LUSE GORMAN

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LEGAL UPDATES AND NEWS

The NCUA Addresses the Loss of Insured Credit Unions Through Charter Conversions and Private Insurance

In a recent letter from the general counsel of the NCUA to the president and chief executive officer of NASCUS, the NCUA addressed certain questions raised regarding the Temporary Corporate Credit Union Stabilization Fund ("TCCUSF"). The letter makes clear, as has always been the case, that any credit union that converts from a credit union to a mutual savings bank or converts to private insurance, is no longer subject to any assessments for the TCCUSF or the NCUSIF. This clearly was the case with ***Coastway Community Bank***, a client of this firm, which converted from a credit union to a Rhode Island mutual savings bank in 2009 and thus is no longer subject to any assessments for the TCCUSF or the NCUSIF. Coastway is the only credit union to successfully convert under the new NCUA rules.

In general, the NCUA did not express concern over the five credit unions that are either converting to thrift institutions or to private insurance. It believes that the total amount of deposits involved will not have a material impact on the assessment rates to the remaining credit unions. The NCUA recognized, however, that if enough credit unions leave the insurance fund it may be required to take remedial action.

The four specific questions raised in the letter are as follows:

Does the NCUA possess the authority to assess all credit unions the total cost of the projected expense for the Stabilization Fund in a single premium?

The NCUA made it clear that it has the authority to do so, but has determined as of the current time to spread the premium out over a number of years to reduce the impact in any one year. In the event, however, that a significant number of large credit unions switch to private insurance or convert to a thrift, ***the NCUA could be forced to accelerate the remaining potential premium costs since it has no ability to charge an exit premium or assess former credit unions.***

If so, how would that cost be determined given the exact total cost of the program in unknowable at this time?

The NCUA recognized that a one-time assessment raises the problem of determining the cost since the final cost will depend upon the performance of the legacy assets, the success of any recoveries through lawsuits and the potential for any transfer of funds from the NCUSIF to the TCCUSF. Although this indicates the difficulty in a one-time assessment, the NCUA's hand could be forced if a number of credit unions leave the system.

Does NCUA have the authority to assess all credit unions more than one Stabilization Fund premium per annum?

The NCUA responded that it does have such authority. It could be used in the future by the NCUA if it deemed it advisable.

Does the NCUA possess the authority to assess only an individual credit union its share of the total costs of the stabilization if the credit union pursues a conversion to a mutual savings bank?

The NCUA stated it has no such authority since the Federal Credit Union Act requires that the percentage assessment be identical for each insured credit union. To otherwise allow such an assessment would amount to an exit premium and the NCUA has no such authority unless Congress acts to provide such authority.

The NCUA noted it has no contingency plan in place at the current time to address the potential for increased assessments if too many credit unions exit the NCUSIF. The agency does, however, have plans to monitor the situation to determine if any different action may be necessary. It is interesting to note that more than 20 years ago, the savings and loan insurance fund imposed an exit premium on thrifts that were converting to banks. A number of commentators have noted the similarities between the savings and loan crisis more than 20 years ago and the current crisis. The question boils down to this, as it did then: Is the problem greater than what is known by the industry or is the situation under control? A generation ago the answer, unfortunately, was that the situation was much more dire than known by the industry.

We recently distributed a newsletter, dated August 19, 2011, regarding the threat to your capital posed by the TCCUSF assessments. We have included a copy of that newsletter for your convenience. As you will see from this material, we are the most experienced firm in counseling credit unions considering a conversion to a thrift charter, as well as assisting credit unions through the process. If you would like a copy of the complete letter from the NCUA or have any questions, please do not hesitate to contact us.

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If you would like to learn more about the mutual savings bank charter or assistance in your due diligence efforts, please contact one of the following attorneys of our firm. We are available to meet with you and can provide management and the Board with the information necessary to make an informed decision and ensure that your Board's decision is consistent with its fiduciary duty to the members.

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