

January 14, 2019

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

RE: Comments on FCU Bylaws

Dear Mr. Gerald Poliquin,

I am writing on behalf of the California and Nevada Credit Union Leagues (Leagues), one of the largest state trade associations for credit unions in the United States, representing the interests of more than 260 credit unions and their approximately 10.7 million members.

The Leagues applaud the NCUA Board (Board) for its efforts to modernize the federal credit union bylaws (FCU Bylaws), and we welcome the opportunity to provide comments on the proposed amendments. The proposed changes are meant to: update and conform the FCU Bylaws to legal opinions issued by the NCUA's Office of General Counsel; provide greater flexibility to federal credit unions (FCUs); remove outdated or obsolete provisions; make certain clarifications; and improve readability by incorporating plain English writing principles.

The Leagues agree with and support many of the proposed changes and additions of clarifying staff commentary. However, there are several proposed amendments, particularly in Articles IV and V, that we believe are not progressive, do not reflect well on the credit union image, and are overreach by the regulator. We respectfully offer the following comments on the proposed FCU Bylaw amendments.

Introduction

Bylaw Amendments Timeline

For many amendments to the standard FCU Bylaws an FCU must request approval from the NCUA's Office of Credit Union Resources and Expansion (CURE). The standard FCU Bylaws do not provide for any timeline by which CURE must arrive at its determination, except in the case of previously approved bylaw amendments.

The Leagues thank the Board for acting to establish a reasonable timeline for CURE to make a bylaw amendment determination. We recommend the Board adopt a 60 calendar day deadline if the NCUA believes that 60 days would afford the Office of CURE sufficient time to consider and respond to a bylaw amendment request. If that is not the case, then we support the proposed 90 calendar days since failure by CURE to approve a bylaw amendment within the designated timeframe would cause the bylaw amendment to be treated as a denied.

Article II. Qualifications for Membership

Limitation of Services and Member in Good Standing

Article II outlines the requirements for obtaining and continuing FCU membership. The proposed rule incorporates into the FCU Bylaws staff commentary prior legal opinions by the NCUA's Office of General Counsel addressing measures that an FCU may take to address abusive and disruptive members. That is, an FCU may limit services or access to credit union facilities to violent, belligerent, disruptive, or abusive members provided that there is a logical relationship between the objectionable conduct and the services to be suspended. The member must also receive adequate notice of the FCU's limitation of services policy.

To facilitate an FCU's implementation of its limitation of services policy, the proposed rule also amends Article II to distinguish between a member that retains all of the rights and privileges associated with FCU membership and a member that is subject to a limitation of services or a restriction on access to credit union facilities. The

proposed rule adds a new section 5, describing the concept of a “member in good standing.”

The Leagues support the proposed amendments to the bylaws and staff commentary and agree that these amendments would be helpful for credit unions. While terms such as “violent,” “belligerent,” “disruptive,” and “abusive” are subjective and, therefore, may not provide absolute clarity, we do not believe the Board should attempt to clarify these terms. Any attempt to define subjective terms or provide a list examples would not be an exhaustive list, and therefore could result in limiting a FCUs’ response. FCUs should retain the flexibility to determine when such behavior is occurring and take appropriate actions to protect staff, other members, and facilities.

Article III. Shares of Members

Par Values

The Leagues support the proposed amendments related to par values. We agree that FCUs should be permitted to establish differing par values for different classes of membership (such as students, minors, or non-natural persons), provided that such differences conform to applicable legal requirements established by federal, state, or municipal antidiscrimination laws. We also agree with the proposed clarification that FCUs have options regarding the share type in which the member must hold the par value of share; that the par value does not have to be in a regular share account.

Trust Accounts

The Leagues support the proposed staff commentary that clarifies that there is no requirement that the settlor of a revocable trust, or the settlor or beneficiary of an irrevocable trust, first establish a regular share account to become a member. Rather, the membership obligation can be satisfied through the opening of the trust account itself. This clarification is beneficial and can help prevent the creation of separate, unused shares.

The Leagues agree with and support the proposed bylaw and staff commentary that states a trust itself, either revocable or irrevocable, may be a member of the credit union in its own right if all parties to the trust, including all settlors, beneficiaries and trustees, are within the field of membership. If all parties to the trust are within a credit union’s field of membership, the trust qualifies as “an organization of such persons.”

However, a related proposed staff commentary creates some confusion. That is, a proposed staff commentary states, in regard to an irrevocable trust, that the credit union need not necessarily view the trust account as a separate legal entity, with its own separate tax ID number. Instead, it need only verify and confirm the eligibility of either the settlor or the beneficiary (or all of the settlors or all of the beneficiaries in the case of multiple settlors or beneficiaries) to join the credit union. It is unclear if this is an accurate statement when the trust itself is a member of the credit union. In compliance with the USA PATRIOT Act, whose tax identification number is used in this scenario? We recommend the staff commentary clarify this point.

