



August 17, 2007

Ms. Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428

Re: Comments on reincorporation of FCU Bylaws into NCUA Regulations

Dear Ms. Rupp:

Thank you for the opportunity to comment on the NCUA Board's proposed change to reincorporate FCU Bylaws into the NCUA Rules and Regulations. For the sake of our members, we are compelled to oppose this proposal.

First, we agree with many of the comments raised by others concerning this proposed change, and we will not repeat those comments in this letter. The NCUA's desire to protect fundamental and material rights held by all credit union members is laudable, but assuming control over all disputes that fall within the bylaws is akin to taking a chainsaw to a problem that is best dealt with using a scalpel.

For example, one of the stated justifications for the change was some isolated instances "where members have been unable to use the judicial system to enforce rights granted by the Bylaws." Rather than throw out the entire system, would it not be better for the NCUA to find a way to clearly establish that credit union members have standing to enforce bylaw violations? If a particular state's court system would not allow this remedy, the NCUA could provide for some type of alternate dispute resolution process to apply in that instance.

Otherwise, requiring that all disputes between a member and his or her credit union be ultimately determined by the NCUA will strip the parties of the type of dispute resolution procedures found in their state's legal system. Is the NCUA prepared to hold extensive hearings and permit depositions and other discovery methods if they are required? Does the NCUA have sufficient employees to act as hearing officers to take evidence and make rulings?

If not, would this lack of resources cause the NCUA to adopt a drastically streamlined approach without these protections? Although some parts of litigation take time and make the process more expensive, they also protect the interests of the parties, including the non-complaining credit union members for whom the credit union holds a fiduciary duty to protect. If the cost of

litigation is a concern, would it not make more sense to provide a remedy that would shift some of the costs to the credit union should a member's claims ultimately be found to have merit?

Besides the increased resources necessary for handling alleged bylaw disputes, the NCUA is opening itself up for criticism and worse, especially because it is abandoning an understandable, bright line rule for when it will get involved in controversies. Your staff's commentary to the proposed regulation says that the NCUA would act in "certain, limited cases," and that "[i]ncorporating the FCU Bylaws into NCUA's regulations will not mean NCUA will become involved as a matter of course in bylaw disputes." Instead, the NCUA will act only when an alleged "bylaw violation poses a threat to fundamental, material credit union member rights." But the NCUA's list of fundamental and material member rights is very broad (the rights to maintain a share account; maintain credit union membership; have access to credit union facilities; participate in the director election process; attend annual and special meetings; and petition for removal of directors and committee members). We do not necessarily disagree with this list, but we question what disputes would NOT fall under this description. Instead of its role being "limited" or "rare", we suspect the NCUA will find itself in the middle of more disputes than it has the capacity to fairly handle. Refusal or failure to do so will open the NCUA up to justifiable criticism that it is not doing its job.

For better or worse, times have changed since 1982 when the NCUA changed its regulations about this issue. Many credit unions are considerably larger, although they still adhere to the core concepts underlying the need for credit unions. Unfortunately, these days it is possible for a small contingent of the credit union membership, and perhaps even one person, to become convinced that the credit union is violating its bylaws. By tinkering with the current system and upsetting the present balance, the NCUA will be making it easier for a disgruntled member to disrupt the operations of the credit union, cause it to incur significant expense, and devote valuable time to responding to baseless claims. If the burden of filing a lawsuit is so high a barrier that it forecloses legitimate grievances, there are ways to remedy that problem as described above. Removing all barriers, however, is not the solution and will lead to serious unintended consequences for the NCUA, for the credit unions it regulates, and their members.

For these reasons, and for other reasons outlined in the comments already received by the NCUA on this issue, we respectfully ask the NCUA to reconsider this proposed change. Thank you for your consideration.

Sincerely,



John Dee Carruth
Manager and CEO