

Submitted via regcomments@NCUA.gov

January 14, 2019

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

Re: Comments on the NCUA Board's Proposal Regarding the Federal Credit Union Bylaws

Dear Mr. Poliquin:

Digital Federal Credit Union (DCU) appreciates the opportunity to provide comments to the National Credit Union Administration Board on its proposal to amend the Federal Credit Union Bylaws, 83 FR 56640 (November 13, 2018).

DCU Is Generally Supportive of the Proposal But Additional Changes Would Further Improve the Bylaws

We believe the proposal is generally positive and commend the agency for undertaking its review of the bylaws and developing a proposal that, in a number of areas, reflects earlier comments received on the Advance Notice of Proposed Rulemaking issued in March. However, we ask the Board to make some important changes to facilitate the application of the bylaws, as discussed below.

Introduction: How Long It Takes to Process Bylaw Amendment Requests Should be Shortened

The agency is proposing to include a timeframe for the Office of Credit Union Resources and Expansion to consider and act on a federal credit union's request for a bylaw amendment. This proposed change is a step in the right direction. Our concern, though, is that the agency would have 90 calendar days to decide whether to approve an amendment. We feel this time period is too long.

Bylaws are important guideposts for governance and in some cases, operational issues as well. Credit unions should not have to wait three months for the agency to decide on their requests to adapt or create a bylaw for their particular needs. Credit unions would not seek an amendment to the bylaws if they did not feel it was significant for their governance or operations.

Given the nature of the bylaws, we respectfully request that the Board decrease the number of calendar days for the agency's review. Rather than 90 days for the agency's process, we would prefer a 30-day turn around time. If more time is needed by NCUA in some rare situations, the decision should be made within 60 calendar days.

The proposed treatment of the review period does not reflect the majority of comments to the ANPR. The Supplementary Information to the proposal notes that most commenters to the

ANPR supported a 30-day review period, 83 FR 56641. Their views reflect the significance of the bylaws and the need for expedience should a bylaw change be requested.

We hope the agency will reconsider this issue, take the support for a shorter review period into greater account, and reduce its review period – which should be 30 days in most cases but no longer than 60 days. Similarly, if the agency has not decided and notified the requesting credit union within that timeframe, the credit union should be able to consider the amendment approved.

Article II Changes Regarding “Member in Good Standing” Seems Appropriate But Further Clarification of Terms Such as ‘Abusive,’ Etc., Would Be Counterproductive

In order to help federal credit unions manage situations with abusive and disruptive members, including invoking limitation of services policies, the agency is proposing to distinguish most other members who do not engage in such behavior as “member(s) in good standing.” DCU finds this approach useful as it lays out standards that will facilitate a credit union’s ability to impose permissible sanctions on members who do not meet the standards, consistent with the Federal Credit Union Act (Act), the bylaws, and the credit union’s policies.

The agency is seeking comments on the application of terms such as “violent,” “belligerent,” “disruptive,” and “abusive” as they relate to member behavior and whether to include examples of these in the NCUA staff commentary to the bylaws. Some credit unions may find the inclusion of examples of such behavior in the commentary to be useful.

Even so, DCU does not think the bylaws or the commentary should attempt to clarify the terms noted above other than possibly by including examples. Our view is that all abusive or disruptive behaviors that might occur at a credit union cannot be envisioned in clarifying such definitions, and credit unions should not be artificially restricted in their legitimate efforts to manage truly abusive and disruptive members.

Article IV, No New Requirements on Posting Annual Meeting Notices in the Office Are Needed

The proposed rule would require federal credit unions to post annual meeting notices in a conspicuous place in the office of the credit union at least 30 days before the annual meeting. DCU does not agree the bylaws need to include this requirement, particularly since the agency has not felt such a directive was needed up to now. There are several articles that deal with posting bylaws, bylaw amendments and meeting notices on a federal credit union’s website. (Articles IV, V, VI and VII.) While DCU supports providing this information to members, we do not agree the bylaws should direct how that is accomplished.

Article V, How Nominating Committees Publicize the Call For Nominations Should not Be Addressed in the Bylaws

DCU agrees with the agency that wide publication to the membership to solicit candidates for board and committee seats could result in greater member participation in a credit union’s elections. However, DCU’s position is that each federal credit union should determine for itself how the call for nominations is published. With all the rules and regulations credit unions generally have to follow, we do not think NCUA should add new requirements through the bylaws on how the call for nominations should be communicated to members. DCU respectfully requests the agency not include such provisions in the final bylaw changes.

Article XIV, Proposed Commentary to the Provisions on Expulsion Provide Additional Explanation

The agency seeks to clarify the legal limitations federal credit unions face under the Act when confronted with the issue of membership expulsion. While more flexibility to effect an expulsion for certain significantly disruptive members (e.g. members attempting fraud or creating employee safety issues) is desirable, DCU recognizes that the Act is very clear as to how expulsions must be handled and that the agency does not have leeway in this area to provide additional authority through the bylaws to credit unions. In light of that, in relation to Article II, the commentary expands on what credit unions can do to deal with such members, short of expulsion. Nonetheless, DCU encourages the agency to agree now to revisit the issue of significantly disruptive members twelve months after a final rule on the bylaws has been implemented to hear from credit unions the extent to which this set of bylaw and commentary changes has helped federal credit union's address these member situations.

Conclusion

The bylaws address a number of fundamental issues but must be updated on a continual basis as the financial marketplace evolves in order for them to be relevant, and useful to credit unions and their members. DCU commends the agency for reviewing the bylaws and developing the proposal, which includes important clarifications and amendments. We also propose several changes, which would further improve the bylaws and facilitate their use by credit unions.

Best regards,



David DeWitt
Senior Vice President Enterprise Services
Digital Federal Credit Union