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August 14, 2023

Shameka L. Sutton  
Jasmine D. Harley  
Ombudsman  
National Credit Union Administration

**Ref: The NCUA Office of the Credit Union Resources and Expansions response dated June 15, 2023 in reference to Snider's complaint and supporting documentation about the proposed merger of Butler Heritage Federal Credit Union, with a conversion of federally insured to a non-federally insured institution.**

Dear Ms Sutton,

Let me first thank you for your follow-up on July 21, 2023 to the above referenced matter and letter I received from Martha J. Ninichuk of CURE which I actually received on June 16, 2023. I am grateful for your recent invitation and the opportunity to discuss and pursue this matter further which I will do herein.

On the NCUA website under Mission and Values there are the following two statements which I believe are significantly important to remember as my concerns are read:

- Protecting the system of cooperative credit and its member-owners through effective chartering, supervision, regulation, and insurance.
- Created by the U.S. Congress in 1970, the National Credit Union Administration is an independent federal agency that insures deposits at federally insured credit unions, protects the members who own credit unions, and charters and regulates federal credit unions.

In the letter provided to me by Ms. Ninichuk, it appears that the emphasis she is voicing is a 7 to 30 day notice required for a conversion of insurance, not necessarily a merger, as a justification for waiving the requirements under 12 C.F.R. 708b.106. While it primarily addresses the notice for conversion of insurance, it tends to use that minimal notice requirement to cancel out other requirements under 12 C.F.R. 708b.106 such as the availability of a website where members of the merging credit union can share comments and questions about the merger ("MTM communication"). I and others felt the letter in general was somewhat ambiguous.

*Since the mission of NCUA is to protect the members who own credit unions*, one would logically think, just because there is a shorter notice *related to only the conversion of insurance* given to members, member-owners would still be given the opportunity to voice and share their opinion in open transparency in MTM communication. Particularly when it comes to important matters such as dissolving their credit unions Charter and all things related to a merger, insurance conversion and transfer of all assets without any compensation.

The merger-vote notice letter that was sent by the Boards President stated the purpose of the merger was: "the directors of the participating credit unions have concluded that the proposed merger is desirable for the following reasons" multiple branch offices and an increased range of services by MyUSA. That statement and the reasons given WAS NOT the purpose. The notice, by omission, deceptively said nothing about any of the true reasons that members would be entitled to know about such as; pressure on the Board from NCUA due to declining net worth caused by the neglect of the Board of Directors to act on DORs from NCUA and the Board of Directors failure to act on at least three preliminary warning letters from NCUA to increase earnings by creating an earnings plan. Most of our members are still not aware of any of the true reasons.

The CURE letter stated: *NCUA has not required the MTM communication when a federally insured credit union is converting to private insurance via merger because the statute limits the notice period from 7 to 30 days, precluding the MTM communication.*

Does the 7 to 30 day notice for converting to private insurance also allow NCUA-CURE to not require the members notice to state the true purpose for the merger with full transparency to its member-owners? With the understanding that NCUAs mission is to protect its member-owners, doesn't NCUA-CURE have an obligation to make sure members are given the true purpose? Does the 7 to 30 day notice also allow the credit union and managers thereof to deceptively collect votes during the notice period, during the 30 days before the member-owners have their first opportunity to ask questions in a meeting that was scheduled only one hour before voting ended? Shouldn't they have their questions answered long before, so they were fully informed before voting?

The CURE letter stated: *NCUA specifically considered your report of the bylaw violation involving the credit union's failure to amend its bylaws to permit electronic votes before the majority of votes were induced but determined not to take further action. This bylaw violation did not have any adverse consequences for members. The credit union's board could have adopted the conforming bylaw amendment at any time by a two-thirds vote without NCUA approval. In keeping with its policy not to intervene in internal credit union disputes, NCUA will not generally take action against minor or technical bylaw violations, but retains discretion to enforce the FCU Bylaws in appropriate cases, such as safety and soundness concerns or threats to fundamental, material credit union member rights. In this case members were adequately notified of the option to vote electronically and thus the failure of the credit union to formally amend its bylaws did not affect fundamental, material member rights.*

