

January 7, 2019

Mr. Gerald Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke St
Alexandria, VA 22314

[Delivered Electronically](#)

Subject: 12 CFR Part 701 Appendix A – FCU Bylaws; RIN 3133-AE86

Dear Mr. Poliquin:

On Thursday, October 18, 2018, the National Credit Union Administration (NCUA) issued a notice of proposed rulemaking regarding ways to streamline, clarify, and improve the standard Federal Credit Union (FCU) Bylaws. The Northwest Credit Union Association (The Association) would like to thank the NCUA for working with stakeholders to modernize the FCU bylaws. This effort is important to a rapidly evolving credit union landscape, which requires the NCUA to regularly review and update the rules pertaining to bylaws and the governance of a credit union.

On behalf of more than 180 credit unions and their 6.5 million members, The Association is pleased to be able to offer our support for FCU bylaw modernization. In order to assist the NCUA in their effort to modernize, we sought input from our members through several different avenues including our NWCUA Regulatory Advisory Subcommittee, and we are pleased to provide that feedback to you.

General Comments

Northwest FCUs often express concerns that the FCU Bylaws do not provide the flexibility necessary to allow an FCU to respond to rapidly changing market practices or to address basic corporate governance matters in a prompt and efficient manner. Many of our credit unions have been making this point for the past eight years. While the NCUA has made a few efforts to modernize and update the standard bylaws over the past decade, those efforts have not resulted in tangible outcomes. To ensure that bylaws remain a catalyst for good governance and organizational change, we would encourage the NCUA to adopt an ongoing review process for updating the FCU Bylaws with a goal of determining what changes are necessary to provide additional flexibility to FCUs.

The current iteration of the FCU bylaws were adopted in 2006 and incorporated into the Code of Federal Regulations (CFRs) in 2007, more than a decade ago, and they have served FCUs well.

¹ The Northwest Credit Union Association is a regional trade association representing the interests of more than 180 credit unions and their 6.5 million consumer-members; institutions that employ and engage more than 19,000 people and hold more than \$90 billion in aggregate assets. The Association is a nonpartisan advocacy organization representing the interests of its member institutions on a variety of systemically important banking issues.

Credit unions affiliated with the Association are principally domiciled in Idaho, Oregon, and Washington, but the Association also has members from the states of Alaska, California, Utah and Hawaii. Learn more about the Association at www.nwcua.org.

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However, over the years they have become a hinderance rather than a catalyst. When FCUs consider switching to a state charter, restrictive and cumbersome bylaws are often cited as a consideration. There have not been significant bylaw revisions in 13 years, and we do not believe this to be a judicious practice as our industry and the marketplace are rapidly evolving. We recognize that a bylaws modernization project is a big undertaking, as such we would encourage the NCUA to adopt a 1/3 biennial review of their bylaws and commit to making necessary updates in a timely fashion. In addition, we encourage the NCUA to reinstate the ability for credit unions to adopt standard bylaw amendments from a booklet that is continuously updated.

Just as updating bylaws is a significant lift for the NCUA, updating bylaws can have a significant operational impact on credit unions as well. It is important to consider a principles-based approach that gives credit unions the flexibility to self-determine bylaw language. We appreciate the NCUA's thoughtful approach which would allow credit unions to adopt all, part, or none of the suggested bylaw changes. We strongly support the adoption in the final rule of this approach.

Specific Comments

FCUs often express concerns that the FCU Bylaws do not provide enough operational flexibility to allow an FCU to respond to changing market practices or to address basic corporate governance matters in a prompt and efficient manner. While many of the hinderances are a result of outdated provisions within the credit union act there are improvements that the board can adopt.

Prudential regulators often provide greater bylaw flexibility, in part, because they have fewer credit unions they oversee; however, current technology can be used to streamline bylaw modernization.

We would encourage the NCUA to remove bylaws from the CFRs. As an alternative, the NCUA could still require the adoption of a set of published model bylaws, while providing the NCUA flexibility to update bylaws outside of the administrative rules. This process would create greater adaptability and better serve the rapidly changing credit union environment.

The NCUA should also consider reordering the bylaw articles. As proposed, the progression of the articles is confusing and may cause challenges to both FCUs and the NCUA. For example, Article II and Article III outline membership qualification and membership shares, which makes sense. However, Article II references Article XIV which outlines expulsion of members. The natural place for Article XIV would be as a section of Article II, or expulsion should be renumbered as Article III as it is closely related to Article II.

