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April 24, 2018

Gerald Poliquin
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428
Via email to: regcomments@ncua.gov

Re: Federal Credit Union Bylaws ANPR

Dear Mr. Poliquin:

The Credit Union National Association (CUNA) appreciates the opportunity to submit comments concerning the National Credit Union Administration's (NCUA) advanced notice of proposed rulemaking (ANPR) on ways to streamline, clarify, and improve the standard Federal Credit Union bylaws. CUNA represents America's credit unions and their 110 million members.

CUNA acknowledges the limitations that the Federal Credit Union Act ("the Act") imposes upon NCUA and the credit union industry as a whole, and each recommendation herein will include a statement as to permissibility under the Act. Given that the Act has not been amended by Congress in several decades, CUNA recognizes that the Act is outdated and, in several key areas, fails to reflect practical operational realities of doing business as a credit union. As NCUA has posed four specific questions for discussion in the ANPR, we will approach suggestions in that context.

1. How can the Board improve the FCU bylaws amendment process?

CUNA members have had few issues with the process to amend bylaws. CUNA believes, however, that abiding by NCUA-set bylaws should be optional with federal credit unions empowered to issue and comply with their own bylaws, tailored to their distinct membership composition, geographic base, and member preferences. A one-size-fits-all set of contractual requirements to accommodate the vast diversity of American credit unions—in size, scope, asset volume, and geography—is antithetical to the uniquely tailored nature of credit unions serving their member-owner community.

CUNA believes that the membership application procedures need not be included in the bylaws, but would be better addressed on the membership application. The Act does not dictate how the mechanics of the application process must be delivered; accordingly, it would be permissible to include this section outside of the FCU bylaws.

Where credit unions seek to amend bylaws, an expeditious process should be in place to approve the requests. A timeline for completion might be a useful tool to ensure expectations can be effectively managed.

2. How can the Board clarify the FCU bylaws provisions addressing limitation of services and expulsion of members?

The Act authorizes a majority of the board of directors of a credit union to expel a member based on non-participation of a member (§1764(b)). The Act also permits expulsion of a member upon a two-thirds majority vote of members during a special meeting called for such purpose, provided such member has been given an opportunity to be heard (§1764(a)). These provisions are restated in the NCUA Bylaws in Article XIV, Expulsion and Withdrawal, with §4 noting that services may be limited for “a member who is disruptive to credit union operations.” CUNA recommends that the bylaws include examples of acts which could evidence “nonparticipation,” including but not limited to:

- failure to maintain the necessary requirements for membership,
- physical abuse or assault, harassment, or multiple incidents of verbal abuse of another member of the credit union,
- neglect or refusal to comply with the Act,
- habitual neglect to pay obligations or default on an obligation resulting in a financial loss to the credit union,
- theft, malfeasance, or misconduct which causes a financial loss to the credit union, and
- insolvency or bankruptcy.

The term “disruptive to credit union operations,” should also be clarified with agency guidance to help credit unions implement a limitation of service policy.

Membership should be automatically forfeited when members whose loans or extensions of credit are defaulted and charged off as a loss. Reinstatement of membership in the case of forfeiture should only be permitted upon majority vote of the board of directors.

Interim or temporary suspensions of membership should be permitted when a member engages in unacceptable conduct that poses an imminent threat to any other member. Such suspension should be authorized by the credit union president, president’s designee, or the board of directors. The Act is silent as to temporary suspensions, but the authority to expel or withdraw a membership is explicitly sanctioned, and providing additional guidance as to implementing such action would be permissible under the Act. If a suspension is imposed, a suspended member may be denied all services except for maintenance of a share account and voting rights.

For both suspensions and expulsions, aggrieved members should have 45 days notice to respond with a written request for hearing (to be noticed 15 days prior, via any reasonable means of communication) before a board majority either votes them out of membership, chooses to retain their membership, or otherwise acts to conclude the suspension or expulsion hearing. Such due process would satisfy potential remediation requirements under the Act. An expelled member would remain liable for any debts and/or liabilities to the credit union.

