VyStar
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May 18, 2010

Ms. Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Va. 223143428
regcomments@ncua.gov

Re: Fiduciary Duties at Federal Credit Unions; Mergers and Conversions of Insured Credit Unions

Dear Ms. Rupp:

We have reviewed NCUA's proposed rule referenced above. On behalf of the Board of Directors and Senior Management of VyStar Credit Union, a state chartered credit union headquartered in Jacksonville, Florida, we offer the following comments.

In general we agree with most of the proposal; however, we did want to comment on two specific areas of the proposal. As a state chartered credit union we are not subject to rule 701.4 related to the duties of federal credit union directors; however, the Florida Office of Financial Regulation will often directly or indirectly follow rules of NCUA. In general we believe the proposal in section 701. 4 is prudent and ensures the directors are acting responsibly in their roles and in particular focusing on the best interests of the credit union and its members.

Throughout our 58 year history, our Board and Senior Management have consistently adhered to the suggested responsibilities in all that we do. We also have a code of ethics that our Officials and employees must sign that addresses many of the requirements this rule would impose. While we strongly agree with the need for a new director to gain a working familiarity with basic finance and accounting practices within a reasonable time, we are concerned that in a complex/large credit union that three months might be an unrealistically short period of time for a new director to gain adequate knowledge. If the credit union is large, complex, and offers a wide variety of products and services, realistically it could take six months to a year for a new director to have a solid working familiarity with basic finance and accounting practices. While we realize the focus is on finance and accounting practices, in a complex credit union, a director will need to have a good working knowledge of the various products and services offered, investments, balance sheet strategies, etc. to have a sound working familiarity of basic finance and accounting practices. Even if the director has formal training and experience in such matters prior to entering their new role, it could take them a number of months to gain solid familiarity with such matters. We recommend that the period to gain that knowledge be extended to a minimum of six months and preferably a year.

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Also, the proposal states if a director does not possess such financial literacy at the time of his or her election or appointment to the Board that financial literacy may be obtained through training provided by the credit union, outside sources, or for small credit unions, NCUA's Office of Small Credit Union Initiatives. We concur that these resources will be valuable in helping new directors obtain this knowledge; however, we believe NCUA should add wording to the proposal to clarify how a director can verify they have obtained such knowledge. In other words, how would NCUA gauge whether a specific director has the knowledge now required? Without adding some clarity of what is expected and how the knowledge base will be evaluated, we are concerned that directors will be left to ambiguous interpretations by regulators, examiners, or legal authorities of what they know or do not know regarding financial literacy. From our perspective the current wording leaves much to interpretation by regulators, examiners, legal authorities, etc.

The proposal discusses indemnification of directors and that "a federal credit union may not indemnify an official or employee for personal liability related to any decision made by that individual on a matter significantly affecting the fundamental rights and interests of the FCU's members where the decision giving rise to the claim for indemnification is determined by a court to have constituted gross negligence, recklessness, or willful misconduct." We believe that indemnification is critical for directors and that not allowing it, even in the context discussed, will discourage members who would make excellent directors from wanting to become directors. While it stresses that a court would have to make the determination, we are concerned that such language will deter members from wanting to serve as directors. Accordingly, we do not concur with the recommended proposal regarding indemnification. We realize that it applies to only certain situations; however, those situations can be open for interpretation, even in a court of law and on occasions with even the best of information, directors and management can sometimes make a decision that produces negative results for the credit union. Gross negligence, recklessness and willful misconduct can be very difficult to properly substantiate.

We generally agree with the proposed changes related to mergers and conversions, particularly to ensure the members fully understand what rights, ownership or interests they might be giving up because of a merger or conversion. The proposal states that approval of a merger or conversion only requires a majority of the Board to approve the merger or conversion and only 20% of the membership to vote. We recommend that when a significant change such as a merger or conversion is being considered that it should require a two-third's majority of the Board to vote to approve the merger or conversion. Such a requirement would be more in alignment with comments included in the section of the proposal related to directors' fiduciary responsibilities and their need to always act in the best interests of the membership and credit union as a whole. Also, we recognize that it is quite difficult to get large numbers of members to vote on any matter; however, only requiring 20% to vote on a merger or conversion seems like a small percentage of the membership acting on a decision that has major implications to the entire membership. We recommend increasing the required percentage of members voting to a higher level, perhaps 30% or 40%. With the additional notification requirements to members that the proposal includes, hopefully those notifications will generate more members wanting to vote on the future of their credit union.

Thank you for providing us an opportunity to comment on the proposal.

Sincerely,

Esther T. Schultz
Chairman of the Board
VyStar Credit Union

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CC: Board of Directors
Terry West, President/CEO
John Turpish, EVP/Chief Financial Officer
Rich Alfirevic, EVP/Chief Operations Officer