



**America's
Credit Unions**

May 7, 2024

The Honorable Todd M. Harper
The Honorable Kyle S. Hauptman
The Honorable Tanya F. Otsuka
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

RE: Permitting Childcare Expenses as Reimbursable Under 12 CFR 701.33

Dear Chairman Harper, Vice Chairman Hauptman, and Board Member Otsuka:

On behalf of America's Credit Unions, I am writing to request the National Credit Union Administration (NCUA) explicitly permit reimbursement of childcare related costs incurred by a federal credit union (FCU) board member.¹ America's Credit Unions is the voice of consumers' best option for financial services: credit unions. We advocate for policies that allow the industry to effectively meet the needs of their nearly 140 million members nationwide.

Credit unions stand out from banks in a variety of ways, including our emphasis on diversity, equity, and inclusion. This is, in part, evident in the prevalence of and increasing percentage of women, not only in senior level positions, but also at the board level.² This is a testament to the work of our industry to achieve greater gender equity in leadership.

Further, we are proud to have a regulator in the NCUA that similarly emphasizes the importance of equality in the credit union industry. We applaud the focus of the NCUA Board, as well as staff, including those in the agency's Office of Minority and Women Inclusion. We appreciate the Board's recent willingness to pursue actionable items to address ongoing challenges among credit unions, such as those related to the agency's records preservation program. Our request below is another great opportunity for the Board to take action to achieve a sensible change to the agency's regulations.

We ask the NCUA to update its existing regulation pertaining to reimbursement of FCU officials. Specifically, we ask the Board to amend section 701.33 to allow FCU board members to be reimbursed for the cost of childcare when it is necessary in order to attend an official board meeting of the FCU. Family structures and childcare responsibilities are significantly different now than when this provision was last amended. To attract new talent, people with young children should be afforded the opportunity to more easily participate on a credit union board with appropriate reimbursement for their childcare expenses.

¹ While the term "childcare" is used throughout this letter, our ask is that child and other non-child dependent care expenses be reimbursable.

² Based on data from the NCUA and analyzed by America's Credit Unions, the percentage of women board members has increased by roughly five percentage points among all asset ranges since at least 2012.

The Federal Credit Union Act (FCU Act) provides sufficient latitude for the Board to pursue such an amendment. While section 1761(c) of the Act generally limits compensation to a single board member, it explicitly states that “the reimbursement of reasonable expenses incurred in the execution of the duties of the position shall not be considered compensation.”³ This provision of the Act is implemented by section 701.33(b) of the agency’s regulations, which, consistent with the Act, states that compensation specifically excludes:

Payment (by reimbursement to an official . . .) for reasonable and proper costs incurred by an official in carrying out the responsibilities of the position to which that person has been elected or appointed, if the payment is determined by the board of directors to be necessary or appropriate in order to carry out the official business of the credit union, and is in accordance with written policies and procedures, including documentation requirements, established by the board of directors. Such payments may include the payment of travel costs for officials and one guest per official[.]⁴

In particular, we ask the Board to update the existing limitation in section 701.33(b)(2)(i). This could be achieved by simply inserting “childcare” into the last sentence of section 701.33(b)(2)(i) as follows: “Such payments may include the payment of childcare or travel costs for officials and one guest per official[.]”

The NCUA last updated the provision regarding the definition of “compensation” over 22 years ago.⁵ In that update, the agency used its expansive statutory authority to add the travel expenses of a guest as reimbursable under section 701.33(b).⁶ In so doing, the Board stated its belief that amending this provision would “allow FCUs greater flexibility to accommodate the needs of officials whose duties include business-related travel.”⁷ While we are fortunate to now live in a world where virtual meetings are ubiquitous, there continue to be instances where in-person meetings are necessary, including in the context of certain FCU board meetings. Such meetings cause attendees to incur not only direct travel-related expenses, such as fuel, but also indirect expenses, such as costs associated with securing childcare for a board member’s family.

