

Response to Office of Inspector General's Report of Investigation 18-01

The Office of the Inspector General (OIG) of the National Credit Union Administration (NCUA) conducted an extensive investigation regarding an anonymous allegation received relating to expenditures of the NCUA Chairman J. Mark McWatters. The report is available on the NCUA's website at the following link: [Report of Investigation No. 18-01 J. Mark McWatters, May 14, 2018.](#)

As noted in the most recent OIG Semiannual Report to Congress, the OIG investigation found Chairman McWatters had not violated any laws.

In accordance with OIG standard procedures applied to all investigations, the findings were provided to the United States Attorney's Office for the Eastern District of Virginia during the second quarter of 2018. The attorney's office advised the OIG the findings did not warrant the pursuit of any additional action.

The OIG report alleges excess spending on the part of the Chairman's Office, which is a subjective standard. In matters of opinion expressed within the OIG report, reasonable minds may disagree, which is the case. The objective criteria to be applied included compliance with law, which the OIG has stated were not violated.

The OIG report did not benchmark the various types of listed expenses to other agencies and therefore, did not note the expenditures for meals and transportation services compare favorably to the way similar business is conducted at other agencies. For example, most agencies have full-time dedicated drivers and cars, with some having fleets, dedicated to transporting the executives. The costs for this type of structure far exceed any cost the NCUA has incurred for car services. Senior officials holding business meetings over meals is considered a regular course of operation for many agencies. In some of these agencies, it includes dedicated dining facilities and staffed cafeteria services, which the NCUA does not have. From a cost comparison and efficiency perspective, the NCUA would compare very favorably.

The Office of the Executive Director determined that NCUA's internal travel and representation expense policies were inconsistent, and needed further clarification, as outlined in the enclosed documents. Also, the claims for reimbursement were within the parameters of agency policy.

We are providing five documents that supplement the record. They include:

Enclosure A - 2018 Legal Opinion on Alcohol and Representational Activity issued April 27, 2018. The opinion reaffirms a legal opinion originally issued on May 11, 2000, which notes the reimbursement for alcohol related expenditures is permissible.

Enclosure B – Office of General Counsel Supplemental Statement of Facts. The document provides insight to the OIG investigation and conclusions that were not captured in the report issued by the OIG from the perspective of the agency's legal counsel.

Enclosure C – Office of Executive Director’s Supplemental Statement of Facts. The document provides insight to the OIG investigation and conclusions that were not captured in the report issued by the OIG from the perspective of the office responsible for developing and administering the agency’s travel policies and procedures.

Enclosure D - NCUA Policy for Travel by Board Members and Senior Policy Advisors. The document is the travel policy issued on July 31, 2018 applicable to the NCUA board members and their policy advisors.

Enclosure E– Representation Expenses Instruction. The document is the official NCUA policy regarding the use of funds for conducting representational activities that are incurred as part of work on behalf of the NCUA.

Enclosure A



National Credit Union Administration

OGC/KST:BHS
SSIC 3000

TO: Executive Director Mark Treichel
FROM: General Counsel Michael J. McKenna *ykr, for*
SUBJ: Alcohol and Representational Activities
DATE: April 27, 2018

This memorandum (1) updates the legal position and (2) provides my understanding of the policy position of the NCUA with respect to the use of agency funds to purchase or reimburse Board Offices for alcoholic beverages in connection with representational activities. The legal parameters remain as they were on May 11, 2000 and permit use of NCUA funds for payment or reimbursement of reasonable alcohol expenses for representation activities. Although certain NCUA policy documents as far back as February 2, 2007 unequivocally forbid the use of agency funds to purchase or reimburse for alcohol, other more permanent policy documents did not expressly forbid such practices. Thus, until October 6, 2017, when the NCUA consolidated its policies on use of representation funds in one standing Instruction, the scope of inquiry necessary to understand the full policy on alcohol and representation funds is arguably difficult to determine. The particulars of my review appear below.

Legal Setting

On May 11, 2000, the NCUA's General Counsel sent a memorandum to the Executive Director addressing the purchase of alcohol using agency funds (the "May 11 Memorandum"). The May 11 Memorandum, which is attached to this memorandum as Exhibit A, concluded that "in appropriate circumstances the NCUA may purchase alcoholic beverages at 'representational' events involving NCUA hosting of nonagency personnel. In addition, the Board may authorize the purchase of alcoholic beverages for employee consumption at internal events." We recently undertook a thorough review of this legal opinion and concluded that no subsequent legal developments have changed the stated conclusions. The May 11 Memorandum continues to be good authority as of the date of this memorandum and you can reference it for our complete legal analysis.¹

¹ While the May 11 Memorandum properly opines that Board Offices may spend, or be reimbursed from, agency funds for alcohol in connection with representational activities, the NCUA Board or an NCUA official under delegated authority at any time could properly decide to prohibit this practice as a matter of policy.

Policy Setting

During our legal review of the May 11 Memorandum, we also reviewed NCUA policy documents available to us. An internal NCUA policy directive on representational expenses for Board Offices, in the form of an Instruction, effective October 6, 2017 (the “2017 Instruction”), states, “Cash, gift cards or their equivalent, alcoholic beverages and entertainment do not qualify for reimbursement.” This 2017 Instruction is current and shows the NCUA has made a policy determination that, despite the absence of a legal prohibition, Board Offices may not use, or be reimbursed from, agency funds for the purchase of alcohol for representational activities. We reviewed the prior version of this 2017 Instruction, dated February 16, 2006 (the “2006 Instruction”), and concluded that the 2017 Instruction, for the first time, expressly prohibited the use of agency funds for alcohol purchases in a broadly available, or codified, directive.² The 2017 and 2006 Instructions are attached to this memorandum as Exhibit B.

After we located and reviewed these relevant instructions, you provided us with a series of memorandums, dating back as far as February 2, 2007, from the NCUA Executive Director to Board Members and Senior Policy Advisors (the “Policy Memorandums”). These Policy Memorandums, providing guidance on Board Office travel expenses and use of the representation fund, expressly prohibited use of the representation fund to cover alcoholic beverages. On October 6, 2017, the same date as the 2017 Instruction, the latest memorandum from you to Board Members and Senior Policy Advisors (the “October 6 Memorandum”) on NCUA policy for travel and use of representation funds cross-references the 2017 Instruction, rather than providing separate or additional guidance on use of representation funds. Thus, the 2017 Instruction now appears to be the exclusive policy guidance on use of representation funds. A representative Policy Memorandum from January 8, 2014 and the October 6 Memorandum are attached to this memorandum at Exhibit C.

NCUA Instruction 1800.3 (Rev. 1), effective November 9, 2016 (the “2016 Instruction”), provides that “Instructions are directives of continuing authority and reference, which remain in effect until superseded or cancelled.” The 2016 Instruction further provides that “[a]ll bulletins must have a stated self-cancellation date or clause, such as ‘will be canceled April 31, 2015’ or ‘...will be canceled when incorporated into the Personnel Manual.’” Finally, the 2016 Instruction directs that, “[a]s necessary, the information in bulletins should be incorporated into a permanent directive as soon as possible.” The 2016 Instruction is attached to this memorandum at Exhibit D.

While certain of these policy documents expressly prohibited use of representation funds for alcohol at least as far back as 2007, we make the following observations about their collective clarity:

1. From October 6, 2017 to the present, consolidated NCUA policy unequivocally forbids the use of agency funds to purchase alcohol or to reimburse Board Offices for such expenses.

² We also reviewed Instruction 2020.4 on General Spending Guidelines for Board Members, dated May 31, 2016. This instruction provides no additional detail and also does not prohibit use of representation funds for alcohol.

2. The 2006 Instruction, in effect from February 16, 2006 until October 6, 2017, ostensibly stated the NCUA's complete and then-current policy on use of representation funds and did not forbid use of representation funds for alcohol expenses.
3. The Policy Memorandums, distributed at least intermittently (and likely annually) from as far back as 2007, also ostensibly state the NCUA's complete and then-current policy on use of representation funds and expressly prohibited use of representation funds for alcohol expenses.
4. In light of the 2016 Instruction, a researcher of NCUA policy documents could reasonably infer, as we initially did, that the 2006 Instruction was the most authoritative and permanent directive on proper use of representation funds through October 6, 2017.
5. From February 2, 2007 through October 6, 2017, the Policy Memorandums and the 2006 Instruction, each of which a reader could reasonably assume contained the NCUA's complete permanent policy on use of representation funds, were inconsistent about whether the NCUA prohibited the use of agency funds to purchase or reimburse for alcohol. This is particularly so when read in the context of the 2016 Instruction and the May 11 Memorandum from my office.

