



January 14, 2019

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

Re: Comments on Federal Credit Union Bylaws; RIN 3133-AE86

Dear Mr. Poliquin:

The Indiana Credit Union League (ICUL) appreciates the opportunity to comment the National Credit Union Administration's (NCUA) proposal to amend the federal credit union (FCU) bylaws found in Appendix A to part 701 of NCUA's rules and regulations. The ICUL member credit unions represent 99% of assets and members of Indiana's credit unions, with those memberships totaling more than 2.5 million consumers.

We encourage NCUA, throughout the development of revised bylaws to incorporate as much flexibility as possible when it comes to bylaws. Changes are occurring in the industry, technology, and the overall financial services marketplace at a much faster pace than ever before. The bylaws FCUs operate under need to allow sufficient flexibility for the FCUs to react to the changes in a timely fashion.

Bylaw Amendments

We support NCUA's inclusion of FCUs being able to submit-bylaw amendments to NCUA's Office of Credit Union Resource and Expansion (CURE) that vary from the standard bylaws published. The proposal also establishes a 90 calendar-day deadline for CURE to reach a decision on a bylaw amendment presented by an FCU. We support the inclusion of a deadline for CURE review of a bylaw amendment. However, we believe that a 60 calendar-day deadline from submission is a sufficient amount of time for review and a decision by CURE.

The proposal also includes language that says if CURE does not reach a decision on a proposed bylaw amendment within 90 days, the applicant FCU should consider the proposed amendment to be denied. We do not support this approach. We believe that the approach should be that a proposed bylaw amendment is considered approved if no response is received from CURE within 90 days. Simply by avoiding making a decision and communicating with the FCU that a submitted bylaw amendment is denied, the FCU is left with insufficient information on why the amendment was denied and is not given the opportunity to modify the proposed amendment in a way that would allow it to be approved. NCUA is concerned that a bylaw amendment that they do not act on within the specified period of time that is considered approved could result in adoption of an amendment that could alter members' fundamental rights, is contrary to law or would pose a safety and soundness risk to the FCU. If a proposed bylaw amendment is so egregious that it would result in any of these concerns of NCUA, it should be evident very quickly during CURE's review and should be denied within the specified amount of time.

It is our expectation, that the automatic approval based on CURE not acting on an amendment within the specified period of time should be the exception, not the normal process. Depending on the final wording and with NCUA specifying what would create a delay beyond the specified review timeframe, in the rare situation where CURE is unable to respond within the review window, CURE could inform the FCU of the delay and the reason for the delay and proceed with its decision within an additional timeframe committed to in the letter. If the amendment were not approved prior to the extended review deadline, the amendment should be considered approved. In addition, where a proposed bylaw amendment is denied, CURE should provide the FCU with as much detail as appropriate regarding the reason for the denial.

Article II. Qualifications for Membership

Article II outlines the requirements for obtaining and continuing FCU membership. The proposed rule includes an expanded discussion in the staff commentary of measures that an FCU may take to address abusive and disruptive members based on prior legal opinions by NCUA's Office of General Counsel.

Member in good standing

The current bylaws address limitation of services in a single sentence in section 4 of Article II. "A member who is disruptive to credit union operations may be subject to limitations on services and access to credit union facilities."

The proposal would create a new section 5 to address limitation of services. The proposed commentary notes that an FCU has broad discretion to deny, as it deems appropriate, all or most credit union services, or access to credit union facilities to a member that has engaged in conduct that has caused a loss to the FCU or that threatens the safety of credit union staff, facilities, or other members. An FCU may take immediate action to address situations in which a member is violent, belligerent, disruptive, or poses a threat to the credit union, or other members, or its employees. The FCU Act prohibits the FCU from immediately expelling the member.

Proposed section 5 describes the concept of a "member in good standing" as someone who retains all the rights of FCU membership, and provides a list of actions that could result in a member no longer being in good standing. A member that fails to meet these basic requirements may be subject to reasonable limitations of service or access to credit union facilities as outlined in the FCU's limitation of services policy.

