



National Credit Union Administration

May 13, 2014

Ms. Carrie R. Hunt  
Senior Vice President of Government Affairs and General Counsel  
National Association of Federal Credit Unions  
3138 10<sup>th</sup> Street North  
Arlington, VA 22201-2149

Dear Carrie:

Chairman Matz asked me to respond to your April 24, 2014 letter regarding NAFCU's request to extend the comment period on NCUA's proposed rule on risk-based capital standards. The content of your letter indicates a misunderstanding of the NCUA regulations you cite. Your presumption that NAFCU's request to extend the comment period automatically requires NCUA Board action is without merit.

Neither the Federal Credit Union Act nor NCUA's regulations give a trade association or any other outside party authority to determine the matters that come to the NCUA Board for action. Rather, as I explain in more detail below, for the Board to act on an item, the item must come before the Board using one of the methods provided under NCUA's regulations.

The Federal Credit Union Act directs the Board to "adopt such rules as it sees fit for the transaction of its business."<sup>1</sup> The NCUA's rules of procedure, found in Parts 790 and 791 of NCUA's regulations,<sup>2</sup> include several avenues for placing an item on the Board's agenda. In addition, regulated entities and other members of the public can submit "applications, requests, and submittals for action by the NCUA" by sending them in writing to the responsible office.<sup>3</sup>

If the Chairman determines to bring a matter recommended by staff under §791.6(b), or requested by the public under §790.3, to the Board, the Board can act either at a Board meeting or, in limited circumstances, through a notation vote. There is, however, no mechanism that automatically converts these recommendations or suggestions to an item requiring Board action.

The FCU Act charges the NCUA Board Chairman to "direct the implementation of the adopted policies and regulations of the Board" on these and other matters.<sup>4</sup> With respect to the risk-based

<sup>1</sup> 12 U.S.C. §1752a(d).

<sup>2</sup> Available at <http://www.ncua.gov/Legal/Regs/Pages/Regulations.aspx>.

<sup>3</sup> *Id.* §790.3.

<sup>4</sup> 12 U.S.C. §1752a(e).

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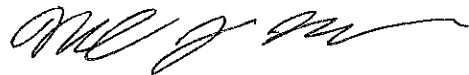
capital proposal, the Chairman has determined not to place the issue of extending the comment period before the Board for a vote.

The regulatory history of NCUA's procedural rules does not provide any support for the conclusion cited in your letter. NCUA has revised the provisions of §791.6 relating to placing an item on the Board's agenda several times, but has never proposed requiring Board action on a request from an outside party. NCUA has also revised the notation voting provisions of §791.4(b) several times,<sup>5</sup> but has likewise never proposed allowing an outside party to force the Board to hold a notation vote on a matter. Further, NCUA has never proposed requiring Board action on matters suggested by the public under §790.3.

Finally, your interpretation of §791.4 would, as a practical matter, have severe unintended consequences. First, allowing a request from an outside, regulated party to force the Board to take action would raise well-founded concerns about regulatory capture. Second, if a written request from any party operated mechanically to require Board action, the Board would be inundated with agenda items. My impression from recent discussions with NAFCU officials is that they want the NCUA Board to take fewer, not more, actions.

If you would like to discuss this matter further or need additional information about the Board's regulations, please let me know.

Sincerely,



Michael J. McKenna  
General Counsel

cc: Chairman Matz  
Board Member Fryzel  
Board Member Metsger

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<sup>5</sup> In 1988, the Board clarified that notation voting was only for "routine matters." 53 Fed. Reg. 29646, 29647 (Aug. 8, 1988). In 1997, the Board revised notation voting procedures to require the Board Secretary to circulate notation voting sheets to all Board members simultaneously. 62 Fed. Reg. 64266, 64267 (Dec. 5, 1997). In 2005, the Board revised the description of matters that qualify for a notation vote by replacing the word "routine" with "administrative or time sensitive, for example enforcement or interagency actions requiring prompt Board action." 70 Fed. Reg. 55516 (Sept. 22, 2005).