



October 13, 2005

Ms. Mary Rupp
Secretary
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Re: Federal Credit Union Bylaws
70 FR 40924 (July 15, 2005)

Dear Ms. Rupp:

America's Community Bankers ("ACB")¹ is pleased to comment on the proposal issued by the National Credit Union Administration ("NCUA") to amend the model bylaws for credit unions.² The proposal is an attempt by the NCUA to clarify and update the bylaws to keep pace with changes in technology and business practices. It follows a previous Notice and Request for Comment on credit union bylaws issued in 2004.³

ACB Position

ACB believes that the proposal does not meet the goals established by the NCUA. The text of the bylaws for credit unions is too detailed, prescriptive, and confusing. Credit unions would be better served with more streamlined bylaws that give them the flexibility to operate in a manner that best meets their needs. If there are specific requirements that the NCUA feels are necessary for the proper corporate governance of all credit unions, those requirements should be contained in separate regulations.

The language that appears to permit members to raise new issues through motions at annual and special meetings is too broad. All members are entitled to get advance notice about the issues that will be discussed at a meeting. Allowing new matters to come up for a vote of members at a meeting does not encourage the type of democratic participation by members that is so important to the NCUA.

¹ America's Community Bankers is the member-driven national trade association representing community banks that pursue progressive, entrepreneurial and service-oriented strategies to benefit their customers and communities. To learn more about ACB, visit www.AmericasCommunityBankers.com.

² 70 Fed. Reg. 40924 (July 15, 2005).

³ 69 Fed. Reg. 58203 (Sept. 29, 2004).

The timeframe given for appointing a new board member in the event of a vacancy on the board is too short and will not give a credit union the time to seek out the most qualified individual.

Bylaws Are Too Prescriptive

The text of the bylaws is too prescriptive and detailed. We understand that the NCUA received similar comments on its previous proposal to revise the bylaws. In fact, approximately half of the commenters on that proposal asked the NCUA to give credit unions more flexibility to draft bylaws.⁴

The NCUA states that it does not consider the bylaws too detailed and that some of the detail is necessary because the bylaws represent a contract between the credit union and its members.⁵ The NCUA states that “The form FCU Bylaws address the member protections the Act affords and function as a contract between the FCU and its members; the FCU Bylaws give members notice of their rights, particularly when they are unfamiliar with the FCU Act.”

Despite good intentions, this is not the case. Bylaws are not intended to operate as a contract. The purpose is to set the general parameters for the day-to-day management and operation of an organization. Bylaws can cover potential conflicts and delegate duties and responsibilities. Most federal and state authorities that enact corporate governance requirements leave organizations with the flexibility to make the bylaws more general or specific, depending on the needs of the organization. Most importantly, the bylaws are subject to change. Even the proposed form credit union bylaws can be amended by a two-thirds vote of the board members without any participation by members. Of course, the NCUA must approve any bylaw change. If the NCUA believes that there are certain corporate governance provisions that should apply to all credit unions, those provisions should appear in regulations to ensure that members are really protected.

Less detailed and prescriptive bylaws would limit the confusion created by the form bylaws and give credit unions the flexibility to run their institutions in a way that best fits their needs and the nature of their membership.

Member Motions

The NCUA states that during a membership meeting, a member may make a motion for members to take action if the Federal Credit Union Act (the “Act”) entrusts the members with such action.⁶ The preamble goes on to state that the NCUA has long recognized that members have the right to move for a member vote to recommend board action.

This language is confusing and will hinder the ability of members to exercise their democratic rights to participate in credit union decisions. First, it may not always be clear whether the Act “entrusts” a particular matter to the members. Some research and analysis may be required.

⁴ 70 Fed. Reg. at 40925.

⁵ Id.

⁶ Id. at 40926.

More importantly, all members of a credit union should get proper notice of the matters that will be presented and voted upon at an annual or special meeting. A member who may consider not attending a particular meeting if it is inconvenient may make a special effort if the member knows that certain matters will be taken up for a vote. Bringing up new matters for a vote without proper notice denies members the ability to fully participate in credit union affairs.

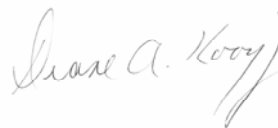
A better approach is the one used by most federal and state authorities that impose corporate governance-related requirements. That is to allow members to propose matters for discussion at a meeting in advance, and if the board accepts those matters, they would appear in the notice of the meeting. Proposals would have to be sent to the board within a timeframe that gives the board a chance to review the matter and provide notice of the meeting in a timely fashion.

Filling Board and Other Vacancies

The selection of qualified board members has taken on increased significance because recent scandals have highlighted corporate governance practices at public and private organizations. Credit unions, like all other organizations, should take the time and perform the necessary due diligence to ensure that the board members chosen, as well as credit and supervisory committee members, are competent, experienced, and willing and able to take on the responsibilities of the position. The proposed bylaws would require that a vacancy on the board, credit committee or supervisory committee be filled no later than the next regularly scheduled board meeting. If a vacancy occurred toward the end of the month at a credit union that has monthly meetings at the beginning of each month, there would be insufficient time to fill the seat. We believe a better approach is to continue to require that the vacancy be filled within a reasonable period of time. If the NCUA prefers to have a specific timeframe in the bylaws, then a minimum of 90 days should be provided.

ACB appreciates the opportunity to comment on this important matter. If you have any questions, please contact the undersigned at (202-857-3144) or via e-mail at dkoonjy@acbankers.org, or contact Krista Shonk at (202) 857-3187 or via e-mail at kshonk@acbankers.org.

Sincerely,



Diane A. Koonjy
Senior Regulatory Counsel