YOUNG, SHERON

From: Snyder, Diane L
Sent: Friday, October 14, 2005 2:31 PM
To: YOUNG, SHERON
Subject: BylawsComment (2).doc
Attachments: image001.wmz; image004.png; oledata.mso

October 12, 2005

Via Email/ regcomments@ncua.gov

Ms. Mary F. Rupp, Secretary to the Board
National Credit Union Administration

RE: Comments on Proposed Bylaw Amendments.

Dear Ms. Rupp:

I am submitting this letter on behalf of the State Employees Federal Credit Union in response to the National Credit Union Administration's [NCUA] request for comments on its proposed revisions to its standard bylaws for federal credit unions.

In presenting its proposed revisions, the NCUA states that it is seeking "to allow maximum flexibility for Federal Credit Unions and their boards of directors, whiles preserving the rights of credit union members to be informed about and participate in the governance of their credit unions and ensuring that all Federal Credit Unions will use essentially the same rules for governing themselves." We commend the NCUA for its intentions but believe that the proposal perpetuates the idea that a single approach can satisfy the governance needs of all credit unions and their varied memberships. Further, we believe that bylaws are meant to set forth the rules by which an organization will govern itself and are not the proper vessel for regulations and regulatory guidance.

We respectfully disagree with the NCUA's opinion that Section 1758 of the Federal Credit Union Act exclusively requires the agency to prepare bylaws that shall be used by all Federal Credit Unions. We believe that the agency and Federal Credit Unions would be better served by a two-pronged approach that would permit credit unions the option of using standard bylaws drafted by the National Credit Union Administration or of drafting their own bylaws within the context of an NCUA regulation that sets standards of content for such bylaws. We believe this two-pronged approach is permitted under Section 1758 and is certainly within the NCUA's intentions as quoted above. Our arguments for this approach are outlined in the attached comment letter dated November 30, 2004.

The NCUA proposes to delete Article III. Section 5(b) on the basis that it is unnecessary because it addresses operational procedures that are subject to regulations. We concur with that and suggest that the bylaws have long been used by the NCUA to bridge the Federal Credit Union Act and the Rules and Regulations. Consequently, many parts of the bylaws could be simplified. For example, Article III, Sections 5 and 6 deal with deposits and trust that are addressed by regulation and state laws. Accounting standards addressed in Article VII, Section 6(b) are subject to Part 741.6 of NCUA's Rules and Regulations. Articles XI and XII even begin by referring back to law and regulation. And, the current proposal to amend Article IV, Section 3 addresses a reporting requirement of the Community Development Revolving Loan Program.

Similar to the inclusion of regulations is the present proposal to incorporate its legal opinions into the bylaws. We commend the NCUA's intention of providing guidance but believe that the bylaws are not the appropriate vehicle. Rather, we respectfully suggest that the NCUA's legal opinions would be better presented in a separate publication.

Lastly, we wish to address the proposed amendment to Article IV, Section 3.
The amendment would raise cap on the number of petitioners calling for a special meeting of the membership from 500 to 750 members in the interest of insuring that there is sufficiently broad interest to justify the cost and disruption of holding a special meeting. However, as a measure of board interest, any cap is artificial and will erode as membership increases. The cap of 750 represents less than five per centum of the memberships of over one thousand one hundred federal credit unions. Within that group, 750 petitioners represents less than two per centum of the membership for over three hundred federal credit unions and less than one per centum for one hundred seventy credit unions. There are other mechanisms short of a full membership meeting that allow small groups to voice concerns. We strongly suggest that the caps set in Article IV, Section 3 and Article V, Section 1 be eliminated.

Thank you for this opportunity to comment on the proposed amendments to the agency's standard bylaws for federal credit unions.

Sincerely,
Patrick G. Calhoun, CEO
State Employees Federal Credit Union

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November 30, 2004

VIA E-MAIL/RECOMMENTS@NCUA.GOV
Ms. Mary F. Rupp, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314

RE: REQUEST FOR COMMENTS/PROPOSED BY-LAW CHANGES

Dear Ms. Rupp:

We represent State Employees Federal Credit Union ("SEFCU"), a federally-chartered credit union, headquartered in Albany, New York. We are submitting this letter on behalf of SEFCU in response to the National Credit Union Administration's ("NCUA") request for comments and suggestions on updating, clarifying and simplifying the NCUA's federal credit union by-laws.

For the reasons set forth below, we believe the NCUA should adopt a policy allowing federal credit unions to choose between (i) adopting by-laws with standardized amendments prepared by the NCUA which focus primarily on corporate governance ("Standardized By-laws") and (ii) drafting and adopting their own by-laws tailored to their specific governance needs subject to NCUA specific content requirements ("Custom By-laws").

