

Office of the President

August 20, 2007

Ms. Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Re: Federal Credit Union Bylaws

Dear Ms. Rupp:

Navy Federal Credit Union provides the following comments in response to the National Credit Union Administration's (NCUA) proposal to reincorporate federal credit union (FCU) bylaws into its regulations.

Navy Federal agrees with the Board that FCU bylaw disputes should arise on an infrequent basis. When a bylaw dispute arises, however, its resolution could impact the viability of the credit union. We believe NCUA's longstanding view that parties seeking resolution of FCU bylaw disputes should look to local corporate law for answers is not in the best interests of FCUs and their members. Additionally, the Board refers to recent cases where FCU members, under the current policy, have been unable to use the judicial system to enforce rights granted by their bylaws (72 FR 30985). Navy Federal agrees with the Board that "[the proposal] is preferable to requiring credit unions and their members to resort to state courts, with the attendant expenses, time delays and uncertainty regarding bylaw enforceability" (72 FR 30986). However, we urge the Board to insure that the final rule and its accompanying documentation clearly reverse earlier opinions that look to local and state corporate law for resolution of FCU bylaw disputes.

We believe the Federal Credit Union Act grants NCUA authority to promulgate rules to assure federal resolution of FCU bylaw disputes, including administrative sanctions, without reincorporating bylaws into regulations (12 U.S.C. 1766 and 1786). We also acknowledge that case law and the Administrative Procedure Act may afford additional authority for federal enforcement of FCU bylaws if they are included in federal regulations. Notwithstanding, we encourage NCUA to seek a reasonable solution that clearly dispels its previous policy of deferring FCU bylaw disputes to state authority and firmly support resolution at the federal level. Regardless of whether FCU bylaws are reincorporated into the regulation, we believe additional regulatory language is needed to clarify how disputing parties should proceed. We suggest this could be accomplished by striking the second sentence in proposed Paragraph 701.2(a), if

Ms. Mary Rupp
Page 2
August 20, 2007

appropriate, and adding a new paragraph (e) to the proposed rule with language substantially as follows:


NCUA has discretion to take administrative actions when a federal 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 to take enforcement action.

It is NCUA's intent that federal credit unions and their members will make every effort to resolve bylaw disputes without NCUA intervention. If a bylaw dispute cannot be resolved, however, federal credit union officials or members should contact the NCUA regional office with jurisdiction for the FCU. Disputes may be appealed to the Board for final resolution.

Resolution of most FCU bylaw disputes may pale in comparison with the danger the proposed bylaws place on FCUs. The proposal could effectively place hundreds of millions of dollars of owner equity at the hands of a small group of FCU members. With hundreds of millions of dollars at stake, it is not inconceivable that unscrupulous interests could contrive plans for 750 FCU members to call a special meeting, recall a federal credit union's board of directors, and elect a slate of directors dedicated to destroying the credit union while extracting as much member equity as possible for their own personal gain. Our scenario may seem unlikely, but unfortunately, high stakes for personal gain trigger unseemly events as we have seen in the Enron, WorldCom, and other scandals. With such high stakes, the threshold for recalling the board of a medium or large size FCU must be placed much higher than 750 members and the Supervisory Committee must have more than the proposed 14 days to plan for the orderly election of a new board. We strongly urge the Board to reevaluate the process for recalling a FCU's board of directors and propose an alternative procedure that does not place credit unions in jeopardy.

Navy Federal Credit Union appreciates the opportunity to provide remarks in response to the NCUA's request for comments on this proposed rule. If you have any questions, please contact Patrick McNichol, Senior Policy Analyst and Compliance Officer at (703) 206-2060.

Sincerely,


John R. Peden
Acting President/CEO

JP/pm