



National Credit Union Administration
Office of Examination and Insurance

January 24, 2019

SENT BY FEDERAL EXPRESS

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Chief Executive Officer

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Dear XXXX:

On December 28, 2018, you filed a request for review by the NCUA's Director of the Office of Examination and Insurance ("E&I") regarding a proposed Letter of Understanding and Agreement ("LUA") from the Regional Office in connection with your credit union's most recent examination. You filed this request pursuant to NCUA's regulation, 12 C.F.R. § 746.106, that allows a credit union to seek my review of a written material supervisory determination by a program office.

Background

During the examination, effective date March 31, 2018, the NCUA determined high ratings for the risk areas of credit, liquidity, strategic, and transaction. The risk assessments centered on the loan growth and the concern for liquidity because of the use of borrowed funds or shares to grow the indirect loan portfolio. At the time of the examination, vehicle loans represented over 59 percent of total loans and total loans represented over 95 percent of total shares.

On June 26, 2018, the NCUA examiner presented Document of Resolution (DOR) items to the XXXX Credit Union's board of directors. The DOR addressed concerns related to the concentration of indirect loans, low levels of liquidity, inadequate internal controls, and high operating expenses.¹

On September 25, 2018, you then received an LUA from the Region addressing the June 26, 2018, DOR areas of concern. Your board refused to sign the LUA alleging that it contained factual inaccuracies or omissions, and that it would have significant detrimental effect on the

¹ The timeframe to appeal the DOR has lapsed.

credit union. On October 30, 2018, you asked the Region to reconsider the LUA. On November 29, 2018, the Regional Director responded to your request for reconsideration. Based on your submission, the Regional Director agreed to remove the section addressing the internal control concerns (with the heading “Accounting Concerns”). However, the Regional Director concluded the other action items contained in the LUA were correct and necessary. Accordingly, the region sent you a revised LUA for board signature.

Your board again refused to sign the revised LUA, and authorized seeking my review. On December 28, 2018, my office received the present request for review.

Discussion

Pursuant to NCUA’s regulations, 12 C.F.R. § 746.106, the Director of E&I has jurisdiction to review a program office’s material supervisory determination, if the request for review was preceded by a request for reconsideration with the program office, and filed within 30 days of a response from the program office. NCUA’s regulations define a “material supervisory determination” as a written decision by a program office that may significantly affect the capital, earnings, operating flexibility, or that may otherwise affect the nature or level of supervisory oversight, of an insured credit union. 12 C.F.R. § 746.103(a).

An LUA is an agreement between the NCUA and a credit union, in which the credit union agrees to take, or not take, certain specified actions. If the credit union’s board signs the agreement, the credit union agrees to be bound by its terms. If they do not sign the agreement then it is “unexecuted” and has no force. In the present matter, your credit union requested that the Regional Office reconsider the revised, proposed LUA. Your credit union has not signed the LUA and the Region has not initiated a substitute enforcement action at this time.

As such, the unexecuted LUA in this matter does not meet the definition of a material supervisory determination, as defined by §746.103. At this point, the proposed LUA is simply an attempt at a negotiated agreement. In short, the present request is not ripe for my review.

If the Region initiates any unilateral enforcement action (such as a preliminary warning letter) in lieu of the proposed LUA, your credit union could then request the region reconsider this action. If the region were to deny your request for reconsideration, you could then appeal this determination to my office.

Decision

Accordingly, for the reasons noted above, my decision is the unexecuted Letter of Understanding and Agreement is not eligible for appeal.

Pursuant to NCUA's Regulations, 12 C.F.R. § 746.103(a)(6), you may appeal this decision to the Supervisory Review Committee within 30 calendar days of receipt of this letter. Such an appeal must follow the requirements of the regulation, and must be filed in writing with the Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428. Please refer to the regulation for additional information regarding the required contents of an appeal.

Sincerely,

Larry Fazio
Director

cc: Board Chairperson XXXX
Regional Director XXXX
Board Secretary Poliquin
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