

May 18, 2018

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

RE: Comments on FCU Bylaws ANPR

Dear Mr. Gerald Poliquin,

I am writing on behalf of the California and Nevada Credit Union Leagues (Leagues), one of the largest state trade associations for credit unions in the United States, representing the interests of more than 250 credit unions and their approximately 10.5 million members.

The Leagues welcome the opportunity to provide comments to the National Credit Union Administration (NCUA) on their advanced notice of proposed rulemaking (ANPR) related to the Federal Credit Union bylaws (FCU bylaws).

The Leagues thank the NCUA Board for their efforts to review, streamline, clarify, and generally improve the standard FCU bylaws. As noted in the ANPR it has been more than 10 years since the current FCU bylaws were adopted. We also note and recognize that any changes to the FCU bylaws must comply with both the letter and the spirit of the Federal Credit Union Act (FCU Act), which itself has not been updated by Congress in several decades.

In the more than 10 years since the FCU bylaws were last adopted the world and the credit union industry has seen a significant rise in the use of e-commerce, mobile banking, and the use of social media and other technologies. As technologies continue to advance at a rapid pace, the Leagues recommend the NCUA Board review the FCU bylaws every three to five years.

In the ANPR, the Board requests comment on several significant topics, including: improving the bylaws amendment process, clarifying the limitation of services and expulsion of members provisions, better facilitating the recruitment and development of directors, improving attendance at annual and special meetings, and eliminating overlaps between NCUA regulations and bylaws provisions. The Leagues respectfully offer the following comments on these topics.

Improving the Bylaws Amendment Process

Federal credit unions have the flexibility to request bylaw amendments if the need arises. In the ANPR, the NCUA notes for many amendments to the standard FCU bylaws an FCU must request approval from the NCUA's Office of Credit Union Resources and Expansion (CURE). This is also the instruction available on the NCUA's website and CURE webpage. However, the introduction to the FCU bylaws found in Appendix A to Part 701, paragraph C.3 states the procedure is for the credit union to file a request with their Regional Director. The Leagues recommend this discrepancy be corrected.

The standard FCU bylaws do not provide for any timeline by which CURE (or the Regional Director) must arrive at its determination, except in the case of previously approved bylaws amendments, which is 15 business days (Introduction to Appendix A to Part 701, paragraph C.4). The Leagues recommend the Board establish a timeline of no longer than 60 days for CURE (or the Regional Director) to provide the credit union with notice of their decision. Establishing a timeline not only promotes the NCUA's service commitment but also allows credit unions to manage expectations.

Clarifying the Limitation of Services and Expulsion of Members Provisions

Limitation of Services

Article II, § 4 of the standard FCU bylaws permits an FCU to limit services or access to credit union facilities to “a member who is disruptive to credit union operations.” The Office of General Counsel’s (OGC) longstanding interpretation of the phrase “disruptive to credit union operations” is found in OGC Opinion Letter 08–0431 (Aug. 12, 2008). In general, the OGC’s opinion is that an FCU may limit services to an FCU member in a number of cases, including situations where a member is abusive to FCU staff or has caused a loss to the FCU, provided that members have received adequate notice of the limitation of service policy and there is some “logical relationship between the objectionable conduct and the services to be suspended.” The Leagues recommend the FCU bylaws be amended to include the established interpretation and clarifications provided in OGC Opinion Letter 08–0431.

While the current interpretation includes when a member has caused a loss to the FCU, the Leagues recommend this be expanded to include situations *before* a member has caused a loss to the FCU, including: when a member’s loan is delinquent for a certain number of days; when a member’s share draft account balance is negative for more than a certain number of days; where the FCU has good reason to suspect fraud or other account misconduct that could lead to a loss; where the member fails to respond to the FCU’s repeated attempts to contact the member. The ability to limit services to a member before they cause a loss to the credit union will incent the member to correct the situation and help the credit union to limit losses.

The Board also questions whether this provision should be removed in its entirety and addressed as a separate regulation. The Leagues recommend the limitation of services provision remain in the FCU bylaws as it addresses members’ rights under Article II–Qualifications for Membership.

Expulsion of Members

The FCU Act authorizes expulsion of a member by: (a) a majority vote of the board of directors of a credit union based on a member’s non-participation (§1764(b)), or (b) by 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.

The Leagues recommend the FCU bylaws be amended to provide examples of “non-participation,” including those enumerated in the FCU Act §1764(b) as well as other examples or guidance provided in OGC opinion letters.

