



May 21, 2018

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

Re: Comments on Federal Credit Union Bylaws Advanced Notice of Proposed Rulemaking

Dear Mr. Poliquin:

The Michigan Credit Union League (MCUL) the statewide trade association representing 100% of the 229 credit unions located in the state of Michigan and their 5 million members appreciates the opportunity to comment on 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 (FCU) bylaws.

Michigan is known to have one of the strongest and most progressive state charters in the country with significant updates to the Michigan Credit Union Act as recently as 2016. The MCUL believes in a strong dual chartering system as the dual chartering system creates incentive for the NCUA and state regulators to promote policies that allow broader operating authority for credit unions and impose fewer constraints on credit union operations. Of the 229 credit unions in Michigan 88 are federally chartered and 141 are state chartered with the majority of assets also held in the state charter.

The NCUA Board's effort to update the standard bylaws for federal credit unions will encourage healthy competition between the charters and continue to ensure a thriving dual chartering system, particularly in an industry of rapid consolidation primarily through credit union mergers.

The MCUL recognizes the FCUA restricts the ability of the NCUA Board to modernize the federal charter. Given the FCUA has not been amended by Congress in several decades, the MCUL recognizes the FCUA is outdated and fails to reflect practical operational processes of doing business as a credit union. We will address the specific questions in the ANPR within this context.

Question 1: *How can the Board improve the FCU bylaws amendment process?*

As with other federal agencies, a one-size-fits-all approach is antiquated, particularly given the sophistication and tailored nature of credit unions each serving their unique communities. The MCUL has heard of few to no circumstances under which a federal credit union had issues amending their bylaws, however, the MCUL, like our national association CUNA, believes 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 and geographic base.

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

While no credit wishes to expel or suspend services to a member the circumstances unfortunately may present themselves at which point a credit union (state or federally chartered) should have the ability to act.

The Michigan Credit Union Act Section 490.357 permits a state chartered credit union to suspend services or terminate membership to a member under the following circumstances:

Sec. 357. (1) The general manager or chief executive officer of a domestic credit union, or his or her designee, may suspend some or all services to a member, or terminate the membership of any person, that does any of the following:

- (a) Causes a loss to the domestic credit union.
- (b) Commits fraud or another misdeed against the domestic credit union or against a person on the premises of the domestic credit union.
- (c) Engages in inappropriate behavior involving another individual, such as physical or verbal abuse of another member or an employee of the credit union

The Federal Credit Union Act authorizes the credit union board of directors to expel a member based on his/her non-participation, if a majority of the board is in agreement. The Federal Credit Union 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 the opportunity to be heard (1764(a)). These provisions are restated in the NCUA Bylaws, Article XIV, Expulsion and Withdrawal, noting that services may be "limited" for a "member who is disruptive to credit union operations." The MCUL recommends the bylaws provide for examples of acts which could evidence "non-participation," including but not limited to:

- Failure to maintain the necessary requirements for membership,
- Physical abuse or assault, harassment, or incidents of verbal abuse of another member of the credit union,
- Neglect or refusal to comply with the Federal Credit Union 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 MCUL agrees with CUNA in that the term "disruptive to credit union operations," should also be clarified with agency guidance to assist credit unions in implementing a limitation of service policy.

Any due process concerns under the FCUA may be remediated by providing suspended and expelled members with 45 days' notice to respond with a written request to be heard.

Due to the restrictions under the FCUA and the limitations imposed on amending the federal charter these recommendations would provide much needed clarification.

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

The MCUL believes the recruitment of credit union directors would be enhanced by model processes, including guidance for nominating committees to ongoing development of directors. Basic mechanisms helping credit unions maintain board stability, continuity, training and development ensure credit unions are equipped with knowledgeable, competent and engaged board members.

In the 2016 amendments to the Michigan Credit Union Act, Michigan's state chartered credit unions were granted authority permitting associate board members with specific requirements reflecting the requirements of board members. Section 490.342 (10) of the Act addresses the requirements of associate board members including signing confidentiality agreements and participating in board meetings. The program allows for a strong "bench" team of prospective board members in the event of a vacancy and upcoming elections.

Board development could also be improved by explicitly allowing boards to integrate technological capabilities. NCUA should clearly allow board meetings to be conducted via virtual, remote or through other technology enable means. NCUA should also permit directors to utilize modern enhancements when casting votes through electronic means. Popular closed-end survey systems, voting buttons and other commonly-integrated technology exists to enable director votes to be conducted remotely and securely. The FCUA is silent as to how votes must be conducted. Given the trend toward meeting flexibility, votes should indicate the same.

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

As discussed in Question 3, modern technology provides technological capabilities which encourage participation without a direct, physical presence. The more NCUA can encourage remote participation by explicitly including the permissibility of electronic or virtual participation, the more likely membership participation in annual and special meetings will increase. Digital and virtual/remote technologies continue to evolve and NCUA must empower credit unions to embrace change in all facets of their operations.

NCUA should also allow credit unions more flexibility in providing notice of the annual meeting. Currently the notice of annual meeting 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 within the FCUA, and the NCUA should not impose this arbitrarily rather the bylaws should authorize FCUs to provide notice of meetings as far in advance as is suitable and preferable for members by various means of communication. The more advance notice members receive, the more likely they are to fit FCU meetings into schedules.

Question 5: *Should the Board eliminate overlaps between NCUA's regulations and the FCU bylaws?*

As previously discussed, credit unions should be afforded flexibility to include various items in their bylaws that are specific and tailored to their particular membership composition. However, for clarity and efficiency, NCUA should attempt to eliminate overlap and redundancy between agency regulations and the FCU bylaws.

Conclusion

The MCUL is encouraged by NCUA's efforts in requesting comments on the bylaw process. As NCUA continues the dialog and rulemaking process MCUL looks forward to continuing collaboration and discussions with the agency.

Sincerely,

A handwritten signature in black ink, appearing to read 'DA', with a long horizontal flourish extending to the right.

Dave Adams
CEO, Michigan Credit Union League and Affiliates