The Association strongly supports the addition of the official commentary and we would recommend that the NCUA have links within the Articles to more easily access the official commentary.

In order to assist the NCUA team, we have provided our specific comments below, first by article and then second by section. We look forward to your positive review of our comments.

- **Article I - Name and Purposes**
 - **Section 2 - Purposes**

- a. **(recommend a change)** The Association appreciates that the NCUA broadened the scope from consumer purpose to member purpose in the draft rule. However, we would strongly encourage the NCUA to remove the member purpose statement entirely. The Credit Union Act outlines the purpose which can be carried out in several different ways. It is important for boards and management to carefully consider how they carry out their mission and to outline that mission within the context of the Act.
- **Article II – Qualifications for Membership**
 - **Section 2 - Membership application procedures**
 - a. We support eliminating the requirement for the board to approve forms. This is typically a staff level function and with the proposed bylaw change, credit unions have the flexibility to determine who makes the decision on which forms are used.
 - **Section 4 - Continuation of membership**
 - a. The Association appreciates the NCUA's careful consideration to limit services or access to the credit union to violent, belligerent, disruptive, or abusive members, and we appreciate the addition in section 4 that adds clarity to this section.
 - b. **(recommend change)** While we appreciate the official NCUA commentary around limiting service we would suggest a more detailed outline within the bylaws themselves around suspension of services This would help provide protection for the credit union in a case of litigation.

Suggested Language:

Suspension of Services. The Credit Union may suspend all services to any member, for cause, if a member engages in any of the following activities:

Intimidation, threats, harassment or physical or verbal abuse of Credit Union directors, committee members, employees, volunteers, members or agents of the Credit Union. This includes actions while on Credit Union premises and through use of telephone, mail, email or other electronic method.

Causes or threatens damage to Credit Union property. Unauthorized use or access of Credit Union property. Knowingly disseminating incorrect, misleading, confidential, or proprietary information regarding the Credit Union or its members. Any actions that may cause risk or harm to the Credit Union. In the event of a suspension of service, the member will be notified of what accounts or services have been discontinued.

- **Section 5 - Member in good standing**

- a. **(recommend a change)** The addition of the member in good standing clause is a significant improvement to the current bylaws. We would encourage the NCUA to add reputational loss as a criterion for being disqualified as a member in good standing.

- **Section 6 Member Duties (recommend adding a new section)**

Suggested Language:

It shall be the duty of each member to keep the Credit Union informed of the member's current address, to comply with the law, these Bylaws, and applicable obligations and agreements with the Credit Union, to refrain from any willful destruction or damage to Credit Union property, and to act with civility in all dealings with officers, employees and other members of this Credit Union. A member shall be considered in good standing with the Credit Union if the member complies with all duties, qualifications and requirements of these Bylaws.

- **Article III – Shares of Members**

- **Section 1 - Par value**

- a. **(recommend a change)** The Association strongly supports the ability for credit unions to create differing classes of par values giving credit unions greater flexibility to serve their members. We would encourage the NCUA to eliminate the installment option for credit union membership and we strongly support the NCUA's addition to the commentary that outlines that an FCU can set a \$0 par value.

- **Section 2 - Establishing membership**

- a. **(recommend a change)** The Association supports the addition of a section on establishing membership. We support the concept of being able to establish membership through multiple options. However, we would encourage the NCUA to provide more than two options and consider allowing FCUs to utilize a hybrid approach to establishing membership. A third option could establish membership through a loan account as long as eligibility is confirmed.

- **Section 6**

- a. **Withdrawals (recommend a change)** The Association supports eliminating the proposed 6 (b) – (e). These are better left to policy rather than bylaws and in some cases may conflict with state laws that apply to credit unions. Alternatively, the NCUA could include these sections as optional and provide commentary on why a credit union should consider adopting these sections within the bylaws.

