

May, 17 2018

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

RE: Comments on FCU Bylaws ANPR

On behalf of Bethpage Federal Credit Union (Bethpage) and our 360,000 members, we appreciate the opportunity to comment on the National Credit Union Administration's (NCUA) advanced notice of proposed rulemaking (ANPR) on ways to improve and refine the standard Federal Credit Union bylaws as set forth in the Federal Credit Act.

As an overall comment, Bethpage believes that NCUA should not be overly prescriptive in dictating what should be contained in standard credit union bylaws, but should instead implement general directions that assist the credit union in guiding its own development of policies. Given that credit unions already operate in a highly regulated environment, bylaws that serve as a second, extraneous or duplicative set of regulations would be redundant and inappropriate.

NCUA asks for comment on several specific questions. Below are our responses.

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

Related to the comment above about avoiding overly-prescriptive bylaws, NCUA should aim to provide maximum flexibility to credit unions in this area. Credit unions should be given latitude to tailor their bylaws to the needs of specific credit union memberships, geographic definitions, employment and or associational situations. In other words, each credit union has unique characteristics that define its approach to member service, and that should be translated by the credit union itself into bylaws, not prescribed by any regulator. Regarding the bylaw amendment process, Bethpage would support an expedited process for bylaw change approvals by NCUA.

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

The Act authorizes a majority of the board of directors of a credit union to expel a member based on non-participation of a member (§1764(b)). The 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 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.” CUNA recommends that the bylaws include examples of acts which could evidence “nonparticipation,” including but not limited to:

- failure to maintain the necessary requirements for membership,
- physical abuse or assault, harassment, or multiple incidents of verbal abuse of another member of the credit union and or credit union staff,
- neglect or refusal to comply with the 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 term “disruptive to credit union operations,” should also be clarified with NCUA guidance to help credit unions implement a limitation of service policy. Membership should be automatically forfeited when members whose loans or extensions of credit are defaulted and charged off as a loss. Reinstatement of membership in the case of forfeiture should only be permitted upon majority vote of the board of directors. Interim or temporary suspensions of membership should be permitted when a member engages in unacceptable conduct that poses an imminent threat to any other member or credit union staff, and/or constitutes conduct prohibited under federal and/or state civil rights laws. The ability to suspend such a member enables the credit union to meet its obligation to maintain a safe and respectful business environment for its staff and members. Such suspension should be authorized by the credit union president, president’s designee, or the board of directors. The Act is silent as to temporary suspensions, but the authority to expel or withdraw a membership is explicitly sanctioned, and providing additional guidance as to implementing such action would be permissible under the Act. If a suspension is imposed, a suspended member may be denied all services except for maintenance of a share account and voting rights. In this regard, further guidance with respect to how servicing a share account can be achieved would be helpful. For both suspensions and expulsions, aggrieved members should have 45 days’ notice to respond with a written request for hearing (to be noticed 15 days prior, via any reasonable means of communication) 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 Act. 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?

With the disclaimer that Bethpage is not advocating a specific, explicit set of requirements that must be followed, there may be value in NCUA promulgating guidance for board member recruitment and training that includes minimum requirements related to more than just financial literacy. Attracting, training and seating qualified board members is a serious foundational element of current board responsibility, and the credit union industry as a whole would benefit from a set of recommendations from NCUA that could be considered.

Also, NCUA should consider suggesting the creation of a standardized Board Advisory Committee that could be optional for federal credit union boards. Bethpage has non-voting Associate board members that attend meetings and participate on committees. This program helps us to build a bench for the board. It allows for a learning period and serves as a practical way to have potential board members standing by so that, if elected by the membership, they could be an immediately contributing and valuable asset to the board and credit union members.

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

Bethpage would be very hesitant to recommend using the federal credit union bylaws process to encourage member participation in any form or fashion. Annual and special meeting attendance is the personal prerogative and choice of individual members; Bethpage, and all federal credit unions, as member-owned cooperatives have a solemn responsibility to encourage participation in a variety of ways. This should be done as a routine matter of course by the credit union management and board, but there would be no point in having NCUA utilize bylaws to effect any improvements.

Bethpage appreciates the proactive and forward-looking nature of NCUA's request for input at this early stage of the formulation of your policy, and encourages you to move forward with rulemaking.

Sincerely,



Wayne N. Grossé
President & CEO