Article IV. Meetings of Members

The proposed rule makes several changes to Article IV—Meeting of Members and Article V—Elections that are meant to encourage greater member participation. However, these are areas in which the Leagues believe that the proposed amendments not progressive and are unnecessary.

Notice Requirements

Under Section 2, the proposed rule requires that the notice for the annual meeting be posted in a conspicuous place in the FCU’s physical office, such as at the teller windows or on the front door of the FCU’s office, at least 30 calendar days before the meeting. The notice must also be prominently displayed on the FCU’s website if the credit union then maintains a website.

While this proposal is not overly onerous on credit unions, it is not progressive and does not reflect the way our next generation of members will interact with the credit union. The Leagues support posting the annual meeting notice on the credit union’s website, if the credit union maintains a website. However, we do not agree with the requirement to also post the notice in a conspicuous place in each of the FCU’s physical locations. The Leagues recommend this be an “or” requirement. That is, an FCU should post the annual meeting notice on the credit union’s website (if the credit union maintains a website) OR post this information in a conspicuous place in each credit union office at least 30 days before the annual meeting. FCUs should not be required to post the

notice in each physical location when the notice is posted on their website.

Quorum Requirements

Under Section 5, the proposed rule adjusts the quorum requirement for meetings. It requires 12 members, excluding the board, credit union staff, and officials, for a quorum. (Currently, 15 members constitute a quorum.) As is currently the case, if no quorum is present, an adjournment may be taken to a date at least 7 but not more than 14 days thereafter. The members present at any adjourned meeting will constitute a quorum, regardless of the number of members present.

The Leagues strongly oppose this proposed amendment to the quorum requirements. Credit union board members, officials, and staff who are members of the credit have equal rights as other members. The proposed amendment implies these members' rights are inferior to the rights of other members and treats them as if they do not count. This proposed amendment is an overreach by the NCUA and does not conform with their role as an insurer or regulator. The proposed amendments are not necessary for FCUs to comply with safety and soundness requirements, nor do they in any way help FCUs or their members.

Virtual and Hybrid Meetings

Under Section 1, FCUs are required to hold an annual or special meeting in the county in which any office of the FCU is located or within a radius of 100 miles of such an office. The proposed rule does *not* change this requirement, nor generally allow an FCU to conduct a virtual or hybrid (combined virtual and in-person) annual or special meeting. The NCUA will, however, consider bylaw amendment requests allowing for hybrid meetings on a case-by-case basis depending on, among other things, the FCU's size, nature, and field of membership.

The Leagues strongly recommend the FCU Bylaws permit FCUs to conduct hybrid meetings. Not permitting hybrid meetings as a standard option is not progressive and does not reflect the current and future ways in which members interact with their credit union. There are many reasons why members do not attend annual or special meetings; inconvenience is certainly one reason. Permitting hybrid meetings would allow members to participate without the inconvenience of travel, missed work, babysitters, etc. If the Board wants to encourage more member participation in meetings, they should open the channels, not unnecessarily restrict them.

Webcasts and Videos

In the staff commentary, the proposed rule encourages FCUs who maintain a website to provide a live webcast of annual and special meetings for interested members, and/or post a video of the annual meeting on the FCU's website. The preamble to the proposed rule states, "This policy encourages members to participate in the annual meeting, while also providing access to members who cannot attend meetings in person."

The Leagues believe that the Board should not "encourage" this or other practices in staff commentary. Encouraging a practice makes it difficult for FCUs to comply. While the practice is only encouraged, they may encounter an examiner who believes they should conform and then include such a finding in their exam report.

In addition, some FCUs do not have legal counsel present at their annual meetings and when they field questions from the floor their response may put the FCU in a bad spot, especially if it is broadcasted to thousands of members. FCUs' legal counsels may recommend they do not broadcast the meeting, or alternatively, not field questions from the floor without the presence of legal counsel.

Article V. Elections

Increased Voting Methods

The proposed rule amends the staff commentary to encourage FCUs to take steps to increase the number of members who vote in FCU elections by increasing the range of voting options. The Board believes that, where possible, FCUs using one of the in-person voting options should consider offering mail or electronic ballots in addition to in-person voting. Similarly, FCUs conducting elections by mail and electronic means should consider also offering in-person voting.

While the proposed staff commentary encourages this approach, interested FCUs would have to pursue bylaw amendments individually in order to do so. The Leagues recommend the NCUA instead provide this voting option in the standard FCU Bylaws, particularly if the Board is going to encourage this approach. In addition, we

have the same comments as above regarding the difficulty of FCUs to comply with “encouraged” practices.

