

# Cooperative Credit Union Association

*Creating Cooperative Power*

May 21, 2018

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

## **Cooperative Credit Union Association, Inc. Comments on Federal Credit Union Bylaws ANPR**

### **BY EMAIL ONLY**

Dear Secretary Poliquin:

On behalf of the member credit unions of the Cooperative Credit Union Association, Inc. (“Association”), please accept this letter relative to the National Credit Union Administration’s (“NCUA”) Advance Notice of Proposed Rulemaking on Federal Credit Union Bylaws. The Association is the state trade association representing credit unions located in the states of Delaware, Massachusetts, New Hampshire and Rhode Island, serving approximately 190 credit unions which further serve approximately 3.6 million consumer members.

The Association welcomes this opportunity to provide input on this important issue. In preparation for the development of the present comment letter and in order to assist in providing thoughtful comments, the Association conducted a survey of all credit union members in order to assess what the local impact of any change to the current federal credit union bylaws and guidance will be, as well as to elicit specific suggestions on changes to the bylaws that would further the common goal of empowering credit union boards of directors to best serve the needs of their members.

Association member credit unions agree that their governing bylaws are one of the most important and basic means of protecting the fundamental credit union member rights that make credit unions what they are. The bylaws are also fundamental in laying the foundation for the fiduciary duties that credit union directors have to their members. As such, the federal credit union bylaws do require regular review and streamlining clarification, and improvement to provide greater operational flexibility and to better reflect the changing needs of federal credit unions. As the federal credit union bylaws have not been updated since 2006, the timing of this proposal is appropriate.

The NCUA’s 2013 meeting with stakeholders to consider possible revisions to the bylaws resulted in a variety of recommended changes, many of which the Association will elaborate on in the present comment letter. One recommendation that the Association reemphasizes is that the NCUA expand the commentary section of the bylaws to provide additional information and guidance.

Current commentary includes clarification on three limited areas: qualifications for membership, shares, and board eligibility requirements. While there is a delicate balance to be struck between the content of the bylaws themselves and the commentary, staff commentary currently is fairly limited and should be expanded.

Every Article of the bylaws should contain commentary. Additional commentary should include detailed examples, sample forms, and suggested language. In the commentary, the agency should strive to provide credit unions with a better index for cross-reference to other rules, laws and guidance. Each topic addressed by the bylaws has historical significance, and amendments have occurred as a result of changes to companion rules, legal interpretations by the agency, and through legal opinion letter responses. Cross-references within the bylaws should be included to other agency regulations or position on the same topic. For example, on the topic of composition of a credit union's board of directors, companion rules on restrictions on service such as familial relations between directors contained in other areas of the bylaws and in agency opinion letters and guidance, could be cross-referenced.

The Association also suggests revisions to the agency's dedicated Federal Credit Union Bylaws webpage. A federal credit union or other interested stakeholder who is searching for the current federal credit union bylaws should be able to quickly and directly access the current bylaws effective at the time of their search. As that search often begins on the agency's website, the full text of the current bylaws should be readily available and apparent on the website. While historical information, reference information, and information on past versions of the bylaws and their references in the Federal Register are important and should be maintained and also readily available, such information should be housed separately from the current effective bylaws.

The Association suggests the formation of a working group to conduct a review of the bylaws, bylaw commentary, and their availability and website presentation to credit unions. As the agency will contemporaneously be reviewing stakeholder comments on revisions to the bylaws themselves, this presents a timely opportunity to review the bylaw and related information and availability more holistically.

Three specific suggestions were received in which commentary could be expanded, two of which were relative to the duties of committees. Across the board, member credit unions agreed that additional commentary authorizing FCUs to establish standing advisory committees designed to recruit potential candidates to fill board vacancies would be helpful. Additionally, credit unions would benefit from additional commentary in the bylaws recommending certain non-binding factors that the nominating committee may consider when selecting a candidate. Lastly, additional commentary could be included on safeguards to be put in place to prevent conflicts of interest.

Additional credit union comments on specific topics are included below.

### **Bylaw Amendment Process**

The decision by a credit union to amend its bylaws is a lengthy process and is not undertaken lightly. When a credit union reaches the stage at which it is applying to amend its bylaws with the NCUA, it has already gone through its necessary due diligence and member voting process. The actual application process should be straightforward and timely.

Association member credit unions suggest that there should be standard options for various sections to make the process easier. Additionally, the Association suggests a 30-day bylaw amendment request response time. Such changes will provide credit union with more timely responses, greater transparency, and enhanced accountability.

