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

Re: Comments on Federal Credit Union Bylaws

Dear Ms. Rupp:

Thank you and the NCUA Board Members for this opportunity to respond to the Notice and Request for Comment concerning proposed changes to the Federal Credit Union Bylaws. My comments focus on just one section of these proposed changes.

Although perhaps well intentioned, several proposed amendments to **12 CFR Chapter VII, Article IV. Meetings of Members, Section 4** are ill advised. In actual practice, these proposed changes will mandate unnecessary additional costs for federal credit unions' annual meetings, will almost assuredly significantly increase the time length of FCU annual membership meetings, and will enable every disgruntled member, crackpot, leftist and right-wing political extremist, or antagonistic agitator to waste the majority of an FCU's members' time and resources. The NCUA Board should not mandate that all FCUs make this counterproductive change to their bylaws.

In NCUA's Notice and Request for Comments Supplementary Information, this proposed change is described as follows on page 6:

"The proposal includes a new sentence at the end of Section 4 to notify members of the rules of order or procedure that the FCU will use when conducting member meetings. Members are entitled to know which rules will govern the process for conducting the meeting and making decisions. NCUA has long held the view that, during a membership meeting, an FCU member may make a motion for members to take action if the Act has entrusted the members with such action. Conversely, an FCU board need not recognize a member's motion if the motion is beyond the members' authority under the Act. In preserving the democratic process in FCUs as member-owned institutions, NCUA has long recognized that members have the right to move for a member vote to recommend board action. If a member has followed the rules of order chosen by an FCU and moves for a

membership recommendation to the board, the chair must recognize the motion even though the board is not bound to adopt the recommendation. This process avails members the opportunity to voice any issues, concerns or suggestions they may have for management and becomes part of a meeting's record. The proposal identifies four authorities an FCU may choose. ***NCUA requests comment on the proposal and alternative procedures, but notes the ability of members to make a motion during a membership meeting is fundamental to the process and the right to be heard on matters that concern them as FCU members.*** [Emphasis Added]"

I am not an attorney; however, my review of the FCU Act suggests that the FCU's board of directors carries most of the responsibility for conducting the affairs of the credit union. Statutory authorities granted to the membership appear to be extremely limited in scope: 1.) Election of the credit union's board 12 USC 1761; 2.) Conversion to a mutual savings bank 12 USC 1785(b)(2); 3.) Termination of Federal Insurance 12 USC 1786(a)(1); 4.) Conversion from federal insurance 12 USC 1786(d)(2); and 5.) Removal of members 12 USC 1764. Ironically, I find no definitive statutory language in the FCU Act that articulates an individual credit union member's specific right of ownership of the institution or any part of the institution's equity. I also find no specific authority requiring an FCU board chairman to recognize any member's motions, especially those that are not germane to a member's statutory authority.

It is also indicated in the NCUA's comments that the proposed "mandatory member motion recognition" provision will be imposed by NCUA upon all FCUs over time. NCUA states on page 15 of the Notice and Request for Comment:

"Adoption of all or part of these bylaws. Although federal credit unions may retain any previously approved version of the bylaws, the NCUA Board encourages federal credit unions to adopt these revised bylaws because it believes they provide greater clarity and flexibility for credit unions and their officials and members. Federal credit unions may also adopt portions of the revised bylaws and retain the remainder of previously approved bylaws, but the NCUA Board cautions federal credit unions to be extremely careful. Federal credit unions must be careful because they run the risk of having inconsistent or conflicting provisions because of the various options the revised bylaws provide as well as other revisions of the text."

Since The NCUA Board and its regional directors are involved in the bylaws change approval process for individual FCUs, I expect that there will be intense regulatory pressure placed on all FCUs to adopt the revised bylaws in full, including the "mandatory member motion recognition" provision.

Unnecessary Additional Annual Meeting Costs: In actual practice the "mandatory member motion recognition" bylaw provision will almost assuredly push every FCU board to hire a professional parliamentarian or attorney

specializing in parliamentary rules to be present at every annual meeting or special meeting of the FCU's membership. Most credit union board members and most credit union individual members are not knowledgeable enough about the FCU Act, the FCU Bylaws, or any of the proposed NCUA-required rules of meeting conduct procedures to ensure that all member motions made at the meeting will be relevant to the motion-making member's statutory authority.

The potentially costly professional parliamentarian will be required to rule on these issues and will be required to meet the expectation that such rulings are made by a non-conflicted third party. The expense of a parliamentarian will be borne by all FCUs at their membership meetings, whether a member motion is offered or not. It would not be prudent for any FCU to engage in a membership meeting without such a parliamentarian present. The FCU board chairman or other presiding officer could readily be perceived as being arbitrary in his or her decision as to the statutory relevance of the member's non-germane motion. The image and public relations risk would be very high if a ruling on a motion is viewed as mishandled. The additional cost of a professional parliamentarian will especially be a burden for smaller FCUs.

Increased Length of Time Required for FCU Membership Meetings: The "mandatory member motion recognition" bylaw requirement will also have the practical effect of extensively lengthening the time requirements for FCU membership meetings. Consider a scenario where an FCU with 100,000 total members holds its annual meeting at which 5,000 members (5%) are in attendance. If just 250 (5%) of these members each offer a germane or non-germane motion that takes one minute to explain and four additional minutes to debate (and/or determine that it is outside the member's statutory authority), the membership meeting will run an additional twenty-one hours beyond the time already required for the board elections and other agenda items.