Nominations

The proposed rule would require the nominating committee to widely publicize the call for nominations to all FCU members by any medium the FCU determines and interview every member who volunteers. The Leagues believe this proposed requirement is another overreach by the NCUA as an insurer and regulator. FCUs should be permitted to conduct their nomination process as they see fit.

The proposed rule would also require the secretary post the nominations by petition, along with those of the nominating committee, on the credit union’s website (if the credit union maintains a website). This requirement is in addition to the current requirement of posting this information in a conspicuous place in each credit union office at least 35 days before the annual meeting.

Similar to our comments above regarding the annual meeting notice, this notice requirement should also be an “or” requirement. That is, an FCU should post the nominations by petition, along with those of the nominating committee, on the credit union’s website (if the credit union maintains a website) *OR* post this information in a conspicuous place in each credit union office. FCUs should not be required to post the notice in each physical location when the notice is posted on their website.

In addition, the annual meeting notice is required to be posted at least 30 calendar days before the annual meeting, while the list of nominees is required to be posted at least 35 days before the annual meeting. The Leagues recommend the Board make the timing of these notices consistent, and we suggest at least 30 calendar days for both.

Article VI. Board of Directors

Directors Emeritus and Associate Directors

The proposed rule includes a new section that an FCU may adopt to create the position of director emeritus for former directors. The proposed rule also adds staff commentary that clarifies an FCU board may establish the position of associate directors through board policy.

The Leagues fully support these proposed amendments, including the FCU board’s role in specifying certain qualifying and limiting terms for directors emeritus and associate directors.

Attendance and Removal

The proposed rule amends the option for FCUs to remove a director or a credit committee member for failure to attend regular meetings. The current bylaw language allows FCUs to remove a director or credit committee member that has missed three consecutive months, or four meetings in a calendar year.

The Leagues support the proposed rule that allows an FCU to select a different time period for the four missed meetings; that is, they may choose four meetings in a calendar year, or four meetings within any 12 consecutive months.

Article XIV. Expulsion and Withdrawal

New staff commentary reiterates that the FCU Act provides only two methods for an FCU to expel a member – upon a two-thirds majority vote of the membership at a special meeting called for that purpose or by operation of a board-approved nonparticipation policy. The staff commentary also clarifies that only in-person voting is permitted in conjunction with a special meeting held for that purpose.

The proposed staff commentary also clarifies that, short of expulsion, an FCU has a wide range of measures available to address abusive or disruptive members under Article II, and it references Article XVI, Section 1, which addresses situations when members use their accounts for unlawful purposes.

The Leagues support the addition of new staff commentary and clarifications. The additional clarity would be helpful to FCUs.

Article XVI. General

Availability of Credit Union Records

The proposed rule requires FCUs with websites to post their bylaws on the website. The Board believes that adding this new requirement will ensure that members without access to an FCU's physical location where they can request a copy of the bylaws can still have access to the FCU's corporate governance documents.

The Leagues oppose this proposed amendment as it is not necessary. Currently, the FCU Bylaws require an FCU's charter and bylaws be made available for inspection by any member and, if the member requests a copy, it will be provided for a reasonable fee. The justification for the proposed amendment presumes a member without access to an FCU's physical location does have access to the FCU's website. In that case, the member may request a copy of the bylaws via website contact or email. A copy of the bylaws can be provided electronically to the member through email or a member portal, thereby ensuring quick response to the member's request.

Further, requiring FCUs to post their bylaws on their website can lead to confusion by consumers and members. When NCUA amends the standard FCU Bylaws, FCUs may adopt all, part, or none of the amendments. Therefore, comparison of a FCU's bylaws and the NCUA's current standard FCU Bylaws could lead to misinterpretation and confusion, particularly with provisions that have been grandfathered in over the years since a FCU was originally chartered.

Article XVIII. Definitions

The proposed rule makes a few technical changes to the definitions applicable to all of the FCU Bylaws, including a listing of approved board officers and their definitions. The Leagues support the addition of these definitions as they provide better clarity, particularly to the terms "Management Official" and "Management."

Conclusion

The Leagues thank the Board for acting to modernize the FCU Bylaws and for the opportunity to comment on the proposed amendments. We support many of the proposed changes and additions of clarifying staff commentary. However, there are several proposed amendments in Articles IV and V that we believe moves the credit union industry backwards, not forward. It is crucial that the NCUA ensure FCUs remain a charter of choice, as opposed to one that is onerous and has antiquated practices.

We hope that you carefully consider our views and recommendations. If you have any questions regarding our comments, please contact me.

Sincerely,

Diana Dykstra
President and CEO
California and Nevada Credit Union Leagues

cc: CCUL