3. How can the Board improve the FCU bylaws to facilitate the recruitment and development of directors?

CUNA believes that recruitment of credit union board members would be enhanced by model processes, starting from guidance for nominating committees to help identify prospective candidates—clarity on valid criteria to use in the selection process, for example—to ongoing development of directors. Some credit unions, for example, might develop a Board profile outlining the skills, professional experience, credit union background, and demographic information sought to be represented. Other credit unions may find it useful to formalize a Board Member Evaluation Program for annual review of oversight and governance. While the implementation may vary among credit unions of differing size, scope, and geography, the basic recommendation is to suggest mechanisms be developed to maintain Board stability, continuity, training and development, and ensure director-level engagement. A clear roadmap outlining roles and responsibilities could act as a driving and living archive to ensure robust participation.

In a modern environment where individuals multitask projects and responsibilities while balancing their extracurricular and personal pursuits and obligations, the key impediment to volunteer activism is the resource of time. Because credit union directors are barred under the Act from receiving compensation, serving in such a capacity, though personally fulfilling, remains a volunteer position. Despite a lack of monetary rewards that customarily accompanies serving on the board of a banking institution, credit union board members are engaged in governance because of their passion for their community's desire for cooperative credit. The bylaws should accommodate these volunteer warriors in making such service feasible. Many states have updated their bylaws to promote flexibility, and most have loosened prescriptive requirements relating to meetings.

Though it is often the case in practice, CUNA would like NCUA to codify that board meetings may be conducted via virtual, remote, or technology-enabled means—whether that be through teleconference, videoconference, internet-enabled closed-group, satellite, or other means that is not solely manifested by a group of persons gathered in the same physical room. Reducing or eliminating the burden of travel time, expense, and lost productivity to other areas of a director's life would, in our view, encourage participation by those who might otherwise elect to volunteer, but for the time commitment to travel to and participate in monthly meetings. This is especially true for rural-based credit unions, whose geographic area may be significantly more widespread than those in an urban cluster, especially considering that rural areas are much more likely to be served by credit unions than banks. The Act specifies that “the board of directors shall meet at least once a month” (§1761b.) but does not specify how such meeting should take place, giving NCUA discretion to include that such meetings may be conducted via any available means, including technology-enabled remote or virtual gatherings.

Similarly, we believe the mechanism for directors to cast votes should also be construed to reflect technological capabilities. Popular closed-end survey systems, voting buttons, and other commonly-integrated technology exists to enable director votes to be conducted remotely and securely. The Act is also silent as to how votes must be conducted. Given the trend toward meeting flexibility, votes should indicate the same.

Article IV, Section 2 of the NCUA bylaws dictate that notice of meetings must be made in writing, in person or via delivery to home address. The Act does not, however, specify how meetings must be noticed. We believe, given the technology commonly-used both now, and

foreseeably in the future, increasingly relies on electronic and—even faster—social media means. While emails noticing meetings should suffice, we advance that use of social media and web-enabled platforms should also be construed as satisfying the notice requirements for annual (but not special, which may be subject to a greater degree of confidentiality) meetings. Hand-delivery to a person’s address is, in many cases, one of the slowest conduits of messaging available; indeed, consumer-members customarily prefer the speed of tweets, texts, status updates, and the like as a real-time communication mechanism that can alternately be pulled or pushed into their data-sphere. Announcements to the membership should be permitted to be made via any acceptable means of mass and open communication, as is customary practice in today’s technology-driven economy.

4. How can the Board improve the FCU bylaws to encourage member attendance at annual and special meetings?

As referenced above, modern technology provides, and will continue to develop and evolve, technical capabilities to encourage mass participation without a direct, physical presence requirement. The more the agency can encourage remote participation by explicitly including the permissibility of utilizing participation via technological means, the more likely additional members can and will participate in annual and special meetings.

Further, extended time to issue the notice for meetings might permit greater participation. Currently, annual meeting notice must be provided at least 30 days but not more than 75 days in advance (Bylaws Article 4, Section 2). It is not uncommon, however, for people to put meetings on calendars a year in advance. The Act (§1760, Members’ Meetings) does not specify how many days advance notice is required, rendering this change legally permissible. This is an arbitrary time frame and credit unions should be delegated the authority to provide notice of meetings as far in advance as is suitable and preferable to their membership.

Thank you for the opportunity to provide comments on the Bylaws ANPR. Should you have any questions about CUNA’s comments, please feel free to contact me at (202) 626-7627.

Sincerely,

Monique Michel
Senior Director, Advocacy & Counsel