Many credit unions currently maintain limitation of services policies to address problems with members, including problems related to behaviors described in proposed section 5. We support NCUA's objective behind proposed section 5 and appreciate NCUA's effort to consolidate in a single place (in proposed section 5 and associated commentary) past Office of General Counsel legal opinion letters relevant to FCUs' ability to limit member services. However, we do not support including Section 5 as written. We are concerned that inclusion of section 5, as proposed, in the FCU bylaws may ultimately limit a credit union's ability to enforce its limitation of services policies. We would recommend that NCUA utilize expanded commentary on the existing section 4 of Article II to provide the examples and clarity of the prior legal opinions addressing limitation of services.

Article IV. Meetings of Members

Article IV addresses procedures related to annual and special meetings of an FCU's membership. The proposed rule makes several changes intended to encourage greater member participation, including enhanced notice requirements and adjustments to quorum requirements.

Notice of meetings

To ensure that members receive adequate notice of an annual or special meeting, the proposed rule requires that the notice for the annual meeting be posted in a conspicuous place in the FCU's physical office at least 30 calendar days before the meeting and be prominently displayed on the FCU's website if the credit union maintains a website. The current notice requirement does not mandate, but allows, notice of the annual meeting to be placed in the FCU's physical office. The current requirement also does not address notice on an FCU's website.

We agree with intent behind enhancing disclosure of FCUs' meetings. We do not believe that the proposed requirement of a mandatory physical and online disclosure is necessary to achieve NCUA's objective and could prove operationally difficult for some credit unions, particularly medium- and small-sized credit unions with limited staff. If NCUA moves forward with a change from the current notice requirements, we believe the disclosure requirement should be a notice "at the FCU's physical office or on the FCU's website."

The proposed rule maintains the requirement that notice of the annual meeting must be provided at least 30 calendar days before the meeting. The proposal would also maintain the existing 75-day maximum advance notice timeframe included in the current bylaws. Extended time to issue the notice for meetings might permit greater participation. We believe NCUA should consider extending the maximum notice timeframe as provided in the FCU bylaws, allowing FCUs the ability to provide notice of meetings as far in advance as is suitable and preferable to their membership.

Quorum

The proposed rule would adjust the quorum requirement for meetings. While the proposal would reduce from 15 to 12 the number of members required, it would also exclude board, credit union staff, and officials, for purposes of achieving a quorum. NCUA's stated reason for this change is 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.

ICUL agrees that member participation is an area that has room for improvement. We do not agree with a proposal that dramatically reduces the potential pool of individuals available to achieve a quorum. We believe that this would be challenging for some credit unions. A member of a credit union who is an employee of the credit union should be treated like any other member and be counted toward a quorum. The proposal does include a safety net of not requiring a specific number for a quorum at a subsequent meeting if a quorum is not achieved at the original meeting. Even with this safety net, the challenges associated with the logistical requirements for holding a second member meeting (annual or special) creates additional hurdles for the FCU to overcome, and we believe will not increase member participation. We encourage NCUA to maintain the current FCU bylaw provision related to the quorum requirement.

Combined virtual and in-person meetings

The proposed rule does not specifically allow an FCU to conduct a virtual or hybrid (combined virtual and in-person) annual or special meeting. 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. NCUA has indicated that it also does not believe it is appropriate to allow a virtual meeting to completely supplant a member meeting. FCUs requesting to hold hybrid meetings would also be required to offer an option for in-person attendance as well as online.

We believe that NCUA should amend Article IV to allow hybrid annual or special meetings without the need to submit a request to do so. Allowing virtual and/or hybrid meetings would have a greater probability of increasing member participation. We believe that the credit union should be the one to determine whether a hybrid meeting is in the members' best interest, not NCUA.

