



January 14, 2019

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

Re: 12 CFR Part 701 Appendix A – Comments on Notice of Proposed Rulemaking re: Federal Credit Union Bylaws; RIN 3133-AE86

Dear Mr. Poliquin:

The Michigan Credit Union League (MCUL) the statewide trade association representing 100% of the 224 credit unions located in the state of Michigan and their 5.3 million members appreciates the opportunity comment on the National Credit Union Administration's (NCUA) proposal to update, clarify and simplify the Federal Credit Union (FCU) Bylaws.

MCUL believes in a strong dual chartering system as the dual chartering system gives credit unions a choice with regard to laws, bylaws, regulations, supervisory fee structure and service provided by the regulator. Of the 224 credit unions in Michigan 87 are federally chartered and 137 are state-chartered with most assets also held in the state charter.

As stated in our comments to the NCUA Board (Board) during the ANPR process, MCUL appreciates the Board's effort to update the standard bylaws for federal credit unions. Doing so will encourage healthy competition between the charters and continue to ensure a thriving dual chartering system. This is especially important in an industry of rapid consolidation primarily through credit union mergers.

MCUL recognizes the Federal Credit Union Act (FCUA) restricts the ability of the NCUA Board to modernize the federal charter. Utilizing the bylaws as a vehicle to amend provisions the Board is otherwise unable to address is another step the Board is taking in providing relief and guidance to credit unions. MCUL appreciates the Board's efforts to recognize concerns addressed during the ANPR process. We will address remaining concerns and the Board's request for comment herein.

Improvements to the Bylaw Amendment Process:

The Board is proposing to establish an explicit 90-day calendar day deadline for the NCUA's Office of Credit Union Resources and Expansion (CURE) – of which is now the primary division of the NCUA handling bylaw amendments – to reach a decision on a bylaw amendment request by an FCU. The Board requests comment on another period for processing such requests. The current FCU bylaws provide no time frame for processing such requests. While the 90-day timeframe is an improvement from the lack of any time frame MCUL feels 90 days is excessive.

MCUL understands the review of bylaw amendments may be a burdensome task, a lesser timeframe of 60 calendar days is more reasonable. Michigan's state-chartered credit union requests are processed expeditiously with an average turnaround time of 30-60 days at the most. To address pressing operational concerns, MCUL requests the NCUA Board consider a timeframe not to exceed 60 calendar days to process an FCU's request to amend its bylaws.

The proposal also states if CURE does not reach a decision on a proposed bylaw amendment within 90 days, the FCU seeking amendments should consider the proposed amendments denied. MCUL does not support the automatic denial. We understand CURE may not be able to review and respond to a request within a specific timeframe. In an instance where CURE is unable to respond within the pre-established timeframe, we believe CURE should notify the credit union of the delay and complete the review rather than an automatic denial of the request. Having no communication and a presumed automatic denial is problematic.

Without a response from CURE, an FCU will not know if the proposed amendment was denied due to a defect with the requested change; or the proposed amendment was denied simply as a result of CURE's inability to review within the allotted time frame. Additionally, if the proposed amendment was denied due to a defect with the request, a lack of response from CURE fails to provide the FCU with any detail on the reason it was denied. MCUL believes CURE should provide a reason for denial so the FCU could address its initial request and amend accordingly.

Member in Good Standing – “Violent”, “Belligerent” and “Disruptive” Members

The FCUA authorizes the credit union board of directors to expel a member based on his/her non-participation if a majority of the board agrees. The FCUA 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 the opportunity to be heard (1764(a)). These provisions are restated in the current NCUA Bylaws, Article XIV, Expulsion and Withdrawal, noting that services may be “limited” for a “member who is disruptive to credit union operations.”

The Board's proposal would create a new section 5 addressing limitation of services. The Board has proposed incorporating NCUA legal opinion letters and other guidance into the bylaws to assist credit unions in determining how to expel a member however, the proposal seeks to accomplish this under the context of a “member in good standing” and whether a violent or abusive member would be considered as such.