This bylaw, which NCUA admits was violated, did have adverse consequences for members and did affect fundamental, material member rights. Not so much as the notice itself to vote electronically but in the manner that electronic votes were expediently and deceptively pursued, how members were methodically manipulated and induced to vote electronically, without full transparency as to why and what they were actually voting for. Several examples of how that was accomplished were fully detailed in the complaint filed on the NCUA website by Kathy Wright on April 12, 2023. Complaints with explicit details and pertinent information was provided to NCUA & CURE numerous times via the NCUA website by at least four members, including one current Butler Heritage Federal Credit Union Board Director and all information was sent directly to Dong Zhang by me. All this information was provided *well before* NCUA sent the approval letter to James Miles of MyUSA on May 30, 2022. Copies of those complaints are still available should you require them

The CURE letter stated: *You also raised several issues with the credit union's compliance with its charter and bylaws, including allegations of falsified votes, conflicts of interest, proxy voting, and impermissible annual meeting locations. Bylaws function as a contract between a credit union and its members and NCUA has a long-standing policy to not become involved in internal federal credit union disputes unless they involve a violation of law or regulation or there are safety and soundness concerns. In general, credit union bylaws should be interpreted and enforced according to state law. As such, we defer to local courts to settle these matters.*

Eight days before the approval letter was issued by Martha J. Ninichuk of CURE, Dong Zhang told me in her call to me on May 22, 2023 that NCUA & CURE had been informed by the Butler County Court in Ohio that it had issued a restraining order and was addressing these matters in a complaint filed by many credit union Member-Owners.

We understand that allegations of falsified votes, conflicts of interest, proxy voting and impermissible annual meeting locations and several other violations remain allegations until they are fully proven. However, before it issued its approval letter, NCUA & CURE was given, explicit and unambiguous information to at least warrant an impartial and comprehensive investigation to determine the validity and impact of those allegations, *in particular falsified votes to elect or retain current board directors*. If it is true, and I can assure you the proof can be found "if" thoroughly investigated by NCUA/CURE, the Board members in question DO NOT have the legal authority to make decisions for the credit union, its member-owners including the merger and conversion of insurance and the entire process that led up to both. It is our belief that they have had no legal authority to make any and all decisions for the credit union *after* they were illicitly elected. Therefore they have had no official

authority to engage with NCUA on all matters pertaining to the Butler Heritage Federal Credit Union. This would include the merger, conversion of insurance and all regulations under the Federal Credit Union Act.

### **Finally and most important!**

The CURE letter stated: You also discussed that NCUA received several complaints regarding Butler Heritage FCU's merger. When NCUA receives complaints, we generally first refer the matter to the credit union's Supervisory Committee for investigation. The Supervisory Committee is expected to complete a thorough, independent and impartial investigation into member complaints. On April 18, 2023, we sent a letter to Butler Heritage FCU's Supervisory Committee requesting an investigation into several issues you and others raised concerning the voting process. On May 2, 2023, we received a response from the Supervisory Committee contending that the voting process was handled properly and facilitated by an independent third party. Finally, NCUA's conditional approval was granted after a thorough review of the documents provided and NCUA found that Butler Heritage FCU complied with NCUA's share insurance conversion regulation. 1 This conditional approval is not intended to address the substance of any allegations of charter and bylaw violations included within the complaint. The conditional approval letter is solely intended to state that Butler Heritage FCU complied with NCUA's share insurance regulation.

CUNA specifically stated:

- When NCUA receives complaints, we generally first refer the matter to the credit union's Supervisory Committee for investigation.
- The Supervisory Committee is expected to complete a thorough, independent and impartial investigation into member complaints.”
- On April 18, 2023, we sent a letter to Butler Heritage FCU's Supervisory Committee requesting an investigation into several issues you and others raised concerning the voting process.
- On May 2, 2023, we received a response from the Supervisory Committee contending that the voting process was handled properly and facilitated by an independent third party.

On April 22, 2023 Dong Zhang of CURE told me directly that all actions of CURE & NCUA concerning the conversion of insurance and merger were put on hold because the Butler County Court in Ohio had informed CURE & NCUA of the lawsuit and restraining order. She said; CURE & NCUAs attorney told them to put everything on hold. This was not true because *as I stated before*, eight days later the Director sent a letter to James Miles on May 30, 2023 stating NCUA has approved the conversion of insurance and the merger could proceed.

The lawsuit and the restraining order which Ms Zhang said CURE & NCUA was aware of, days before the approval letter was sent, contained among many things the following language and excerpts. All of which should have been a clear and reasonable indication to CURE & NCUA that the response from the Supervisory Committee might be tainted, biased or inaccurate and warrant further investigation and diligence before an approval was issued.