Section 701.33(b)(2)(i) offers just a single example of what might be considered a reasonable and proper reimbursable cost. The example is clearly not intended as an exhaustive list of permissible expenses, given the regulation’s use of “may.” We believe the cost associated with childcare is more similar to travel than other expenses the agency has indicated are not reimbursable under this section. Assuming a virtual meeting is not an option, the only way for a board member to attend a meeting is to physically travel to the meeting location. The only option for a board member to attend a board meeting is to ensure his or her child or dependent has proper care, which in many situations, absent the presence of another family member or trusted

³ 12 U.S.C. § 1761(c).

⁴ 12 C.F.R. § 701.33(b)(2)(i).

⁵ 66 Fed. Reg. 65,628 (Dec. 20, 2001).

⁶ Previously, reimbursement was limited to the travel expenses of the board member’s “immediate family member.” *Id.*

⁷ *Id.*

caregiver, requires utilizing a paid caregiver. This concern and expense is amplified for any single parent or head of household with a dependent.

Again, the category of childcare expense is more like travel expense than it is other categories for which the agency has opined are impermissible under 701.33(b)(2)(i). For example, the agency's Office of General Counsel (OGC) stated in a 1992 legal opinion letter that lost wages incurred while attending an FCU board meeting are not reimbursable.⁸ As noted above, in many instances childcare is necessary to allow a board member to attend a meeting. The cost of childcare is much different from that of lost wages. Childcare is an additional mandatory expense that would not be required but for the travel necessary to attend an FCU board meeting. Lost wages, while also technically an expense, are not a tangible expense in many instances, including where board members have available paid time off through their employer. While reimbursement of lost wages would certainly be helpful, it is not absolutely necessary—and a board member's loss of wages to attend a meeting is clearly not akin to a board member's failure to secure childcare. Additionally, the 1992 legal opinion letter explains that it is the agency's understanding that "many credit unions accommodate volunteer officials by scheduling meetings at times that are the least disruptive to work or childcare schedules." This is somewhat accurate—many credit unions schedule board meetings in the evenings, after the workday, or on weekends; however, this does not resolve childcare concerns. In fact, that is precisely when childcare would be needed for most volunteers as this falls outside of the standard hours for daycares or other paid caregiver services. Thus, this expense is inextricably tied to the travel required to attend a board meeting and should be reimbursable.

To our knowledge, the NCUA last addressed the specific issue of childcare as a reimbursable expense in a legal opinion letter more than 25 years ago.⁹ In that opinion, the OGC affirmed the 1992 opinion, stating that reimbursement of childcare expenses incurred by a board member when attending a board meeting is impermissible.¹⁰ In the event the Board disagrees with the importance of this issue, including the need to update section 701.33(b)(2)(i) regarding compensation, we urge the agency to revisit the 1999 legal opinion to include childcare as a reimbursable expense. Things are much different now, including with regard to family structure, than they were in 1999 when there was a greater percentage of men on FCU boards, and women were generally more likely to be responsible for childcare.

We agree with the NCUA—as it stressed in the pending succession planning proposal¹¹—that succession planning is an important component of a credit union's overall strategic plan, helping ensure the appropriate personnel are available to execute the credit union's strategic plan and mission. This of course includes a credit union's board of directors. We must remember these are volunteers. Any and all sensible, permissible updates to the agency's regulations should be considered. In order to attract and retain the next generation of board members, it is critical that

⁸ NCUA Legal Opinion Letter: 92-0507 (June 1992).

⁹ NCUA Legal Opinion Letter: 98-1215 (Mar. 1999).

¹⁰ *Id.*

¹¹ 87 Fed. Reg. 6,078 (Feb 3, 2022).

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the NCUA embrace modernization of its rules and regulations, particularly when such changes are clearly within the Board's authority under the FCU Act.

America's Credit Unions appreciates your consideration of our request. For the reasons addressed above, it is critical that the NCUA modernize its rules to permit childcare as a reimbursable expense under 701.33(b)(2)(i). Should you have any questions or require any additional information, please contact Luke Martone, Senior Director of Advocacy & Counsel at LMartone@americascreditunions.org or (202) 508-6743.

Sincerely,

A handwritten signature in black ink that reads "Luke Martone". The signature is written in a cursive style with a horizontal line extending from the end of the name.

Luke Martone
Senior Director of Advocacy & Counsel