The proposal is specifically seeking comment from stakeholders on how the Board should define and clarify the terms “violent,” “belligerent,” and “disruptive,” in the context of defining a “member in good standing”. Michigan credit union stakeholders provided the following input in response to the definition of “member in good standing”. Respondents are seeking a broad definition similar to the following:

A person's behavior that includes any act or threat of physical violence, harassment, intimidation or other threatening disruptive behavior that would create a hostile or dangerous environment for employees and/or members of the credit union. A hostile environment is one in which one's behavior creates an environment that is difficult or uncomfortable for another person.

The Board also requested specific examples of such behavior. A few examples from our member credit unions were provided including the following:

- Physically or verbally abusive towards staff, volunteers or other members – to include any actions or words that are unwanted or suggest the situation could lead to an unwanted environment;
- Harassment, derogatory language, profanity, threats and intimidation
- Threats of violence – direct or insinuated; written or verbal
 - *A member was purchasing gifts for tellers, giving them his phone number, repeatedly asking them on dates and making inappropriate comments. Some of the gifts including clothing in which he would become upset if the tellers did not try them on or wear them. The behavior continued to escalate to the point staff were concerned for their safety. Since we could not expel this individual our only course of action was to issue a “trespass” against him for that branch location.*

Many credit unions maintain a “limitation of services” or similar policy to address problematic member, including related to those behavior described above and addressed in proposed section 5. Such policies are helpful to an extent, however challenges in dealing with unruly members is an unfortunate reality. Aside from a credit union’s ability to limit member services, an FCU is ultimately restricted in available remedies, such as expulsion, as discussed in the example above.

While we greatly appreciate the Board’s intent and believe some aspects of the proposed section 5 could be helpful, we are concerned that the potential downside of the proposed language still leaves a gray area in which a credit union may still be unable to expel an abusive member. Therefore, MCUL would prefer to see a broader definition of “violent,” “belligerent,” and “disruptive” included in the definition of a “member in good standing” allowing for a more workable avenue to expel such a member, rather than just their financial standing with the credit union.

Electronic Voting

The proposed rule provides staff commentary (comment vii) clarifying electronic voting. The commentary states that an FCU may use many forms of electronic voting as it wishes for those members who choose to vote electronically. However, the proposal does not allow an FCU to adopt an electronic-only voting process. While modern technological innovations have changed the way that corporations and other businesses conduct meetings and hold elections, NCUA remains concerned allowing electronic-only voting could disenfranchise those members that do not have access to electronic devices or that may live in areas without access to reliable internet. NCUA will, however, consider bylaw amendment requests allowing for electronic-only voting on a case-by-case basis.

MCUL appreciates NCUA’s concern about disenfranchising members. We disagree with the proposed commentary prohibiting an FCU from utilizing electronic-only voting. We would argue that a credit union’s management knows its membership best and therefore we think it is appropriate to permit an FCU to determine which method of voting most appropriate. Credit unions want members to participate in the voting process. It would be unlikely a credit union would utilize a voting method that precludes members interested in voting from doing so. The more NCUA can encourage remote participation by explicitly including the permissibility of electronic or virtual participation, the more likely membership participation in annual and special meetings will increase. Digital and virtual/remote technologies continue to evolve and NCUA must empower credit unions to embrace change in all facets of their operations.

If the Board does not agree to allow FCUs to freely employ electronic-only voting (reflective of that in the proposed commentary), MCUL would support allowing electronic-voting on a case-by-case basis.

Conclusion

MCUL is encouraged by the NCUA's efforts, particularly in the areas addressed in our comments. However, as NCUA continues the dialog and rulemaking process MCUL encourages the NCUA to seriously consider industry comments and concerns. While we understand the restrictions in amending the federal charter we also encourage the NCUA to continue efforts to ease burden on federal credit unions. We look forward to continued collaboration and discussion with the agency.

Sincerely,

A handwritten signature in black ink, appearing to read 'DA', with a long horizontal flourish extending to the right.

Dave Adams, CEO
Michigan Credit Union League and Affiliates