

August 9, 2011

W. Kent Hartzler, President & CEO
Everence Federal Credit Union
2160 Lincoln Highway E
Suite 20
Lancaster, PA 17602

Re: Management Official Interlocks Pertaining to a Federal Credit Union (FCU).

Dear Mr. Hartzler:

You have asked whether the National Credit Union Administration's (NCUA's) management official interlocks rule prohibits Everence FCU's management officials from serving nonaffiliated depository organizations that operate under the Enterprise Financial family of companies. Yes, we believe the rule prohibits management interlocks between the FCU's management officials and any common management officials involved with the holding companies and thrift within the enterprise. Furthermore, we are concerned the FCU's board is improperly controlled by Everence Financial, particularly with regard to Everence Financial's selection of the FCU's slate of candidates for its board of directors.

Background

Everence Financial (formerly named Mennonite Mutual Aid Association) consists of a variety of companies that provide insurance and financial products. Everence Association, a fraternal benefit society, holds a controlling interest in many of the companies and shares common ownership and control with the Mennonite Foundation, a charitable foundation. Everence Association also controls Everence Holdings, Inc., an insurance and financial services holding company that solely owns the following: Everence Securities; Everence Insurance Company; MMA Distributions, Inc.; Everence Capital Management, Inc.; and, Everence Trust Company, a federally-chartered thrift with less than \$5 million in assets. The depository holding companies (Everence Financial and Everence Holdings) and thrift (Everence Trust) are located in Goshen, Indiana.¹

Everence FCU serves over 15,000 members and has over \$124 million in assets as of its March 2011 call report. The FCU's main office is located in Lancaster, Pennsylvania and two of its nine branch offices are located in Goshen, Indiana. The FCU's field of membership overlaps with the customer base served by Everence Financial (Everence). You have stated that the management at both the FCU and Everence agreed to collaborate in providing a full range of banking, insurance and financial products to their shared customers. Everence's board of

¹ The Office of Thrift Supervision's website indicates that Everence Trust and both holding companies, under the names Mennonite Mutual Aid Association and Everence Holdings, Inc., held assets of \$4,781,000 via a consolidated financial statement as of the December 2010 cycle. <http://ots.gov/?p=InstitutionSearch&iid=16425>; see also 12 C.F.R. §711.2(p).

directors approves the slate of candidates presented to the FCU's membership for election to serve on the FCU's board of directors. In addition, the president and chief executive officer of Everence serves on the FCU's board of directors as well the thrift's board of directors.

Analysis

Depository Institution Management Interlocks Act

The Depository Institution Management Interlocks Act (Interlocks Act) permits management official interlocks between affiliates, but establishes certain prohibitions against the same individual simultaneously serving as a management official of two, unaffiliated depository institutions. 12 U.S.C. §§3201 et seq. NCUA has a regulation that implements the Interlocks Act for federally insured credit unions. 12 C.F.R. Part 711.

The purpose of the Interlocks Act, as stated in NCUA's regulation, is "to foster competition by generally prohibiting a management official from serving two nonaffiliated depository organizations [either a depository institution or a depository holding company] in situations where the management interlock likely would have an anticompetitive effect." 12 C.F.R. §711.1(b). The definition of "a management official" includes a director, honorary director of a depository institution with assets of at least \$100 million, a senior executive officer, branch manager, trustee of a depository organization, or representative or nominee of the foregoing. 12 C.F.R. §711.2(m). Because an FCU cannot meet the definition of an "affiliate" as set forth in the statute, 12 U.S.C. §3201(3), NCUA must review the prohibitions and the various exceptions provided in its rule when an FCU's management official also serves in a similar capacity at an unaffiliated depository organization. A "depository organization" means a depository institution or depository holding company. 12 C.F.R. §711.2(h).

The Interlocks Act and NCUA's rule generally prohibit an FCU's management official from simultaneously serving as a management official of another depository organization that has an office in the same city, town, or village unless the dual service qualifies for an exception or NCUA exempts a prohibited interlock. 12 U.S.C. §§3202 and 3204; 12 C.F.R. §711.3(a), §711.4-711.6. If each depository organization has total assets of \$50,000,000 or more, then the management official is prohibited from serving an unaffiliated depository organization in the same relevant metropolitan statistical area. 12 U.S.C. §3202(1); 12 C.F.R. §711.3(b).

As you have represented, the president and chief executive officer of Everence, a savings and loan holding company, serves on the board of directors of the FCU and the thrift. Absent an exemption, this individual is a covered management official under the Interlocks Act. He may not serve as a director at the FCU at the same time he is serving as a management official at Everence and the thrift because all of the depository organizations have offices in the same community, Goshen, Indiana. 12 U.S.C. §3202; 12 C.F.R. §§711.3(a). As an alternative to terminating his service to avoid a prohibited interlock, the impacted institutions within the Everence umbrella may seek an exemption from the prohibition either by establishing eligibility for the small market exemption or obtaining a general exemption from NCUA. See 12 C.F.R. §§711.5-.6.

Nomination Process for FCU Board of Directors

As noted above, we are concerned the FCU's board is improperly controlled by Everence. You stated that Everence's board of directors approves the slate of candidates presented to the FCU's membership for election to serve on the FCU's board of directors.

The fundamental nature of a credit union is based in the ownership and control of the institution by its membership, as opposed to external influences such as holding companies or investors. In the passage of the Credit Union Membership Access Act of 1998, Congress included the following statement in its findings: “[c]redit unions, unlike many other participants in the financial services market, are exempt from federal and most state taxes because they are *member-owned, democratically operated, not-for-profit organizations generally managed by volunteer boards of directors* and because they have the specified mission of meeting the credit and savings needs of consumers, especially persons of modest means.” Pub. L. 105-219, Sec. 2; 112 Stat. 913 (August 7, 1998) (emphasis added).

The FCU Act states that an FCU’s board shall “be elected annually by and from the members as the bylaws provide.” 12 U.S.C. §1761(a). Article V of the NCUA FCU Bylaws provides four options for voting procedures. 12 C.F.R. Part 701, Appendix A. Each option contemplates member involvement in the selection of nominees, through the use of a nominating committee consisting of members, in addition to nominees properly nominated through member-driven nomination petitions or nominations from the floor. In previous opinions, we have stated that, while the board of directors establishes policies and criteria for the nominating committee, there are parameters to its influence; an FCU’s board of directors cannot usurp the role of the nominating committee. By precluding the function of the nominating committee, we believe an FCU violates the FCU Bylaws. See OGC Op. 02-0567 (June 18, 2002)(available on NCUA’s website). Everence’s involvement in the selection of the slate of nominees presented to the FCU’s membership is contrary to the FCU Act and FCU Bylaws.

Please feel free to contact Staff Attorney Chrisanthy Loizos or me with any additional questions.

Sincerely,

/S/

Hattie M. Ulan
Associate General Counsel

cc: Susan Robbins, NCUA Supervisory Examiner
Dan Popp, NCUA Examiner
Norm Tonsic, NCUA Examiner
Kelly Lay, Associate Regional Director, Region II

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