



October 13, 2005

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

RE: Comments on FCU Bylaws

Dear Ms. Rupp:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation's federal credit unions, I am responding to the National Credit Union Administration's (NCUA) request for comments regarding amending the Federal Credit Union Bylaws (bylaws).

The Federal Credit Union Act (Act), 12 U.S.C. 1758, requires the NCUA Board to prepare bylaws to be used by federal credit unions (FCUs). In 1999, the NCUA Board revised the existing bylaws by consolidating them into one publication and deleting obsolete laws. As part of an ongoing project, the Board has proposed further changes to the bylaws. Last year, the Board issued a Notice and Request for Comment (Request) soliciting comments on ways to improve the bylaws. 69 FR 58203 (Sept. 29, 2004). The Request also sought comment on specific suggested changes to the bylaws based on amendments FCUs had submitted for approval since 1999. The Board received comments on the various issues raised in the Request as well as numerous other suggestions for improving the bylaws and as a result, has issued the current proposed revisions to the bylaws.

Overall, NAFCU supports NCUA's project to update and clarify certain bylaws provisions. NAFCU appreciates the adoption of some of its previous suggestions into the current draft of the bylaws. NAFCU does, however, offer the following comments on the current draft as outlined below.

### Improved Accessibility

The proposal includes a new Introduction to address generally the function of the bylaws, methods for amending bylaws and some additional guidance. The proposal also adds headings to each section to make it easier to locate bylaw provisions and increases the use of plain English to make the bylaws more user-friendly. Staff commentary is also added in several areas to address issues that FCUs commonly question. NAFCU supports these additions and believes that they will be most helpful to members wishing to review the credit union's bylaws.

### Article II - Qualifications for Membership

The proposal amends Section 4 to clarify that FCUs may restrict services or access to FCU facilities to members who cause a loss to the FCU or are disruptive to FCU operations. NAFCU has heard from many of its credit union members who are unclear as to their ability to restrict services under the Federal Credit Union Act. This change will assist credit unions and will also serve to put members of the credit union on notice that disruptive behavior will not be tolerated.

### Article IV- Meetings of Members

The proposal amends Section 1 to delete the requirement that the annual meeting be held "within the period authorized by the Act" because the Act no longer specifies a time period for holding the annual meeting. Instead, the proposal adds a blank for the FCU to insert the date of its annual meeting. NAFCU supports credit unions having this flexibility.

Section 3 is amended to increase the maximum number of member signatures required to call a special meeting from 500 to 750. NCUA is proposing to increase this number because special meetings are expensive to conduct and currently can be called by a small percentage of an FCU's membership. NCUA believes that increasing the required number of signatures will help ensure that special meetings are called only when an issue is of interest to a large group of members and ensure adequate representation, without unduly hindering members from obtaining a special meeting. While NAFCU is pleased that NCUA is raising the cap, NAFCU is still concerned that having a flat cap of 750 does not take into account credit union growth and may not be a meaningful number in the case of a large credit union. Accordingly, NAFCU urges NCUA to consider creating a process whereby the cap can be adjusted according to the membership size of the credit union.

Amendments to Section 4 include references to the Act and NCUA regulations where they require items of business for the annual meeting agenda and a new sentence notifying members of the rules of order or procedure that the FCU will use when conducting member meetings. NCUA feels that members are entitled to know which rules govern the conduct of the meeting and the decision making process and believes

that this notification will help protect the member's opportunity to voice any issues, concerns, or suggestions they may have for management, and ensure that such will become part of the meeting's record. NAFCU supports this addition.

#### Article V – Elections

##### *Option A4*

As proposed, Section 2(c)(2) would require FCUs to mail paper ballots to all members when conducting an election by electronic means. The Request sought comments as to whether FCUs should be required to include a mail ballot with its electronic election procedure instructions rather than require a member without the requisite electronic device to request a ballot under Option A4.

NAFCU opposes this proposal as it would defeat the purpose of electronic ballots. NAFCU believes that members who choose to conduct business electronically, prefer to vote electronically. Those members without the equipment or desire to vote electronically retain the ability to use a paper ballot.

#### Article VI – Board of Directors

Amendments to Section 4 provide that FCU directors must fill vacancies on the board of directors, credit committee, and supervisory committee “as soon as possible, but no later than the next regularly scheduled board meeting.” The proposed language replaces the current requirement that directors fill vacancies “within a reasonable time.” NAFCU opposes the change in bylaws. In most credit unions it is not feasible to secure a qualified replacement by the next board meeting. Accordingly, NAFCU suggests that the language read “as soon as practically possible.”

The proposal adds to the list of board responsibilities in Section 6(d) by acknowledging that boards should establish a training policy for directors and volunteer officials that covers areas such as ethics, fiduciary responsibilities and accounting, as part of the duties customarily performed by boards of directors. NAFCU supports this addition as NAFCU believes that members of credit unions should be aware that the directors have certain duties.

#### Article XIV – Expulsion and Withdrawal

The proposal expands the provision in Section 1 by including the two methods to expel a member under the Act. 12 U.S.C. 1764(a) and (b). NAFCU believes the additional language about expulsion gives credit union members notice as to the methods allowed by law.

Article XV – Minors

The proposal amends this article to note that state law controls transactions between FCUs and minors. While NAFCU notes that the article does restate a provision in 12 U.S.C. 1765, NAFCU believes the bylaws should include certain provisions in the FCU Act related to member rights, including those pertaining to minors, in order to be accessible to credit union members.

Additional Concerns

NAFCU would like NCUA to reconsider creating an alternative procedure for FCUs to adopt non-standard bylaws. NAFCU suggests that NCUA create a procedure whereby a FCU can draft its own bylaws based on the provisions of the FCU Act, and submit the bylaws to NCUA for approval. FCUs could still adopt NCUA's model bylaws. This approach would give FCUs more flexibility in adopting bylaws that fit their governance needs and would prevent FCUs from having to obtain NCUA approval in a piecemeal fashion for non-standard bylaws amendments.

NAFCU would like to thank you for this opportunity to share its views on this proposed rule. Should you have any questions or require additional information please call me or Carrie Hunt, NAFCU's Associate Director of Regulatory Affairs, at (703) 522-4770 or (800) 336-4644 ext. 234.

Sincerely,

A handwritten signature in cursive script, reading "Fred R. Becker, Jr.", positioned to the left of a vertical red line.

Fred R. Becker, Jr.  
President/CEO

FRB/crh