



May 21, 2018

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

SUBMITTED VIA EMAIL: regcomments@ncua.gov

RE: Federal Credit Union Bylaws Advanced Notice of Proposed Rulemaking

Dear Mr. Poliquin,

On behalf of Minnesota's credit unions, please accept this correspondence in response to the National Credit Union Administration's (NCUA) advanced notice of proposed rulemaking on ways to streamline, clarify and improve the standard Federal Credit Union bylaws (FCU bylaws). The Minnesota Credit Union Network (MnCUN) represents the interests of Minnesota's 109 credit unions and their more than 1.7 million members. MnCUN thanks you for the opportunity to provide feedback on this matter.

We strongly support the NCUA's efforts to improve the FCU bylaws and have provided responses to your questions. Please consider the following when making your decisions.

How can the Board improve the FCU bylaws amendment process?

The NCUA Board (Board) could improve the amendment process by establishing a timeline of 60 days to approve amendment requests. Further, that if the Board has not responded within 60 days, the requested amendment(s) become effective automatically. Language to this effect could be placed in the preamble to the FCU bylaws. This would expediate the amendment process and would not require a change to the Federal Credit Union Act (Act). Section 1758 of the Act, which gives the Board authority to approve proposed FCU bylaws, is silent regarding the process for such approvals.

We also support Credit Union National Association's suggestion that credit unions be given more freedom to tailor bylaws to their own individual and specific needs. Credit unions across the country differ from one another in many ways including membership demographics. A one-size-fits-all approach does not allow credit unions to tailor their bylaws to the needs of their specific membership.

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

The FCU bylaw provisions regarding expulsion of a member should be amended to give the board of directors of a credit union (Directors) clear authority to expel a member (without a vote of the members) in certain circumstances. Currently, it is not clear if Directors have authority to act on their

own to expel a member for misconduct such as fraud, attempted fraud, theft, abusive behavior, causing a loss to the credit union, etc. This could be accomplished by adding examples of conduct that constitute “nonparticipation.”

Pursuant to § 1764(b) of the Act, Directors may adopt and enforce a policy for expulsion based upon “nonparticipation” of a member. However, “nonparticipation” is not defined in the Act. The Board should add a list of examples of actions that constitute “nonparticipation.” The list should include:

- fraud or attempted fraud, theft, malfeasance, or other criminal activity;
- conduct that causes a financial loss to the credit union;
- insolvency or bankruptcy;
- failure to maintain the necessary requirements for membership;
- physical abuse or assault, harassment or verbal abuse of another member or an employee of the credit union; and
- habitual neglect to pay obligations or default on an obligation to the credit union.

A credit union’s ability to expel members who engage in conduct (e.g., fraud, theft, habitual neglect to pay obligations, etc.) should not be dependent upon whether that conduct results in a financial loss to the credit union. Removing that interdependency will allow a credit union to proactively remove a member before future conduct of that member results in a financial loss to the credit union. Therefore, conduct that causes a financial loss to the credit union should be its own independent example, and not a factor for removing a member for fraud, theft, etc.

If the Board feels that the examples above do not constitute “nonparticipation,” then the Act should be amended to allow Directors to expel members for “cause.” The list above could be inserted in the Act as examples of the types of conduct that constitute “cause.”

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

There are several things the Board could do to improve the FCU bylaws to help facilitate the recruitment and development of Directors as well as committee members. One of the hinderances to the recruitment of Directors is the time commitment that is currently required. Pursuant to § 1761b of the Act, Directors are required to meet once a month. For some credit unions monthly meetings are necessary, however, that is not the case for all credit unions. Amending the Act to reduce the minimum frequency to “quarterly” or “every three months,” would give credit unions the ability to tailor the frequency of their board meetings to their specific needs. To mitigate any concerns regarding Directors’ ability to fulfill their duties, language could be added requiring that, in months that Directors do not meet, they still be provided with information necessary to perform their duties. Additionally, the NCUA Examiners would still have discretion to require certain credit unions to meet on a more frequent basis if the Examiners believe that more frequent meetings are necessary for the proper operation of the credit union. Giving credit unions the flexibility to reduce the frequency of meeting will help in the recruitment of Directors.

