



Submitted via email to: regcomments@ncua.gov

May 15, 2018

Gerald Poliquin
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Re: Federal Credit Union Bylaws ANPR; RIN 3133-AE86

Dear Mr. Poliquin:

The Wisconsin Credit Union League, representing Wisconsin's credit unions® and their 3 million plus members, welcomes the opportunity to comment on the National Credit Union Administration's (NCUA's) advanced notice of proposed rulemaking (ANPR) on streamlining, clarifying and improving the standard Federal Credit Union (FCU) bylaws.

The ANPR poses four specific questions, and we will address each in turn.

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

Given the unique composition of each FCU, its geographic base and its members' preferences, the NCUA should give FCUs more freedom to tailor their bylaws and to adopt amendments as needed to suit their needs. The NCUA should also accelerate the process for reviewing and approving FCUs' requests to approve their bylaws amendments. To help accomplish these goals, we suggest three changes:

- The current FCU bylaws requirement that a two-thirds board vote for bylaws amendment is not mandated by the Federal Credit Union Act (FCUA). Since directors are required to act in an FCUs best interests and to make fully informed decisions, the bylaws should allow a simple majority of an FCU's board to approve a bylaws modification. Making bylaws amendment too difficult for boards may unnecessarily restrain an FCUs ability to adapt to changing needs. Wisconsin's model bylaws for state-chartered credit unions provide: "These Bylaws may be amended, altered or repealed in any manner not inconsistent with applicable law by a majority vote of the Board at any duly convened meeting of the Board."
- FCU members should be able to approve bylaws amendments directly when necessary. Since members do not have directors' duties not to act in their own self-interest, a "super-majority" requirement makes sense in this context. For example, Wisconsin's model says: "These Bylaws may be amended by a three-fourths (3/4) majority vote of the members present at any annual or special meeting of the members, if all notice and other requirements applicable to amendment of these Bylaws are satisfied."
- The NCUA should retain the procedures for reviewing and approving FCUs' proposed bylaws amendments, as already detailed in the bylaws introduction, to prevent improper amendments from taking effect. However, a timeline should be added to ensure an expeditious process to approve such requests. Such a timeline would help credit unions plan for bylaws amendments and manage the expectations of directors and members. For example, a proposed

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amendment should be considered approved if the NCUA has not replied to a request for approval within a fixed timeframe, such as 90 or 120 days.

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

The FCUA authorizes a majority of the board to expel a member based on non-participation of a member (§1764(b)). It 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.”

The terms “nonparticipation” and “disruptive” need to be better defined, to help FCUs understand the circumstances that allow expulsion and denial of services.

Ideally, the FCUA would be amended to adopt a broader and more subjective standard for expulsion, such as “for good cause,” rather than the awkward and ill-defined term “nonparticipation.” Short of that, CUNA has recommended, and The League agrees, that the NCUA’s bylaws include examples of acts that constitute “nonparticipation,” such as:

- Failure to maintain the necessary requirements for membership;
- Physical abuse or assault, harassment, or verbal abuse of credit union staff or of another credit union member;
- Neglect or refusal to comply with the FCUA;
- 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 NCUA guidance to help credit unions implement effective denial of services policies. For example, credit unions should be free to suspend certain services – such as applications for new loans or the ability to maintain share draft accounts – for members who cause a loss to the credit union. In addition, interim or temporary suspensions of membership should be permitted when a member engages in unacceptable conduct.

For both suspensions and expulsions, aggrieved members should have 45 days to respond with a written request for hearing 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 FCUA. 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?

The NCUA should actively search for ways to help FCUs attract and retain qualified volunteer directors. One avenue would be to reduce the demands on directors’ busy schedules by allowing them to attend meetings remotely. Wisconsin’s

model bylaws for state-chartered credit unions were revised several years ago to accommodate credit unions boards that wish to meet via teleconference or other means. It provides:

The Board may hold any regular or special meeting or committee meeting, including a meeting of the executive committee or credit committee by telephone conference call or any other means of communication by which all participating Directors or members may simultaneously hear each other during the meeting and all communication during the meeting is immediately transmitted to each participating Director or member, and each participating Director or member is able to immediately send messages to all other participating Directors or members. If any meeting is conducted under this paragraph, all participating Directors or members shall be informed that a meeting is taking place at which official business may be transacted.

Adopting a similar provision in the NCUA's bylaws would help reduce the travel time, expense, and associated burdens that may discourage qualified candidates from serving on FCU boards. This is especially true for rural FCUs serving large geographic areas, whose directors may have to travel further for meetings than directors of urban FCUs.

The NCUA's bylaws might also allow FCU boards to obtain directors' consent to action without the need for a formal meeting. Several years ago, Wisconsin's Office of Credit Union adopted the following provision in its model bylaws to allow for written consent in lieu of a meeting:

Any action required or permitted by the Bylaws, or any provision of Ch. 186 to be taken by the Board at a Board meeting, may be taken without a meeting if one or more written consents, setting forth the action so taken, shall be signed by all of the Directors entitled to vote on the subject matter of the action and retained in the credit union's records. Action taken pursuant to written consent shall be effective when the last Director signs the consent or upon such other effective date as is specified in the consent.

Such a change would help FCU boards to operate more efficiently, and it would reduce the demands on FCUs directors to attend meetings in-person.

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

The NCUA should do all that it can to allow FCUs the freedom to use technological advances that allow annual meetings to be held remotely – via video conference, teleconference, or other means. Reducing the time commitment for annual meeting could only encourage members to participate and to voice their opinions.

In addition, the NCUA's bylaws should give FCUs more latitude to provide earlier notices of meetings to members. Currently, annual meeting notice must be provided at least 30 days but not more than 75 days in advance (Bylaws Article 4, Section 2). This notice timing requirement is not found in the FCUA, and the NCUA should not impose it arbitrarily. Instead, its bylaws should authorize FCUs to provide notice of meetings as far in advance as is suitable and preferable for members. The more advance notice members receive, the more likely they are to fit FCU meetings into their busy schedules.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Guttormsson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Paul Guttormsson
Vice President – Legal & Compliance
The Wisconsin Credit Union League