



**National Association  
of Federal Credit Unions**

3138 10th Street North  
Arlington, VA 22201-2149

NAFCU | Your Direct Connection to Advocacy, Education & Compliance

August 26, 2016

The Honorable Rick Metsger, Chairman  
The Honorable J. Mark McWatters, Board Member  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314

RE: Modernization of Federal Credit Union Bylaws

On behalf of the National Association of Federal Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally insured credit unions, I am writing to you regarding the National Credit Union Administration's (NCUA's) federal credit union (FCU) Bylaws.

In 2014, the agency convened a working group to study and develop suggestions for improvements. Since that time, NAFCU continues to hear our members request that NCUA explore provisions of the Bylaws that could be enhanced, streamlined and improved in order to provide additional flexibility to FCUs. Accordingly, NAFCU urges NCUA to issue a proposed rule or advanced notice of proposed rulemaking to continue this work.

Over the past few years, NAFCU and our members have dedicated significant time and resources on developing valid ideas for NCUA to improve FCU Bylaws. For example, both in 2012 and 2015, responding to the agency's Annual Regulatory Review, NAFCU submitted comment letters that listed specific ideas to improve the Bylaws, including comments on the required number of members needed on matters relating to special meetings and board nominations. We also sent NCUA a white paper when its working group convened in 2014. I have attached those documents again for your information.

We appreciate the work to date that NCUA has done to provide FCUs with the flexibility to meet member needs, and to keep pace with state regulations that have conferred competitive advantages to state chartered credit unions. Accordingly, as part of the agency's ongoing continual quality improvement initiative and related to its current efforts to modernize field-of-membership rules, NAFCU believes now is an appropriate time for the agency to revisit improvement of FCU Bylaws.

National Credit Union Administration

August 26, 2016

Page 2 of 2

Should you have any questions, please do not hesitate to contact me at (703) 842-2249 or [memancipator@nafcu.org](mailto:memancipator@nafcu.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Emancipator", with a stylized flourish at the end.

Michael Emancipator  
Senior Regulatory Affairs Counsel

*CC: Gail Laster, Director of Office of Consumer Protection*



**National Association  
of Federal Credit Unions**  
3138 10th Street North  
Arlington, VA 22201-2149

NAFCU | Your Direct Connection to Education, Advocacy & Advancement

August 6, 2012

Michael J. McKenna  
General Counsel  
Office of General Counsel  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314

RE: FCU Bylaws

Dear Mr. McKenna:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents federal credit unions, I am writing to you regarding the National Credit Union Administration's (NCUA) Federal Credit Union (FCU) Bylaws.

As you know, the FCU Bylaws are at the center of many aspects of credit union governance. The NCUA, in 2006, finalized a rulemaking that made a range of changes to the FCU Bylaws and required FCUs to adopt it unless they had previously-adopted bylaws. Before the 2006 revisions, the agency revised the FCU Bylaws in 1999 and 1991, respectively. In 2007, the NCUA reincorporated the FCU Bylaws into its regulation to clarify the agency's authority to enforce the bylaws. *See* 72 FR 61495 (October 31, 2007). The only substantive issue addressed in the 2007 rulemaking was director succession.

Moreover, in recent years, the agency has placed great emphasis on credit union governance. For example, the agency adopted regulations establishing credit union board fiduciary duties, as well as rules on prohibitions against indemnification.

NAFCU believes that it is time for the agency to conduct a thorough review of and make appropriate changes to the FCU Bylaws. Revisions to the bylaws are overdue, given that the last substantive revisions were made over 6 years ago. Unlike the previous processes involving NCUA's review and changes to the Bylaws, however, we believe it is critical that NCUA's review and analysis should, from the onset, involve industry input. In order to effectively consider and incorporate industry input, we strongly urge the agency to establish a working group or advisory committee comprised of qualified industry participants. NAFCU would be happy to work with the agency in assembling such working group.

Michael McKenna

August 6, 2012

Page 2 of 2

Should you have any questions or would like to discuss these issues further, please contact me by telephone at (703) 842-2234 or by e-mail at [chunt@nafcu.org](mailto:chunt@nafcu.org), or Tessema Tefferi, NAFCU's Regulatory Affairs Counsel, by telephone at (703) 842-2268 or by e-mail at [ttefferi@nafcu.org](mailto:ttefferi@nafcu.org).

Sincerely,

A handwritten signature in cursive script that reads "Carrie R. Hunt".

