

January 11, 2019

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

Email: regcomments@ncua.gov

Re: Comments on 12CFR Part 701, Appendix A. Federal Credit Union Bylaws

Dear Mr. Poliquin:

On behalf of Black Hills Federal Credit Union, headquartered in Rapid City, South Dakota, and serving more than 71,000 members, we appreciate the opportunity to comment on the National Credit Union Administration's proposed rules to update, clarify, and simplify the Federal Credit Union Bylaws.

Our comments on how the proposed rules will impact credit unions and specifically, Black Hills Federal Credit Union members, reflects our belief that NCUA is looking for efficient ways to regulate credit unions, without hindering our ability to grow and serve our membership. However, we don't believe NCUA has accomplished their goal to update, clarify, and simplify the federal credit union bylaws. Instead of simplifying, the proposed bylaws are far more burdensome.

We have included comments on several of the proposed changes, by section, below:

Introduction: The proposed rule establishes a 90 calendar day deadline for CURE to reach a decision on a bylaw amendment.

The proposed rule offers an inordinate amount of time for decision making thereby forcing a credit union to wait months for bylaw amendments that impact daily operations, services, and membership growth. Thirty calendar days should be sufficient to determine if a bylaw change meets prescribed guidelines; if not administratively feasible, then 60 days is more appropriate. A 90-calendar day deadline is too long. It is important for NCUA to provide a timely response and avoid unreasonable delays, rather than leave credit unions to assume their requests are denied when months pass with no response.

Article II. Qualification for Membership.

The definition of a “member in good standing” supports our practice of limitation of services (not expulsion) for members who abuse our services or staff. As the commentary states, these are basic requirements and common courtesies. Abusive behaviors are the exception and do not warrant advanced notification at account opening. A prospective member may in fact find such a disclosure offensive or excessive. Providing official notification prior to restricting access should be sufficient.

If a member exhibits disruptive, abusive, or belligerent behavior, our practice is to send a letter warning the member that continued hostile behavior will result in restrictions on access to services. If the behavior persists, a second letter informs the member of the decision to restrict access. Credit unions are more than capable of making this decision and communicating it to the member at the time of the infraction, not well in advance of inappropriate and unusual behavior.

As requested, below are examples of conduct deemed to be disruptive, abusive, or belligerent that resulted in restricted services based on our limitation of services procedure:

- A male member regularly came into a branch and waited for a specific female Teller, even though other Tellers were available. While the Teller served the member, he continually asked her out, commented on her appearance or clothing in a sexually suggestive way, and made her uncomfortable. The supervisor contacted the member and asked him to stop this behavior. His conduct continued, and the employee no longer felt comfortable serving this member. The member complained loudly about the requirement to be served by others, cursed, and made negative comments about the other employees' appearance. The member was then restricted from using in-branch services, but he was allowed to continue online and ATM services.
- A member who primarily used online banking and the Contact Center to conduct transactions began using abusive language toward whomever answered the call. He cursed, called the representatives “dumb idiots,” and said they were unqualified. He also threatened to “come down there and knock some sense into” the person helping him. The member was then restricted to online services only.
- After being denied a loan, a member threatened to follow an employee home or meet him in the parking lot. The member stated once he “handles it with the loan officer,” he'll get the loan he needs. This member was then prohibited from entering a credit union building and restricted to online, mobile, or ATM/ITM services.

We are committed to protecting our employees. However, in many years of service, very few cases have warranted full restricted access—limiting the right to maintain a share account, and the right to attend, participate and vote at annual or special meetings. To require prior notification of the FCU's limitation of services policy is unnecessary.

Article III. Shares of Members.

The narrative states, “The proposed rule adds new language under Section 1 providing representative examples for FCU’s to choose in establishing varying par values for different classes of membership (such as students, minors, or non-natural persons).” The new language also clarifies FCU’s may require members to maintain a regular share account or permit members to base their qualification for membership on some other type of account.

The proposed rule would have a positive effect on the opening and distributing of trust accounts. Currently, a member with a share account is required to open a second share account for the trust. Rather than having multiple accounts, the trustee would have the ability to satisfy membership through one account for the trust. The trustee could fulfill the duties of the trust and reporting of the trust more succinctly.

Article IV. Meetings of Members.

The narrative states “the proposed rule makes several changes to Article IV to encourage greater member participation including enhanced notice requirements and adjustments to quorum requirements.” These proposed changes create excessive stipulations and do not effectively address the goal of expanding member participation.

Meetings. The board should be allowed, but not required, to provide a live webcast of annual or special meetings.