By way of background, we note that the NCUA has consistently maintained that the Federal Credit Union Act (the "Act") requires the NCUA board of governors (the "Board") to prepare by-laws that must be used by federal credit unions. We disagree. Act §1758 provides that the Board [shall prepare a form of by-laws] to be used by persons organizing a federal credit union, upon their request, in order to simplify the chartering process. Act §1758 also provides that at the time of presenting an organization certificate, the persons organizing the credit union

shall submit proposed by-laws for the Board's approval (emphasis supplied). [1]

A reasonable interpretation of Act §1758 would require only that the Board provide model by-laws for persons wishing to organize a credit union, which would in turn be made available to such persons if such model by-laws are requested by them. Act §1758 says nothing about approval of the Board being required after the time of organization. Finally, Act §1758 requires that such by-laws be "consistent with [the Act]."

With the above points in mind, we believe the NCUA's policy regarding federal credit union by-laws to be capable of substantial improvement. First, we do not believe the current federal credit union by-laws to be easily comprehensible to the average credit union member or director. They should be. New Standardized By-laws should be designed which focus on the business of the credit union, the conduct of its affairs and its rights or powers or the rights and powers of its members, directors or officers. Accordingly, we believe many of the provisions set forth in the current federal credit union by-laws need not be contained in new Standardized By-laws.

The primary purpose of this letter, however, is not to argue that the NCUA prepare new Standardized By-laws (although we believe that to be a worthy objective), but to argue for a different policy with regard to by-laws that allow individual credit unions to adopt by-laws tailored to their own needs. These Custom By-laws would be subject to certain "content requirements" imposed by the NCUA. So long as the individual credit unions choosing to design their own by-laws comply with applicable state law, the Act and the content requirements imposed by the NCUA, such an approach should not be objectionable to the NCUA.

Specific content for Custom By-laws would be based on the requirements of the Act (as dictated by Act §1758). For example, the power to levy late charges is addressed in Section 1757(10) of the Act, member meetings are addressed in Section 1760, and the size of the board and supervisory committee are addressed in Sections 1761(a) and (b). They could be addressed as:

Specific Content Requirements:

1. **The by-laws shall provide for assessing late charges against members who fail to promptly meet their obligations. [12 U.S.C. §1757(10)]**
2. **The annual and special meetings of members must be addressed. [12 U.S.C. §1760]**
3. **The credit union board of directors must consist of at least five members elected annually and the Supervisory Committee shall consist of at least three member appointed annually. [12 U.S.C. §1761(a) and**

(b)]

Once a credit union has drafted its Custom By-laws, it should then be able to adopt them without NCUA review and approval. We do not believe NCUA compliance review to be necessary to accomplish the purposes of the Act with regard to by-laws. Eliminating compulsory NCUA review and approval would substantially decrease the current administrative burden imposed upon the NCUA staff. Any Custom By-laws which fail to comply with specific NCUA requirements would be deemed unlawful to the extent of such non-compliance (as is the case, for example, under state corporate law) and might subject the non-complying credit union to NCUA disciplinary action.

We believe the "two-pronged" approach outlined above would address many of the corporate governance issues raised by the increasing diversity of federal credit unions. The best governance for a single group credit union with a single location, we submit, may be quite different from that of a multi-group credit union operating in geographically dispersed areas. Both differ from the governance needs of a credit union chartered to serve a community with a quarter million or more residents.

Examples of corporate governance issues may include such issues as (i) how a federal credit union can ensure that its board of directors is representative of full membership; (ii) whether additional qualifications should be imposed on directors [2]

in order to achieve better membership representation; (iii) whether a federal credit union should be required to convene a special meeting of the membership for any purpose upon the request of less than one percent of its members; and (iv) whether by-law amendments should be placed before the membership instead of the credit union's board of directors.

We believe that NCUA Standardized By-laws should present only <u>one</u> solution to these and other governance questions. Individual credit unions should be allowed, through the use of Custom By-laws designed to be consistent with applicable state law, the Act and NCUA specific content requirements, to seek alternative solutions best suited to their respective needs.

Very truly yours,

CRANE, GREENE & PARENTE

Patrick K. Greene

Should you have any questions regarding any of the above, please do not hesitate to contact me.

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Historically, the NCUA has generally sought avoidance of by-law issues, unless an alleged by-law violation has posed a threat to the safety and soundness of the federal credit union in question or unless the issue in question relates to the Act or NCUA rules and regulations. See, e.g., Letter from Hattie M. Ulan, Associate General Counsel, NCUA to Heinz K. Walter, IBM Hudson Valley Employees Federal Credit Union (Apr. 30, 1991) (available at www.ncua.gov).

[2]

The issues of director qualifications and petition requirements, however, are issues which the NCUA has determined, through staff attorney opinion letters and policy statements, are directly related to the Act. See Letter from Hattie M. Ulan, Associate General Counsel, NCUA to Clarence A. Fry, Chairman of the Board, Aberdeen Proving Ground Federal Credit Union (Aug. 19, 1992) (available at www.ncua.gov). As such, the NCUA has objected to by-law amendments that seek to impose additional qualifications on persons seeking to become members of board of directors. See, e.g., Letter from Richard S. Schulman, Associate General Counsel, NCUA to Daniel P. Stake, General Counsel, Tinker Federal Credit Union (Dec. 29, 1994) (available at www.ncua.gov). The NCUA has viewed additional qualifications as restrictive of one's eligibility to run for a board member position and as being in conflict with the democratic principles implicit throughout the Act.