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Mr. Gerard Poliquin, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314– 3428

Re: Bylaw Changes – Supervisory Committee

Dear Mr. Poliquin:

I appreciate the opportunity to comment on the proposed bylaw changes. These comments are limited to suggestions for strengthening the operation of a Federal Credit Union's Supervisory Committee.

Supervisory Committee and Board Relationship

As noted in my comments in August 2018, I have noted over time that the independence from the Board of a Supervisory Committee can be a potential point of conflict. It was suggested then that the statutory Federal Credit Union Supervisory Committee is perfectly structured to provide both high-level oversight of the enterprise and accomplish the board directed audit function and with a few minor changes in the bylaw the potential for conflict between Boards and a Supervisory Committee can be avoided.

In preparing our comment, I compared the existing bylaw with the proposed bylaw. I am encouraged by the proposal as it simplified the wording, eliminated some areas for mis-interpretation and did not seek to expand the authority of the Supervisory Committee in ways which I have observed can find a Federal credit union's Supervisory Committee looking at matters that do not involve the safe and sound operation of the Federal credit union.

Although the draft bylaw does not adopt the suggested change to Section 3 of Article IX of the Standard Bylaws:

Section 3. Duties of supervisory committee.

a. The supervisory committee is a Board Committee and makes, or causes to be made, the audits, and prepares and submits to the Board and NCUA the written reports required by the Act and regulations. The committee may employ and use clerical and auditing assistance required to carry out its responsibilities prescribed by this article and may request the board to provide compensation for this assistance. It will prepare and forward to the Administration required reports.

It does move in the direction of making more precise the relationship between the Supervisory Committee and the Federal Credit Union's Board.

I suggest in the attached comparison of the new and proposed rule that the Chair of the Supervisory Committee be appointed by the Chair of the Board of Directors rather than by the members of the Supervisory Committee. The change would reinforce the need for clear lines of communication between the Board and Supervisory Committee. However, as has been pointed out to me, it may result in the single Board member appointed to the Supervisory Committee becoming the chair which could dampen the independence needed to properly discharge the Supervisory Committee's function.

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I have also suggested that the Bylaw be clarified to make clear the Supervisory Committee is subject to the budget process and does not have unfettered authority to spend a Federal credit union's unbudgeted resources. Again, this enhances the communication process and prevents misallocation of credit union funds.

We understand that NCUA routinely refers member complaints it receives to the Supervisory Committee under the interpretation of 12 C.F.R. Section 715.3. I have expressed concern that this approach to complaint resolution strips management of authority to resolve complaints using procedures designed by it to ensure member confidence and invites an allocation of resources by a volunteer Supervisory Committee better placed elsewhere. I do not read the proposed bylaw amendments as placing that duty in the bylaw.

I suggest, however, that the authority granted in Section 6 is broader than that required for the Supervisory Committee to carry out its statutory functions. The blanket authority of the Supervisory Committee to pursue any activity which the Supervisory Committee "deems to be unsafe or unauthorized" should be reworded to: "deems to raise significant questions of safety and soundness or regulatory compliance."

NCUA may then continue to refer matters to the Supervisory Committee as a matter of course but I trust that the Board, Supervisory Committee and a Federal credit union's management may resolve matters using appropriate procedures developed by the credit union to resolve these matters and report them back to NCUA upon completion of any required investigation and actions.

We look forward to your comments and questions.

Sincerely,

Bruce O. Jolly, Jr.

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Attorney and Counselor at Law