Conclusion

Consistent with the May 11 Memorandum, the law continues to permit the reasonable use of agency funds to purchase or reimburse Board Offices for the purchase of alcohol in connection with representational activities. Although the NCUA consolidated its policy forbidding use of agency funds for alcohol from October 6, 2017 to the present, the complete policy position between February 2, 2007 and October 6, 2017 is arguably unclear, or at least difficult to determine. We would defer to your assessment of the full import of the policy records but are available to consult further. Please contact me if you have questions.

Exhibit A

May 11 Memorandum

(See Attached)



National Credit Union Administration

GC/PMP:bhs
SSIC 3000
00-0404

TO: Carolyn Jordan, Executive Director
FROM: Robert M. Fenner, General Counsel *RMF*
SUBJ: Alcoholic Beverages at NCUA Functions
DATE: May 11, 2000

You asked whether NCUA may pay for alcoholic beverages served off of federal premises.¹ With Board authorization and in appropriate circumstances the NCUA may purchase alcoholic beverages at "representational" events involving NCUA hosting of nonagency personnel. In addition, the Board may authorize the purchase of alcoholic beverages for employee consumption at internal events.

The Comptroller General of the United States generally considers liquor, along with food and other refreshments, as a form of entertainment. 14 Comp. Dec. 344, 346 (1907).² The Comptroller views entertainment as essentially personal, even where it occurs in a business-related context. The Comptroller generally disapproves of agency expenditures on representational or employee entertainment absent specific statutory authority to make such expenditures. 43 Comp. Gen. 305 (1963).

Many federal agencies have specific funds appropriated by Congress expressly for representational purposes. NCUA, however, has no such representational appropriation or other specific statutory authority to entertain nonagency personnel. The Comptroller has previously reviewed NCUA expenditures on representational entertainment and stated that NCUA may not spend its operating funds on such

¹ The OED memorandum appears to assume that alcohol consumption on federal premises is prohibited. While our memorandum focuses on the question of payment, we should point out that we are not aware of any restrictions on the consumption of alcohol in NCUA-owned space. Although General Services Administration regulations do not apply to NCUA-owned space, the GSA does permit the consumption of alcohol on federal premises subject to its jurisdiction if approved in writing by the agency head. 41 C.F.R. §101-20.307 and Memorandum from James Engel to Joyce Jackson, dated December 10, 1996.

² This is the most recent Comptroller opinion that specifically discusses alcohol consumption in other than a travel reimbursement context. The Comptroller treats alcoholic beverages differently from other consumables for purposes of travel reimbursement. By statute, government travelers will be reimbursed for "subsistence" items and the Comptroller has determined that alcoholic beverages are not subsistence items. B-202124, July 17, 1981.

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entertainment. B-170938, October 30, 1972.³ With regard to expenditures on employee entertainment, the Comptroller has not had occasion to review any NCUA policies but has blessed such expenditures at other agencies only in very limited circumstances. See 1996 Comp. Gen. LEXIS 76 (approving food and refreshments in connection with an employee award ceremony); B-281063, December 1, 1999 (approving food and refreshments as a nonseverable part of a training facility rental package); 1982 Comp. Gen. LEXIS 1284 (approving food and refreshments in connection with an EEO event).

The Comptroller, who is part of the legislative branch of government, is authorized by statute to issue opinions about the appropriateness of government expenditures. 31 U.S.C. §3529. The NCUA's long-standing position is that it is a nonappropriated funds agency and, therefore, the rules applicable to appropriated funds and the attendant decisions of the Comptroller are not controlling. Nevertheless, in the past we have adopted the Comptroller's reasoning on the permissibility of certain expenditures. See memorandum from James Engel to Karl Hoyle, dated October 25, 1996. The Department of Justice (DOJ) Office of Legal Counsel (OLC) now questions the constitutionality of the Comptroller's authority to issue opinions about executive branch expenditures. 15 Op. O.L.C. 80 (August 5, 1991). DOJ OLC takes the position that "the opinions of the Comptroller General, although useful sources on appropriations matters, are not binding upon departments or agencies of the executive branch." Memorandum from Richard L. Shiffrin, Deputy Assistant Attorney General, to Emily C. Hewitt, General Counsel, General Services Administration, dated August 11, 1997. Most importantly, in a conflict between the Comptroller and DOJ, the DOJ says its analysis will take precedence over the Comptroller's analysis. Id.

DOJ recently introduced a different, less restrictive analysis of the legality of agency expenditures long labeled by the Comptroller as "personal." DOJ rejects the Comptroller's view that certain expenditures with both a personal component and an official component are legal only if specifically authorized by statute. When analyzing a proposed expenditure, DOJ says that an agency should first look to see whether the expenditure is specifically authorized or specifically prohibited by statute. If neither, the agency may authorize the expenditure if it is necessary or incident to the achievement of the agency's authorized purposes. An agency has "considerable discretion" in determining whether the expenditure furthers the agency's authorized purposes. Id.

No statute specifically authorizes or prohibits NCUA spending on representational entertainment, including alcohol. In accordance with the DOJ analysis, such expenditures are legally permissible if the Board determines them to be necessary or

³ An internal NCUA document currently provides for funding of representational expenses, but does not describe what particular expenses. NCUA Instruction 2020.2, Representation Expenses, dated January 26, 1998.

incident to the achievement of an NCUA purpose.⁴ Our view is that the Board has sufficient discretion to determine that the purchase of reasonable amounts of wine or beer for a reception in honor of the media, regulators, legislators, credit union officials, or credit union trade associations could serve NCUA's purposes by building rapport with those whose interests are affected by NCUA activities.

Likewise, no statute specifically authorizes or prohibits NCUA spending on employee entertainment, including alcohol, and such expenditures are legally permissible if the Board determines them to be necessary or incident to the achievement of an NCUA purpose. Again, our view is that the Board has sufficient discretion to determine that the purchase of reasonable amounts of wine or beer for a reception at an employee conference could serve NCUA's purposes by improving employee morale or by facilitating team building and inter-employee cooperation.⁵

The views stated above extend only to the legality of purchasing alcohol with agency funds. Whether such purchases are good policy is another matter. DOJ, for example, has determined that DOJ itself may legally make certain expenditures, including the purchase of food and beverages, in support of the Combined Federal Campaign. Memorandum from Stuart Frisch to Henry Romero, dated December 10, 1996. However, that internal DOJ memo also provided that:

[I]n making such [purchase] determinations, good judgement and precautions must be exercised . . . relative to the amount of the expenditure, the quantum of the expenditure, the quantum of benefit to be gained, the importance of the benefit to the mission and goals served by the appropriation, prior practice, and public perceptions of the expenditure.

These words of warning are particularly appropriate when the expenditure involves alcohol. Alcohol may lead to embarrassment or poor duty performance if it is consumed at the wrong place, at the wrong time, or in excessive amounts. The NCUA may be sued if alcohol consumption precipitates personal injury or property damage. The media, the trades, or the public-at-large might also perceive any policy authorizing expenditures on alcohol, even a carefully-crafted policy, as inappropriate.

⁴ In NCUA's case, the DOJ's call for deference to an agency's decision is bolstered by the NCUA Board's statutory authority to expend funds "as it may deem necessary or appropriate." (emphasis added). 12 U.S.C. §1766(i)(2).

⁵ The NCUA Board is also specifically authorized to provide such additional compensation or benefits as the other federal banking regulatory agencies provide, or could provide, their employees. 12 U.S.C. §1766(j)(2). Informal contacts with the other banking agencies indicate that at least two of those agencies occasionally purchase alcoholic beverages for their employees.

Exhibit B

2017 and 2006 Instructions

(See Attached)

NCUA



INSTRUCTION

NO. 2020.2 (REV. 3)	DATE: October 6, 2017
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SUBJ: Representation Expenses

TO: All Board Staff and All Office Directors

1. **PURPOSE.** To establish the policy on the appropriate use of representation funds and the method for obtaining reimbursement for representation expenses.
2. **CANCELLATION.** Instruction No. 2020.2 (Rev. 2), dated February 15, 2006, is cancelled and should be removed from the files.
3. **BACKGROUND.** The board has discretion in the use of agency funds in carrying out the purposes of the Act. This instruction provides direction and guidance on the use and administration of the representation funds.
4. **POLICY.** The use of representation funds are authorized for the board members, senior policy advisors and the executive director within limits included in the NCUA annual operating budget. All NCUA officials are required to exercise sound judgment and use appropriate discretion in the expenditure of agency funds in conducting matters related to official business. The use of representation funds is only permissible if considered to be prudent and necessary for agency purposes and the accomplishment of NCUA's mission.
 - a. **Representation Expense Definition.** Representation expenses are those incurred by one or more NCUA personnel while conducting certain official agency business functions with: (1) other government agency officials and representatives; (2) congressional and legislative members and staff; (3) state government officials and representatives; (4) industry representatives; (5) news media personnel; and (6) other non-NCUA individuals. For purposes of this definition, official agency business functions include conferences, receptions, award ceremonies, training events, business meetings and agency development initiatives.
 - b. **Authorized Uses.** Representation funds are authorized for food, beverages and other expenses, such as event cover charges, associated with agency business functions primarily conducted with non-NCUA individuals.
 - c. **Authorized Participants.** Representation funds may be used only to pay for the portion of the cost incurred by NCUA participants.