Carrie Hunt

General Counsel and Vice-President of Regulatory Affairs



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July 14, 2014

Michael J. McKenna  
General Counsel  
Office of General Counsel  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314

RE: Federal Credit Union Bylaws

Dear Mr. McKenna:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents federal credit unions, I am writing to you regarding the National Credit Union Administration's (NCUA) Federal Credit Union Bylaws.

As you know, the Federal Credit Union Bylaws are at the center of many aspects of credit union governance. In 2007, the NCUA Board adopted the current standard 2007 Federal Credit Union Bylaws (FCU Bylaws) and incorporated them as Appendix A to Part 701 in October 2007. They have not been amended or revised since this incorporation.

During its 2012 Regulatory Review, NCUA received public comment on the FCU Bylaws indicating that they should be updated and streamlined to afford greater flexibility to federal credit unions. In the 2012 Regulatory Review Report, the Office of General Counsel suggested that the NCUA Board form a working group to review the bylaws and determine if they should be modernized. Accordingly, in 2013, NCUA established a working group, which consisted of NCUA and credit union industry participants.

As NCUA knows, NAFCU believes that it is time for the agency to conduct a thorough review of and make appropriate changes to the FCU Bylaws. Revisions to the bylaws are overdue, given that the last substantive revisions were made over 6 years ago. Accordingly, NAFCU would like

to express its appreciation to NCUA for establishing a working group to solicit input from credit unions and industry representatives on how to effectively incorporate the appropriate changes to the FCU Bylaws. NAFCU also assembled a working group of its members and staff to review the FCU Bylaws. Attached are the specific recommendations of NAFCU's working group that we ask NCUA to consider as the agency finalizes its proposed amendments to the FCU Bylaws. NAFCU and our members urge NCUA to adopt these recommendations in order to modernize the FCU Bylaws and afford greater flexibility to federal credit unions.

Should you have any questions or would like to discuss these issues further, please contact me by telephone at (703) 842-2244 or by e-mail at [mcoleman@nafcu.org](mailto:mcoleman@nafcu.org), or Alicia Nealon, NAFCU's Regulatory Affairs Counsel at [anealon@nafcu.org](mailto:anealon@nafcu.org) or (703) 842-2266.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. Coleman".

Michael Coleman  
Director, Regulatory Affairs Counsel  
National Association of Federal Credit Unions

Attachment



National Association  
of Federal Credit Unions  
3138 10th Street North  
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## Introduction

In 2013, the National Association of Federal Credit Unions (NAFCU) assembled a working group of its members and staff to review the current standard 2007 Federal Credit Union Bylaws (FCU Bylaws or bylaws). The review of the FCU Bylaws consisted of a-section-by-section review, analysis, discussion, and subsequent determination on specific recommendations.

Below are the specific recommendations of NAFCU's working group that we ask NCUA to consider as the agency finalizes its proposed amendments to the FCU Bylaws. While NAFCU and our members may have additional recommendations after NCUA proposes amendments to the FCU bylaws, we urge NCUA to consider these recommendations as the agency works to modernize the FCU Bylaws and afford greater flexibility to federal credit unions.

## Recommendations

### General:

- Advanced Notice of Proposed Rulemaking (ANPR)

NCUA should consider issuing an ANPR to solicit feedback from industry and interested parties on the crucial burdens imposed by the present Bylaws and the requisite adjustments and amendments needed to afford greater flexibility to federal credit unions.

- Bylaws Structure and Hierarchy

NCUA should restructure the Bylaws using an Arabic numeral hierarchy. The current use of Roman numerals is outdated and confusing for citation purposes. Additionally, for ease of reference within lengthy passages of certain Articles in the Bylaws, NCUA should restructure the Bylaws so that each section is preceded by the Article number and separated by a decimal. For example, Section 1 in Article 2 would be numbered as Section 2.1. This numbering would not only clearly identify each section's location within the appropriate Article, but it would also ensure consistent and correct citations. Finally, NCUA should truncate section titles, when possible, for brevity. For example, Article 4, Section 2, which is currently titled "Notice of meetings required," could be retitled to "Meeting Notice," or Article 5, Section 6, which is currently titled "Submission

of information regarding credit union officials to NCUA,” could be retitled to “NCUA Contact Information.”

Introduction: The introduction establishes the date for credit unions to adopt all or part of these bylaws, and clarifies the process for amending the bylaws. The bylaws are drafted to address a range of issues such as a credit union’s organization and governance, the relationship of the credit union to its members, and the procedures and rules a credit union will follow.