Quorum. Requiring a quorum to be made up of a minimum number of members who are not directors, credit union staff, or officials, does not promote engagement. Requiring attendees does not ensure active participation, nor does it include a true representation of the membership. In fact, it is more likely to promote a single viewpoint with a distinct lack of diversity represented. Consider the difficulty for working families who have little time to attend a credit union meeting, especially when they are happy with their service. Credit unions have worked hard to attract and serve young individuals, multicultural families, low-income persons, and demographically and geographically diverse members. Requiring a certain number of members to attend a meeting is not a viable way to increase engagement of a diverse membership.

Although our meetings are heavily promoted, they most often result in little attendance by members. Our members stay current on credit union events and performance throughout the year, and learn about the candidates and cast their votes prior to the meeting. Our annual meeting is a review of the previous year’s performance and announcement of elected individuals, rather than a forum to discuss decisions where members may have comments. Forcing credit unions to solicit attendance will lead to added expense as credit unions seek to include food, entertainment, prizes, etc. to entice members to attend. Once again, these types of lures will not appeal to active, working families or members not living nearby.

Minimum meeting requirements create an untenable situation and place an unfair burden on credit unions to coerce members to take time away from home, family, or work to attend a meeting. Members who are comfortable with the direction and management of their credit union may not feel the need to vote in credit union elections, let alone attend a meeting. If the proper options to engage are offered, it is ultimately the members' responsibility to participate.

Article V. Elections.

Providing multiple ways for members to vote will have a greater impact on member engagement and voter participation than requiring a minimum number of participants at a meeting.

We encourage all members to vote and provide an easy, convenient means to do so, either electronically or by mail. Our members are far more likely to vote electronically from home than vote at a meeting. Adding an in-person voting option would be inefficient and unnecessary when electronic and mail voting methods are private, secure, and convenient, and offered for weeks in advance of the meeting. Credit unions should have the freedom to determine which methods of voting are best for their membership.

Volunteer selection in larger credit unions can be a time-consuming and burdensome task for a nominating committee. While we encourage members to run for a seat on the board, it is not a good use of our nominating committee's time if it is mandated that every applicant be interviewed. Our committee could be in the position of arranging and interviewing a large number of applicants for two openings. The nominating committee should be trusted to use their credit union's application packet to evaluate applicants and choose the most qualified candidates to interview.

Article VI. Board of Directors.

The proposed rules regarding the ability to establish, as a matter of FCU board policy, the position of director emeritus and associate director is helpful. This offers credit unions more opportunities for developing their cadre of volunteers and adding significant expertise and important perspectives. Additionally, the proposed rule defines volunteer absences to no more than four absences in a rolling 12-month calendar. This is a positive change that will provide more engagement from volunteers

Article VIII. Credit Committee or Loan Officers.

Modernizing the language and incorporating opinions regarding the use of automated processing, underwriting and funding of loans is beneficial. The ability to automate less complex loan applications provides credit unions with greater efficiency, enhanced service, and allows valuable time to be spent on more complex situations.

Article XVI. General

The proposed rule would require FCUs with websites to post their bylaws on the website. We do not believe our bylaws should be placed on our website for un-related parties to view. If a member does not have access to a physical location, upon request, we can email or mail a copy of the bylaws to the member.

Article XVII. Amendments of Bylaws and Charter

The Article-by-Article Analysis states, “The proposed rule modernizes the language of this Article and incorporates plain English writing principles.” However, when reviewing the wording in the proposed Appendix A to Part 701—Federal Credit Union Bylaws, the following wording is added, “To adopt amendments to the credit union’s charter, **members must vote** at a duly held meeting after receiving prior written notice of the meeting and a copy of the proposed amendment or amendments with the notice.” This appears to be an error to the proposed wording and should state, “To adopt amendments to the credit union’s charter, **board** members must vote at a duly held meeting...” We respectfully request the bylaw be corrected by adding the word “board.”

If this is not an error and it is the intent to have members vote on a Charter amendment, we highly disagree. This would be a huge departure from long-standing bylaws that would affect the future direction of all credit unions. It would remove established authorities from the Board of Directors and place decision making on the members who choose to participate. The cost alone would be prohibitive to many credit unions. The proposed bylaw is incredibly burdensome and would effectively halt all credit union growth. We believe this amendment should retain the same wording as currently written.

Thank you for the opportunity to provide comments. If you have questions, I can be reached directly at rogerh@bhfcu.net or 605-858-6110.

Sincerely,



Roger R. Heacock
President and CEO