- d. Travel Expenses. Representation expenses do not include expenses for travel. Reimbursement for travel is governed by the NCUA Non-Bargaining Unit Travel Manual.
- e. Non-Reimbursable Items. Cash, gift cards or their equivalent, alcoholic beverages and entertainment do not qualify for reimbursement. Communications for seasonal or personal salutations are not permissible agency expenses.
- f. NCUA Only Meetings. The use of representation funds normally requires participation of at least one non-NCUA individual. On an exception basis when NCUA needs require, representation funds may be used for food and beverages for work involving only NCUA employees. This is limited to the rare and non-recurring situation where there is a need or requirement to meet or work through a meal and that need or requirement is justified in writing in the claim for payment.
- g. When on Travel Status. When feasible, in order to conserve funds available for representation expenses, officials participating in an official agency business function while on travel status should follow normal travel policies for claiming reimbursement for meals. If this is not feasible and representation expenses are claimed for meals while in travel status, NCUA officials must reduce the per diem by the amount claimed from representation funds. In the event that the amount claimed from representation funds exceeds the per diem limit, then no per diem shall be claimed for that day.
- h. Delegation of Authority. NCUA board members, senior policy advisors and the executive director may designate representatives within their respective offices or chain of command to be eligible for reimbursement.
- i. Potential Conflicts of Interest. NCUA officials should give appropriate consideration of the likelihood that the expenditure, especially where industry officials are in attendance, may create an appearance of loss of impartiality in the official's NCUA duties. When there is any question about the loss of impartiality, the official should consult with the agency ethics officer.
- j. Required Documentation. To claim reimbursement, all agency officials must complete the appropriate expense claim information in Concur, detailing the date the expense was incurred, a description of the expense, the purpose of the meeting or function and identification of those in attendance. Summary receipts that do not itemize purchases will not be considered acceptable documentation.
- k. Approval. Board members and senior policy advisors will submit their claims and the claims of their designees to the executive director or deputy executive director for payment. Expenses for the executive director must be authorized by the NCUA chairman in advance. All others will submit their claims to the deputy executive director for payment.

5. **EFFECTIVE DATE**. This instruction is effective immediately and will remain in effect until cancelled or superseded.

/s/
Mark Treichel
Executive Director

Authoring Office
OED

NCUA



INSTRUCTION

NO. 2020.2 (REV)	DATE: February 15, 2006
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SUBJECT: Representation Expenses

TO: All Board Staff and All Office Directors

- PURPOSE.** To provide policy guidance on the appropriate use of agency representation funds and the method for obtaining reimbursement for representation expenses.
- CANCELLATION.** Instruction No. 2020.2 (Rev), dated October 1, 2002, same subject, is cancelled and superseded by this Instruction.
- REFERENCES.** 12 U.S.C. §§ 1766(i)(2) and (j)(2);1783(a);1789(a)(7); 1795f(a)(17); 5 C.F.R. Part 2635, Standards of Ethical Conduct for Employees of the Executive Branch, §§ 2635.101(b), 2535.502, 2635.702 and 2635.704, NCUA Instruction 1235.07, dated February 10, 2000.
- BACKGROUND.** The Board has broad discretion in the use of agency funds in carrying out the purposes of the Act. Through its annual budget process, the NCUA Board establishes the dollar limitation that Board Members, the Executive Director, Regional Directors, the Central Office Directors and the President of AMAC are authorized to expend for food, beverages and other expenses associated with agency business functions primarily conducted with non-NCUA individuals.
- INSTRUCTION.** All NCUA officials are required to exercise sound judgment and use appropriate discretion in the expenditure of agency funds in conducting matters related to official business. The purchase of food, beverages, and other expenses is only permissible if considered to be prudent and necessary for legitimate agency purposes and the accomplishment of NCUA's mission. It is particularly important that a careful determination be made on whether to use agency funds for such purchases. Misuse of funds is inconsistent with our responsibility for prudent fiscal management. NCUA officials should give appropriate consideration of the likelihood that the expenditure, especially where industry officials are in attendance, may create an appearance of loss of impartiality in the official's NCUA duties. Where there is any question about the

expenditure causing an appearance of loss of impartiality, the official should consult with an ethics advisor or the agency designee set forth in NCUA Instruction 1235.07.

- a. Definition of Representation Expenses. Representation expenses are defined as those expenses incurred by one or more NCUA personnel while conducting certain official agency business functions with: (1) Other government agency officials and representatives; (2) Congressional and legislative members and staff; (3) State government officials and representatives; (4) Industry representatives; (5) News media personnel; and (6) other non-NCUA individuals. For purposes of this definition, *official agency business functions* include conferences, receptions, award ceremonies, training events, business meetings, agency development initiatives. Such expenses include the purchase of food, beverages, and other expenses such as small gifts or tokens of nominal value as commemorations. Representation funds may be used to pay for the expenses incurred by both NCUA and non-NCUA participants.

Representation expenses do not include expenses for travel - for which reimbursement is governed by the NCUA Travel Manual - or for office supplies. Cash, gift cards or their equivalent do not qualify as representational expenses. Communications for seasonal or personal salutations are not permissible agency expenses.

Although normally use of representational funds requires participation of at least one non-NCUA individual, when NCUA needs require, representational funds may be used for food and beverages for work involving only NCUA employees with no outsiders. This is limited to the rare and non-recurring situation where there is a need or requirement to meet or work through a meal and that need or requirement is justified in writing.

- b. When on Travel Status. When feasible, in order to conserve funds available for representation expenses, personnel participating in a representation expense event while on travel status should follow normal travel policies for claiming reimbursement for meals. If this is not feasible and representation funds are claimed for meals while in travel status, NCUA officials subject to per diem limitations (all NCUA employees except Board members), must reduce the per diem by the amount claimed from representation funds. In the event that the amount claimed from representation funds exceeds the per diem, then no per diem shall be claimed for that day. (See Chapter 6 of the NCUA Travel Manual for special circumstances allowing for approval of actual expenses (in excess of per diem) for employees other than NCUA Board members.)
- c. Delegation of Authority. NCUA Board Members, the Executive Director, the Regional Directors, the Central Office Directors and the President of

AMAC with approved budgets for representation funds may designate representatives within their respective offices to be eligible for reimbursement. Most central office directors do not have representation budgets, which necessitates an office director to obtain Executive Director approval to use or designate the Executive Director's representation budget.

- d. Required Documentation. To claim reimbursement, all agency staff must submit a memorandum, with receipts for expenses attached, detailing the date the expense was incurred, a description of the expense, the purpose of the meeting or function and identification of those in attendance. Summary receipts that do not itemize purchases will not be considered acceptable documentation.
 - e. Approval. Designees will submit their claims for review and approval to the person from whom they received their designation. Board members and the Executive Director will submit their claims and the claims of their designees directly to the Chief Financial Officer for payment. The Regional Directors, Central Office Directors and President of AMAC will submit their claims and the claims of their designees through the Executive Director to the Chief Financial Officer.
 - f. Accounting. The Chief Financial Officer will maintain the documentation and the current account balance.
6. **EFFECTIVE DATE.** This instruction will be effective immediately and will remain in effect until cancelled or superseded.

/S/

J. Leonard Skiles
Executive Director


Exhibit C

January 8 and October 6 Policy Memorandums

(See Attached)



SENT BY E-MAIL

TO: NCUA Board Members and Senior Policy Advisors
FROM: Executive Director Mark A. Treichel 
SUBJ: NCUA Policy on:
(1) Travel by NCUA Board Members and Senior Policy Advisors;
(2) Use of the Representation Fund by Board Members; and
(3) Purchase of Business Related Supplies by Board Members
DATE: January 8, 2014

In accordance with Travel Order #2014-1, issued January 8, 2014, this memorandum explains the per diem and actual expense reimbursement options available to NCUA Board Members (each a "Board Member") for official travel. In addition, this memorandum summarizes general rules applicable to all government travelers and clarifies a number of associated issues regarding travel by Senior Policy Advisors and Chief of Staff to a Board Member (each a "SPA"), the use of NCUA's representation fund by Board Members, and their purchase of business-related supplies.