- Section C. *Bylaw Amendments*. In light of the fact that the NCUA’s Office of Consumer Protection is responsible for the FCU bylaws, the NCUA should update this section to reflect the responsible body within the NCUA in charge of the task.
- Section D.3. *The nature of the bylaws*. Currently, this section reads as follows:

“3. NCUA has discretion to take administrative actions when a credit union is not in compliance with its bylaws. If a potential violation is identified, NCUA will carefully consider all of the facts and circumstances in deciding whether to take enforcement action. NCUA will not take action against minor or technical violations, but emphasizes that it retains discretion to enforce the bylaws in appropriate cases, such as safety and soundness concerns or threats to fundamental, material credit union member rights.”

The group agreed that the second sentence should be removed as it is superfluous. In addition, the scope of the third sentence should be narrowed, which can be done by changing the structure of the sentence. It was also suggested that a sentence be added to address matters that the NCUA will act on.

1. Article I – Name; Purpose. This article establishes the name of the chartered credit union and affirms that its purpose is to operate as a member-owned, not-for-profit organization designed to, among other things, meet the credit and savings needs of its members.
  - Section 2. *Purposes*. Remove (or, in the alternative, make optional) the following phrase in the first sentence:

“with the specified mission of meeting the credit and savings needs of consumers, especially persons of modest means.”
2. Article II – Qualification for Membership: This section establishes procedures for accepting new member applications within a credit union’s field of membership. Once accepted, the member is required to maintain a membership share in the



credit union and will continue to be a member until he/she chooses to withdraw or is expelled in accordance with the credit union's policies.

- Section 2. *Membership Application Procedures*. Currently, the section reads as follows

*“Membership application procedures.* Applications for membership from persons eligible for membership under Section 5 of the charter must be signed by the applicant on forms approved by the board. The applicant is admitted to membership after approval of an application by a majority of the directors [or under a policy approved by the board], a majority of the members of a duly authorized executive committee, or by a membership officer, and after subscription to at least one share of this credit union and the payment of the initial installment, and the payment of a uniform entrance fee if required by the board. If a person whose membership application is denied makes a written request, the credit union must explain the reasons for the denial in writing.”

This section should be amended to incorporate the following recommendations:

- 1) “Signed” – E-Sign Act is not reflected.
  - 2) “on forms approved by the board” – remove this phrase or add “approved by the credit union management”
  - 3) Add the bracketed/highlighted phrase – “or under a policy approved by the board”
  - 4) Make optional the highlighted phrase – “and the payment of the initial installment”
- Section 3. *Maintenance of membership share required*. Currently, this section includes the following provision: By resolution, the board may require persons readmitted to membership to pay another entrance fee.” This provisions should be an optional provision which can be omitted.
  - Section 4. *Continuation of Membership*. Currently, the standard bylaws read as follows: *“Continuation of Membership*. Once a member becomes a member that person may remain a member until the person or organization chooses to withdraw or is expelled in accordance with the Act and Article XIV of these bylaws. A member who is disruptive to credit union operations may be subject to limitations on services and access to credit union facilities.”
    - i. The last sentence of this section causes problems for credit unions’ ability to effectively manage their safety and soundness. A credit union needs the have the ability to exclude members that have committed crimes against the credit union. There are legitimate “safety and soundness” concerns that arise in some cases. At the very least, credit unions should be able to expel members that have

committed fraud against the credit union or those on Treasury's OFAC list.

3. Article III- Shares of Members: This article establishes the par value of member shares, which can be payable upon subscription or in monthly installments. The FCU Board is given discretion to establish a cap on the number of shares held by an individual and the transferability of shares. This article allows members to withdraw their shares from the credit union. Members are also given the ability to place shares in an account for a trust.

