



Office of the President

10 January 2019

Mr. Gerard Poliquin  
Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314-3428

Re: Federal Credit Union Bylaws  
[RIN 3133-AE86]

Dear Mr. Poliquin:

Navy Federal Credit Union appreciates the opportunity to comment on NCUA's proposed changes to the Federal Credit Union Bylaws (FCU Bylaws). Navy Federal is the nation's largest natural person credit union, with more than \$95 billion in assets and 8 million members, and is committed to serving the financial needs and improving the financial condition of our members. We welcome NCUA's ongoing review of the FCU Bylaws and believe that this effort will help to ensure that credit union members' interests continue to be represented as the industry grows and evolves. We offer our comments on two issues.

### Member Expulsion

While we applaud the NCUA's efforts to modernize the FCU Bylaws and the clarifications made in the proposal, it is clear that there are additional opportunities to enhance and improve them. In particular, the section of the FCU Bylaws addressing methods of member expulsions<sup>1</sup> has become outdated and unworkable for credit unions and their membership. We believe that the NCUA can adopt a more expansive interpretation of expulsion requirements based on members' nonparticipation by allowing credit unions to adopt realistic policies to address this important issue.

Credit unions exist to serve members. They value and embrace the "Once a member, always a member" philosophy in dealing with membership issues. It strains reason to think, therefore, that credit unions would take the issue of member expulsion lightly or would expel a member absent a compelling reason to do so. There are occasions, however, when expelling a member is clearly in the best interest of a credit union, its membership and its employees because, for example, a member has attempted to commit or has committed a crime against a credit union, or worse, engaged in violent or threatening behavior against its employees.

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<sup>1</sup> Appendix A to 12 CFR 701 - FCU Bylaws - Article XIV. Expulsion and Withdrawal

The FCU Bylaws' inflexible, one size fits all expulsion policy provides limited options for credit unions in those circumstances. We appreciate the proposed clarifications to FCU Bylaws Article II Section 5 and the associated official commentary regarding members in good standing and the limitation of services to existing members, incorporating longstanding NCUA opinions. However, we believe that restricting a credit union's options to limiting services is a grossly inadequate response, and does nothing to address the fundamental issues surrounding member expulsion. This regulatorily sanctioned approach creates undue risk for the credit union, its employees and members.

We believe that it is well within NCUA's prudential regulatory authority to recognize there are situations where members have become a threat to the wellbeing of credit unions, their employees and members, and, in those cases, the credit union should be empowered to respond accordingly. Credit unions' boards of directors are currently empowered to expel members by a special meeting or for nonparticipation. We urge NCUA to draft bylaw amendment language that empowers credit unions' boards of directors to expel members who have attempted to commit or have committed a crime against a credit union, or worse, engaged in violent or threatening behavior against its employees.

#### Threshold Number of Signatures for Board Nominations

Navy Federal also appreciates the Board's reconsideration of the model bylaws around the threshold signatures for convening special meetings and revisiting model bylaws on Board nominations. We note that Navy Federal registered concerns with the model bylaws low numerical threshold in comments that date to over a decade ago, and that the numbers themselves date to at least the 1970s. In the years that have passed since our prior comments on these threshold signature requirements, the concerns we raised have only become more acute.

Federal policymakers have already shown a willingness to address this issue. NCUA's fellow regulators at the SEC adopted a 3% ownership threshold for board nominations in its proxy access rule (see SEC Release No. 33-9136 (August 25, 2010)). Proxy access has also drawn the interest of Congress, in the proposed Corporate Governance Reform and Transparency Act of 2017, which passed the House and sought to address the use of leverage by proxy firms to wield power over public companies (see H.R. Rep. No. 115-451 (2017)). While the credit union governance model may not suggest the full suite of protections that the SEC and Congress have considered regarding public companies, some modernization, even if qualified by recognition it may be on a case-by-case basis, would certainly be welcome.

NCUA's current Federal Credit Union Bylaws reference a 1% figure. We believe that this would be an appropriate marker for the model's threshold, rather than the current use of fixed numbers. We also note that the use of a percentage metric would scale automatically with the size of the credit union, and would, therefore be less likely to require revision in the future.

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Navy Federal appreciates the opportunity to provide our comments to the NCUA's Federal Credit Union Bylaws Request for Comment. If you have any questions, please contact Mark Lawton, SVP, Regulatory Compliance and Public Policy by phone at 703-255-8328, or by email at [mark\\_lawton@navyfederal.org](mailto:mark_lawton@navyfederal.org).

Sincerely,

A handwritten signature in black ink that reads "Cutler Dawson". The signature is written in a cursive style with a large initial "C".

Cutler Dawson  
President/CEO

CD/pm