For matters not addressed in this memorandum or topics where further clarification is required, Board Members and SPAs should consult the *NCUA Travel Manual, Non-Bargaining Unit* ("*NBU Travel Manual*") or the Office of the Chief Financial Officer (OCFO).

A. TRAVEL REIMBURSEMENT OPTIONS FOR BOARD MEMBERS

For lodging expenses, meals and incidental (M&IE) expenses for each official trip, a Board Member may elect to be reimbursed for their actual travel expenses, or to be subject to the per diem rates applicable to NCUA non-bargaining unit (NBU) employees. Board members must complete a single expense report for each official trip, indicating in the comments section the reimbursement option they choose to apply to all expenses reported for that trip. The difference between the actual expense and the per diem options are described below:

1. Actual Expense

A Board Member who elects this option will be reimbursed for the actual travel expenses incurred, subject to providing receipts for all lodging, M&IE and transportation expenses.

2. Per Diem

A Board Member who elects the per diem rates option will be reimbursed for travel expenses under the same rates applicable to NBU employees. The per diem option

establishes ceilings on the amount travelers normally may spend on lodging and M&IE while on official business. Chapter 5 of the *NCUA Travel Manual, Non-Bargaining Unit*, NCUA 8031 ("*NBU Travel Manual*") describes this system in detail. Generally, travelers are reimbursed for actual lodging expenses, up to the lodging per diem maximum established by the General Services Administration (GSA). Travelers also receive, irrespective of actual expenses incurred by the traveler, GSA's designated per diem amount for meals and incidental expenses. GSA publishes the lodging and M&IE per diem rates for all U.S. localities on its website at www.gsa.gov/perdiem. Travelers on the per diem system need receipts for expenses described in Section 7-3 of the *NBU Travel Manual*.

The Federal Travel Regulation (FTR) limits the maximum reimbursement amount for actual expenses to 300% of the lodging per diem, and 300% of the M&IE per diem. 41 C.F.R. §301-11.303. The *NBU Travel Manual* follows the FTR limit, so travelers will not be reimbursed for actual expenses in excess of 300% of the per diem amounts. *NBU Travel Manual*, ¶1-2.

A Board member may need to attend or participate in NCUA training programs, business-related meetings, or special events held at the Board Member's permanent duty station. Payment of per diem at the permanent duty station is authorized when deemed necessary or practical to facilitate a Board Member's participation in the program, meeting, or event.

B. GENERAL RULES FOR GOVERNMENT TRAVEL

Regardless which reimbursement option a Board Member chooses, the following general rules apply to official business travel by government employees, including Board Members and SPAs.

Government employees must exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business. 41 C.F.R. §301-2.3; *NBU Travel Manual* ¶1-3.

Government employees are to incur only those expenses that are essential to the transaction of official business. 41 C.F.R. §301-2.2; *NBU Travel Manual* ¶1-3.

Government employees may not claim reimbursement for expenses for alcoholic beverages. 41 C.F.R. §300-3.1(Per diem allowance(b)); *NBU Travel Manual* ¶1-2.

Government employees may not claim reimbursement for entertainment expenses. 41 C.F.R. §300-3.1(Per diem allowance(b)); *NBU Travel Manual* ¶1-2.

Government employees may not claim reimbursement for meals when meals are furnished by the government or are included in registration fees, tuition, or training associated with a meeting or event. When a meal is provided, NCUA employees and Board Members under the per diem system must deduct the value of that meal from the per diem expenses claimed for that day. Board Members who choose the actual expense option may not claim reimbursement for any meal furnished by the government or included in registration fees, tuition, or training associated with a meeting or event. 41 C.F.R. §301-11.18; *NBU Travel Manual* ¶5-4L.

Government employees must use the government-issued charge card for all official business expenses, unless the expense is exempt from being charged on the card. The only exempt expenses are dry cleaning, local transportation systems, taxis, tips, meals where using a card is impractical, such as group meals, and telephone calls made using a government calling card. 41 C.F.R. 301-51.1-51.2; *NBU Travel Manual* ¶3-1.

Government employees must not claim reimbursement for any costs attributable to travel, for personal convenience, by an indirect route or an interruption in travel. 41 C.F.R. §301-10.8; *NBU Travel Manual* ¶2-1. Government employees' travel costs are based on their official duty station, which for Board Members and SPAs is Alexandria, Virginia. Any trip with a point of origin or point destination not necessitated by official agency business is an indirect route. Only the lesser of the actual total expense incurred or the amount of expense that would have been incurred via the direct route will be reimbursed. *NBU Travel Manual* ¶2-1. Board Members and SPAs claiming reimbursement for a trip including travel, other than for personal convenience, by an indirect route or an interruption in official travel status must include with their expense reports comparative documentation of the costs of direct or uninterrupted travel.

Government employees may not use the government-issued charge card to obtain the government rate for personal travel, even if originating official business travel at the personal destination would save the agency money.

Government employees may only be reimbursed for the cost of business or first class travel under limited circumstances. 41 C.F.R. §301-10.123. Generally, NBU employees, including Board Members and SPAs, may fly business class only as permitted in the *NBU Travel Manual* ¶2-7.C or its equivalent. First class accommodations and seating may be used only in the rare circumstances described in ¶2-7.D of the *NBU Travel Manual*. All government travelers, may, however, redeem their frequent flier miles or points to upgrade to first or business class.

NCUA employees must use the travel management center under contract with NCUA to book tickets, or purchase tickets directly from carriers. NCUA employees may not book official travel through other travel management centers or websites. All tickets should be issued in electronic format (E-ticket) to minimize transaction fees. *NBU Travel Manual* ¶2-10.

C. SENIOR POLICY ADVISORS

SPAs assigned to individual Board Members are subject to the same rules regarding travel reimbursement that apply to all NBU employees and other government employees, as outlined in section (B), above, the FTR, and the *NBU Travel Manual*. The items listed below address questions that have arisen frequently in specific reference to SPA travel.

SPAs may not self-certify the need for the actual expense reimbursement option, but must obtain the approval of the supervising Board Member and document a permissible reason for exceeding the applicable per diem rate. Permissible reasons include, but are not limited to, those listed in ¶6-2 of the *NBU Travel Manual*.

In no event will SPAs be reimbursed for actual expenses in excess of 300% of the per diem amount for lodging and 300% of the per diem amount for M&IE.

D. USE OF THE REPRESENTATION FUND

Board Members should be mindful of the following rules for use of NCUA's representation fund.

As a general rule, the representation fund may be used to cover expenses of credit union industry representatives at NCUA-hosted meetings or events.

The representation fund may be used to cover expenses of other non-NCUA participants such as government officials and news media personnel under certain circumstances, but Board Members should exercise restraint and judgment in this use of the representation fund.

Board Members on official travel status should not use the representation fund except in extremely limited circumstances. When in official travel status, the representation fund may be used only for appropriate expenses not covered by the travel per diem, such as hosting an out-of-town lunch or dinner meeting.

The representation fund will not be used under any circumstances to cover expenses for alcoholic beverages or entertainment.

All representation fund reimbursement claims are completed in Concur and approved by the Office of the Executive Director (OED). Receipts must be attached in Concur documenting all representation expense reimbursement claims.

For a more detailed explanation of representation funds and their usage, see NCUA Instruction No. 2020.2 (REV).

E. PURCHASE OF BUSINESS RELATED SUPPLIES


It sometimes is necessary for Board Members to conduct NCUA business from their homes, instead of the permanent duty station, due to the nature of their official duties. Each Board Member is authorized to spend up to \$250 annually to replenish depleted business supplies (*e.g.*, paper, printer cartridges). While Board Members have broad latitude with respect to the kinds of supplies they may purchase with their \$250 annual stipends, durable items such as equipment (*e.g.*, computers, printers, scanners), if needed, will be issued or provided by the agency and will remain the property of the agency.

To be reimbursed for the expense of purchasing business-related supplies, a Board Member must submit for OED approval a reimbursement claim on a NCUA expense report in Concur.