### **Complaint: Filed 5/7/2023 which CURE & NCUA had as early as May 22, 2023**

18. In 2020 the BHFCU appointed three supervisory committee members that consisted of Defendant Vince Lovejoy, who was also a director, Jordan Terrill, the son of Board member John Terrill, and Rod Hale, the former husband and allegedly close friend of Defendant Margaret Hale. None of them have ever performed or acted as mandated in the Charter.

19. Prior to 2021 and since that time there have been no meetings of any supervisory committee. Therefore, there has been no supervisory committee to address all of the mandates in Article X, and all actions have been invalid, unlawful, and ultra vires.

20. Defendant Lovejoy, whose appointment itself is in violation of the Charter, has signed and authorized numerous documents in the capacity of Supervisory Chair such as a Management Agreement with MyUSA.

21. The appointment of the son of John Terrill as a supervisory committee member, who has never been involved with the Credit Union or with the non-existent supervisory committee affairs, is a conflict of interest and therefore also a breach of fiduciary duty, considering the supervisory committee is charged with the task of overseeing and possibly suspending his father the President of the Board for violations apparent.

22. The appointment of Rod Hale because of his relationship with Margaret Hale who was expected to manage MYUSA is another conflict of interest and breach of fiduciary duty.

23. Because Vincent Lovejoy is the only purported active member of the supervisory committee and he is in conflict with the Charter as a member of the Board and a Defendant in this complaint, he is in no way likely to act in the supervisory capacity as mandated in Article X of the Charter nor suspend or charge himself, the Board or the Board members with any violation.

24. This lack of supervisory committee oversight, controlled by the Board of Directors themselves, have caused and allowed many of the allegations herein pertaining to but not limited to the unlawful merger process.

**5/9/2023 MAGISTRATE'S ORDER GRANTING TEMPORARY RESTRAINING ORDER AND ORDER FOR HEARING AND ORDER FOR HEARING ON PRELIMINARY INJUNCTION FILED GEHR, M**

Based upon the limited evidence presently before the court finds a substantial likelihood of success on the merits of certain matters whereby irreparable harm will inure to Plaintiffs without immediate intervention of the Court. Specifically, the Court finds that without such immediate intervention, the Plaintiffs' will be irreparably harmed.

If the Butler County Court determined a restraining order was justified with the limited evidence before the court, why didn't NCUA-CURE pay attention to or give credibility to the same evidence & more that had been sent to them over a two month period? Since NCUA-CURE had sufficient evidence and a virtual road map, why didn't it investigate all aspects of the Supervisory Committee and determine if it was legitimate, before or after it was

told; *“the voting process was handled properly”* and before it issued an approval letter based on information which could be proven false if adequately investigated?

## **6/2/2023 MAGISTRATE’S ORDER DENYING DEFENDANTS’ MOTION TO TERMINATE TEMPORARY RESTRAINING ORDER AND GRANTING PRELIMINARY INJUNCTION FILED GEHR, M**

Here, Plaintiffs’ exhibits and citations to federal regulations, in light of the allegations raised, demonstrate that they can likely prove irregularities in BHFCU proceedings , including in the vote on the merger with MyUSA.

## **6/30/2023 ENTRY DENYING DEFENDANTS’ PARTIAL MOTION TO DISMISS FILED STEPHENS, J**

Defendants’ motion to dismiss is not well taken. Defendants’ motion to dismiss Plaintiffs’ First and Second Claims is denied.

The CURE letter stated: In keeping with its policy not to intervene in internal credit union disputes, *NCUA will not generally take action against minor or technical bylaw violations, but retains discretion to enforce the FCU Bylaws in appropriate cases, such as safety and soundness concerns or threats to fundamental, material credit union member rights.*

An abundance of explicit detailed information concerning material credit union member rights that had been violated and warranted investigation, was given to NCUA & CURE from April 7, 2023 and up until May 30, 2023 when Martha Ninichuk of NCUA sent James C. Miles the approval letter to merge with a non-federally chartered /insured credit union. With that abundance of information in hand, we would like to understand, how NCUA & CURE concluded there were not bonafide threats to our member’s fundamental rights?