- **Article IV – Meetings of Members**

- **Section 1 & 3 - Annual meeting & Special meetings**

- a. **(recommend a change)** Credit unions need greater flexibility pertaining to their annual membership meetings. Currently, attracting members to attend a membership meeting requires a significant expense of both time of CU employees and member money to cover marketing, materials, and other related items to attract a turnout. Even with a significant marketing effort it is rare that a credit union has even a moderate number of members in attendance at their annual meetings. The Association would strongly encourage the NCUA to consider adding to the official commentary, that ‘place’ as it pertains to an annual meeting, can be defined as a place online accessed through technology.
- **Section 4 - Items of business for annual meeting and rules of order for annual and special meetings.**
 - a. **(recommend a change)** Since this section is solely a suggestion on how annual and meetings should be carried out, it should be removed from the bylaws and instead added to the official commentary pertaining to this section. It is important for credit unions to consider independently how a meeting should be conducted. By outlining this in bylaws, that must be adopted by FCUs, it could create confusion if a credit union chose a different way of ordering their meetings.
- **Section 5 - Quorum**
 - a. **(recommend a change)** The section defining a quorum should not be arbitrarily set at 12 members. Instead the NCUA should leave the numerical requirement blank and allow credit unions to insert a number that constitutes a quorum.
- **Article V – Elections - General suggestions**
 - a. The Association strongly recommends that a FCU have the option to permit any combination of voting methods, which would include electronic, mail, and in person. Allowing the flexibility to vote by different methods will result in greater member participation. Under the proposal, a credit union must select one of four approved election procedures and none of the methods allow for multiple voting options.

Elections of Directors and Supervisory Committee members, voting may be conducted by voice vote, hand vote, paper ballot (including, without limitation, ballots cast in person or by mail or courier), or electronic ballot.
- **Article VII – Board Officers, Management Officials, and Executive Committee**
 - **Section 6 & 7 - Duties of financial officer & Duties of management official and assistant management official.**
 - a. This section should be combined as it is the responsibility of credit union management to hire a Chief Financial Officer.

The affairs of the Credit Union shall be directed by the Board of Directors. The Credit Union's day-to-day activities shall be conducted by a professional staff reporting to the President/CEO acting as Financial Officer to the board.

- **Article IX – Supervisory Committee**

- **Section 6** - Powers of supervisory committee—special meetings.

- a. The Association would suggest striking the following language from section 6 as it is overly broad and undefined.

“or to consider any practice of this credit union the committee deems to be unsafe or unauthorized.”

For example, a supervisory committee by majority vote which, per bylaws is 2 or 3 members, could call a special membership meeting at great expense to the credit union if the board or management were to say that a training in Hawaii was not authorized. Because there are no clear parameters this creates a potential for abuse.

Conclusion

In conclusion, the Association and its member credit unions appreciate the opportunity to comment on this important matter. We recognize that this was a significant undertaking and appreciate the efforts of the Board and the staff assigned to this project. We thank Chairman McWatters, Board Member Metsger, and Staff attorney Ben Litchfield, among others.

Our letter focused primarily on specific changes to the proposed bylaws, in addition our membership asked that the NCUA taking the following additional actions:

- Establish a 5-year review, 13 years is too long to go without significant bylaw revisions;
- Not require credit unions to adopt the new bylaws;
- Bylaw changes not apply to FISCUs.

We recognize that the Federal Credit Union Act is a significant barrier to bylaw modernization. The Association and our members are committed to advocating for changes to the Act that will further enhance the ability of the NCUA to make improvements to the standard bylaws. Two areas that our members and the Association believe the board should consider bringing to the attention of Congress also include:

- **Director Compensation** - The largest FCU in the country is the 30th largest financial institution in the US, and they are not the only FCU in the top 100 largest financial institutions in the US. The Federal Credit Union Act prohibits board compensation and we would strongly encourage the NCUA to advocate for the removal of this prohibition to Congress under the basis of improving safety and soundness.
- **Number of Board Meetings** - The requirement of monthly board meetings for credit unions is not in line with other types of financial institutions, which have quarterly meeting requirements and many state charters allow for fewer board meetings. The Association would encourage the NCUA board to advocate for the removal of the monthly board

meeting requirement from statute and allow the NCUA board to set meeting requirements by rule.

Thank you again for the opportunity to comment on these extremely important issues. We would be pleased to answer any questions that you may have.

Respectfully,

A handwritten signature in black ink that reads "John Trull". The signature is written in a cursive style with a large, stylized initial "J" and a long, sweeping underline.

John Trull
Vice President, Regulatory Affairs
Northwest Credit Union Association