- New section needed to address: (1) a credit union's right to offset, (2) take action on dormant account, and (3) escheatment.
- Section 1. *Par Value*. Currently, this section reads as follows, "The par value of each share will be \$\_\_\_\_\_. Subscriptions to shares are payable at the time of subscription, or in installments of at least \$\_\_\_\_\_ per month." This section should be amended to permit the elimination of reference to installments if they do not apply to the FCU.
- Section 4. *Transferability*. This section addresses how shares may be transferred. Under this section, shares may only be transferred "by an instrument in a form as the board may prescribe."
  - 1) This section should be amended to provide a FCU Board the option of delegating the authority to senior management regarding how shares may be transferred. This can be accomplished by adding, after the quoted phrase: "The board may delegate to senior management the authority to determine the manner and form of transfer."
- Section 6. *Trusts*. The section is more limiting than necessary and does not provide credit unions adequate flexibility in establishing accounts for trusts. Additionally, this section fails to recognize membership of the trust itself as a legal 'person' entity.
  - 1) The scope of the section should be expanded to capture trusts as "legal persons" and incorporated and unincorporated entities.
  - 2) The requirement that a trust fiduciary to become a member should be eliminated. Instead, this section should be amended to address the admission of trusts as legal entity persons that are within the FOM totally aside from any investigation about the membership eligibility of trustees, trustors/grantors, beneficiaries, etc. If that is not a desirable or available option for the trust or FCU, the membership eligibility of other parties to the trust should be able to be evaluated for their contribution to membership eligibility of the trust.
  - 3) The person or entity eligible for membership should be broader so as to allow a credit union to determine the limitation. Trust should be

able to be admitted on the basis of membership-eligibility of any one trustor/grantor or trustee or beneficiary. Specifically,

1. For revocable trusts, in addition to the grantor/trustor/settlor, membership-eligibility of the trustee or any beneficiary should suffice.
  2. For irrevocable trusts, the membership-eligibility of the trustee, a beneficiary or the trust as a legal person should suffice.
- 4) The requirement that the name of the beneficiary must be stated in both a revocable and irrevocable trust should be removed. The identities and number of beneficiaries on such trust often cannot be known with certainty on an ongoing basis, and this requirement creates unnecessary regulatory burden. Additionally, the requirement for the name of each beneficiary should be limited to those accounts with funds held 'in trust' as in a POD or similar arrangement where the FCU certainly does need to know and record the beneficiary name.
4. Article IV – Meetings of Members: Credit unions are required to hold an annual meeting for members, with proper notice given in advance of the meeting. This article outlines the appropriate items of business for the annual meeting, and the rules of order for annual and special meetings.
- Section 2. *Notice of meetings required.* Credit unions should have increased flexibility as to the timing and manner of providing notice of meetings.
    - 1) Increase the time a credit union has to provide notice of meetings from 75 days before a meeting to 120 days. Alternatively, allow credit unions flexibility to determine the time by including options in the FCU Bylaws.
    - 2) Allow credit unions the option of providing notice of meetings on their websites and at each branch.
  - Section 4. *Items of business for annual meeting and rules of order for annual and special meetings.* This section should be amended to:
    - 1) Permit the FCU Board to have authority to approve minutes of the meeting of members subject to certain ratification provisions,
    - 2) Require the Secretary to make available to the membership meeting the minutes of the previous meeting, and
    - 3) Dispense with the 'reading' of the minutes under most circumstances.
    - 4) Add a new provision stating, "Ratification or correction of the minutes of the last annual and any subsequent special meeting"
5. Article V – Elections: NCUA outlines four voting options that a credit union can adopt for its Board nomination and election procedures. The NCUA Board also requires that a credit union's bylaws define specific procedures for elections such as eligibility requirements, proxy voting, and ballot requirements.

- Duties of nominating committee. Each option under this section should be amended to clarify the duties of the nominating committee, as follows:
    - 1) Clarify that the committee does not have to nominate each person who seeks to be nominated;
    - 2) Clarify that the committee can appoint existing board member to remain in his or her seat until a candidate to fill the seat is found and duly nominated; and,
    - 3) Clarify that the committee is not required to fill each vacant seat.
  - Election by consent. Currently, only Option A2 has an option for a nominee to be elected by consent or acclamation.
    - 1) Each of the options should provide similar flexibility
  - Flexibility to establish minimum age for nominee.
    - 1) Currently, the minimum age to be a nominee is 18. A credit union board should have the flexibility to establish a minimum age requirement of up to 21.
  - Credit unions should have the option of conducting elections entirely electronically (to include TouchTone telephonically).
6. Article VI – Board of Directors: This article establishes the credit union’s board structure, including the number of directors, the composition of members, and the terms of office. The board is required to hold regular, monthly meetings and can also hold special meetings, with proper notice. A director may be removed for cause, including a failure to attend regular board meetings. The article defines procedures for dealing with a vacancy on the board.
- Section 2. *Composition of board.* The term “family members” is too limiting; change to “member of household” to ensure that a credit union can prohibit more than one person from being compensated within the same household. This section should be amended to provide an FCU Board the authority to allow specific relationships and specifying permissible identities. Such a revision would permit an FCU to ‘tailor’ the ‘family’ relationship limitations.
  - Section 4. *Vacancies.* NCUA should amend “as soon as possible” to “as soon as practicably possible” to allow a credit union reasonable time to replace a member of a board or supervisory board.
  - Section 6. *Board responsibilities.*
    - 1) Currently, this section reads, in part: “The board has the general direction and control of the affairs of this credit union and is responsible for performing all the duties customarily performed by board of directors.” To clarify the board’s authority to delegate certain duties, add a sentence after the quoted sentence that reads: The Board

may delegate the performance of certain duties as permitted by applicable laws, regulations and these bylaws.