National Credit Union Administration
Office of the Executive Director

SSIC # 1400

TO: NCUA Board Members and Senior Policy Advisors
FROM: Executive Director Mark A. Treichel 
SUBJ: NCUA Policy for Travel and Use of Representation Funds by Board Members and Senior Policy Advisors
DATE: October 6, 2017

This memorandum explains the travel reimbursement options available to NCUA board members and senior policy advisors for official travel that differ from the travel policies for non-bargaining unit staff. In addition, this memorandum summarizes key general rules applicable to all government travelers and the use of representation funds by board members and senior policy advisors.

A. LODGING REIMBURSEMENT OPTIONS

The maximum reimbursement for per diem is normally 100 percent of the lodging and M&IE per diem rate published by the General Services Administration. Exceptions to this limit are authorized as long as they are supported in the travel expense report as meeting 41 C.F.R. §301-11.300(a)-(d).¹ When the standard M&IE per diem rate is exceeded, copies of receipts of all expenses incurred must be attached to the travel expense report. In no case can the maximum reimbursement exceed 300 percent of the per diem rate.

Board members and senior policy advisors may on rare occasions need to attend or participate at the permanent duty station in training programs, business-related meetings, or special events involving NCUA. While rare, payment of per diem at the permanent duty station is authorized when it is deemed necessary to facilitate participation in the program, meeting, or event.

B. GENERAL RULES FOR GOVERNMENT TRAVEL

The following general rules apply to official business travel by government employees, including board members and senior policy advisors.

¹ C.F.R. §301-11.300 When is actual expense reimbursement warranted?

When: (a) Lodging and/or meals are procured at a prearranged place such as a hotel where a meeting, conference or training session is held; (b) Costs have escalated because of special events (e.g., missile launching periods, sporting events, World's Fair, conventions, natural or manmade disasters); lodging and meal expenses within prescribed allowances cannot be obtained nearby; and costs to commute to/from the nearby location consume most or all of the savings achieved from occupying less expensive lodging; (c) The TDY location is subject to a Presidentially-Declared Disaster and your agency has issued a blanket actual expense authorization for the location (see §301-70.201); (d) Because of mission requirements; or (e) Any other reason approved within your agency.

Government employees must exercise the same care a prudent person would exercise if traveling on personal business. 41 C.F.R. §301-2.3.

Government employees are to incur only necessary and reasonable expenses when transacting official business. 41 C.F.R. §301-2.2.

Government employees may not claim reimbursement for expenses for alcoholic beverages. 41 C.F.R. §300-3.1.

Government employees may not claim reimbursement for entertainment expenses. 41 C.F.R. §300-3.1.

Government employees may not claim reimbursement for meals when meals are furnished by the government or are included in registration fees, tuition, or training. NCUA employees, board members and senior policy advisors must deduct the value of the meal from the per diem expenses claimed for that day. 41 C.F.R. §301-11.18.

Government employees must use the government-issued charge card for all official business expenses, unless the expense is exempt.² 41 C.F.R. 301-51.1-51.2.

Government employees must not claim reimbursement for any extra costs resulting from travel by an indirect route or an interruption in travel. 41 C.F.R. §301-10.8.

Government employees' travel costs are based on their normal duty station. Any trip with an alternate origin or endpoint for any reason other than official agency business is an indirect route. Only the lesser of the actual total expense incurred or the amount of expense that would have been incurred via the direct route will be reimbursed. Board members and senior policy advisors claiming reimbursement for a trip including travel by an indirect route or an interruption in official travel status must include comparative documentation of the costs of direct or uninterrupted travel with their travel expense report.

Government employees may not use the government-issued charge card to obtain the government rate for personal travel, even if originating official business travel at the personal destination would save the agency money.

C. USE OF THE REPRESENTATION FUND

Board members and senior policy advisors must follow the rules for use of NCUA's representation fund as detailed in NCUA Instruction No. 2020.2 (REV).

Attachment

² §301-51.2 Are there any official travel expenses that are exempt from the mandatory use of the Government contractor-issued travel charge card?

Expenses for which payment through the Government contractor-issued travel charge card is impractical (*e.g.*, vendor does not accept credit cards) or imposes unreasonable burdens or costs (*e.g.*, fees are charged for using the card) are exempt from use of the travel charge card. Your agency may also exempt an official travel expense when it is necessary in the interest of the agency (see §301-51.4).

Exhibit D

2016 Instruction

(See Attached)

NCUA



INSTRUCTION

NO. 1800.3 (Rev. 1)	DATE: November 9, 2016
----------------------------	-------------------------------

SUBJECT: Processing Procedures of NCUA Directives

TO: All NCUA Staff

ENCL:

- (1) [Directives Process Flowchart](#)
- (2) [Template for Instruction](#)
- (3) [Template for Bulletin](#)
- (4) [Template for Cancellation](#)
- (5) [Template for Routing Sheet](#)
- (6) [Template for Manual Transmittal Sheet](#)
- (7) [Style Guide](#)
- (8) [Sample Instruction and Guidelines](#)
- (9) [“How-to” Steps for Meta-tagging](#)
- (10) [Comment Matrix](#)

1. **PURPOSE.** The instruction outlines the procedures used to process NCUA office directives. It excludes public issuances such as Letters to Credit Unions, Regulatory Alerts and Interpretive Ruling and Policy Statements.
2. **CANCELLATION.** NCUA Instruction No. 1800.3, Processing Procedures of NCUA Central Office Directives, dated February 23, 1996, is cancelled and should be removed from active files.
3. **BACKGROUND.** In an effort to maintain agency-wide consistency, it is necessary to modify procedures on the processing of directives. The procedures outlined in this instruction apply to written communications originated by offices which establish or change policy; assign responsibility; require two or more offices to take action of a continuing nature; establish a procedure, technique, standard, guide, or method of performing a duty, function, or operation; or change or cancel another directive. This instruction includes templates to facilitate agency-wide consistency within all NCUA directives.
4. **POLICY.** All directives developed will follow the procedures outlined in this instruction. Directives are the primary means of transmitting information on internal policies and procedures. The NCUA Board establishes policy for the agency and has delegated signature authority for issuing implementing directives to the Executive Director.

NCUA’s internal directives include instructions, bulletins, manuals and guides.

- a. **Instructions** are directives of continuing authority and reference, which remain in effect until superseded or cancelled. Instructions are signed by the Executive Director. As noted in Delegation of Authority SPE 9, instructions that pertain only to a specific office may be signed and released by the issuing office director to their staff.
- b. **Bulletins** are temporary directives that provide advance notification on agency policies and procedures that require immediate dissemination. All bulletin numbers will be followed by a capital B, to indicate the directive is a bulletin. (e.g., 4011B). All bulletins must have a stated self-cancellation date or clause, such as “will be canceled April 31, 2015” or “...will be canceled when incorporated into the Personnel Manual.”

As necessary, the information in bulletins should be incorporated into a permanent directive as soon as possible. Bulletins are signed by the issuing office director after review and concurrence by the Executive Director.

As noted in Delegation of Authority SPE 9, bulletins that pertain only to a specific office may be signed and released by the issuing office director to their staff.

- c. **Manuals (e.g. Personnel, NBU Travel)** are a collection of permanent policies and procedures covering related subjects and used to provide relatively lengthy technical guidance. Manuals and any revisions are signed by the Executive Director.
- d. **Guides/Handbooks (e.g. Examiner Guide, Hi-Tech Handbook)** are a collection of information covering related subjects and used to provide lengthy guidance. Guides are signed by the issuing office director.

5. **RESPONSIBILITIES.**

- a. **The Office of Primary Interest (OPI)** will:

- 1) Obtain OED concurrence on any proposed directive prior to the drafting stage.
- 2) Draft directives related to their areas of responsibility that communicate agency policies and procedures. The OPI will ensure that these policies and procedures adequately document the functions, policies, programs, and procedures for which they are responsible and that these directives are consistent with all applicable laws, regulations, and NCUA policies.
- 3) Provide a complete submission to the Office of the Executive Director (OED). This includes a copy of the directives via e-mail to the _OED Directives mailbox. A hard copy, approved by the office director, will also be submitted to the OED.
- 4) Ensure that agency policies and procedures developed by their offices are kept current, and reviewed annually for necessary revision, amendment, or cancellation.

