

August 20, 2007

Mary F. Rupp  
Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314

RE: Comments on Proposed Rule Regarding Federal Credit Union Bylaws

Dear Ms. Rupp:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation's federal credit unions (FCUs), I am responding to the request for public comment on the National Credit Union Administration's (NCUA) proposed rule regarding federal credit union bylaws (Bylaws).

Under the proposed rule, the FCU Bylaws would be reincorporated by reference into the NCUA regulations in order for the agency to potentially exercise enforcement authority over Bylaws disputes. NCUA reasons that, while its approach to let state courts determine the outcome of Bylaws disputes has worked over the years, there have been recent cases where FCU members were unable to use the judicial system to enforce their FCU's Bylaws. *See, e.g., Sly v. Dearborn Financial Fed. Credit Union*, 443 F. Supp. 2d. 885 (E.D. Mich. 2006).

NAFCU shares NCUA's concerns regarding credit union members' access to the judicial system. However, we believe that the current proposal as drafted is not necessary at this time.

NAFCU agrees with the current NCUA policy that FCU Bylaws are a contract between credit union members and credit unions. *See, e.g., NCUA Legal Op. Letter No. 00-0134* (March 23, 2000). Further, we recognize that credit union members have ownership rights in their credit union consistent with the cooperative model of ownership. NAFCU also believes that it is incumbent on credit unions to ensure that members' rights are respected. We also recognize that disputes between credit unions and credit union members can arise, and in limited circumstances, these disputes are not internally resolved.



However, NAFCU does not agree that federal regulation and oversight of bylaws disputes is appropriate at this time. NAFCU member credit unions have expressed concern that the involvement of the NCUA could result in various unintended consequences. For example, outside parties with adverse interests or a few dissatisfied members of a credit union may be able to create undue problems for the credit union that they would not be able to under the current regime. NCUA should not overlook that litigation, while it does pose challenges to the parties involved, is not without benefits. Courts will only hear cases that meet particular legal standards including subject matter jurisdiction, personal jurisdiction, and standing.

### **Standards for Intervention**

The NCUA currently has the authority to exercise its administrative enforcement authority when a credit union violates the FCU Act or NCUA regulations or a threat to the safety and soundness of the credit union exists. Reincorporating the bylaws will maintain this standard, but would add the ability for the NCUA to intervene when a violation poses a threat to fundamental credit union members' rights.

NAFCU members have expressed concern that in the proposed rule the standards for intervention in bylaws disputes when there is no violation of the FCU Act or NCUA regulation or a threat to the safety and soundness of the credit union are unclear and ambiguous. For example, it is unclear what process will be used in determining whether a particular action warrants intervention and who will make such determination. The supplementary information provided by the NCUA simply states that the Regional offices will have a primary role in determining whether the NCUA will intervene and whether taking administrative action is warranted, but the NCUA will have discretion where fundamental member rights are involved. This simply does not provide credit unions with enough information.

Further, if the NCUA intervenes in bylaws disputes, it should make clear, among other things, whether credit union members are required to first seek judicial relief, and whether and to what extent a NCUA determination will have precedential value.

### **Fundamental Member Rights**

NAFCU strongly believes in the fundamental member rights inherent in cooperative ownership. NAFCU generally agrees with the NCUA that the following are fundamental members' rights: maintain a share account; maintain a credit union membership; participate in the director election process; attend annual and special meetings; and petition for removal of directors and committee members.

Nonetheless, as we stated in our recent official comment letter dated June 22, 2007, to the NCUA regarding member inspection of credit union records, we are not convinced that these rights should be federally regulated at this time. We are concerned



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that the NCUA's intent to intervene in situations that it deems involves fundamental members' rights can create a slippery slope to overly burdensome and ineffective regulatory oversight.

*Access to Credit Union Facilities*

Under the proposed rule, a fundamental member right that could trigger NCUA intervention in bylaws disputes is access to credit union facilities. NAFCU does not agree that a *blanket* access to credit union facilities is a fundamental member right. Certainly, a credit union member has the right to gain access to facilities to obtain services. A credit union member also has the right to gain access to places to which the membership in general has access (i.e., places where member meetings are held). A member should not have access to certain areas because of security and privacy concerns.

NAFCU appreciates this opportunity to share its comments on this proposed rulemaking. Should you have any questions or require additional information please call me or Tessema Tefferi, NAFCU's Associate Director of Regulatory Affairs, at (703) 522-4770 or (800) 336-4644 ext. 268.

Sincerely,



B. Dan Berger  
Senior Vice President for Government Affairs

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