2) Subpart (g) of this section currently reads, "Appointing one or more loan officers and delegating to those officers the power to approve or disapprove loans, lines of credit or advances from lines of credit." To provide management greater authority to oversee loan officers, subpart (g) should be revised to read, "Appointing one or more loan officers, upon recommendation by the management official and subject to removal thereby, and delegating to each officer the power to approve or disapprove loans, lines of credit or advances from lines of credit"

- Section 8. *Attendance and removal*. The scope of this section should be extended to apply to any and all committees.
7. Article VII – Board Officers, Management Officials and Executive Committee: This article prescribes the selection, duties, and terms of office for Board Officers and Management Officials. The Board Officers may appoint an Executive Committee, Credit Committee and/or Investment Committee to carry out specifically delegated functions. The Board must list the positions of the board officers and management officials of this credit union.
- Section 2. *Election and term of office*. The section imposes a 7-day timetable by which the credit union's board meeting must be held. This section should be amended to provide credit unions with the flexibility to increase the timeframe to 20 days.
  - Section 4. *Approval required*. The section requires that the credit union approve all individuals authorized to sign various credit union instruments. This section should be revised to provide a FCU board the option to delegate this authority to the credit union's chief executive or the executive committee.
  - Section 8. *Board powers regarding employees*. This section should be amended to provide for delegation to management official, and should read, "The board delegates to the management official power to employ, fix the compensation, and prescribe the duties of employees as necessary, and has the power to remove employees, unless it withdraws the delegation of such has delegated these powers to the financial officer or management official. Neither the board, the financial officer, nor the management official has the power or duty to employ, prescribe the duties of, or remove necessary clerical and auditing assistance employed or used by the supervisory committee and, if there is a credit committee, the power or duty to employ, prescribe the duties of, or remove any loan officer appointed by the credit committee."
  - Section 9. This section should be amended to:

- 1) Permit the FCU Board to have authority to approve minutes of the meeting of members subject to certain ratification provisions,
- 2) Require the Secretary to make available to the membership meeting the minutes of the previous meeting, and
- 3) Dispense with the 'reading' of the minutes under most circumstances.
- 4) Add a new provision stating, "The board has the authority to approve the record of meetings of the members subject to subsequent ratification of the record by the members at the next duly called meeting of members."

8. Article VIII- Option 1 Credit Committee: If the credit union chooses to have a Credit Committee established by the Board it must follow the guidelines of this section. This article proscribes the selection, duties, powers, required meetings, and terms of office for the Credit Committee.

- a. Section 7. *Unapproved loans prohibited.* This section currently reads as follows: "No loan or line of credit may be made unless approved by the committee or a loan officer in accordance with applicable law and regulations." It is recommended that this section be amended to allow the committee to designate individuals, other than loan officers, that can approve loans.

Article VIII- Option 2 Loan Officers: If the credit union does not have a Credit Committee it must follow the guidelines of this section. This article proscribes the duties and lending guidelines that a Loan Officer must follow in disbursing funds.

- a. Section 8. *Records of loan officer; prohibition on loan officer disbursing funds.* To provide greater clarity, this section should be revised to read, "Each loan officer must enter into credit union records each loan transaction approved and each not approved within 7 days of the filing of the application or request."

9. Article IX- Supervisory Committee: The Supervisory Committee is appointed by the board from the members of the credit union. This committee is responsible for conducting audits and preparing written reports. The committee has the authority to verify accounts, to remove directors and Credit Committee members, and to convene special meetings.

- Section 3. *Duties of supervisory committee.* Subsection b of this section requires that the supervisory committee call and hold a special meeting within 7 to 14 days after all director positions become vacant simultaneously. It is recommended that credit unions are allowed a longer period (20 to 30 days) to call and hold the special meeting.
- Section 5. *Powers of supervisory committee.* This section uses the term "member" or "members" interchangeably. It is recommended that the section

is amended to clarify, in each instance the term(s) is used, whether the term is referring to credit union members, committee members or members of the credit union board.

