



May 21, 2018

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

Advance Notice of Proposed Rule Making, Federal Credit Union Bylaws
RIN 3133-AE86

Dear Mr. Poliquin:

Freedom Credit Union (Freedom) appreciates this opportunity to comment on the NCUA's Advance Notice of Proposed Rulemaking ("ANPR") on streamlining, clarifying, and improving the standard Federal Credit Union Bylaws ("FCU Bylaws"). Freedom is a federally insured, state-chartered credit union with approximately \$830 million in total assets. Freedom has a significant interest in the FCU Bylaws because the bylaws promulgated by NCUA serve as a model for use by state-chartered credit unions in Pennsylvania.

We agree, as NCUA notes in the Background to the ANPR, that the FCU Bylaws protect the rights of members and underpin the cooperative principles of credit unions. We believe those values can be preserved while modernizing the FCU Bylaws to provide for more efficient governance. Our comments are intended to advance this theme.

How can the NCUA Board improve the FCU Bylaw amendment process?

NCUA notes that bylaw amendments must be approved by the Office of Credit Union Resources and Expansion (CURE). CURE has no timeline for rendering a decision on a proposed bylaw amendment. The FCU Bylaws are incorporated into the NCUA Regulations, Part 701. Accordingly, the final rule should contain a provision giving CURE a deadline. For example, the rule could give CURE 30 days to review a proposed bylaw amendment. If CURE does not render a decision within that time, the bylaw amendment is deemed approved.

Currently, the "fill-in-the-blank" provisions of the FCU Bylaws do not require NCUA approval. This is a positive. There is no need for additional review and approval because the outside parameters have been set. We recommend that NCUA continue the practice.

How can the NCUA Board clarify the FCU bylaw provisions addressing limitations of service and expulsion of members?

We think it is appropriate that the approach to applying limitations on service and expulsion of members be addressed in the FCU Bylaws, NCUA Regulations and the relevant service agreement. Governance documents, regulations, and transaction documents should work in concert on this very important issue. Our aim is to preserve membership rights, but limit the potential for employer liability in situations where a member's behavior is inappropriate or potentially harmful to staff.

The current FCU Bylaw language addresses a member who is "disruptive to credit union operations." NCUA interprets this provision as allowing an FCU to limit services where the member is abusive to staff or has caused a loss to the credit union. This is a good practice, but the language should be clarified.

The language should be amended to state:

The credit union may limit or deny services to a member who engages in or displays behavior that threatens credit union staff; raises sexual harassment or hostile workplace matters; violates the Bank Secrecy Act and anti-money laundering laws; constitutes fraud; or causes the credit union a financial loss for any reason.

As you can see from the proposed language, our aim is to root out behavior that can lead to employer liability or compliance violations. We also think it is appropriate that a member who causes a financial loss may be denied services. Our comments strike an appropriate balance between membership rights and protecting employees and the credit union. Finally, we think defining the behavior that can trigger a denial of services more specifically provides greater transparency while protecting the credit union from consumer protection claims.

The recommended bylaw provision could be enforced or advanced in the NCUA Rules and Regulations. Regulation 701.35(c) permits an FCU Board to establish the terms conditions of share, share draft, and share certificates. A subsection could be added to 701.35 that restates the types of behavior that triggers a denial of services. The result is that the regulation supports the governance document, the bylaws.

Finally, the language of service agreements could address behavior that will trigger a denial of services. Each credit union would be free to decide if it wanted to include such a provision in service agreements. The value is that behavior that may lead to a denial of services would be defined in the credit union's governance document and its agreements. Credit unions might already include such language in service agreements. It would be beneficial if the credit union's bylaws combined with the appropriate regulation reinforces the practice.

How can NCUA clarify Article III, Section 3 Time Period for Maintenance of membership share?

NCUA should adopt commentary to the FCU Bylaws stating that FCUs have discretion to set the timing when a member must restore the par value or membership share. The commentary should provide that if par value is nominal, less than \$10, a member must restore it in 30 days.

How can NCUA clarify Article III, Section 6, Trusts?

We question whether a governance document should establish membership requirements applicable to trusts. It is more appropriate to articulate this requirement in the NCUA Regulations such as Part 701.35 or a similar provision. Accordingly, the membership requirements for trusts should be removed from the FCU Bylaws and established in the NCUA regulations.

