



January 11, 2019

Gerald Poliquin
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314

Re: Federal Credit Union Bylaws: Notice of Proposed Rulemaking

Dear Mr. Poliquin,

The Ohio Credit Union League (OCUL) welcomes the opportunity to submit comments concerning the National Credit Union Administration's (NCUA) Notice of Proposed Rule Making (NPR) as it relates to updating the standard federal credit union bylaws (FCU Bylaws).

OCUL represents Ohio's 267 credit unions and their three million members. Ohio is home to 145 federally-chartered and insured credit unions, 73 state-chartered, federally-insured credit unions, and 49 state-chartered, privately-insured credit unions.

The dual-charter system is recognized in 47 states and provides choice as to whom will serve as their institution's chartering authority and prudential regulator. In Ohio, that ratio leans to the federal-charter from a credit union number standpoint, while the majority of assets are held by state-chartered credit unions. The dual-chartering system nourishes greater diversity of credit unions and reflects the specific needs of their unique membership. By updating the standard bylaws and continuing to modernize operations, NCUA keeps the federal charter competitive, ensuring a thriving dual-charter system.

For brevity and organization, we will address only the bylaws questions raised in this NPR that we believe are most pertinent to Ohio's credit unions. Additionally, OCUL acknowledges the limitations that the Federal Credit Union Act (FCU Act) imposes upon NCUA and the credit union industry as a whole. OCUL has previously addressed other issues raised in the prior Advanced NPR (ANPR) regarding FCU Bylaws.

Bylaws Amendment Process Should Favor Credit Unions

The proposed 90-day period for bylaw amendments is not sufficiently responsive and could be detrimental to credit union operations. For bylaw amendments which the agency does not respond to within 90 days, such amendments will be treated as a denial, under the proposal, and be subject to the appeal process.

OCUL and its member credit unions understand that NCUA requires a sufficient time to conduct business and aims to process bylaw amendments expeditiously. However, the agency should be held accountable through a reasonable window of approval. While OCUL is supportive of a 30 day window, 60 days to process a bylaw amendment is reasonable; 90 days, which is a full quarter, is unreasonably long. Additionally, a default approval in the absence of processing the bylaw amendment in a timely fashion, or at all, should favor the interests of the credit unions.





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Any bylaw amendment request which the agency does not respond to on a timely basis (i.e. the 30 or 60-day period we support), or at all, should be deemed approved. The agency states that its support for a default denial stems from the possibility of the credit union adopting a bylaw which has a “material adverse effect on fundamental member rights, poses a safety and soundness risk to the FCU, or is otherwise contrary to law.”¹ With NCUA’s staff size and competency, 60 days is an adequate time period to garner an opinion on whether a bylaw amendment would trigger one of the three items above. Having an automatic default of denial may force an unnecessary number of credit unions to undergo an appeal process or may result in an unnecessary hindrance in operations.

Incorporating Legal Opinions and Guidance in the Code of Federal Regulations is Imprudent

OCUL is skeptical of making Agency guidance prescriptive by adding it to the Code of Federal Regulations. Generally, NCUA seeks to add an abundance of guidance to the bylaws, which in turn adds it to the regulations. NCUA notes that in the prior ANPR commenters requested guidance clarifying termination of services, temporary suspensions, and examples of unacceptable conduct. In response, the agency proposes to add existing legal opinions, not any clarification, to the FCU bylaws as guidance.

In fact, OCUL was one such commenter but explicitly stated our position which was that temporary suspension of membership is permissible and should be viewed as such from the agency’s standpoint since the FCU Act is silent.

In providing historical context for why the FCU Bylaws became incorporated in the regulatory scheme, the agency acknowledged that it sought to circumvent the bylaws’ enforcement powers provided to the agency in the FCU Act by adding the FCU Bylaws to the regulations, where the agency enjoys more enforcement powers.² Under the FCU Act, NCUA may only suspend or revoke a charter or place the FCU into a conservatorship for violations of the FCU Bylaws. Because the FCU Bylaws are now regulations, the agency is able to use broader enforcement tools such as the issuance of a cease-and-desist letter. With this historical context in mind, OCUL views the addition of legal opinions pertaining to limitation of services and termination as an extension of the agency’s goal to further put FCU Bylaws items under its regulatory enforcement umbrella. While we can appreciate the need for the agency protect fundamental member rights through a robust enforcement scheme, it is inappropriate for the agency to regulate each topic it deems ambiguous.

For an issue such as temporary suspension of services, it is most helpful for the agency to issue stand-alone guidance and FAQs to assist FCUs in determining their options. However, it is inappropriate for the agency to unilaterally decide how FCUs should handle such an issue when the FCU Act is silent on said item. FCUs should be empowered to make their own operational decisions when Congress has concurred with this distribution of authority.

¹ 83 FR 56641

² 83 FR 56640.



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Finally, from a readability and application standpoint, we believe it is most important for the agency to create concise and user-friendly bylaws. OCUL is supportive of the agency's goal in creating clear FCU Bylaws, and this is best achieved by creating a document that is not abundant with legal opinions, guidance, and examples.

