annually. The list is circulated to the NCUA Board Secretary as well as other officials to guard against any possible conflicts. This annual listing is not included in any NCUA-specific regulation or guidelines, but nothing would prevent us from making it a formal guideline, and we will consider doing so.

While NCUA's role as a regulator clearly requires it to be independent and objective, we have never explicitly used these terms in our strategic plan. We agree that independence and objectivity are crucial parts of our stated mission of fostering the safety and soundness of insured credit unions and our first stated value, integrity. NCUA Strategic Plan 2003-2008, p. 7. We also agree with your observation that our Board members understand their duty to be objective. We have no objection to explicitly articulating the concepts of independence and objectivity in future versions of the plan.

Technical Issues

In the first paragraph of the "Background" section on page 5, you state, "NCUA requires its credit unions to obtain federal share (deposit) insurance from the National Credit Union Share Insurance Fund." The requirement that federally chartered credit unions obtain share insurance is a requirement imposed by the FCU Act, not NCUA. Accordingly, we believe this sentence should read, "The Federal Credit Union Act requires federal credit unions to obtain federal share (deposit) insurance from the National Credit Union Share Insurance Fund."

Finally, we think your discussion of how agency enabling legislation facilitates Board member independence on pages 6 to 8 should place greater emphasis on the provision, unique to the FCU Act, which permits only one Board member with recent credit union experience. You mention this provision in the text, but then fail to list that control in Table 1 with the other statutory controls designed to ensure independence and objectivity. The FCUA Act imposes a more stringent requirement than the other enabling statutes, and we believe Table 1 would be more accurate if you added a row listing this requirement. Although Table 2 includes this restriction in the list of FCU provisions, a reader must parse through the entire chart to determine whether or not other agencies you studied are subject to a similar restriction. We think it is somewhat inconsistent to highlight what may be perceived as shortcomings of the FCU Act, such as the fact that unlike the Federal Deposit Insurance Act, the FCU Act does not require one Board member to have state supervisory experience, without placing equal emphasis on a provision of the FCU Act with no parallel in other enabling statutes.

Thank you again for this opportunity to comment, and please feel free to call me if I can be of further assistance in preparing your final report.

Sincerely,



J. Leonard Skiles
Executive Director

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