America's Credit Unions

Updated 4/17/25

FAQ on Recent Firing of NCUA Board Members

On April 16, 2025, President Donald Trump removed two Democratic members of the National Credit Union Administration (NCUA) Board – Todd Harper and Tanya Otsuka – leaving only Republican Chairman Kyle Hauptman. This unprecedented action has raised legal and operational questions for credit unions. The NCUA is an independent regulator for credit unions, historically governed by a three-member, bipartisan Board that under NCUA regulations requires a quorum of two to act.

America's Credit Unions, working together with our league partners, is actively engaged in conversations with the NCUA, the Administration, and key Congressional Committees to gather information and continue to stress the importance of a strong, independent NCUA and demonstrate the importance of credit unions to consumers and the economy.

Below is a FAQ addressing what this situation means for the NCUA and potential impacts to credit unions.

Q1: Can the Board Operate with only one member? What does the Federal Credit Union Act say about the NCUA Board's composition and voting requirements?
A: Yes, under current NCUA interpretation of statute, the Board can operate with only one member.

The NCUA Board is established by the Federal Credit Union Act (FCU) as a three-member board appointed by the President with Senate confirmation. By law, no more than two members can belong to the same political party, ensuring a bipartisan makeup. Notably, the FCU Act does not specify Republican/Democratic parties, just that the members must be from different political parties. Board members serve staggered six-year terms and may remain in holdover status after their term ends until a successor is confirmed. The President designates one of the three members to serve as the Chairman (in this case, Kyle Hauptman was designated as Chairman in January 2025).

For the Board to conduct official business, the Act requires a quorum of a majority of the Board. Under NCUA regulations at 12 CFR § 791.2, "[t]he agreement of at least two of the three Board members is required for any action by the Board." In practical terms, with a full three-member board, at least two members must be present to form a quorum and vote on actions.

However, the FCU Act does not contain a numerical quorum requirement, stating instead that, "A majority of the Board shall constitute a quorum." Chairman Hauptman may consider himself a quorum of one and undertake the actions of the Board unilaterally.

© America's Credit Unions 2025

Q2: Can the NCUA still operate with a single Board member? What is the impact on regulations and oversight?

A: There is some precedent for a single Board member acting on behalf of the Board. In early 2002, former Chairman Dennis Dollar served for almost two months as the sole NCUA board member. Using his tenure as guidance, certain Board-level functions may continue under a one-member Board, particularly administrative, supervisory, and delegated actions. However, new regulations, amendments to existing regulations, or rescission of existing regulations may remain constrained by the requirements of 12 CFR § 791.2 (requiring the agreement of at least two of the three Board members), as former Chairman Dollar did not approve or rescind any rulemaking during his tenure as sole NCUA Board member.

Day-to-day supervision and existing operations will continue, but the NCUA's ability to take new official actions could be partially constrained without a quorum. Any official agency action during this time could be questioned legally. Here's what that means:

- New Regulations and Policies: Without a quorum, the NCUA Board has historically been limited in its ability to approve new rules, although a one-member Board has held formal meetings and taken official actions in the past. However, any pending rules may be on hold until the Board vacancies are filled. According to regulation, the sole remaining member, as Chairman, cannot unilaterally issue regulations – formal rulemaking by the agency would require at least a two-member Board vote.

- Supervisory Exams and Routine Functions: Examinations and supervision will continue. The NCUA's core mission of supervising credit unions and insuring deposits is carried out by the agency's staff, and those activities do not require a Board vote in each instance. Regular safety and soundness monitoring is largely unaffected in the immediate term.

- Impact on the National Credit Union Share Insurance Fund (NCUSIF): The NCUSIF continues to operate normally and is not directly affected by a change in the composition of the NCUA Board. The Fund's day-to-day management, including monitoring of insured deposits and handling of share insurance coverage, is administered by NCUA staff and does not require ongoing Board action. Credit union members remain fully protected up to the insured limits, and there is no lapse in share insurance coverage as a result of the Board removals.

- Approvals and Member Services (e.g., Field of Membership (FOM) changes): Normally straightforward, the field of membership requests are processed by NCUA staff, but if a credit union appeals a staff denial or if a policy change in FOM rules is needed, those appeals or changes go to the Board for a decision. Likewise, the process for chartering new credit unions may be more reliant on Board involvement. The FCU Act states that a newly formed credit union's "organization certificate shall be presented to the Board for approval." However, the precise procedural steps for chartering and FOM determinations is often left to regulation rather than statutory design. Similarly, approving a new federal credit union charter or certain mergers and conservatorships usually requires Board action, which may not be possible with only one member.

Q3: Is this the first step in an effort to consolidate the federal banking regulators?