### **Limitation of Service and Expulsion**

The proposal asks how the NCUA can clarify the FCU bylaws provisions addressing limitation of services and expulsion of members. Currently, the Federal Credit Union Act authorizes a majority of the board of directors of a credit union to expel a member based on non-participation of a member.<sup>1</sup> The Act also permits expulsion of a member upon a two-thirds majority vote of members during a special meeting called for such purpose, provided such member has been given an opportunity to be heard.<sup>2</sup> These provisions are restated in the NCUA Bylaws in Article XIV, Expulsion and Withdrawal, with Section 4 noting that services may be limited for “a member who is disruptive to credit union operations.”

Credit unions who find themselves in delicate situations such as these must be able to rely on clear rules. The Association suggests that any changes to the federal credit union bylaws in this area must preserve the important membership rights that credit union members are granted by virtue of the credit union charter and their due process, while at the same time promote credit union and employee privacy and safety.

What is necessary is enough guidance for federal credit unions to be able to set their own limitation of service and member expulsion policies. The authority to expel or withdraw a membership is explicitly sanctioned, and providing additional guidance as to implementing such action would be not only permissible but encouraged.

Commentary to provisions in the bylaws on limitation of service and expulsion should clearly state that an analysis of what is considered disruptive behavior must include behavior that is disruptive not only to the operations of the credit union, but also to employees and both the actual and potential reputation of the credit union. Areas of emerging risk, especially in the cyber arena, should be included in the analysis of disruptive behavior. In the age of social media and when significant public discourse occurs in the cyber sphere, it is not difficult to imagine a situation where a social media attack against the credit union or the cyber-bullying of another member or employee could not only severely disrupt credit union operations, but also have long-lasting effects for the reputation of a credit union. Situations such as these which present modern examples of behavior that falls squarely within the agency’s interpretation of disruptive should be included within the commentary of the bylaws as guidance to help credit unions implement a limitation of service or expulsion policy.

Relative to limitations of service, the Association suggests that the bylaws, perhaps in commentary, provide examples of what constitutes “disruptive behavior” by a member. Illustrative examples of behavior which could lead to a limitation of service could include:

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<sup>1</sup> 12 U.S.C. §1764(b).

<sup>2</sup> 12 U.S.C. §1764(a).

- 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;
- Neglect or refusal to comply with the Federal Credit Union Act;
- Habitual neglect to pay obligations or default on an obligation resulting in a financial loss to the credit union;
- Theft, malfeasance, or misconduct which causes a financial loss to the credit union; and
- Insolvency or bankruptcy.

In regards specifically to expulsion, the Association suggests that the decision on expulsion of members should lie initially with credit union senior management. Certain expulsions should not require board approval, for example, those based on check fraud loss, BSA rules violations, or loan chargeoffs at a loss to the credit union. It is suggested that the opportunity to be heard standard include a written notice standard to the member with an appeal process to the board of directors within a specified period of time. Lastly, any expelled member should remain liable for outstanding debts to the credit union.

### **Participation and Meetings**

There have been significant advances in technology since the NCUA last revised the federal credit union bylaws over 10 years ago. Such technological advancements should be incorporated in a measured way that allows for the adoption of more efficient means of communication, voting, and both member and director participation, while maintaining the confidentiality of member and credit union information.

Wherever possible, the bylaws and commentary should be amended to allow for the operational realities of e-communication and e-participation. Directors should be allowed and encouraged to participate by virtual means without any physical presence requirements. In addition, both annual and special meetings could be conducted as “hybrid virtual meetings.” Virtual meetings using today’s technological resources still preserve the important deliberative process that traditionally has occurred through in-person meetings, and allow members to interact and have discourse on important issues in real time.

In addition, member voting should occur through safe closed-end survey systems, voting buttons, and other commonly integrated technology. Modern technology provides, and will continue to develop and evolve, technical capabilities to encourage mass participation without a direct, physical presence requirement. The more the agency can encourage remote participation by explicitly including the permissibility of participation via technological means, the more likely additional members can and will participate in annual and special meetings.

Proscriptive requirements that fail to recognize the modern environment in which we now live and operate, such as rigid physical meeting requirements and the Article IV, Section 2 requirement that notice of meetings must be made in writing in person or via delivery to home address, have the opposite effect of enhanced participation and should be revisited with an eye towards allowing for secure technological advancements and flexibility where possible. It is suggested the bylaws could be amended to empower credit unions to enfranchise their membership with more efficient means of participation.

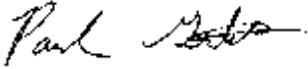
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Thank you for your consideration of these views. The Association appreciates the opportunity to provide input and I remain available to address any questions or concerns at [pgentile@ccua.org](mailto:pgentile@ccua.org) that you or your staff may have at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul C. Gentile". The signature is written in a cursive style with a horizontal line extending to the right.

Paul C. Gentile  
President/CEO

PCG/kb