



strength in members.

May 21, 2018

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

Dear Mr. Poliquin,

On behalf of the New York Credit Union Association, which has represented the interests of both state and federal credit unions in New York for more than 100 years, I would like to comment on NCUA's Advanced Notice of Proposed Rulemaking requesting suggested changes to NCUA's bylaws. This is an important opportunity to advance needed changes in the core operational framework. These comments reflect the concerns raised by credit unions in both a survey responding to this ANPR and the experience the Association has had in advocating for past bylaw changes.

NCUA should take this opportunity to clarify precisely what powers credit unions have to remove disruptive and abusive credit union members. Bylaws should clearly explain board powers. Unfortunately, there have been so many opinion letters detailing various powers related to the removal of members that the bylaw language has ceased to be of much use. In contrast, New York State law contains a list of the exact circumstances under which members can be expelled from a credit union (See §464 New York Banking Law).

As part of this clarification, NCUA should also consider reducing the amount of due process to which a credit union member is entitled before being removed for abusive and/or disruptive conduct. Instead of mandating that an expulsion has to be approved pursuant to a special meeting of the membership, credit unions should be allowed to delegate removal authority to boards of directors. Due process could be satisfied by permitting members to present their side of the story to the board in giving them an opportunity to appeal to the membership as a whole.

NCUA should also take this opportunity to improve the process used for approving bylaw amendments forwarded to them by credit unions. Specifically, NCUA should have a timeframe by which amendments should be either rejected or considered approved. The clock would only start running when NCUA has received all the information it needs to make a decision. This approach would ensure NCUA has the materials it needs to review any bylaw amendment requests, while at the same time, ensuring that credit unions can plan for changes.

Two proposals in the ANPR would allow NCUA to codify board member qualifications in the bylaws. Specifically, NCUA is requesting comment on whether or not it is appropriate to amend the bylaws to "encourage the recruitment of new board members." In addition, NCUA is seeking

authority to mandate that certain criteria be considered by board nomination committees. The Association opposes NCUA's suggestion that membership qualifications be embedded into the bylaws.

The Federal Credit Union Act imposes very general requirements on board membership. Under the existing framework, credit unions can choose appropriate criteria for persons to be selected by a board nomination committee. Crucially, the democratic ethos under-pinning the credit union industry is so strong that even members not chosen by a nominating committee must still have the opportunity to run for a board seat. As member-owned, not-for-profit cooperatives, it is ultimately the prerogative of individual credit unions and not government regulators to determine what criteria best qualifies an individual to serve on a given board. By embedding criteria in these bylaws, NCUA would effectively be preempting the authority of members. It even raises the possibility that a member could be removed simply because he/she doesn't meet the criteria outlined by NCUA.

Finally, NCUA requests feedback related to the use of technology to increase participation in annual membership meetings. At this point, there is a lack of consensus within the Association's membership about whether technology should be used for this purpose. At the very least, NCUA should not go forward with any proposals in this area until it has confidence that the technology to be used is resistant to tampering. In addition, some members expressed concern that technology not properly employed would hinder an annual meeting rather than make it open to more members.

Thank you for the opportunity to comment, and we look forward to continuing the dialogue on this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "W. J. Mellin". The signature is fluid and cursive, written in a professional style.

William J. Mellin
President/CEO
New York Credit Union Association