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

We appreciate NCUA's effort to facilitate the recruitment and development of directors. Credit union volunteers are a mainstay of the movement. Bylaws are not exactly a recruitment tool. However, NCUA might include commentary on nonbinding best practices for nominating committees and recruitment

efforts. NCUA might also include commentary clarifying the permissibility of advisory committees as a recruiting tool.

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

As member-owned, democratically controlled, financial cooperatives, it is desirable that members participate in elections and attend the credit union's annual meeting. Participation is the choice of each member. The current FCU Bylaws enable FCUs to choose between four options for conducting nominations and elections including mail ballots and electronic balloting. We think the current bylaws provide an adequate and efficient means for members to participate in the nomination and election process.

NCUA asked whether the timing of notice of an annual meeting is sufficient. We believe the current timing requirements, at least 30 days prior to and no more than 75 days prior to the annual meeting are adequate. A notice period that is longer than 75 days is too remote from the meeting date and would tend to diminish attendance.

Amending the FCU Bylaws to permit annual or special meetings by video conference may increase attendance. A member could log in from home, increasing the convenience of participating. Pennsylvania corporation law allows a shareholder meeting to be conducted by internet or video technology provided: shareholders can read or hear the proceedings as they occur, vote on matters submitted to shareholders, pose questions, make motions, and comment on the business of the meeting. Accordingly, the FCU Bylaws should be amended to permit a credit union to conduct an annual or special meeting of members by electronic means consistent with the state corporation law where the credit union is headquartered.

NCUA asked whether there are vendors that could be recommended. At this time, we have no specific solution or provider to recommend. NCUA would generate additional interest, however, if the bylaws would permit the practice. Then credit unions may be interested in exploring the costs and feasibility and adopt online or virtual membership meetings if they so choose.

The next issue is whether a virtual annual or special meeting creates an impermissible proxy vote. We maintain that conducting the membership meeting online would not be an impermissible proxy. A proxy authorizes another person to vote for the member. The execution of a virtual membership meeting would enable the member to login, hear the discussion, ask questions, and vote on matters that come before the meeting individually. There is no proxy authorization or solicitation. The member is simply using technology to exercise his/her right to participate in the meeting and vote or act on the business coming before the meeting.

Finally, Article IV, Section 1, requires an FCU to adopt a specific time for the annual meeting such as, no later than March 31 of each year. This bylaw section also imposes a geographic restriction. We do not believe the timing and location restrictions impact member attendance. Amending Article IV, Section 1 to simply state that an annual or special meeting may be held at such time and place as determined by the FCU Board would be consistent with meeting requirements permitted by state corporation law. In addition, it would provide flexibility in the event that holding a meeting in a specific month is not feasible for appropriate business reasons.

Should the NCUA Board eliminate overlaps between the NCUA's regulations and the FCU bylaws?

The FCU bylaws are deemed to be a Part of 701 of the NCUA Regulations. However, as a general rule of construction, the specific controls the more general. A regulation dealing with a specific matter is likely to be more specific than the bylaw. Therefore, eliminating overlaps could avoid unnecessary redundancy and the potential for confusion over conflicting provisions.

The NCUA asks whether it should remove Article XVI, section 4, which deals with conflicts of interests. This particular bylaw provision should remain as it serves a governance function. That is, the conflict provision is beneficial to include in the bylaws because a board should be very familiar with the credit union bylaws. An individual board member should be able to identify when he/she may have a conflict and should not participate in a particular discussion or vote. The provision also helps the board chair in that should the Chair identify a conflict the bylaw enhances the Chair's authority to instruct a board member to recuse him/herself. If NCUA were to adopt a conflict of interest's regulation to cover all institution-affiliated parties, any potential overlap would not be problematic .

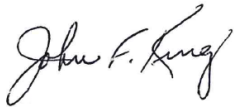
In terms of other areas of overlap, member access to books and records strikes us as appropriate to include in the bylaws. It is also appropriate that the bylaws address the membership share. The membership share represents ownership in the credit union and ownership is the proper province of the bylaws. Similarly, a board's authority to declare dividends is appropriate subject matter for the bylaws.

Consistent with our comments regarding trust accounts, Article III, Section 7, joint accounts and membership requirements should be removed from the bylaws and dealt with in the NCUA Regulations. Specifically, consistent with a credit union's authority to establish the terms and conditions for an account, it can decide whether to require a separate account to establish membership in the case of joint owners.

Conclusion

NCUA's last update of the FCU Bylaws was in 2007. This effort to modernize and streamline the bylaws is appropriate. We would be happy to discuss any question that you might have about the comments in this letter at your convenience.

Sincerely,



President/CEO