Other members, our attorney and I find it difficult to understand and question how NCUA & CURE can assume that a virtually non-existent unlawful Supervisory Committee, controlled solely by its Board of Directors will complete a thorough, independent and impartial investigation into member complaints. While having possession of all of this information, how can NCUA & CURE accept or believe a response from the Supervisory Committee contending that “the voting process was handled properly” without an in-depth investigation from an impartial competent entity, and then use the basis of that response to approve the merger and conversion?

I /We are allowing for the possibility that other personal involved in this matter failed to fully inform the Director of pertinent facts or evidence which may have prevented her from sending the approval letter and the subsequent letter to me.

In closing the CURE letter stated: If you have any questions, please contact Consumer Access Analyst Dong Zhang at (571) 480- 0745.

When you consider the lack of response and the misinformation that I received from Dong Zhang as detailed in my final email to her below, why would I call her and why would Martha Ninichuk suggest I contact her if I have any questions? I can only assume Ms. Ninichuk did not see this email.

**From:** Steve Snider [mailto:stevesnider@cinci.rr.com]  
**Sent:** Friday, June 02, 2023 10:10 AM  
**To:** 'DZHANG@NCUA.GOV'  
**Subject:** Butler Heritage

Dear Dong,

On May 22<sup>nd</sup> or nine days ago, you called me and represented that NCUAs attorney advised you that everything concerning the merger would be on hold as long as the temporary restraining order was in place, which it still is.

Astoundingly, NCUA sent a letter to James Miles last Friday the 30th of May stating NCUA has approved the merger and it can proceed. I see you were copied on this letter.

If in fact you investigated Butler Heritage, and still made the decision to approve the merger based on what we know factually was an illegal process, then NCUA was given false information from Butler Heritage of which you based your decision on, or NCUA has chosen to look the other way and allow the merger to proceed with blatant violations of 708b.106.

As you know, NCUA was given explicit proof that the members of Butler Heritage were given false information to secure their positive votes for a merger and the process violated NCUA 708b.106 in many ways per the attached. How can NCUA approve this illicit process when NCUA is aware that members were clearly deceived?

The Butler Heritage merger process did not adhere to many NCUA regulations, or the Charter, in combination all was in violation of the provisions in one or both (law or Charter), for process, procedure, and substance. In addition to failing to provide proper and timely notice, the Member-Owners of the credit union they also failed to create a website where members could correspond and post remarks (another violation of federal law) **The Member Owners were never fully informed with the information provided, and withheld from them, and therefore the members were unable to cast an informed vote.**

Is there no consideration from NCUA for the members concerns and their lack of transparency during a deceptive voting process which unquestionably violated NCUA requirements?

Over the past seven weeks each time I inquired to you, your response was always:

"We will incorporate it along with the information previously submitted for review. **We will let you know when the review is complete.**"

" **We will need to reach out to the officials and get back to you.** Thank you for your patience!"

As you know, you have not told any members who filed complaints or me anything!

Below is the last email I sent you on May 24th, of which you gave no response.

Stephen L. Snider  
Member Butler Heritage Federal Credit Union

The suggestion that I contact Dong Zhang became a dilemma for me and is a partial reason I have not responded to Ms. Ninichuks letter until now, in addition to the ambiguity in her letter.

### **The members herein implore you for immediate help in this matter**

All things considered, it would be the hope of we members who are most knowledgeable and defendants in the state case concerning this matter, and for the interest of those members who are not, that the Director consider withdrawing her approval letter dated May 30, 2023 to James C. Miles for all reasons apparent. If this is done, we will work simultaneously with the attorneys for the Defendants & Plaintiffs in our state case to expedite a solution acceptable to all parties with NCUAs approval and oversight involving the following.

We understand that the net worth of the credit union has consistently dropped. However, we know the primary reason is because of the recent neglect and mis-management by MyUSA but primarily the current negligent incompetent board of directors that has been in charge for almost 3 years. They must be replaced with a competent, knowledgeable goal oriented board.

With this understanding we implore NCUA to work with our members, our attorney and protect the members who owns Butler Heritage by giving us a reasonable amount of time to settle our lawsuit, change our leadership and make the credit union viable to possibly remain independent OR at least allow us the opportunity and time to merge with a federally insured candidate(s) who has mutual interest that we can have confidence in and trust. We have three potential candidates two of which we have spoken with and who maintain a strong genuine interest.

I remain,



Stephen L. Snider

Member-Owner of the Butler Heritage Federal Credit Union