If one were previously a happy and satisfied member of this FCU, this would likely be the last annual meeting marathon that the formerly satisfied member ever attended. I can't imagine anyone having that much time to waste. The requirement that all member motions be recognized could actually decrease members' interest in the business affairs of their credit union. The larger the membership of an FCU, the more problematic this NCUA-mandated bylaw provision becomes. Control of the membership meeting agenda, procedures, and timetable should be only subject to the elected board of directors' good judgment as duly elected representatives of the membership.

Disgruntled Members and Crackpots: NCUA's "mandatory member motion recognition" bylaws provision will enable every disgruntled FCU member, crackpot, leftist or right-wing political extremist, or antagonistic agitator to waste the FCU's members' time and resources. It's almost a truism of human behavior that if one is a satisfied credit union member, there is less reason to take time out of a busy schedule to attend a credit union membership meeting. On the other

hand, if one is a disgruntled member who has been denied a loan or experienced another real or imagined slight, that member has significant incentive to attend a membership meeting and offer potentially disruptive motions from the floor.

Webster's Dictionary defines "crackpot" as one given to eccentric or lunatic notions. One can only guess as to how many crackpots there are in any given population of FCU members, but it is likely to be more than one. Crackpots often actively seek forums like FCU annual membership meetings to express their "eccentric notions" about UFOs and other standard tabloid newspaper fare. Although some FCU members may see these crackpots' motions as a form of entertainment, most will not.

Open forums also are a strong draw for FCU members who have a political agenda, regardless of whether it is leftist, right wing, or mainstream. With the knowledge that their motions must be recognized, these political advocates could make motions demanding that the FCU take a stand on global warming and the environment, the re-distribution of global wealth, getting the U.S. out of the United Nations, Evolution vs. Creationism, stem cell research, abortion, immigration laws, gay and lesbian marriage, or any other controversial political issue that has no statutory foundation as a legitimate agenda item for a credit union membership meeting.

Community chartered FCUs with large geographical fields of membership may also find their annual meeting will be attended by a new type of agitator. Many community bankers are eligible to join these credit unions. These bankers could attend in force and make motions that the FCU voluntarily pay state and federal income taxes and voluntarily subject itself to the Community Reinvestment Act. FCU members who are savvy investors could organize like-minded individuals in large numbers to attend an annual meeting to propose the voluntary liquidation of the FCU in order to get their hands on their portion of the FCU's equity, undivided earnings, and liquidated fixed assets. Also, under NCUA's proposed bylaws changes, even at a very large credit union it would only take 750 of these bankers or savvy investor agitators to require a special membership meeting to implement their objectives. The FCU would be required to expend resources to implement the agitators' desired special meeting.

Final Observations and Conclusion: The proposed "mandatory member motion recognition" FCU bylaws change will create many more potential problems than it solves and should not be adopted. The additional cost of a professional parliamentarian will especially be a burden for smaller FCUs. Every disgruntled FCU member, crackpot, leftist or right-wing political extremist, or antagonistic agitator will be empowered to waste the FCU's other members' time and resources, discouraging future attendance. Control of the membership meeting agenda, procedures, and timetable should be only subject to the board of directors' good judgment as duly elected representatives of the membership. If the "mandatory member motion recognition" bylaws change is approved, it will

once again demonstrate that NCUA places its desire to derail credit union conversions to mutual savings banks ahead of the business decisions made by each FCU's leaders. (See the July 6, 2005 *Credit Union Times* page 33 for confirmation of an NCUA Board Member's motive for this proposed bylaw change.)

As a practical matter, FCUs and their members would be better served by voluntarily choosing to have all statutorily authorized membership issues and board elections handled by a mail ballot provided to each and every credit union member. The in-person membership meeting has become an anachronism. Although proper legal notice and other letter of the law actions are conscientiously being met, credit union annual meetings are often held at inconvenient times, located at unsuitable venues, and are attended by barely enough members to constitute a legal quorum (as few as 15 FCU members.) More often than not, only board members and staff attend these functions. A handful of members are *defacto* calling all of the shots rather than the full membership making the decisions. Imagine if disgruntled members, crackpots, political extremists, banker agitators, and liquidation seeking savvy investors showed up in force at one of these sparsely attended in-person membership meetings. NCUA's "mandatory member motion recognition" bylaws change places the interest of these counterproductive members above those of the vast majority of members who belong to their credit union in order to receive reasonably priced financial services and customer-centric service.

Regardless, the FCU board of directors has the primary statutory authority to conduct the business of the credit union. NCUA should let them.

I welcome the opportunity to respond to any questions the NCUA Board or staff may have concerning my comments.

Sincerely,



Marvin C. Umholtz

Marvin Umholtz is President & CEO of Umholtz Strategic Planning & Consulting Services based in Castle Rock, Colorado south of Denver. He is a 30-year credit union industry veteran who has held many leadership positions with credit union organizations and vendors during those years. An accomplished speaker and former association executive, he candidly shares his credit union industry knowledge and insight with public policymakers, financial industry executives, and vendor companies. Umholtz also helps credit union boards and CEOs with strategic issues like growth, technology, mergers, charter conversions, regulatory advocacy and vendor management. Additionally he serves as membership director for the Coalition for Credit Union Charter Options www.ccuco.org.