Article V. Elections

Electronic voting

The proposed rule provides staff commentary clarifying electronic voting. The commentary states that an FCU may use as many forms of electronic voting (e.g., mobile phone or internet) as it wishes for those members who choose to vote electronically. However, the proposed rule does not allow an FCU to adopt an electronic-only voting process. NCUA will, however, consider bylaw amendment requests allowing for electronic-only voting on a case-by-case basis. This is another decision we believe should be left up to the credit union, not NCUA. The board and management of the credit union has a much better understanding of the FCU's membership, and what types of voting options offer the greatest opportunity for member participation. If ultimately NCUA does not agree to allow FCUs to employ electronic-only voting, we would support NCUA's proposal of allowing electronic-only voting on a case-by-case basis.

Article VI. Board of Directors

To provide additional guidance to FCUs on associate director positions, the proposed rule clarifies, through staff commentary, that an FCU may establish associate director positions through board policy and that the decision to establish an associate director position, as well as the selection of the individuals to become associate directors, is solely within the discretion of the FCU's board. ICUL supports the proposed option for an FCU to establish associate director positions. We believe these positions will provide qualified individuals with a good opportunity to gain exposure to board meetings and discussions, but without formal director responsibility or the right to vote.

Article XIV. Expulsion and Withdrawal

Article XIV addresses the expulsion and withdrawal procedures for members. NCUA notes that expulsion of a member is very limited under the FCU Act, which states that an FCU may only 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.

We are concerned that NCUA's interpretation of the term "nonparticipation" as outlined in the proposal is too narrow. We believe NCUA has the latitude to develop a broader definition and to provide examples in the commentary to help FCUs understand when expulsion of a member is warranted. We ask NCUA to amend the bylaws, or commentary, to include examples of acts that could be grounds for member expulsion in a broader context than the proposed definition of "nonparticipation." These could include:

- Failure to maintain the necessary requirements for membership;
- Physical abuse or assault, harassment, or multiple incidents of verbal abuse of another member of the credit union;
- Habitual neglect to pay obligations or default on an obligation resulting in a financial loss to the credit union;
- Theft, malfeasance, or misconduct that causes a financial loss to the credit union; and
- Insolvency or bankruptcy.

Credit unions continue to express concern that the ability to act on expelling members who are abusive and or disruptive to the credit union staff or other members is too constrained by the current bylaws. Unfortunately, in today's environment this is an issue that credit unions face far too often. Only having the ability to limit services or facility access does not always fully protect the staff and membership. There is a need for the bylaws to be less restrictive in this area, and a broader definition of what constitutes "nonparticipation" would be helpful in the development of a nonparticipation policy.

Article XVII. Amendments of Bylaws and Charter

Article XVII provides the requirements for amending an FCU's bylaws or charter. The proposed rule would require an FCU to post its current bylaws on its website if the FCU maintains a website and to update the posting if it amends its bylaws. We agree members should be able to access the bylaws and be assured the bylaws they are accessing are current. However, we believe requiring all FCUs to maintain their bylaws online would potentially be a challenge, again particularly for medium- and small-sized credit unions with limited staff and expertise. We agree with the proposed exception for those FCUs that do not maintain a website.

For FCUs that do choose to post their bylaws on their website, we ask NCUA to modify the proposed provision regarding posting updated bylaws to be flexible in the timeframe required for posting the revised bylaws. NCUA could reference the updated bylaws being posted within a reasonable amount of time after adopting amendments, without specifying how quickly this is to occur. NCUA could address this in the commentary for this section as well.

Thank you for the opportunity to comment on the proposal to amend the federal credit union (FCU) bylaws found in Appendix A to part 701 of NCUA's rules and regulations. As changes occur in the industry, technology, and the overall financial services marketplace, the FCU bylaws need to be flexible enough to allow FCUs to adjust to the changes necessary in a timely and efficient manner.

If you have any questions regarding our comment letter, please contact me at (317) 594-5320. Thank you again for the opportunity to comment.

Sincerely,



John McKenzie
President, Indiana Credit Union League