- 5) Coordinate proposed directives with impacted offices during the drafting stage and maintain file copies of comments and concurrences. The OPI will send out a request for comments using a standardized template (see Enclosure 10) and request that all commenting offices populate any comments they have into the provided template.
- 6) Consult the eLibrary directives index and the SSIC list in the Communications Manual when determining the directive number.
- 7) Ensure office staff use the applicable directive template and style guide (see Enclosures 2-4 and 7) and identify applicable key words (metatags) when preparing directive.
- 8) Input applicable search terms (key words) within the metatag field of each directive (see Enclosure 9).
- 9) Review the directive to ensure proper format, consistency, and overall compliance with privacy and records management requirements. Directives requiring substantive changes will be returned to the originating office for correction.
- 10) Ensure that grammar and spell checks have been performed prior to submission.
- 11) Indicate office directors' approval by including the standardized route sheet (see Enclosure 5) which has been initialed by the office director.

b. The Office of the Executive Director (OED) will:

- 1) Assign a date to the directive once the Executive Director signs it.
- 2) Distribute approved directives via E-mail to all agency staff.
- 3) Submit to the _eLibraryposting mailbox for posting to the NCUA eLibrary.
- 4) Return the original signed hard copy of the approved directive to the appropriate OPI.

c. The Office of the Chief Information Officer (OCIO) will:

- 1) Exercise supervision over the operation and maintenance of the NCUA eLibrary, which is the official repository for NCUA's directives.
- 2) Update indices of all directives.
- 3) Post approved directives to the NCUA eLibrary.

6. **PROCEDURES.** A complete submission package includes both a hard copy and an electronic MS Word copy. The electronic copy will include the proposed directive along with any enclosures. The hard copy package will include those documents plus the routing form indicating office director

approval. The hard copy folder package will be setup with any supporting documentation, as appropriate, on the left side and the directive and enclosures on the right.

Directives requiring revisions by OED will be resubmitted by the OPI in final format along with a redlined hard copy for OED review. If the OED provided handwritten edits on the hard copy, that document will also be included in the supporting documents when returned to OED.

A complete directive package consists of the following:

- **A hard copy** of the directive and any applicable enclosures and supporting documents;
- **A signed routing form** indicating that the proposed directive has been reviewed and approved by the office director, along with any other office concurrences (such as Labor Relations, OGC, etc.), as required;
- **An electronic copy** (in MS Word format) of the directive and any applicable enclosures submitted via E-mail to the _OED Directives mailbox; and
- **A redline copy** of the prior version of the directive showing all proposed changes, if the directive is an update of a prior version.

The general requirements on the preparation of directives in terms of content, style, and format are described in Enclosure 7. Refer to the [Communications Manual](#) for additional information.

7. **DISTRIBUTION/EXCEPTIONS.** NCUA directives will be distributed to all NCUA staff, unless a special distribution has been requested by the originating office. Documents directed solely to a specific audience, such as all directors or all field staff, must be noted as such in the original submission.
8. **REVISION OF DIRECTIVES.** Revision(s) may be made to active directives. Any revision submitted to OED for signature will include a redline copy of the current directive. The following procedures also apply:
 - a. **Instructions/Bulletins.** Amend the current instruction/bulletin as needed. OED will review and assign the appropriate date, upon approval and signature of the Executive Director.
 - 1) If the subject and content will remain primarily the same, the current directive number, based on the applicable SSIC code, may continue to be used, adding “Rev. 1, 2, 3...” to the end of the number. For example, if you are revising 1800.3, the new number will be 1800.3 (Rev. 1). If you are revising 12500.2 (Rev. 3), the new number will be 12500.2 (Rev. 4).
 - 2) Some of the older instructions have at some point been amended, but did not indicate the revision number. If the directive indicates prior revision, but does not indicate a specific version number, simply use (REV) in caps at the end of the number.

3) If either the subject or the content requires substantive changes, you may retitle as appropriate or request the use of the applicable SSIC code which most closely relates to the revised directive.

b. **Manuals.** Amend the current manual as needed. A request for amendment must consist of preparing and sending the following via E-mail to the _OED Directives mailbox:

1) A standard transmittal sheet summarizing the changes, use the template provided (see Enclosure 6). OED will assign a sequential Change Number to the transmittal sheet.

2) An MS Word file of the revised chapter or manual. OED will insert the Change Number and Revision Date (Month/Year) as a footer on each page of the revised manual.

9. **CANCELLATION OF DIRECTIVE.** If a directive becomes obsolete and is no longer needed, it may be formally cancelled and deleted from all active files. You may cancel an instruction or bulletin in one of two ways.

- **Revision and cancellation.** If revising/updating a previous instruction or bulletin, insert a cancellation line within the body of the proposed directive. The cancellation line should always appear as Section 2 **CANCELLATION.** Identify the directive being cancelled by its number including any revision number, name, and issuance date.

Sample Wording:

NCUA Instruction [INSERT NUMBER AND NAME OF DIRECTIVE], dated [INSERT DATE OF DIRECTIVE], is cancelled and should be removed from the files.

- **Cancellation ONLY.** If a directive is obsolete and needs to be deleted, use the template provided (see Enclosure 4). Identify the directive being cancelled by its SSIC number including any revision number, name, and issuance date.

Example:

SUBJECT: Cancellation of Instruction [INSERT NUMBER AND NAME OF DIRECTIVE] dated [INSERT DATE OF DIRECTIVE]

- The SSIC code for the cancellation of directives is 1800. This SSIC code is designated as the base number for cancellation of all directives. Consult the directives index in the eLibrary to determine the next number in the 1800 sequence to be used. The cancellation template can be used to cancel one or multiple directives.

10. **EFFECTIVE DATE.** This instruction is effective immediately and will remain in effect until cancelled or superseded.

/S/
Mark A. Treichel
Executive Director

OED/OCIO

Enclosure B



National Credit Union Administration
Office of the General Counsel

Supplemental Statement of Facts

This document addresses an investigative report from the National Credit Union Administration's ("NCUA") Inspector General. The report addresses certain representation and travel expenses of the NCUA Board Chairman, J. Mark McWatters. This document provides additional relevant information on the subjects of the report, along with information about furniture purchases reported in the press.

First, the report addresses the use of agency funds for the purchase of alcoholic beverages. The Office of General Counsel (OGC) has, on at least two occasions, including as recently as last year, thoroughly reviewed and opined on the legality of using agency funds to purchase alcohol for representational activities. Relevant legal parameters permit such purchases, and a copy of General Counsel's most recent legal memorandum on this subject is included with this document at Attachment A.

In the course of the review of legal parameters, OGC also reviewed NCUA policies on alcohol purchases, which the NCUA Executive Director has unilaterally delegated authority to amend and permit reimbursement for alcohol at representational activities at any time. Despite no legal impediment, agency policy since October 6, 2017 has unequivocally and uniformly forbidden the use of agency funds to purchase or reimburse for alcohol. However, prior to October 6, 2017, the date when the Executive Director consolidated NCUA policies on use of representation funds in one standing Instruction, the scope of inquiry necessary to understand the full agency policy on alcohol and representation funds is difficult to determine and, in the view of OGC, ambiguous. A memorandum included with this document in Attachment A discusses this policy ambiguity.

Second, the report addresses certain travel expenses, including airfare to Vienna for \$11,974, airfare to Barcelona for \$12,215, and other transportation services. The NCUA, as an independent agency, is not subject to travel restrictions that apply to some other agencies. All the NCUA Board Chairman's travel of which OGC is aware, once again, falls within legal parameters. Further, the travel in question falls within relevant agency policy. A recent travel authorization memorandum for NCUA Board Members is Attachment B to this document.

Enclosures (2)

Attachment A

This is included as Enclosure A,

Memorandum on Alcohol

Purchases of this information

package

Attachment B

Travel Authorization Memorandum

(See attached)



National Credit Union Administration
Office of the Executive Director

SSIC #1400
TRAVEL ORDER #2019-1

TO: NCUA Board Members and Senior Policy Advisors

FROM: Executive Director Mark A. Treichel /s/

SUBJ: Travel Authorization for Board Members and Senior Policy Advisors of the National Credit Union Administration

DATE: December 31, 2018

The National Credit Union Administration board members and senior policy advisors are authorized to travel on official business incident to the administration of the Federal Credit Union Act and in accordance with the NCUA's travel policies without further written travel orders. The applicable travel policies include the NCUA Non-Bargaining Unit Travel Manual and the NCUA Policy for Travel by Board Members and Senior Policy Advisors issued July 31, 2018.

Board members and senior policy advisors are authorized to use privately owned automobiles at the authorized rate for travel on official business in accordance with the NCUA's travel policies. All other transportation expenses will be reimbursed based on actual cost, in accordance with the provisions of the NCUA Non-Bargaining Unit Travel Manual.

Use of a rented, government-owned, or government-leased vehicle is authorized.

Use of taxicabs, Uber, Lyft and other ride-sharing services are authorized.

Board members and senior policy advisors will submit their completed travel expense reports to the Office of the Executive Director for review for compliance with the NCUA's travel policies and for processing. A separate travel expense report should be submitted for each specific overnight event while local travel should be submitted at least monthly.

