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UNITED STATES OF AMERICA  
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of

Xxxx (b)(6)

*Docket No. BD 12-08*

Dividend Claim

**Decision and Order on Appeal**

**Decision**

This matter comes before the National Credit Union Administration Board (Board) pursuant to 12 C.F.R. §745.202, as an administrative appeal of the determination by the Agent for the Liquidation Agent of N & W Poca Division Federal Credit Union denying Xxxx's claim for dividends from July 1, 2008 through September 30, 2008.

**Background**

N & W Poca Division Federal Credit Union, Bluefield, WV (Credit Union) was chartered in 1968 and served a variety of employee groups in the Bluefield, WV area. The NCUA Board placed the Credit Union into involuntary liquidation on October 3, 2008, due to insolvency and appointed itself as the Liquidation Agent. The NCUA determined that the Credit Union was insolvent as of September 25, 2008. The Agent for the Liquidation Agent (Liquidating Agent) made share payouts of the balances in share accounts directly to the shareholders, but did not pay unposted dividends on the share balances for the period ended September 30, 2008. Because the Credit Union was insolvent prior to its liquidation, the Credit Union did not have sufficient earnings and therefore did not have authority to pay dividends for the period ended September 30, 2008. The Credit Union had paid dividends on share accounts for the period ended June 30, 2008.

Xxxx held a share certificate account (account #xxxx) with the Credit Union. As noted, the Credit Union was liquidated on October 3, 2008. On the date of liquidation, the balance in account #xxxx was \$xxxx. Following the liquidation, the Liquidating Agent paid Xxxx \$xxxx on xxx share certificate account. The Liquidating Agent did not pay Xxxx dividends on xxx share certificate account for the quarter ended September 30, 2008. By letter dated October 29, 2008, Xxxx appealed the Liquidating Agent's determination to the NCUA Board. In xxx appeal letter, Xxxx requested dividends in the amount of \$xxxx on account #xxxx for the quarter ended September 30, 2008.

On September 24, 2008, the Credit Union paid Xxxx the balance of \$xxxx and dividends of \$xxxx on another share certificate that matured on that date (account #xxxx). This transaction is not part of xxx appeal.

### **Application of FCU Act and NCUA Regulations to Appeal**

A federal credit union issues shares and share certificates, and pays dividends on those shares. Dividends are not the same as interest. Unlike interest, dividends may only be paid if the federal credit union has sufficient earnings. Section 117 of the Federal Credit Union Act, 12 U.S.C. §1763, states in part: "At such intervals as the board of directors may authorize, and after provision for required reserves, the board of directors may declare a dividend to be paid . . . at different rates and maturity dates in the case of share certificates . . . ." The board of directors may not declare and pay dividends unless sufficient prior and/or current earnings are available at the end of the dividend period. 12 C.F.R. Part 707, Appendix C §707.2(i)2 and §707.4(b)(8)1.

The NCUA determined the Credit Union was insolvent as of September 25, 2008. This meant that the Credit Union did not have available earnings from which to pay dividends to any of its shareholders for the period ended September 30, 2008. Accordingly, no dividends could be paid. Xxxx is not entitled to dividends for the quarter ended September 30, 2008.

The payment of dividends to Xxxx on September 24, 2008 on xxx matured share certificate (account #xxxx) does not serve as precedent for the later payment of dividends that clearly was not permissible on September 30, 2008. The fact that Xxxx did not receive dividends on account #xxxx for the third quarter of 2008 arose from the Credit Union not having sufficient earnings to pay dividends following the NCUA's determination that the Credit Union was insolvent as of September 25, 2008.

### **Order**

For the reasons set forth above, it is ORDERED as follows:

The Board upholds the Liquidating Agent's determination and denies Xxxx's appeal.

The Board's decision constitutes a final agency determination. Pursuant to 12 C.F.R. §745.203(c), this final determination is reviewable in accordance with the provisions of Chapter 7, Title 5, United States Code, by the United States district court for the Federal judicial district where the Credit Union's principal place of business was

located. Such action must be filed not later than 60 days after the date of this final determination.

So **ORDERED** this 28th day of April, 2009 by the National Credit Union Administration Board.

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Mary F. Rupp  
Secretary of the Board