

January 23, 2007

Thomas Ellis, Chairman of the Board
Community Resource Federal Credit Union
37 Vandenburg Lane
Latham, NY 12110

Re: Examiner Access to Federal Credit Union (FCU) Board Minutes.

Dear Mr. Ellis:

You have asked if an FCU's directors have the right to conduct "privileged and private discussions . . . while on the record" and may withhold minutes of these meetings from National Credit Union Administration (NCUA) examiners. An FCU must make minutes of all meetings of its board of directors available to NCUA examiners upon request.

You state the credit union's directors conduct meetings at which only the directors are present, referring to these meetings as executive session meetings, as compared to meetings of directors where other persons, such as the credit union's CEO, may be present. You have questioned NCUA's right to review the minutes of so-called executive session meetings.

The FCU Act requires an FCU's board of directors to keep minutes of all their meetings. 12 U.S.C. §1761b. The FCU Bylaws also require minutes for all board of directors' meetings and make the secretary of the board responsible for preparing and maintaining minutes. FCU Bylaws, Article VII, Section 9.

The FCU Act and NCUA regulations expressly provide access to all credit union records. The FCU Act states "[e]ach Federal credit union shall be subject to examination by, and for this purpose [NCUA supervision] shall make its books and records accessible to, any person designated by the [NCUA] Board." 12 U.S.C. §1756. NCUA regulations further provide:

[T]he NCUA Board is authorized to examine any insured credit union Such examination may require access to all records, reports, contracts to which the credit union is a party, and information concerning the affairs of the credit union. Upon request, such documentation must be provided to the NCUA Board or its representative.

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12 C.F.R. §741.1. An FCU's board of directors is responsible for the "general direction and control of the affairs" of an FCU, 12 U.S.C. §1761b, and examination of a board's actions and decisions, as reflected in an FCU's minutes, are part of NCUA's supervision to ensure safe and sound operations and compliance with law and regulations. Thus, NCUA examiners are entitled to access all credit union records and this includes all board meeting minutes.

We also note a recent change in the law affects credit unions' ability to withhold records based on attorney-client privilege. Your letter notes attorney-client privilege would be a basis for withholding certain records from NCUA examiners. NCUA previously permitted credit unions to withhold records covered by attorney-client privilege recognizing that courts might treat release of attorney-client privileged information to NCUA as a waiver of the privilege. A recent statutory change establishes that submission of any information to the NCUA or any state credit union supervisor, as part of any supervisory or regulatory process, will not waive the attorney-client privilege. Financial Services Regulatory Relief Act of 2006, Pub. L. No. 109-351, §607(b), 120 Stat. 1966, 1982 (2006) (to be codified at 12 U.S.C. §1785(j)).

If you have any further questions, please feel free to contact Staff Attorney Paul Peterson or me at (703) 518-6540.

Sincerely,

/S/

Sheila A. Albin
Associate General Counsel

OGC/PMP:bhs
06-1134