Enclosure C



Supplemental Statement of Facts

In connection with the Report of Investigation 18-01 issued by the National Credit Union Administration’s (“NCUA”) Inspector General (IG), the report addresses a review of the NCUA Board Chairman J. Mark McWatters’ travel expenses and use of representation funds. After reviewing the report, for the record, several issues need further clarification for context.

The Office of the Executive Director (OED) is responsible for the issuance and enforcement of the applicable policies and procedures governing Board travel and also use of representation funds. IG staff interviewed the Executive Director and Deputy Executive Director as part of the investigation and the report references statements made during those interviews and attaches summaries of the statements. However, some relevant documents OED provided before or during individual interviews are not included as attachments to the report. Since compliance with the policies is a focal point of the report, these documents are necessary to have a full and complete understanding of the facts. The omitted information addressed inconsistency in the NCUA policies and enforcement governing representation expense claims for Board Members and their staff. Attached are two documents provided to the Office of Inspector General during their investigation including a brief Power Point prepared by the Executive Director and an email provided by the Deputy Executive Director.

Two key areas in the report include the lack of submission of itemized receipts and the purchase of alcohol during representational functions. As the chart below shows, the two policies governing this area were inconsistent, which contributed to the implementation and quality control issues. These inconsistencies are the Executive Director’s responsibility and were resolved through revisions made in policy in October 2017 and further updated in July 2018.

Issue	Instruction 2020.2 (Issued 2006)	Annual Travel and Representation Fund Policy Memorandum	Instruction 2020.2 (Issued 2017)
Requires Itemized Receipt	Yes	No	Yes
Precludes Alcohol	No	Yes	Yes

There is a multi-layered staff level review and approval process for Board Members to receive reimbursement for travel and representation fund claims. The confusion of the policy interpretation can be seen in the IG interview notes of those involved in the process. This occurred at various levels of the quality control process and is something resolved with the changes to the policies.

The report and some of the NCUA staff also seemed to conflate the travel rules with the representation fund rules, which are not the same. For instance, the report implies that an employee must use the government-issued charge card for representation expenses, because they are business expenses. However, the references to the use of the charge card are always in relation to travel expenses and not representation expense. Since representation funds are not part of the travel program, they do not require the use of the government-issues charge card. Specifically, the reference in the report states, “SSIC 1400 also provides that employees must use the government-issued charge card for all official business expenses, unless the expense was exempt.” This statement is specific to travel related expenses, but that is not clear in the report. The NCUA Travel manual says the card “may” be used for other business-related purchases such as supplies and training, so the policy allows but does not require use of the government card.

Page 4 of the IG report states “No NCUA policy ever authorized the reimbursement of representation expenses for alcohol.” The OED disagrees with this statement. While policies prior to 2006 are not available, the Executive Director can confirm that in the early to mid-2000s alcohol reimbursements were made and were allowed. Furthermore, agency instruction dated 2006, which was effective during the period in question, is less than clear as the instruction allows beverages and is inconsistent with the subsequent memos precluding alcohol. The instruction was not clarified to preclude alcohol until October of 2017, and further clarified in July 2018 to specifically allow reimbursement within specified limits.

Lastly, relative to all travel and representation expense claims there are no violations of any law or regulation, and only \$159 in claims relative to noncompliance with unclear internal agency policy.

Attachments:

- 1) Executive Director’s Representation Fund Explanation Presentation
- 2) Deputy Executive Director’s Email to OIG on Policy Inconsistency



NCUA
National Credit Union Administration

Executive Director Treichel

Representation Expense –IG Meeting

April 24, 2018



Policy Matter

- **NCUA is an independent-non appropriated FIRREA Banking Agency**
- **NCUA may purchase alcoholic beverages at representational events per OGC legal opinion**
- **Therefore any question relative to purchase of alcohol is a policy issue, and in no instance is it a legal or regulatory issue**

Past Inconsistent Policy

Until the October 2017 Representation Expense Instruction update, OED policy guidance to the board was inconsistent and not incorporated into one guiding Instruction

Issue	2006 Instruction 2020.2	Annual OED Memo on Travel and Representation	2017 Instruction 2020.2
Requires Itemized Receipt	Yes	No	Yes
Precludes Alcohol	No	Yes	Yes

Additional Consideration

- **OED to review and update 2020.2 to include training of Board and Board staff on policy and policy changes annually.**
- **OGC to update the current legal opinion indicating NCUA may purchase alcoholic beverages at representational events (OGC verbally indicates conclusion remains the same).**

From: Kutchev, John E
To:
Cc:
Subject: Follow up on Discussion of Board Travel
Date: Thursday, April 19, 2018 6:12:01 PM

After our meeting this week where you asked several follow up questions mostly directed at the need for itemized receipts and also the authorization for the reimbursement of alcohol, I took the time to review the policies in those areas again. I honestly was having a hard time grasping how I missed enforcing this part of our policy. Based upon that review, it is obvious there is inconsistency in what has been issued on both topics as I will explain below. I believe we have resolved the inconsistency with the issuance of the October 2017 instruction and policy memo, but prior to that, there was inconsistent information for the Board to reference.

The 2006 Representation Expenses instruction 2020.2 did not prohibit the purchase of alcohol, while the annual memo issued by the Executive Director did prohibit the reimbursement of alcohol. The 2020.2 instruction specifically states in regard to what can be claimed, "Such expenses include the purchase of food, beverages, and other expenses such as small gifts or tokens of nominal value as commemorations." It does not prohibit the purchase of alcohol as a beverage. The annual memo states, "The representation fund will not be used under any circumstances to cover expenses for alcoholic beverages or entertainment." So my question is which policy applies?

The 2006 instruction does require the submission of itemized receipts, but the annual Executive Director memo allows the submission of any receipt as support for the reimbursement. The 2006 2020.2 instruction states, "Summary receipts that do not itemize purchases will not be considered acceptable documentation." The annual memo states, "Receipts must be attached in Concur documenting all representation expense reimbursement claims." The memo does not require itemized receipts. Again, which policy applies?

Further confusing the issues is there is nothing we can find that makes it illegal or impermissible to reimburse the Board for the purchase of alcohol as part of their representation funds. So, it comes down to an internal policy decision of which there are two policies on the same issue, one authorizing alcohol and one not, one requiring itemized receipts and one not.

In light of this confusion on the receipts issue, I referred back to what we require all other staff to do in terms of the receipts they provide. From what I can find, there is no history of requiring staff to provide itemized receipts for any travel or expense reimbursement. The Collective Bargaining Agreement (CBA) signed in November 2011 did not require itemized receipts as support for reimbursement. It simply required receipts. There are even exceptions allowed where a credit card receipt may suffice. In the current CBA signed July 2015, it not only doesn't require itemized receipts, but rather notes that imported charge card receipts also suffice as support for reimbursement. So I conclude that not requiring itemized receipts is consistent with the expectations and treatment of all 1,200 agency employees.

For the first time I could find, in the fall of 2017, we renegotiated the CBA's Travel and Expense Reimbursement Article to require "itemized receipts" when a receipt is required for reimbursement. This is also consistent with the change we made in the Representation Expense instruction 2020.2 revised in October 2017.

The point of this message is to let you know this is not a clear cut "should have known to do this" type issue. It is admittedly a poorly structured combination of policies, which we corrected in the fall of 2017 with changes to both the board policies and instruction, as well as the CBA.

If you have more questions, let me know.

John E. Kutchey
Deputy Executive Director
National Credit Union Administration
1775 Duke Street, Alexandria, VA 22314 | www.ncua.gov
(703) 518-6322

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Enclosure D



National Credit Union Administration
Office of the Executive Director

SSIC #1400

TO: NCUA Board Members and Senior Policy Advisors
FROM: Executive Director Mark A. Treichel /s/
SUBJ: NCUA Policy for Travel by Board Members and Senior Policy Advisors
DATE: July 31, 2018

This memorandum explains the travel reimbursement options available to NCUA board members and senior policy advisors (collectively, travelers) for official travel that differ from the travel policies for non-bargaining unit staff. In addition, this memorandum summarizes key general rules applicable to all government travelers.

A. LODGING AND MEAL REIMBURSEMENT OPTIONS

For lodging expenses and meals and incidental expenses (M&IE) for each official trip, the traveler may elect to be reimbursed for their actual expenses or claim the per diem rates applicable to NCUA non-bargaining unit staff. Subject to additional limitations below, reimbursement cannot exceed 300 percent of the applicable GSA per diem rate under any circumstances for either lodging or M&IE, regardless of the method elected.