Facilitating the Recruitment and Development of Directors

Article V of the standard FCU bylaws sets out four distinct procedures that an FCU may choose to follow to select directors. In each case, a nominating committee must appoint at least one member to each vacancy, including any unexpired term vacancy, for which elections are being held. However, these procedures do not provide guidance on how the nominating committee should proceed with identifying prospective candidates nor do they clarify the criteria that the nominating committee may use when selecting candidates.

The Board questions whether the agency should include commentary in Article V recommending certain non-binding factors that the nominating committee may consider when selecting a candidate to fill a vacancy and whether to include commentary authorizing FCUs to establish standing advisory committees designed to recruit potential candidates.

The Leagues support including such commentary in the FCU bylaws. With the growing complexity of credit unions and increased expectation on board oversight non-binding guidelines would help credit union nominating committees identify suitable prospective candidates. We stress that the guidelines be non-binding and credit unions maintain the flexibility to establish candidate qualifications based on their own unique needs, geography, demographics, and fields of membership.

The Leagues believe credit unions would also benefit from other informal, non-binding guidance designed to support board stability and board member training, development, and engagement. We recognize the agency already has many resources designed for board member education and development, but that those resources may be underutilized. We suggest the agency provide a single location on their website dedicated to board member and volunteer resources.

Improving Attendance at Annual and Special Meetings

Annual Meeting Notice – Timing

Article IV § 2 of the standard FCU bylaws requires an FCU provide members with at least 30 but not more than 75 days written notice before the date of any annual meeting. The Board asks whether the required notice periods for annual and special meetings are adequate to ensure members have sufficient advanced notice to attend the meetings.

Our members have expressed concern with the “not more than 75 days” limit. With annual meetings occurring on a regular and pre-determined basis, as set forth in Article IV § 1, credit unions would appreciate the ability to advertise the meeting well in advance of the 75 days requirement. For example, a credit union with annual meetings held in April every year, may wish to advertise and promote attendance at the annual meeting beginning in the fall of the previous year. Furthermore, it is not uncommon for individuals to put meetings on their calendar a year in advance.

The Leagues recommend the language be clarified to allow early notice and promotion of the annual meeting. We suggest the first sentence of Article IV § 2a. be amended to read, “The secretary must give at least one written notice to each member at least 30 but no more than 75 days before the date of any annual meeting or at least 7 days before the date of any special meeting of the members.” The FCU Act does not prescribe a notice or timing of such a notice. This revision retains the current requirement for timely notice without limiting additional promotion of and planning for the annual meeting.

Annual Meeting – Employing New Technologies

With the rise of ecommerce and mobile banking, the Board is interested in ways that it may improve Article IV to allow FCUs to utilize new technologies, particularly social media and web-based conferencing solutions, to allow more members to attend annual and special meetings.

The Leagues generally support the use of new technologies to communicate with members and improve attendance at annual and special meetings if the technology used allows for: (a) member debate of issues; and (b) secure and authenticated member votes, similar to the requirements to verify the name and account number of the voter for absentee ballots. While technology may or may not exist today to support these objectives, the Leagues applaud the NCUA for exploring this avenue. Advancing technology is one reason why we call for a review of the FCU bylaws at least every three to five years.

Eliminating Overlaps Between NCUA Regulations and Bylaws Provisions

The NCUA staff identified several NCUA’s regulations that overlap, to some extent, with the standard FCU bylaws. Many of the overlapping standard FCU bylaws provisions are in Article XVI and address issues such as FCU member confidentiality, conflicts of interest, record retention, and the availability of books and records to FCU members.

The Leagues believe these duplicative regulatory and bylaws requirements increase compliance burden in that credit unions must be aware of and ensure compliance with multiple references on a single topic. In addition, should either a regulation or a bylaw requirement change, the NCUA and credit unions need to ensure the change does not create a conflict with the other provision. We support removing the overlapping provisions from the FCU bylaws to the greatest extent possible and making appropriate adjustments to the NCUA’s regulations to maintain their substantive protections.

Conclusion

The Leagues applaud the NCUA Board for their efforts to review and update the FCU bylaws. We strongly recommend this exercise be conducted every three to five years.

Thank you for the opportunity to comment on the FCU Bylaws ANPR and for considering our views and recommendations. If you have any questions regarding our comments, please contact me.

Sincerely,

Diana Dykstra
President and CEO
California and Nevada Credit Union Leagues

cc: CCUL