Another way to help in the recruitment of Directors, and committee members, would be to update the FCU bylaws to account for the modern technologies that allow for meetings to be conducted virtually. The FCU bylaws should expressly allow meetings to be conducted via teleconference, videoconference, internet-enabled closed-groups, satellite or other virtual means. This will reduce the burden on Directors and committee members, which will certainly help enhance recruitment. The Act would not need to be amended to allow for this change, as it does not specify how meetings are to be conducted.

In addition to the time commitment, another hinderance to the recruitment of Directors and committee members is the lack of compensation. With certain exceptions, § 1761(c) of the Act prohibits credit unions from compensating Directors and committee members. Amending the Act to allow for some sort of compensation would help in the recruitment. It would also help credit unions in the recruitment of persons of skill, knowledge and training in key professional areas (e.g., legal and financial). To give transparency and oversight to such compensation, the Board could require that compensation be published in the credit union's annual report.

Regarding development, the Board could amend the FCU bylaws to expressly allow for credit union boards to appoint persons to the position of associate director. This position would not have voting rights on the board, but could be used to develop persons as future Directors or for persons with expertise (e.g., legal, compliance or financial) who could provide guidance during board meetings.

We do not believe that creating model processes or guidance for the nomination or recruitment of board members would be beneficial. Credit unions need flexibility in recruiting so that they may tailor recruitment efforts based upon their specific size, community, membership, etc.

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

Similar to our response to Question 3 above, FCU bylaws should be amended to expressly allow members to attend, and vote at, meetings virtually. This should be allowed for both annual and special meetings. The FCU bylaws should also be amended to allow for electronic delivery of meeting notices. This may be accomplished without amending the Act, as it is silent regard meeting notice. (See § 1760).

Request for General Comments?

Article I. Name/Purpose

- **Section 2** - We suggest removing the term “provident” from this section. The term is outdated and most people may not even know its meaning (we had to look it up).

Article II. Qualifications for Membership

- **Section 2** - This section should be removed. Membership application procedures should be addressed in the guidelines for membership or the membership application itself rather than the FCU bylaws.
- **Section 3** – We suggest removing the phrase “By resolution, the board may require persons readmitted to membership to pay another entrance fee.” For many credit unions, charging such a fee is standard practice, therefore this language is unnecessary. At a minimum, the Board should clarify that this section is optional by adding the following: [This Section is Optional]. This change would not conflict with the Act because the board of directors has the authority to determine whether to charge an entrance fee. (See § 1759).

Article III. Shares of Members

- **Section 1** – It is highly uncommon for a credit union to accept installment payments for shares. Therefore, please consider removing this language from the FCU bylaws. The Act gives the board of directors the authority to determine method of payment for shares. (See § 1759).
- **Section 3** – Since Directors have the authority to establish the policy for payment and maintenance of membership shares, this section should be deleted from the FCU bylaws.
- **Section 5** – If the Board agrees with our suggestion to remove language regarding the payment for shares in installments from Art. III, Sec. 1, then the phrase “or installments of shares” should be deleted from this section.¹
- **Section 6** – The trustee is the party with whom the credit union typically has the most interaction. Please consider revising the language to state that, “either the settlor or the trustee must be a member.” This will be beneficial to members as it gives them more flexibility in the operation of their trust. Doing so does not conflict with the Act.

Article IV. Meetings of Members

- **Sections 1 & 3** – See response to Question 4 above regarding ways to encourage attendance and participation at meetings.
- **Section 2** – Please consider removing this section and moving the specific notice requirements for annual and special meeting to their applicable sections. Please see our response to Question 4 regarding the use of electronic delivery methods for notices.

¹ The staff commentary under Art. III, Sec. 7 would also need to be deleted.

- **Section 4** – Since the requirements for the Community Development Revolving Loan Program do not apply to all credit unions, consider amending subsection (c) to simply state, “Other reports as may be required by regulation.”

