



January 14, 2019

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

*Submitted electronically
to regcomments@ncua.gov*

RE: Comments on FCU Bylaws; RIN 3313-AE86

Dear Mr. Poliquin,

The Credit Union Association of the Dakotas (CUAD) appreciates the opportunity to provide comment to the National Credit Union Administration (NCUA) regarding its proposed rulemaking concerning Federal Credit Union (FCU) Bylaws. CUAD supports the NCUA in its overall effort to modernize and clarify the FCU bylaws. We encourage the NCUA to adopt more flexibility in the model bylaws to accommodate the unique diversity that exists in federal credit unions across the country. The Credit Union Association of the Dakotas represents federally chartered credit unions in the states of North Dakota and South Dakota that range in size from under \$5 million in assets to over \$1.2 billion in assets – and from under 500 members to over 66,000 members.

Introduction – 3(c). Bylaw Amendments

The NCUA is proposing to establish a 90 calendar day deadline for the Office of Credit Union Resources and Expansion (CURE) to reach a decision on a bylaw amendment. Specifically, the proposed language would provide that, “CURE will advise the credit union within 90 days if it approved the proposed amendment after its review and, if necessary, consultation with the NCUA’s Office of General Counsel. If CURE denies a proposed amendment, the credit union may appeal that decision to the NCUA Board in accordance with the procedures set out in subpart B to part 746 of this chapter. For purposes of this provision, if CURE does not reach a decision within 90 days, the proposed amendment is considered to be denied.”

As most bylaw amendments are in response to an operational issue and/or change, CUAD believes 90 days is too long to wait for a decision and suggests that 45 calendar days would be more



appropriate for a response. Furthermore, if CURE does not reach a decision within 45 calendar days, the proposed amendment should be considered approved.

This would be consistent with other provisions within NCUA regulations, such as 12 CFR 702.206, regarding Net Worth Restoration Plans (NWRP), specifically, “(f) Review of NWRP (1) Notice of decision. Within 45 calendar days after receiving an NWRP under this part, the NCUA Board shall notify the credit union in writing whether the NWRP has been approved, and shall provide reasons for its decision in the event of disapproval. (2) Delayed decision. If no decision is made within the time prescribed in paragraph (f)(1) of this section, the NWRP is deemed approved.”

Article II. Qualifications for Membership

The NCUA proposes to add section 5 which would define “member in good standing.” As proposed, “A member in good standing is a member who maintains at least the minimum share set forth in Article III, Section 1 of these bylaws; who is not delinquent on any credit union loan; who has not had any account with this credit union closed due to abuse or negligent behavior; who has not been belligerent or abusive to any duly elected or appointed official or employee when that official or employee is carrying out their duties as set in the Act, the rules and regulations, the charter, and bylaws of this credit union; and who has not caused a financial loss to this credit union.” 83 FR 56650, November 13, 2018.

The definition concludes with, “Subject to Article XIV of these bylaws and any applicable limitation of services policy approved by the board, members not in good standing retain their right to attend, participate, and vote at the annual and special meetings of the members and maintain a share account.” *Id.*

Staff commentary would be expanded regarding violent, belligerent, disruptive or abusive members and limitation of services policy. The commentary includes, “So long as the individual is not barred from exercising the right to vote at annual meetings and is allowed to maintain a regular share account, the FCU may fashion and implement a policy that is reasonably designed to preserve the safety of its employees and the integrity of the workplace.” 83 FR 56661.

CUAD has concerns with the language of proposed section 5, specifically for members not in good standing regarding their “right to attend” membership meetings. Unless the matter of their expulsion is to be considered at the meeting, an abusive, potentially violent member, that has otherwise been prohibited from going on credit union premises should not be allowed to attend a meeting in person and only should be allowed to vote remotely.

CUAD agrees that the terms “violent,” “belligerent,” “disruptive,” and “abusive” are subjective, but is cautious to recommend any singular definition or example for each term as it



may limit a credit union's flexibility in applying a limitation of services policy. For example, talking on one's cell phone could potentially be deemed disruptive, especially, twenty years ago, now it is the norm. Perceptions change and bylaws need to be fluid enough that it does not need to be amended on a continuous basis. Furthermore, the facts and circumstances surrounding the particular event must also factor in. Therefore, to define every scenario that could fall into a particular category could potentially limit its application.

Article III. Shares of Members

The NCUA proposes to add language that would allow FCUs to establish varying par values for different classes of membership. The examples given include students, minors and non-natural persons. CUAD requests the NCUA include clarification in the commentary regarding transitioning between different types of accounts, for example, if a minor opens an account and pays \$5 for the par value, but when they turn 18 an account has a par value of \$10 – is the member required to pay additional \$5? Are they grandfathered in at the \$5 value as a once a member always a members concept? Would the credit union need to close the minor account and then re-open an adult account.

