ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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October 16, 2012

Mr. William DeSarno
Inspector General
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

Dear Mr. DeSarno:

On April 5, 2012, I wrote to National Credit Union Administration (NCUA) Chairman Debbie Matz to request documents and information related to NCUA's use of contingency fee arrangements with outside counsel hired to handle certain financial securities-related litigation.[1] I now write to ask you to investigate NCUA's use of such arrangements in light of the potential negative impact of contingency fee arrangements on the interests of member credit unions.

On September 25, 2012, the NCUA filed suit against Barclay's Capital, Inc. in U.S. District Court for the District of Kansas.[2] Barclay's Capital is the seventh Wall Street investment firm the NCUA has sued for misrepresenting the quality of certain mortgage-backed securities in sales to member credit unions.[3] To date, NCUA has reached settlements with three defendants totaling over $170 million—with Deutsche Bank Securities for $145 million, with Citigroup for $20.5 million, and with HSBC for $5.25 million.[4]

According to the NCUA's contingency fee agreement with outside counsel, which Committee staff reviewed *in camera*, 25 percent of all money recovered is paid in legal fees to two firms. The contingency fee agreement entitled two firms—Kellogg Huber and Korein Tillery—to more than $40 million in fees. Because of the unusual fee agreement, only $127.25 million flowed into the estates of the failed credit unions; money recovered by the estates is used to mitigate the commitment from the Temporary Corporate Credit Union Stabilization Fund (Stabilization Fund). Any fee arrangement

[1] Letter from Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, to Hon. Debbie Matz, Chairman, Nat'l Credit Union Admin. (Apr. 5, 2012).
[2] NCUA Press Release, "NCUA Sues Barclay's Capital," (Sept. 25, 2012).
[3] *Id.*
[4] *Id.*

that reduces the amount of money in the Stabilization Fund places a greater burden on the NCUA's members in terms of fees and assessments.

Executive Order 13433, signed by President George W. Bush in 2007, prohibited the use of contingency fee arrangements by Executive Branch agencies in order to "ensure the integrity and effective supervision of the legal and expert witness services provided to or on behalf of the United States."[5] I share these concerns insofar as contingency fee arrangements impose exorbitant or unnecessary costs on taxpayers who have a right to expect the government to operate transparently and efficiently.

In a letter dated April 23, 2012, the NCUA maintained that it is not covered by E.O. 13433 because it "does not receive appropriations of tax dollars for the agency's insurance or regulatory functions."[6] The agency doubled down on the position that it is allowed to use contingency fees, adding that "the EO would not apply to the NCUA Board . . . when it is acting as conservator or liquidating agent for a federally insured credit union."[7] It is my belief that if the NCUA's member credit unions had an opportunity to weigh in, they would ask that the agency take all steps to minimize the amount NCUA would otherwise have assessed federally insured credit unions—including eliminating the use of contingency fee agreements.

Like the NCUA, the Federal Housing Finance Agency (FHFA) acts as conservator for Fannie Mae and Freddie Mac. The FHFA does not utilize contingency fee arrangements as a matter of course because the agency considers them a bad value.

The Committee understands that the NCUA expects additional recoveries from financial institutions that misled credit unions about the quality of mortgage-backed securities. The contingency fee agreement between the NCUA and Kellogg Huber and Korein Tillery will determine how much of the money recovered flows into the Stabilization Fund. With that in mind, I request that you and your staff investigate the agency's use of contingency fee arrangements. Please consider the following questions:

1. Were the contingency fee arrangements utilized by NCUA in the above-referenced litigation the best possible alternative given the circumstances? Please consider the potential costs of such arrangements to the agency and the possible effects for member credit unions and taxpayers of paying unnecessarily high legal fees.

2. Does E.O. 13433 cover the NCUA?

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[5] Exec. Order No. 13,433, 72 Fed. Reg. 28441 (May 18, 2007).
[6] "Analysis of Executive Order 13433," attached to letter from NCUA Chairman Debbie Matz to Chairman Darrell Issa (Apr. 23, 2012).
[7] *Id.*

If you have any questions about this request, please contact Jonathan Skladany or Brien Beattie of the Committee staff at (202) 225-5074. Thank you for your attention to this matter.

Sincerely,

Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member