A: It is too early to speculate whether this action is a step toward potential consolidation of the federal banking regulators. Treasury Secretary Scott Bessent recently voiced his opposition to consolidating federal financial regulators, leaving the Administration's plans uncertain. Any such consolidation would require Congressional action to amend several key statutes, including the FCU Act, National Bank Act, Federal Deposit Insurance Act, and Federal Reserve Act. America's Credit Unions has been in contact with key Congressional Committees reiterating the need for an independent credit union regulator. Meanwhile, banking regulators with only Republicans remaining on their boards, including the Federal Deposit Insurance Corporation and now the NCUA, may experience a period of deregulation or lack of regulation while the open positions remain vacant.

In addition, when President Trump was sworn in, America's Credit Unions wrote to him and the Department of Government Efficiency highlighting the need to retain an independent regulator for credit unions. We wrote similar letters to the Director of the Office of Management and Budget and the Secretary of the Treasury. We have been and will continue to be a persistent and strong voice for retaining an independent NCUA.

Q4: What does the law say about removing NCUA Board members?

A: The FCU Act (12 U.S.C. §1752a) details the appointment and term of NCUA Board members, but it does *not* explicitly state any provision about the President removing Board members before their terms end. There is no clause saying "the President may remove a Board member for cause" or any similar language in the statute. This silence has led to differing interpretations and uncertainty. This may also lead to a legal challenge of the recent firing of Board Members Harper and Otsuka.

- <u>Congressional Intent for Independence:</u> When Congress restructured the NCUA in 1978, it deliberately went from a single Administrator (who served at the pleasure of the President) to a multi-member Board with fixed terms. The legislative history suggests Congress wanted to insulate the NCUA from political swings. In fact, a Senate report from that time highlighted that the NCUA's previous single head "serve[d] at the pleasure of the President" and that "the lack of tenure tends to politicize the decision-making process." It noted an incident where an NCUA Administrator, serving without tenure protection, was summarily dismissed by the White House after taking a controversial position. In light of that, Congress said "at the very least . . . the need to provide tenure for the [NCUA Administrator] in order to strengthen the NCUA's status as an independent agency." By creating a board with fixed terms, Congress intended to protect NCUA Board members from arbitrary removal, similar to other independent regulators.

- <u>No Express "For-Cause" Provision:</u> Unlike some agencies (for example, the FDIC or Federal Reserve Board, which have explicit or well-understood removal protections), the NCUA's statute does not spell out a "for cause" removal protection in text. However, absence of explicit language is not the end of the story. Courts will often look at the structure and purpose of the agency to infer whether Congress meant to limit removal. The Supreme Court has said that "in the absence of specific provision to the contrary, the power of removal is incident to the power of appointment." This means that generally, the

© America's Credit Unions 2025

President can remove an official he appoints unless Congress clearly intended otherwise. Therefore, legislative intent will likely be key.

- Legal Uncertainty: The White House has stated that the President is "the chief executive of the executive branch and reserves the right to fire anyone he wants." In their public statements, the fired Board members (Harper and Otsuka) argue the opposite—that firing them "violates the bipartisan statutory framework adopted by Congress to protect credit union members" and undermines the agency's independence. Both viewpoints have some support in law. This is why this firing may be challenged in court, since it involves interpreting the FCU Act's silence on removals in light of its purpose.

Q5: Have the courts ever addressed whether a President can remove an NCUA Board member before their term is up?

A: Yes, in *Swan v. Clinton* (1996), the D.C. Circuit upheld President Clinton's removal of an NCUA Board member serving in a holdover capacity after his term expired, but did not decide whether a President can remove a Board member during their active term. The court suggested holdovers have less protection than in-term members and acknowledged Congress likely intended some removal limits. The case implies that firing sitting NCUA Board members without cause is legally uncertain and may be subject to court review.

Q6: What do past Supreme Court rulings say about the President's power to remove members of independent agencies like the NCUA?

A: Supreme Court precedent supports limits on the President's ability to remove members of multi-member independent agencies. *Humphrey's Executor* (1935) and *Wiener* (1958) held that Congress can restrict removal, even without explicit statutory language, to preserve agency independence. In contrast, recent cases like *Seila Law* (2020) and *Collins* (2021) ruled that single-director agencies must allow at-will removal.

Q7: Has anything like this happened at other agencies? Are there historical examples of Presidents firing independent agency officials, and what happened?

A: Yes. Early in his second term, President Trump dismissed Democratic members of the Federal Trade Commission (FTC), National Labor Relations Board (NLRB), Merit Systems Protection Board (MSPB), and Federal Elections Commission (FEC). This marked a rare and controversial instance of a President removing sitting members of independent regulatory agencies.

Under the Federal Trade Commission Act, National Labor Relations Act, and Civil Service Reform Act of 1978, these members can only be removed by the President "for cause."

Multiple lawsuits challenging the removals are active and pending in the U.S. District Court for the District of Columbia, with plaintiffs arguing that their termination violated statutory "for cause" protections and *Humphrey's Executor* precedent. While some lower courts granted temporary relief, those rulings have been stayed on appeal. The U.S. Supreme Court will hear the consolidated issue in May 2025 to determine whether the President can remove members of multi-member independent agencies without cause.

© America's Credit Unions 2025