Article V. Elections

- The Board should consider generalizing the voting procedures and processes. Please also consider adding language to expressly allow for the use of current technologies for voting and nominating. The Act does not require the use of specific election procedures and processes; the Board has the authority to make this change without an amendment to the Act.
- **Staff Commentary on the election process** - For ease of use, please consider placing staff commentary closer to the applicable topic.

Article VI. Board of Directors

- **Section 5** – See our response to Question 3 above regarding ways to improve the FCU bylaws to facilitate the recruitment and development of board members.
- **Section 6** - The Board could restructure the list of directors’ duties to expressly identify those duties that can be delegated and duties that cannot be delegated. Please consider amending the FCU bylaws to expressly allow Directors to delegate the duties of subsection (c) to the appropriate credit union staff.

Article VII. Board Officers, Management Officials and Executive Committee

- **Sections 1 & 10** – Please see our response to Question 3 above regarding board and committee compensation.
- **Section 9** – In many (perhaps most) credit unions, the secretary’s duties are fulfilled by credit union staff. Additionally, we think that more time to complete the records of the meetings is needed. Please consider revising the first sentence of Section 9 to state, “The secretary, unless delegated to management, prepares and maintains full and correct records of all meetings of the members and of the board, which records will be prepared within 21 days after the respective meetings.”

Article VIII. Option 1 Credit Committee

- **Sections 6 & 7** – Please consider adding language stating that lending decisions should adhere to the credit union’s loan policies, and existing laws and regulations.

Article VIII. Option 2 Loan Officers (No Credit Committee)

- **Sections 2 & 3** – Please consider adding the language stating that lending decisions should adhere to the credit union’s loan policies, and existing laws and regulations.

Article IX. Supervisory Committee

- See our response to Question 3 above regarding improvements that could enhance the recruitment of committee members.
- **Section 2** – The Board should consider adding “vice-chair” as an option in lieu of secretary.
- **Section 3 (b) & (c)** – Due to the turmoil that could exist under the circumstances described in these sections, please consider reducing the timeframe from 45 days to 30 days.
- **Section 3(d)** – We believe that more clarity should be added to this section. Please consider revising the language to state, “The Supervisory Committee acting as the board may not amend or rescind any existent policy nor create any new policy.” Please also consider providing more clarity to the definition of “policy matters.” Perhaps this could be accomplished with a list of examples.
- **Section 5** – Attempting to schedule a meeting, which would be well-attended, within 14 days is challenging. Please consider extending this timeframe to 30 days.

Article XI. Loans and Lines of Credit to Members

- **Section 2** – Late payment fees are generally governed by laws and regulations. Please consider removing the phrase “as determined by the board of directors.”

Article XIV. Expulsion and Withdrawal

- Please see response to Question 2 above regarding improvements that should be made to this article. In general, Directors should have more power to expel a member without a member vote. This will help credit unions be more proactive in protecting the credit union members and staff from the misconduct of members.

Article XVI. General

- **Section 5** – Please consider removing the requirement that meeting minutes be signed. This is an unnecessary practice for at least two reasons. First, meeting minutes are already verified when they are approved at the subsequent meeting. Second, meetings are also often documented through video or audio recording.

- **Section 6** – The term “other records” is broad. Please consider limiting the scope of this term. Additionally, please consider narrowing the definition for “proper purpose.” Allowing unfettered access to credit union records could be overly burdensome on a credit union and endangering to privacy.
- **Section 7(c)** - To better organize the FCU bylaws, please consider moving this definition to Article XVIII.

Article XVII. Amendment of Bylaws and Charter

- Please see our response to Question 1 above regarding improvements to Article XVII.

We thank the NCUA for taking efforts to improve the FCU bylaws, and we thank you for considering our commentary on this matter. If you have any questions about our comments, please do not hesitate to contact me at (651) 288-5517.

Sincerely,

A handwritten signature in blue ink that reads "Tim Tacheny". The signature is written in a cursive style with a small flourish at the end.

Tim Tacheny
Associate General Counsel
Minnesota Credit Union Network