



OHIO CREDIT
UNION LEAGUE

August 20, 2007

Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Re: NCUA Proposed Changes Regarding FCU Bylaws

Dear Ms. Rupp:

The Ohio Credit Union League (“League”), the trade association for credit unions in Ohio, both federal and state chartered, advocating on behalf of more than 400 credit unions and 2.7 million credit union members, appreciates the opportunity to provide comments on the National Credit Union Association’s (“NCUA”) proposed changes regarding the FCU Bylaws.

This proposal addresses several issues regarding the Federal Credit Union Bylaws: including federal credit union bylaw enforcement; a new introduction to the FCU bylaws; a shortened process for the adoption of amendments already approved for another FCU; and a new FCU bylaw on how to handle director successions when the entire board has been removed or is unable to perform its duties.

NCUA deregulated its bylaws in 1982 and did not, at the time, address the issue of whether the agency would enforce bylaws. Rather, NCUA’s current position has been that it should not intervene in disputes between members and credit union boards regarding bylaw compliance; this position was addressed in legal opinions and other policies from the agencies since 1982. NCUA did not foresee current problems members may face in trying to have their credit union’s bylaws enforced.

It is NCUA’s position that its inaction has generally meant that members would need to take legal action against the credit union which, according to NCUA, can be costly and time consuming and may not provide the needed relief.

Some examples provided included situations when credit union members could not call a special meeting (as prescribed in the Bylaws) to remove the Board of Directors due to a conversion proposal.

Under the proposal, NCUA has specifically set forth the following changes:

- NCUA would reincorporate the FCU Bylaws into its regulations by reference. NCUA also added language to the bylaws would also state that NCUA has discretion to take administrative action regarding Bylaw matters pursuant to Section 701.2(e) as follows:

NCUA has discretion to take administrative actions when a credit union is not in compliance with its bylaws. If a potential violation is identified, NCUA will carefully consider all the facts and circumstances in deciding whether to take enforcement action. NCUA will not take action against every minor or technical violation, but emphasizes that it retains discretion to enforce the bylaws in appropriate cases, which may include, but are not limited to, safety and soundness concerns or threats to fundamental, material credit union member rights.

- NCUA states that their authority to enforce the bylaws is based on provisions in the FCU Act that require bylaws for FCU's and that permit NCUA to cancel or suspend a FCU's charter or place it into liquidation for failure to comply with their bylaws.
- NCUA has expanded the authority of the Supervisory Committee. A new bylaw section would be added to clarify the Supervisory Committee's responsibilities for situation in which an FCU has no remaining directors due to resignation or inability to serve. The bylaw amendment clarifies that the Supervisory Committee must act as a temporary board and must schedule a special meeting to elect an interim board.
- NCUA has proposed amending the Bylaw Amendment Process: NCUA will post its bylaw amendment opinion letters on its website, allowing credit unions to seek and adopt identical language. The credit union must still file the amendment with NCUA. If NCUA does not respond within 15 business days, the amendment will be considered approved.

In reviewing NCUA's Proposed Changes Regarding Federal Credit Union Bylaws, the League has a number of concerns and suggestions regarding this Proposal.

First, NCUA has proposed to amend part 701 by adding Section 701.2(a) to read as follows:

Federal credit unions must operate in accordance with their approved bylaws. The Federal Credit Union Bylaws and any amendments approved for specific Federal Credit Unions are hereby incorporated by reference pursuant to 5 U.S.C. 552(a)(1) and accompanying regulations. Federal credit unions may adopt amendments to their bylaws as provided in the bylaws, with the approval of the Board.

In reviewing this proposal, NCUA has stated that it has authority to enforce the bylaws based on provisions in the FCU Act that require bylaws for federal credit unions and that permit NCUA to cancel or suspend a federal credit union's charter or place it into liquidation for failure to comply with bylaws (12 USC 1758 and 12 USC 1766(b)(1)).

Furthermore, in 1982, the Bylaws were removed from the regulations as part of a general deregulatory effort. NCUA also deleted two of the sections incorporating the Bylaws by reference as well as the regulation requiring NCUA approval of amendments. These rules were one result of a comprehensive review of agency regulations NCUA undertook in the early 1980's. In 1999, the last section incorporating the Bylaws by reference of Section 701.2 was also deleted (*See* Supplementary Information A. Background, NCUA Proposed Rule).

The League believes that the Bylaws should not be incorporated into the regulations by reference and is not in support of their proposal. The League believes that it is unnecessary and that incorporating the Bylaws back into the regulations by reference would be reregulation and overly broad and ambiguous as to the interpretations, disputes, enforcements and review of the Bylaws creating a burden on the credit union in time, resources and cost.

The League does support NCUA's longstanding position that has been to not intervene in disputes between members and credit union boards regarding bylaw compliance, which has been addressed in legal opinions and other policies from the NCUA since 1982. If a member has a dispute regarding the Bylaws he or she should pursue current remedies available under federal or state law.

