

April 9, 1991

James L. McPheters, President
San Diego Teachers' Credit Union
P.O. Box 34606
San Diego, California 92163-4606

Re: Federal Regulation of State-Chartered Credit Unions (Your March 19, 1991 Letter)

Dear Mr. McPheters:

Thank you for your letter to Chairman Roger Jepsen expressing the concerns of the State of California Department of Corporations Credit Union Advisory Committee regarding federal regulation of federally insured, state-chartered credit unions ("FISCUs"). The Chairman requested that I respond to your letter, since it addresses legal issues.

NCUA believes its regulation of certain aspects of FISCU operations to be both appropriate and necessary. The underlying goals of NCUA's regulatory system are protection of the credit union system and safety and soundness of the National Credit Union Share Insurance Fund (the "NCUSIF"). In order to achieve those goals, NCUA must regulate all federally insured credit unions, both federal credit unions ("FCUs") and FISCUs, sufficiently to insure that they do not create an undue risk to the NCUSIF or otherwise threaten the stability of the system. In doing so, NCUA attempts at all times to strike a balance between regulating all federally insured credit unions and maintaining the integrity of the dual chartering system.

In some cases, NCUA regulation of FISCUs is congressionally mandated. The Federal Credit Union Act, 12 U.S.C. ~1751 et seq. (the "Act") requires FISCUs to comply with certain provisions of the Act and NCUA's Rules and Regulations, 12 C.F.R. ~700 et seq. (the "Regulations"). Section 201(b)(9) of the Act states that any credit union seeking federal share insurance must agree to comply with Title II of the Act and all regulations promulgated pursuant thereto. 12 U.S.C. ~1781(b)(9). Only congressional amendment of the Act could remove FISCUs from the ambit of Title II and the relevant regulations.

Congress, in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101-73, 103 Stat. 183 (1989) ("FIRREA"), made certain changes in and additions to the Act. Title XI of FIRREA required the NCUA Board to promulgate regulations dictating standards for real estate appraisals for all federally insured credit unions. Section 919 of FIRREA amended Section 202 of the Act, 12 U.S.C. ~1782, by adding a provision that directed the Board to promulgate regulations mandating CPA audits for all federally insured credit unions under certain circumstances. Section 914 of FIRREA added Section 212 to the Act, 12 U.S.C. ~1791, setting forth conditions for Board approval of officials of newly-chartered or troubled federally insured credit unions. The regulations implementing those portions of FIRREA (12 C.F.R. Part 722, 12 C.F.R. Section 701.13, and 12 C.F.R. Section 701.14, respectively) must, by FIRREA's terms, apply to both FCUs and FISCUs. Again, only congressional action can change this situation.

In some instances, the NCUA believes that safety and soundness concerns mandate applying certain regulations to FISCUs as well as FCUs. For example, certain provisions of NCUA's lending regulation, 12 C.F.R. Section 701.21, were made applicable to FISCUs for safety and soundness reasons. Business loans (~701.21(h)), improper fees (~701.21(c)(8)), and preferential loans (~701.21(d)(5)) pose serious risks to all credit unions; FISCUs are no less subject to those risks than are FCUs. Safety and soundness concerns and protection of the NCUSIF dictate that FISCUs be subject to the same standards and precautions as FCUs in these areas. NCUA does recognize that some states have laws or regulations that can adequately guard

against unsafe lending practices. For that reason, Section 741.3 of the Regulations, while expressly subjecting FISCUs to the provisions of Sections 701.21(h), 701.21(c)(8) and 701.21(d)(5), contains an exemption for FISCUs chartered by states that have adopted substantially equivalent regulations.

We also note that Executive Order No. 12612, 52 Fed. Reg. 48615 (1987), reprinted in 5 U.S.C.A. 601 nt., requires NCUA to address states' interests whenever it promulgates a regulation affecting FISCUs. The Executive Order states: "Federal action limiting the policymaking discretion of the States should be taken only where constitutional authority for the action is clear and certain and the national activity is necessitated by the presence of a problem of national scope." While the Executive Order does not diminish NCUA's authority to regulate FISCUs, compliance with the Executive Order ensures that states receive notice of proposed rules that may affect their regulation of state-chartered credit unions and have the opportunity to express their views if they consider themselves adversely affected by such proposed rules. The NCUA Board, prior to issuing a final regulation affecting state interests, weighs those interests and the regulation's probable effect thereon against other relevant interests, in order to strike the proper balance between states' rights and the safety and stability of the entire credit union system and the NCUSIF.

I hope that we have been of assistance.

Sincerely,

Robert M. Fenner
General Counsel

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