Show me the Money! ND credit unions ask NCUA where their capital assets went.

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Let's talk a little credit union history. Prior to the financial collapse in 2008 – 2009, the largest corporate credit union in the United States was U.S. Central Federal Credit Union (U.S. Central), which provided services to other corporate credit unions, including Midwest Corporate Federal Credit Union (Midwest Corporate) that served North Dakota's credit unions.

In early 2009, credit union leaders and volunteers got a quick lesson on things like OTTI and TARP. For those unfamiliar with the terms, Other Than Temporary Impairment (OTTI) occurs when market value of an investment is less than its book value; and the Troubled Asset Relief Program (TARP) was the response by the U.S. Government to purchase toxic assets and equity from financial institutions to strengthen its financial sector to address the subprime mortgage crisis. In response to investment losses incurred at U.S. Central, the National Credit Union Administration (NCUA) implemented the Corporate Stabilization Program and placed U.S. Central into conservatorship.

As the NCUA set out to recover assets lost through OTTI and TARP, they also accessed federally insured natural person credit unions an additional insurance premium to the National Credit Union Share Insurance Fund (NCUSIF) to make up for the investment losses at U.S. Central, which were estimated to be close to $6 billion. The investment losses at U.S. Central exceeded their Member Contributed Capital, which led to the extinguishment of all the contributed capital.

The corporate restructuring plan also called for corporates to recapitalize, merge, or liquidate. North Dakota credit unions were not willing to take additional risks and re-capitalize Midwest Corporate or merge with another corporate where they would have had to ante up capital. Basically, what you had was a government forced liquidation. Fortunately, North Dakota credit unions had access to the Bank of North Dakota that provided many of the services of a corporate credit union without having to maintain a capital share.

In October 2010, the NCUA Board issued Midwest Corporate a claim receipt for Member Contributed Capital representing the value of "paid in capital" (PIC) and Membership Capital Accounts (MCA) balances as of November 20, 2008. For North Dakota credit unions, that was estimated at $10.5 million MCA and $3.3 million in PIC. The claim receipt states that it enables Midwest Corporate owners "to share pro rata in the net proceeds, if any, to the extent of the PIC and MCA Balances as of the record date" and "no further action is required on their part to file or activate a liquidation claim."

Now, we can fast forward to April 2021 when the NCUA board authorized the 100 percent reimbursement of MCA and 3 percent of PIC. Yet, North Dakota credit unions received letters stating that since Midwest Corporate dissolved in 2011 and the legal existence of the charter was officially canceled three years later, Midwest Corporate members were ineligible to receive reimbursement. The NCUA claims that since the corporate was liquidated, they have no legal path or a legal entity to pay back these recovered assets.

So, here is the big question: What happens to the these recovered assets after a liquidation? Does the NCUA just get to keep the $10.5 million in MCA assets that were owned by North Dakota credit unions? Have they been distributed to other surviving corporates in other parts of the country? These are fair and important questions to ask. The MCA and PIC accounts were investments owned by North Dakota credit unions, entities that still exist or have merged into other credit unions, many due to the aftermath of the financial crisis.

Why shouldn't these recovered assets be returned to their rightful owners? The NCUA knows exactly who made these investments and what losses each credit union was required to record due to the U.S. Central failure. Does the NCUA, the liquidating Agent of U.S. Central, have the authority to just take Midwest Corporate's share of assets and distribute them to whomever? Or, worse yet, does the NCUA get to keep that money? If so, what is the legal basis for this authority?

The NCUA continues to maintain that since Midwest Corporate's charter was canceled, there is no "legal entity" to pay any claim, and the former capital holders of Midwest Corporate lack legal authority to assert the claim on behalf of the terminated credit union. However, we know that the U.S. Central liquidating agent, the NCUA, reached out to the North Dakota Department of Financial institutions (ND DFI) to give them a "heads up" that reimbursement checks were about to be released to North Dakota credit unions. We know this as the ND DFI deputy commissioner shared this information with us. ND DFI then informed the liquidating agent that the corporate had been liquidated years ago.

Clearly, the NCUA was aware that the corporate was federally charted, and ND DFI had no regulatory oversight. Why would the agency reach out to the state regulator if they weren't about to send out reimbursement checks to North Dakota credit unions? What would have happened if the deputy commissioner would have simply said, "Send us the checks and we'll get them out."? Why couldn't the ND DFI serve as the "legal entity" to pay these claims to the rightful owners since they served as the liquidating agent for Midwest Corporate?

To ensure that this issue is resolved fairly for our North Dakota credit unions and their members, the Dakota Credit Union Association (DakCU) has reached out to Senator Kevin Cramer, who serves on the Senate Banking Committee, and North Dakota's Senior Senator, John Hoeven. They agree that North Dakota credit unions should receive their share of the recovered assets and penned a joint letter to the NCUA expressing as much. In addition, DakCU has learned that our neighboring credit unions in Iowa have received similar bad news, as Iowa Corporate Central Credit Union was liquidated in 2015. Iowa's credit unions are also asking the NCUA to proceed with fairness.

Bottom line is the financial crisis of 2008 and the ensuing fallout had a negative impact on our credit unions. Here in North Dakota, we have lost 16 credit unions through mergers since 2009. Clearly, the lost revenue, shared insurance premium assessments, and ensuing regulations contributed to the consolidations. The reimbursements of the capital shares would certainly benefit every one of these credit unions and their member owners.

The NCUA needs to do the right thing and disburse these recovered assets to the rightful owners. Since credit unions are member owned financial cooperatives, the NCUA has arbitrarily decided to confiscate these assets from everyday North Dakotans who are members of these institutions. The 30 surviving credit unions in North Dakota that lost their capital investments deserve no less – and neither do their members.