10. Article X – Organizational Meeting: This article outlines procedures for the credit union’s initial organizational meeting to elect directors, board officers, and credit committee members.

- Section 1. Initial meeting. This section should be permitted to be excluded from an FCUs bylaws after formation since for many present FCUs, this content is not the content appropriate to their formation and therefore at least misleading.

11. Article XI- Loans and Lines of Credit to Members: This article affirms the credit union’s authority to make loans to its members in accordance with this article and applicable laws and regulations.

- Section 1. *Loans purposes*. This section currently reads: “Loans may only be made to members and for provident or productive purposes in accordance with applicable law and regulations.” The “for provident or productive purposes” is unnecessary and it is recommended that it is removed.
- Section 2. *Delinquency*. This section currently reads: “Any member whose loan is delinquent may be required to pay a late charge as determined by the board of directors.” The “as determined by the board of directors” standard is overly prescriptive in that the board of directors must determine or approve late charges. It is recommended that the “as determined by the board of directors” is removed.

12. Article XII. Dividends

[no recommendations regarding this Article]

13. Article XIII. Reserved

[no recommendations regarding this Article]

14. Article XIV- Expulsion and Withdrawal: Under this section, a member can be expelled by the credit union by a two-thirds vote of the members present at a special meeting, after the member is given an opportunity to be heard. Expulsion or withdrawal does not relieve a member of liability to the credit union.

- This section currently reads, in part, “All amounts paid in on shares by expelled or withdrawing members, before their expulsion or withdrawal, will be paid to them in the order of their withdrawal or expulsion, but only as funds become available and only after deducting any amounts due to this credit union.” The meaning of ‘order’ is ambiguous and needs clarification.

- This section should be revised to grant a credit union added flexibility to address membership issues. In particular, a credit union should have the ability to determine whether a member's actions rise to a level that justifies expulsion. At the very least, a credit union should have the ability to establish a policy that allows it to expel a member who has engaged in fraud against the credit union.

15. Article XV. Minors: Minors are permitted to own credit union shares.

[no recommendations regarding this Article]

16. Article XVI. General: This article requires compliance with laws and regulations and requires agents of the credit union hold information regarding members and transactions in confidence. The credit union must keep appropriate records and make such records available to members upon request.

- Section 2. *Confidentiality*. To clarify and emphasize that confidential member information may be disclosed by a requirement of state or federal government authority, this section should be revised to read, "The officers, directors, members of committees and employees of this credit union must hold in confidence all transactions of this credit union with its members and all information respecting their personal affairs, except when permitted or required by state or federal law."
- Section 5. *Records*. To read more grammatically correct, this section should be revised to read, "The minutes of each meeting of the members, the board, and the committees must be signed by their respective chair or presiding officers and by the each person-serving as secretary of such meetings."
- Section 6. *Availability of credit union records*. To afford credit unions greater flexibility, and eliminate unnecessary fees on their members, the last sentence of this section should be revised to read, "The charter and bylaws of this credit union must be made available for inspection by any member and, if the member requests a copy, it will be provided for a reasonable fee, if any."
- Section 8. *Indemnification*. The section is more limiting than necessary and does not provide credit unions with the optimum legal options. It should be amended to allow credit unions to specify the particular state law or statute under which it seeks indemnification.

17. Article XVII. Amendments of Bylaws and Charter: The bylaws or the charter of a Credit Union can be amended upon the affirmative vote of two-thirds of the authorized number of members of the board at any duly held meeting of the board.



[no recommendations regarding this Article]

18. Article XVIII. Definitions-

- a. "Applicable law and regulations": this definition should be updated to allow an FCU to specify the exact State Statute that applies, as the present text is too vague and provides for ambiguity as to the laws that apply.
- b. "Immediate Family member": this definition should be amended to include foster, in-law, and in loco parentis relationships. Additionally, the scope of this definition should be revised to only define "family member," rather than "immediate family member."
- c. A new definition for "household" should be added and defined to mean all persons living in the same residence maintaining a single economic unit.



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of Federal Credit Unions**

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NAFCU | Your Direct Connection to Education, Advocacy & Advancement

August 3, 2015

Michael J. McKenna  
General Counsel  
Office of General Counsel  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314

RE: 2015 NCUA Regulatory Review

Dear Mr. McKenna:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally insured credit unions, I am writing to you regarding the National Credit Union Administration's (NCUA) 2015 Regulatory Review. NAFCU appreciates this opportunity to comment. As you will note, we are not restricting our comments to the items listed on the agency's 2015 Regulatory Review agenda, as we believe there are additional issues that require the agency's immediate attention.