NCUA Should Not Take Action for Minor Violations of ByLaws

NCUA seeks to clarify its position regarding when the agency seeks to take action against FCUs for minor violations of the FCU Bylaws. Currently, section 4d of Appendix A to Part 701 of the FCU Bylaws reads as follows, "NCUA will not take action against minor or technical violations but emphasizes that it retains discretion to enforce the FCU bylaws in appropriate cases." Under this current rule proposal, that same section would read as follows, "NCUA will not *generally* take action against minor or technical violations but emphasizes that it retains discretion to enforce the FCU bylaws in appropriate cases."

Despite seeming insignificant, this portion of the rule proposal signals the agency will focus on minor or technical violations. Previously, the agency was explicit that it would refrain from taking action against minor or technical violations of the bylaws. OCUL believes that for minor or technical violations, the credit union and any affected member are in the best position to resolve any discrepancies on their own. Such minor items should not warrant the agency's involvement or resources.

NCUA Should Allow More Flexibility for Annual Meeting Notice

In the previous ANPR, OCUL stressed the need to allow credit unions more flexibility when sending the written notice for the annual meeting. As this was not addressed in the current NPR, OCUL writes to again stress this point. Currently, the annual notice must be provided at least 30 days but not more than 75 days in advance. However, it is more common for businesses and individuals to put meetings on calendars up to a year in advance. The current timeframe is arbitrary, and credit unions should be able to provide a written notice of meetings as far in advance as is effective for their specific circumstances.

Credit Unions Should Be Empowered to Optimize Meetings and Voting Through Electronic Means

As the agency is well aware, credit unions' historical mission has never been conducive to member disenfranchisement. Yet, despite no evidence of systemic member disenfranchisement, the agency uses this reasoning as its sole objection to allowing FCUs to conduct virtual or hybrid (combined virtual and in-person) annual or special meetings. Because credit unions serve a diversity of membership whose composition may be based on various factors such as community, employment, religious affiliation, or other items, there should not be a uniform standard in which the agency proscribes the most appropriate method of holding a special or annual meeting. Credit unions should be empowered to offer meetings that are best tailored to their membership. At minimum, this should include the option of having a hybrid meeting without having to submit a special bylaw amendment. OCUL fails to understand how members could be disenfranchised when the membership is presented with two distinct options of





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attending an annual or special meeting. We hold that two methods of attendance and participation are better than one.

NCUA relies solely on its belief that members are susceptible to disenfranchisement due to a possible lack of internet access in its objection to allowing FCUs to conduct electronic-only voting. While OCUL does not see material risk that credit unions would systemically disenfranchise the owners of the credit unions, we can appreciate the agency's attempt to ensure that each member has means to participate electronically whether that involves voting or a meeting.

While it is true that U.S. households have varied accessibility to the internet (which may be affected by socio-economic status or geographic boundaries as well as other factors³), the Federal Communications Commission's 2018 Broadband Deployment Report finds that approximately 92% of the population has access to both fixed internet services and mobile LTE service.⁴ That percentage fluctuates depending on geographic region: 68.6% of Americans in rural areas have access to both services compared to 97.9% of Americans in urban areas.⁵

As the agency is aware, access to the internet is a fundamentally different topic than utilization of the internet. In the early 2000s approximately, half of all adults were online, according to the Pew Research Center.⁶ Today, Pew Research Center finds that nine-in-ten adults use the internet.⁷ With relatively high access and utilization, OCUL believes it is appropriate for NCUA to permit electronic-only voting and hopes that agency reconsiders its foundational premise.

In the prior ANPR, OCUL urged the agency to encourage more integration of technological capabilities, specifically as it relates to voting. Commonly integrated technology like closed-end survey systems, voting buttons, or other means could be most helpful to credit union operations and member participation.

Conclusion

We appreciate the agency's commitment to improving the operating environment for credit unions by reviewing NCUA's regulations through its Regulatory Reform Task Force. OCUL believes that the agency has made great strides in modernizing the regulations which provides an improved member service experience. Directly connected to this improved member service experience is this foundational document of the credit union, its bylaws, which benefits members and shapes their experience. As such, OCUL strongly urges the agency to consider the following items before issuing a final rule:

- Implementing a 60-day window for the agency to approve/deny a bylaw amendment;

³ Federal Communications Commission, 2018 Broadband Deployment Report (Feb. 2, 2018), *available at* <https://www.fcc.gov/reports-research/reports/broadband-progress-reports/2018-broadband-deployment-report>.

⁴ Id.

⁵ Id.

⁶ The Pew Research Center, Internet/Broadband Fact Sheet *available at* <http://www.pewinternet.org/fact-sheet/internet-broadband/>.

⁷ Id.



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- Allowing the default to favor the credit union by triggering an automatic approval of a bylaw amendment if the agency does not respond within the 60 day window;
- Creating clear and concise FCU Bylaws by removing the proposed legal opinions and guidance from the bylaws;
- Permitting credit unions to send written notice of the annual or special meeting outside of the 75-day window so that members can better prepare to attend the meeting; and,
- Empowering credit unions to utilize technology by offering a hybrid meeting and electronic-only voting if the credit union decides incorporating these methods are most beneficial and least disenfranchising for its membership.

As NCUA continues the dialogue and rulemaking process for updating bylaws, OCUL looks forward to collaborating with the agency. If you have further questions or would like to discuss OCUL's comments in more detail, please feel free to contact us at 800-486-2917.

Respectfully,

Handwritten signature of Paul L. Mercer in black ink.

Paul L. Mercer
President

Handwritten signature of Miriah Lee in black ink.

Miriah Lee
Regulatory Counsel



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