Actual Expense: A traveler who elects the actual expense option will be reimbursed for the actual travel expenses incurred, subject to providing receipts for all claimed expenses. Travelers may elect the actual expense method for lodging and the per diem method for M&IE, in which case receipts are not required for M&IE. When actual expenses are claimed, the reimbursement is preauthorized up to 200 percent of the applicable GSA per diem rate. Exceptions beyond this limit are authorized up to 300 percent of the standard GSA per diem rate, as long as they are supported in the related travel expense report as meeting 41 C.F.R. §301-11.300(a)-(d).¹

Per Diem: A traveler who elects the per diem rate option will be reimbursed for travel expenses under the same rates applicable to non-bargaining unit staff. Receipts must

¹ C.F.R. §301-11.300 When is actual expense reimbursement warranted?

When: (a) Lodging and/or meals are procured at a prearranged place such as a hotel where a meeting, conference or training session is held; (b) Costs have escalated because of special events (e.g., missile launching periods, sporting events, World's Fair, conventions, natural or manmade disasters); lodging and meal expenses within prescribed allowances cannot be obtained nearby; and costs to commute to/from the nearby location consume most or all of the savings achieved from occupying less expensive lodging; (c) The TDY location is subject to a Presidentially-Declared Disaster and your agency has issued a blanket actual expense authorization for the location (see §301-70.201); (d) Because of mission requirements; or (e) Any other reason approved within your agency.

always be provided for lodging reimbursement claims but are not required for M&IE under this method.

Neither payment of per diem amounts nor reimbursement for lodging is authorized when the traveler is at their permanent duty station.

B. TRANSPORTATION OPTIONS

Travelers are authorized to use premium options for taxicab and transportation network companies. When travelers are sharing a ride with another NCUA staff member and the staff member is claiming the expense, the staff member is authorized to claim the premium options. Examples include the acceptable use of Uber Black or Lyft Lux service.

C. GENERAL RULES FOR GOVERNMENT TRAVEL

The following general rules apply to official business travel by government employees, including board members and senior policy advisors.

Government employees must exercise the same care a prudent person would exercise if traveling on personal business. 41 C.F.R. §301-2.3.

Government employees are to incur only necessary and reasonable expenses when transacting official business. 41 C.F.R. §301-2.2.

Government employees may not claim reimbursement for expenses for alcoholic beverages. 41 C.F.R. §300-3.1. If a traveler has alcohol on the bill as part of the meal, however, the traveler may charge the total bill to the NCUA-issued charge card and seek reimbursement only for the food-related charges, or charge the total bill to a personal charge or credit card and seek reimbursement only for the food-related charges.

Government employees may not claim reimbursement for entertainment expenses. 41 C.F.R. §300-3.1.

Government employees may not claim reimbursement for meals when meals are furnished by the government or are included in registration fees, tuition, or training. Travelers must deduct the value of the meal from the per diem expenses claimed for that day using the GSA per diem breakdown. 41 C.F.R. §301-11.18.

Government employees must use the government-issued charge card for all official business expenses, unless the expense is exempt.² 41 C.F.R. 301-51.1-51.2. An example of an exempt situation includes splitting a single bill for a traveler into multiple credit card

² **§301-51.2 Are there any official travel expenses that are exempt from the mandatory use of the Government contractor-issued travel charge card?**

Expenses for which payment through the Government contractor-issued travel charge card is impractical (*e.g.*, vendor does not accept credit cards) or imposes unreasonable burdens or costs (*e.g.*, fees are charged for using the card) are exempt from use of the travel charge card. Your agency may also exempt an official travel expense when it is necessary in the interest of the agency (see §301-51.4).

transactions due to the purchase of alcohol or payment for a personal guest, or when there is alcohol on the bill as part of a meal.

Government employees must not claim reimbursement for any extra costs resulting from travel by an indirect route or an interruption in travel. 41 C.F.R. §301-10.8.

Government employees' travel costs are based on their normal duty station. Any trip with an alternate origin or endpoint for any reason other than official agency business is an indirect route. Only the lesser of the actual total expense incurred or the amount of expense that would have been incurred via the direct route will be reimbursed. Travelers claiming reimbursement for a trip including travel by an indirect route or an interruption in official travel status must include comparative documentation of the costs of direct or uninterrupted travel with their travel expense report.

Government employees may not use the government-issued charge card to obtain the government rate for personal travel, even if originating official business travel at the personal destination would save the agency money.

Enclosure E

NCUA



INSTRUCTION

NO. 2020.2 (REV. 4)

DATE: August 2, 2018

SUBJ: Representation Expenses

TO: All Board Staff and All Office Directors

1. **PURPOSE.** To establish the policy on the appropriate use of representation funds and the method for obtaining reimbursement for representation expenses.
2. **CANCELLATION.** Instruction No. 2020.2 (Rev. 3), dated October 6, 2017, is cancelled and should be removed from the files.
3. **BACKGROUND.** The board has discretion in the use of agency funds in carrying out the purposes of the Federal Credit Union Act. This instruction provides direction and guidance on the use and administration of the representation funds.
4. **POLICY.** The use of representation funds are authorized for the board members, senior policy advisors and the executive director within limits included in the NCUA annual operating budget. All NCUA officials are required to exercise sound judgment and use appropriate discretion in the expenditure of agency funds in conducting matters related to official business. The use of representation funds is only permissible if considered to be prudent and necessary for agency purposes and the accomplishment of NCUA's mission.
 - a. **Representation Expense Definition.** Representation expenses are those incurred by one or more NCUA personnel while conducting certain official agency business functions with: (1) other government agency officials and representatives; (2) congressional and legislative members and staff; (3) state government officials and representatives; (4) industry representatives; (5) news media personnel; and (6) other non-NCUA individuals. For purposes of this definition, official agency business functions include conferences, receptions, award ceremonies, training events, business meetings and agency development initiatives.
 - b. **Authorized Uses.** Representation funds are authorized for food, beverages (both alcoholic and non-alcoholic) and other expenses, such as event cover charges, associated with agency business functions primarily conducted with non-NCUA individuals. Alcoholic beverage reimbursement is limited to the total food reimbursement portion at the event.
 - c. **Authorized Participants.** Representation funds may be used to pay for all participants. Payment for any non-NCUA individual is limited to four times per calendar year for the same individual.

- d. Travel Expenses. Representation expenses do not include expenses for travel. Reimbursement for travel is governed by the NCUA Non-Bargaining Unit Travel Manual.
- e. Non-Reimbursable Items. Cash, gift cards or their equivalent, and entertainment do not qualify for reimbursement. Communications for seasonal or personal salutations are not permissible agency expenses.
- f. NCUA Only Meetings. The use of representation funds normally requires participation of at least one non-NCUA individual. On an exception basis when NCUA needs require, representation funds may be used for food and beverages for work involving only NCUA employees. This is limited to the rare and non-recurring situation where there is a need or requirement to meet or work through a meal and that need or requirement is justified in writing in the claim for payment.
- g. When on Travel Status. When feasible, in order to conserve funds available for representation expenses, officials participating in an official agency business function while on travel status should follow normal travel policies for claiming reimbursement for meals. If representation expenses are claimed for meals while in travel status, NCUA officials must reduce the daily per diem limit by the corresponding meal allotment provided by GSA in their M&IE breakdown.
- h. Delegation of Authority. NCUA board members, senior policy advisors and the executive director may designate representatives within their respective offices or chain of command to be eligible for reimbursement.
- i. Potential Conflicts of Interest. NCUA officials should give appropriate consideration of the likelihood that the expenditure, especially where industry officials are in attendance, may create an appearance of loss of impartiality in the official's NCUA duties. When there is any question about the loss of impartiality, the official should consult with the agency ethics officer.
- j. Required Documentation. To claim reimbursement, all agency officials must complete the appropriate expense claim information in the travel reimbursement system provided for by the Office of the Chief Financial Officer, detailing the date the expense was incurred, the purpose of the meeting or function and identification of those in attendance. Itemized receipts are required and must support the amount claimed for payment including enough information to determine compliance with the policy regarding alcoholic beverage limitations.
- k. Use of Official Agency Credit Card. The use of the official NCUA credit card is optional for representation expense payments.
- l. Approval. Board members and senior policy advisors will submit their claims and the claims of their designees to the executive director or deputy executive director for payment. All others will submit their claims to the deputy executive director for payment.

EFFECTIVE DATE. This instruction is effective immediately and will remain in effect until cancelled or superseded.

/s/
Mark Treichel
Executive Director

Authoring Office
OED