Article IV. Meetings of Members.

Currently section 5 of Article IV provides that 15 members constitute a quorum at annual or special meetings. The proposed rule would revise this section to provide that, "12 members excluding the board, credit union staff, and officials, constitute a quorum at annual or special meetings." CUAD objects to the board, staff and officials being treated as a lesser member for purposes of meeting a quorum – a member is a member. The NCUA notes that it is "proposing this adjustment to encourage FCUs to have wider participation from members, rather than allowing credit union staff and board members to control all corporate decision making within the credit union." *83 FR 56643* CUAD does not believe changing the quorum will have a meaningful impact on participation at meetings, it will just delay the inevitable by forcing an adjournment and rescheduling the meeting to a later date at which the quorum will be whoever shows up, while at the same time treating board, staff and officials as "lesser" members.

Commentary in the proposed rule would provide that, "FCUs are encouraged 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 NCUA Board encourages this policy for FCUs that currently have a website." *83 FR 56662* However, the discussion of the proposed rule notes that, "the proposed rule does not generally allow an FCU to conduct a virtual or hybrid (combined virtual and in-person) annual or special meeting....Due to its concerns about member disenfranchisement, however, the Board does not currently support adopting this position in a rulemaking that affects all FCUs." Encouraging credit union live webcast annual meetings might create confusion among



members in that they would be able to view and not participate in the meeting. Additionally, it may decrease member attendance at meetings if they can opt to just watch the meeting from home/office and not have to physically attend. If the meeting cannot be conducted virtually then a live webcast of the meeting should not be encouraged. Furthermore, live streaming a meeting creates additional concerns that some credit unions may not be able to easily mitigate, even if they have a website, for example the live stream may create privacy concerns for those in attendance. IT requirements to live stream a meeting may not be supported by their website.

Article V. Elections

CUAD encourages the NCUA to provide flexibility in elections process without the need for credit unions to make an individual request. Therefore, FCU bylaws should include an additional option for FCUs to use a combination of in-person and other remote options such as mail and/or electronic devices.

Article VI. Board of Directors

CUAD supports the NCUA's proposed language in the model bylaws and staff commentary relating to Director Emeritus. This is an item a number of CUAD affiliated credit unions have considered and we believe it is appropriate to include this language for FCUs. CUAD also supports the related commentary that clarifies that the decision to establish a director emeritus position is solely within the discretion of the board of directors. CUAD also appreciates the flexibility in that "the board may establish a director emeritus position by adopting either the optional bylaw amendment or a board policy." 83 FR 56663 CUAD also supports the clarification in the staff commentary regarding associate directors noting that "the board may also establish the position of associate director through board policy." *Id.*

Article XVI. General

Current Section 6. *Availability of credit union records provides*, "All books of account and other records of this credit union must be available at all times to the directors and committee members of this credit union provided they have a proper purpose for obtaining the records. The charter and bylaws of this credit union must be made available for inspection by any member and, if the member requests a copy, it will be provided for a reasonable fee."

The proposed rule would expand this section to require, "If this credit union maintains a website currently or in the future, the board must post the bylaws of this credit union on the website." CUAD objects to this requirement as overly burdensome on the credit union. It is CUAD's opinion that, in general, bylaws are not referenced by members unless there is an issue and/or it is a potentially litigious law firm trolling as has been plaguing credit unions on various other issues.



CUAD agrees that members must be provided a copy of the credit union's charter and bylaws upon request. As an alternative, CUAD suggests that in lieu of posting the actual charter and bylaws on the website for anyone and everyone to obtain, that a credit union post a notice on how members can request a copy of the charter or bylaws, that way the credit union can limit its access to only members and also can have a heads up if there is going to be a potential problem so as to address it immediately. CUAD supports the remainder of the change, specifically, "The board must also make the charter and bylaws of this credit union available for inspection by any member, upon request. If the member requests a copy of the charter or bylaws, the board will provide a copy to the member. The board may provide this copy to the member in physical or electronic copy. If the member requests a physical copy, the board may charge a reasonable fee for the physical copy." 83 FR 56660

Finally, CUAD supports the revision of Section 7 regarding member contact information. The proposed rule expands the requirements that, "members must keep the credit union informed of their current address" to also keep email addresses current with the credit union.

Thank you for this opportunity to share our comments and concerns.

Respectfully,

Jeffrey Olson
CEO/President

Amy Kleinschmit
Chief Compliance Officer