

April 20, 2010

To: Mary F. Rupp, Secretary of the Board
National Credit Union Administration
regcomments@ncua.gov

From: Doug Kileen, President/Chief Executive Officer
Safe 1 Credit Union

Re: Comments on Notice of Proposed Rulemaking; Fiduciary Duties at Federal Credit Unions

I am writing to express my disagreement with portions of the proposed changes to CFR Part 701.4 issued March 18, 2010.

Sub-section 701.4 (c) (3) includes a requirement that Directors have a working familiarity with basic finance and accounting practices. I think the other provisions of this section clearly define the duties and responsibilities of an elected Director and that this sub-section is inappropriate and usurps the basic rights of credit union members.

Obviously, one would hope that each Director would have a working knowledge of financials as described, but it should never be a statutory requirement. Requiring specific knowledge for elected volunteer positions is a slippery slope. Once you begin to define such strict requirements, why not require a College Degree, or better yet, an Accounting Degree. Members have the right to elect the Directors of their choice for any reason. The election of co-members and co-workers to serve as volunteer Directors is a basic democratic tenet of credit unions. Requiring specific knowledge or education for an elected position trumps the rights of members.

Even elections for important political positions generally do not require the candidate have specific knowledge or training. Corporate stockholders regularly elect "paid" Directors based on individual stockholdings, without regard to qualifications or training. Similarly, it is a basic right of a credit union member to elect any other member in good standing, whether they are a professional, a blue collar worker, or a homemaker. I do not believe this standard is required, by statute, for the credit union's Chief Executive Officer or the Chief Financial Officer, or even a member of the NCUA Board. Thus, how can it be required for an elected volunteer?

Further, this standard would be difficult to administer. The standard "ability to read and understand" is virtually impossible to ascertain without testing. Requiring testing would be in direct conflict with the rights of members to elect the members of their choosing.

What is it that makes the knowledge of financials so important that it should be a statutory requirement? Obviously, one would expect all Directors to understand basic financials, but we

also expect them to be responsible for their credit union's compliance with laws and regulations. Certainly, credit union management deals with legal and compliance issues on an increasingly regular basis. Should we then require all Directors to have a working knowledge of the legal system and legal issues? Better yet, why don't we require a Juris Doctorate? Even that would not ensure accounting or finance expertise, and as stated before, this is the slippery slope that we place ourselves on if this portion of the regulation is adopted as proposed.

Is this sub-section really necessary? Have there been a rash of credit union failures due to Director's lack of financial knowledge? Although I do not have inside information regarding recent credit union failures, in most cases I am familiar with, if there were specific individuals to blame, my fellow CEOs would be at the top of the list, with Regulators next in line.

I have been in the credit union industry for nearly forty years, and I can honestly say that some of the most competent Directors and Supervisory Committee members I have come in contact with did not have financial backgrounds and would not test well in that area. However, they were excellent Directors because they carried out their duties and responsibilities in the spirit and the manner which is described elsewhere in Part 701.4. I think the other sections of this Part of the Regulation are sufficient to define the responsibilities of Directors, and Section (b) (3) should be removed in its entirety.

I also urge the Board to eliminate proposed sub-section 701.33 (c) (5). This section prohibits a Federal Credit Union from indemnifying officials or employees from personal liability in cases of gross negligence, recklessness, or willful misconduct. I realize the section limits this to matters affecting the fundamental rights of members, but again, this is a very slippery slope. Negligence, willful misconduct and similar terms are defined differently by different individuals. Judges and regulators have different standards of care, and this sub-section allows these individuals to define these terms and apply them to Directors, subjecting them to claims against their personal assets. Are we forgetting that these are unpaid volunteers?

It is difficult to recruit qualified individuals to serve as credit union volunteers, in the best of circumstances. If regulators continue to increase the volunteer's legal liability, it will make recruitment impossible. Each NCUA Board member should ask themselves, would you volunteer to serve as a Director for a credit union, knowing that personal assets were at risk. In today's litigious society, I certainly would not run for a Director position, knowing that an ambitious regulator or judge could put all my personal assets at risk. Directors and employees make errors, but that should not subject them to legal liability or legal fees without adequate protection from the credit union's insurance on bond coverage.

I appreciate your consideration.

Doug Kileen