



July 23, 2013

Open Letter to NASCUS Membership:

Since NCUA proposed changes to its derivatives regulation at its May 16, 2013 Board meeting, I have noticed confusion within the credit union movement about the nature of the proposal. Specifically, some have characterized the proposal as "giving credit unions an authority to engage in these transactions." What NCUA has actually done with this proposed rule is more complicated than that. It is true that for federal credit unions, NCUA is proposing to expand their authorities under section 703 of NCUA's Rules and Regulations. But to be clear, for federally insured state-chartered credit unions (FISCUs), NCUA is not expanding their authority: rather, NCUA is proposing to take away existing authority for some state-chartered credit unions. The proposed rule would limit the ability of states to allow FISCUs to engage in derivatives transactions.

In most states, state-chartered credit unions are prohibited from engaging in derivatives transactions. NCUA's proposed rule does not change that. While it is true that some of those states may use their wild card provision to allow derivatives if NCUA authorizes the activity for federal credit unions, ultimately the decision on whether the activity is appropriate for state-chartered credit unions in those states remains with the state regulator. And that is appropriate.

However, not all states currently prohibit state credit unions from engaging in derivatives transactions. Many states allow this activity for their state-chartered credit unions. For those states, NCUA's proposed rule would preempt state authority and limit an available tool to credit unions in those states to mitigate interest rate risk. It must also be noted that no one has produced any evidence that the state supervision of derivatives transactions has produced a material risk to the share insurance fund. In fact, many of our state regulators are quite experienced in supervising derivatives activities in credit unions, but especially in state-chartered banks.

I know that opinion is divided within the credit union movement as to whether NCUA should allow derivatives authority for federal credit unions. Frankly, that is an issue for the federal side of our system to work out. For the state-chartered system the case is easier and less complicated. States should continue to determine if the activity is appropriate for their credit unions.

Of course, the proposed rule raises many other intriguing, and in some cases, controversial issues. They will be addressed in our comments to be filed with NCUA by July 29. But for now, I wanted to focus on a clear understanding of how the rule affects the two charters. It proposes to give to federals and take away for the states.

Sincerely,

A handwritten signature in black ink that reads "Mary Martha".

Mary Martha Fortney  
NASCUS President and CEO