### **General Comments**

Regulatory burden is the top challenge facing all credit unions. While smaller credit unions continue to disappear from the growing burden, all credit unions are finding the current environment challenging. Finding ways to cut-down on burdensome and unnecessary regulatory compliance costs is the only way for credit unions to thrive and continue to provide their member-owners with basic financial services and the exemplary service they need and deserve.

Acknowledging this increasing regulatory burden, NCUA Chairman Matz announced in March 2015 that the agency was "committed to making 2015 the year of regulatory relief." NAFCU agrees that the agency needs to focus on ways to provide much needed relief to credit unions, many of whom are struggling to survive in a post-Dodd-Frank environment characterized by overwhelming compliance burdens. It is clear the regulatory pendulum has swung too far in

favor of overregulation and has become a threat to economic growth. Recognizing that there are a number of outdated regulations and requirements that no longer make sense and must be modernized or eliminated, NAFCU drafted and released a document entitled “NAFCU’s Top Ten Regulations to Eliminate or Amend” in February 2015 (attached to this comment letter). This document outlines ten key issues that regulators can and should act on now to provide meaningful relief.

It is also important to note that the credit union industry faces looming challenges from regulators and external threats which could impair both economic growth and the ability to serve its over 100 million members. In particular, the Financial Accounting Standards Board (FASB) has announced plans to finalize a new standard for the financial reporting of credit losses, which would require credit unions to artificially increase allowances on their balance sheets and reduce available capital. Meanwhile, the Consumer Financial protection Bureau (CFPB) has begun the initial stages of a planned rulemaking which would significantly limit the ability of credit unions to provide a consumer-friendly product in the payday lending space. As for external threats, the growing danger of data breaches has become a serious problem for consumers, businesses, governments, and financial institutions as cyber attackers continue to adapt and find new ways to penetrate systems. NAFCU and its members urge that NCUA work with the FASB, the CFPB, and other financial regulators to develop commonsense and coordinated approaches to effectively address these issues and more.

### **Financial Accounting Standards Board**

The FASB determined post-financial crisis that there was a need to establish a more predictive model for the financial reporting of credit losses on loans and other financial instruments held by lending institutions. In March 2015, the FASB announced, after an exhaustive seven-year study of the issue, expectations to finalize the standard for timely financial reporting of credit losses in the third quarter of 2015. NAFCU has come out in strong opposition to the FASB’s proposal as it would lead to increased costs on the industry while providing few, if any, benefits.

Specifically, the FASB proposal would establish a “current expected credit loss” (CECL) model for financial institutions. Under this model, the Allowance for Loan and Lease Loss (ALLL) would reflect a credit union’s current *estimate* of the contractual cash flows that the credit union does not expect to collect, based on its assessment of credit risk as of the reporting date. Past events, the current economic environment, and other subjective forecasts about the future would factor into the institution’s assessment of expected losses. This model would replace the current “incurred loss” model that does not require recognition of the credit loss until the loss is probable (or has been incurred). The practical effect of this change will be an immediate increase to the credit union’s ALLL balance and reduce capital, which will impair the capital ratio.

NAFCU believes NCUA should engage the FASB in order to remove duplicative regulatory burdens on an already extremely safe and sound industry. In particular, NCUA and the FASB should carefully consider the possible negative effects the FASB’s accounting changes could have if it is allowed to be implemented in combination with NCUA’s Risk-Based Capital (RBC) proposal, discussed below.

### **Field of Membership (12 C.F.R. § 701.1)**

In January 2015, NCUA established a Field of Membership (FOM) Working Group to identify and examine ways to strengthen the federal credit union (FCU) charter. NAFCU commends the agency for proactively soliciting stakeholder comment and insight on how it can streamline FOM expansions. To assist in this important endeavor, NAFCU convened a taskforce of over 50 of its members of various asset sizes, charter types, and geographical locations to examine issues related to NCUA's existing FOM procedures and regulations. A letter detailing the recommendations of NAFCU's taskforce was presented to NCUA on May 13, 2015, with the expectation that these suggestions would affect progressive procedural and regulatory FOM relief. The following is a brief overview of NAFCU's extensive list of recommendations; please reference NAFCU's May 13, 2015 FOM letter for a more comprehensive discussion of each issue.