Second, under the proposal NCUA has added language that would give NCUA discretion to take administrative action regarding Bylaw matters. The proposed regulation Section 701.2(e) specifically states that:

NCUA has discretion to take administrative actions when a credit union is not in compliance with its bylaws. If a potential violation is identified, NCUA will carefully consider all the facts and circumstances in deciding whether to take enforcement action. NCUA will not take action against every minor or technical violation, but emphasizes that it retains discretion to enforce the bylaws in appropriate cases, which may include, but are not limited to, safety and soundness concerns or threats to fundamental, material credit union member rights [*Emphasis added*].

In reviewing the proposed language, it appears to be overly broad and ambiguous and does not include any specific examples or restrictions on what can or cannot be reviewed and enforced by the NCUA under the Bylaws. It leaves the discretion on the issue to "NCUA" on a case by case basis. This has the potential to place a heavy burden on the federal credit union as well as on the NCUA to handle, address, respond, and resolve disputes under an "administrative process" which has not yet been determined. Without structure and guidelines, the federal credit unions and NCUA could very well be overwhelmed by member requests and disputes.

As stated above, members should look at federal and state law to bring issues involving their rights as members and shareholders to the appropriate judicial system. Therefore, the League does not support this proposal as written; and, respectfully requests NCUA to consider withdrawing this

proposal or at the very least redrafting the proposal and include some additional structure and criteria.

The League suggests that the NCUA may want to consider some policies and guidelines that may define and restrict matters that NCUA should consider and a process to resolve disputes both internally and administratively with the federal credit union and/or with NCUA.

For example, some issues that may be presented for consideration are as follows:

- Should Federal Credit Unions have a process to address internal disputes regarding the bylaws;
- What matters or issues rise to the level of an administrative procedure to be reviewed by NCUA, These should also be narrowly construed;
- Who has standing to bring a dispute to the Federal Credit Union’s Board of Directors;
- Who has standing to bring a dispute to the National Credit Union Administration, e.g. a member or does it require more than one member, the credit union;
- What is the administrative process, e.g. Credit Union review by the Board of Directors, Appeal or review by NCUA Regional Director, Appeal to the full NCUA Board, Administrative Appeal to Federal Court under the Administrative Appeals Act;
- Does NCUA have the appropriate Enforcement Power and Injunctive Authority or must it seek judicial relief.

While these are just some suggested issues to consider, the League respectfully recommends that NCUA consider other issues as well. In addition, any matter involving a dispute or an administrative process or procedure should only be with the NCUA Regional Director. Furthermore, NCUA’s enforcement authority regarding bylaws should not impose greater regulatory burdens on federal credit unions and should not be more expansive than other regulators. This is very important in that the operational, managerial, and oversight of the credit union be maintained.

Third, under the proposal NCUA has also expanded the authority of the Supervisory Committee to act as the temporary board of directors if there are no board members currently serving on the board.

The League believes this proposal is reasonable and is in support. However, the League does suggest that this provision in the Bylaws be discretionary and not mandatory for each federal credit union.

Fourth, NCUA has proposed a procedural change to file bylaw amendments with NCUA, that have previously been permitted, which would be deemed approved if NCUA does not respond in 15 days.

The League supports this proposal in that it is an improvement to the current process.

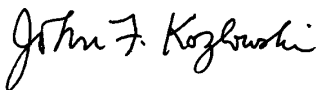
Finally, NCUA has proposed the additional enforcement procedures to the Bylaws in order to enforce what it determines to be “potential violations” of the Bylaws affecting the members. One example being the issue of dissenting credit union members wishing to remove current board members at a special meeting because the Board is in favor of converting the federal credit union to a mutual thrift.

While this issue is important to some of the membership, it would appear that those provisions of the Bylaws that may have the greatest affect on the rights of the members should be adopted, amended, or rescinded by a membership vote only and not by the Board of Directors, unless otherwise allowed by the membership. By doing so it would be the membership that would control and make decisions in their best interests affecting the future of the credit union. For example, the members would have the authority to call a special meeting if the structure of the credit union is at issue. Failure of the Board of Directors to attend, in whole or in part, would be considered a vacancy on the Board thereby allowing the members to elect new Board members at the special meeting to govern the credit union. These provisions should be, however, very limited in number, scope and substance thereby not creating a void in leadership and severing the role between the Board and Management.

The above represents the comments of the Ohio Credit Union League and the League appreciates the opportunity to offer these for consideration. The League would also be willing to provide additional comments or input if so desired.

If you have any questions or comments, please do not hesitate to contact me at jkozlowski@ohiocul.org or (800) 486-2917 ext. 266. Thank you for the opportunity to provide comments on this proposal.

Sincerely,



John F. Kozlowski
General Counsel