



May 21, 2018

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

RE: Comments on Federal Credit Union Bylaws ANPR

Dear Mr. Poliquin,

The Credit Union Association of the Dakotas (CUAD) appreciates the opportunity to provide comment to the National Credit Union Administration (NCUA) regarding its advanced notice of proposed rulemaking concerning Federal Credit Union bylaws. To provide a brief background, the Credit Union Association of the Dakotas represents state and federally chartered credit unions in the states of North Dakota and South Dakota. CUAD is responding to the following questions posed by NCUA:

*How can the Board improve the FCU bylaws amendment process?*

CUAD believes that the FCU bylaw amendment process should and can be improved to more expeditiously process requested changes. The standard bylaws should provide for a timeline by which NCUA must arrive at its determination as many bylaw changes are prompted by operational concerns. The bylaws should require a response by the NCUA with a specified timeframe and if the NCUA does not respond the credit union can proceed under the adopted amended bylaw.

The NCUA should also include standard bylaws amendments that will give the credit union the flexibility to adopt certain bylaw options. These standard bylaw amendments would not need to be submitted to the NCUA for approval.

*How can the Board clarify the FCU bylaws provisions addressing limitation of service and expulsion of members?*

The Federal Credit Union Act (the Act) places restrictions on how a member can be expelled from membership of a federal credit union. Section 1764 of the Act provides that, "a member may be expelled by a two-thirds vote of the members of a Federal credit union present at a special meeting called for the purpose, but only after opportunity has been given him to be heard."

An exception to the special meeting requirement, is that the FCU board may "adopt and enforce a policy with respect to expulsion from membership based on nonparticipation by a member in the

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affairs of the credit union...” The Act discusses considerations the credit union’s board should take into account when adopting a nonparticipation policy which include, “a member’s failure to vote in annual credit union elections or failure to purchase shares from, obtain a loan from, or lend to the Federal credit union.”

In addition to the Act’s provisions on expulsion of a member, which are reflected in the current bylaws under Article XIV, the bylaws also provide for limitations of services in certain scenarios. Article II, Section 4, provides in relevant part, “A member who is disruptive to credit union operations may be subject to limitations on services and access to credit union facilities.”

With regard to FCU bylaw provisions addressing expulsion of members, CUAD recommends that the NCUA provide additional examples of “nonparticipation” so as to allow boards a venue to expel individuals that are a threat to the credit union and its other members, such as those causing the credit union a financial loss, refusal to comply with the Act, criminal activity, etc.

In reference to FCU bylaw provisions addressing limitation of services, “disruptive to credit union operations” should be further clarified/defined by NCUA guidance and/or commentary.

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

CUAD recommends that the NCUA provide suggestions and/or nonbinding guidance regarding factors that the nominating committee may consider when selecting a candidate to fill a particular vacancy. However, these suggestions should not be interpreted nor expected to be standards that must be followed as a candidate’s qualifications needs to be specific to the particular credit union. CUAD agrees with the NCUA in that matters regarding director qualification fall squarely within the sound business judgment of each individual FCU.

CUAD believes that the NCUA should include an option in the standard bylaws for FCUs to establish standing advisory committees designed to recruit potential candidates to fill board vacancies.

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

While encouraging attendance of members at annual and special meetings has always been both a goal and struggle for credit unions, the bylaws should not include any unnecessary barriers to increasing participation. The NCUA should allow FCUs to conduct annual and/or special meetings via technological solutions.

While the ANPR inquires as to what market solutions exist to allow members to debate issues brought to the floor or to securely vote on director nominations, CUAD recommends that the bylaws only outline the baseline requirements that a solution must have. With the ongoing advancements in technology, the bylaws need to be flexible enough to be able to utilize whatever technology exists now and also what might exist tomorrow without having to go through the unnecessary process of bylaw updates and amendments.



Security protocols can be implemented through online registration to join a meeting. If a credit union can identify and verify a member to open accounts and/or grant loans, surely similar procedures can be used to allow a member to vote at an annual meeting.

It is unknown if using technology to hold meetings would encourage greater member participation, however; as noted above, the bylaws should not be a barrier to at least trying new solutions in an effort to increase member involvement.

Thank you for this opportunity to share our comments.

Respectfully,

A handwritten signature in black ink that reads 'Jeffrey Olson'. The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Jeffrey Olson  
CEO/President

A handwritten signature in black ink that reads 'Amy Kleinschmit'. The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Amy Kleinschmit  
Chief Compliance Officer