NAFCU's members continue to raise questions about NCUA's Office of Consumer Protection's policies and procedures, particularly during the process of applying for FOM expansions or conversions. NAFCU believes that NCUA can remedy and streamline these procedural issues by releasing interpretive guidance and outlining a more transparent process. In particular, NAFCU recommends the following procedural changes: (1) update the Chartering and FOM Manual to reflect the current process; (2) establish deadlines for FOM amendment requests; and (3) increase transparency in the decision-making process.

NAFCU also believes that NCUA has the ability and latitude under the *Federal Credit Union Act* (FCU Act) to promulgate regulatory solutions to the existing FOM restrictions. Because any regulatory change requires NCUA Board action and a Notice of Proposed Rule Making (NPRM), NAFCU encourages the NCUA Board to move swiftly on proposing regulatory changes in order to ensure that the federal charter keeps pace with state charters. These recommended changes include removing all non-statutory requirements that impose geographic and population-based limitations on community charters. In particular, NAFCU suggests that the agency reconsider its definitions of "well-defined local community" and "rural district." NAFCU urges NCUA to remove the 2.5 million population cap for a "well-defined local community" as well as removing or significantly increasing the 250,000 population limit or, at minimum, restore the pre-2010 population threshold of 500,000. Similarly, the current population density threshold for a "rural district" is far too low, and the person-per-square-mile limitation should not be part of the qualifying formula. However, if NCUA insists on a person-per-square mile limitation, then NAFCU strongly recommends that the 100 person per square mile limit be raised substantially. In addition to the above suggestions, NAFCU's May 13, 2015, letter also includes extensive recommendations for changes to regulatory limitations on Trade, Industry, or Profession (TIP) Charters, charter conversions, the service facility requirement, and the emergency merger guidelines.

### **Bylaws (12 C.F.R. § 701.2)**

The Federal Credit Union Bylaws (FCU Bylaws) are at the center of many aspects of credit union governance. In 2007, the NCUA Board adopted the current standard 2007 Federal Credit

Union Bylaws and incorporated them as Appendix A to Part 701 in October 2007. *See* 72 FR 61495 (October 31, 2007). The only substantive issue addressed in the 2007 rulemaking concerned director succession.

Because it has been eight years since substantive amendments were made to the FCU Bylaws, NAFCU strongly believes that NCUA should modernize the FCU Bylaws and afford greater flexibility to FCUs. During its 2012 Regulatory Review, NCUA received public comment on the FCU Bylaws reflecting the industry's call for FCU Bylaw modernization. In the 2012 Regulatory Review Report, the Office of General Counsel suggested that the NCUA Board form a working group to review the bylaws and determine if they should be modernized, and in 2013, NCUA established such a group NCUA and credit union industry participants. NAFCU also assembled a working group of its members and staff to review the FCU Bylaws.

In July 2014, NAFCU submitted the specific recommendations of our working group to the agency. Today, we once again urge NCUA to adopt these recommendations in order to modernize the FCU Bylaws and afford greater flexibility to FCUs. NAFCU would like to also take this opportunity to suggest additional revisions to the FCU Bylaws that we believe will further modernize outdated procedures.

Article IV, section 3, of the FCU Bylaws states that a special meeting must be called by the chair at the request of 25 members or 5% of the members, whichever is larger, but not more than 750 members. NAFCU recommends that the 750 cap be increased to 1000 in order to prevent manipulation of the board by a small number of members.

In addition, Article V, option A2, A3 and A4 provides that signatures of 1% of the members, with a minimum of 20 and a maximum of 500, are needed for nomination by petition. NAFCU suggests that NCUA eliminate the cap of 500 and require that the petition be signed by 1% of the credit union's members. NAFCU believes this will create a mechanism to keep pace with credit union growth.

Finally, Article VIII, Option 1, section 7 of the FCU Bylaws states that no loan or line of credit may be made unless approved by the committee or a loan officer. NAFCU recommends that NCUA amend this section to reflect that credit unions are allowed approve loans through technological services, not just individuals. Through legal opinions and guidance, NCUA has articulated its belief that a fully-automated system for a loan application, underwriting, and funding is legally permissible under the FCU Act. The agency, however, has yet to codify this position in the FCU Bylaws. NAFCU and our members believe NCUA should amend the FCU Bylaws to reflect that credit unions are allowed approve loans through technological services, as long as they use the appropriate safeguards determined by NCUA and their individual internal policies.