



strength in members.

January 14, 2019

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

Re: Comment on Proposed Bylaw Amendments

Dear Mr. Poliquin,

On behalf of the New York Credit Union Association, which has advocated for state and federally chartered credit unions for over 100 years, I am writing this letter to comment on the proposed amendments to NCUA's bylaws. As the template for board governance, not only should NCUA ensure that it periodically reviews the framework under which credit unions must operate, but it is also vitally important that credit unions participate in such a review. This comment letter is based on survey responses provided to the Association by dozens of credit unions of varying asset size.

There was overwhelming support for NCUA to better explain and give credit unions the maximum flexibility allowed under law when dealing with violent, belligerent and disruptive members. Credit unions understand that the Federal Credit Union Act, unlike state counterparts such as New York, places strict limits on the steps credit unions can take to expel disruptive members. While the suggested reforms will be helpful, we also believe that additional steps can and should be taken.

There is widespread support for the creation of a new paragraph 5, to Section II, so that credit unions can easily delineate who is and who is not a member in good standing. Nevertheless, in drafting the final bylaws, the language should be more nuanced. Specifically, the language as drafted implies that credit unions have no flexibility in categorizing members as lacking good standing once they have committed one of the criteria. For example, the language provides that a "member in good standing is a member who [has not]... caused a financial loss to the credit union." In contrast, credit unions often treat loss-causing members on a case-by-case basis and decide that a past bankruptcy or delinquency should not deny a member full membership benefits.

In addition, even with the constraints imposed by statute, there are steps that NCUA can and should take to give credit unions the ability to deal with unruly members. Most importantly, emphasizing that credit unions can take actions against members who are "violent, belligerent or disruptive" is too restrictive. For example, in New York State, credit unions can be liable for sexual harassment claims based on the conduct of a single member. Such conduct would not necessarily be violent, belligerent or disruptive on its face, but rather wholly inappropriate when viewed in totality. Against this backdrop, the commentary should be strengthened to unequivocally state that nothing in the act or its implementing regulations should be interpreted as prohibiting the credit union from taking immediate action against members who fail to

conduct themselves in a reasonably responsible and respectful manner as determined by management. Credit unions should have the right not only to take action against violent, disruptive and abusive members, but also members who do not conduct themselves in a reasonable manner. Credit union membership is a privilege, not a right.

A second thrust of the proposed bylaw amendments is to encourage credit unions to make greater use of technology in conducting board/member business. Enthusiasm for these proposals varied widely depending on the size of the credit union with many expressing concern that the benefits would be more than outweighed by the cost of these proposals. NCUA's approach strikes the appropriate balance. Credit unions should have greater flexibility to use technology when holding member meetings and votes, but it should not mandate the use of technology at this time. There is just too great a difference with regard to credit union capabilities.

A third proposal that should be clarified is NCUA's suggestion that at least 12 members unaffiliated with the credit union be present at annual meetings. There are some credit unions for which this would be a challenge. What would the consequences of a failure to meet this threshold be? Instead of mandating a minimum of non-member credit union attendees, bylaw commentary should encourage that credit unions actively take measures to maximize attendance at annual meetings by members not otherwise affiliated with the credit union.

The Association and its members appreciate NCUA's reconsideration of its bylaws. One final suggestion would be that the board commit to more frequently and periodically making adjustments to the bylaw framework. The financial services industry is changing so rapidly that it is absolutely crucial that the bylaws be designed and implemented in a way that allows credit unions to keep up with these changes.

Sincerely,

A handwritten signature in black ink, appearing to read "W. J. Mellin". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

William J. Mellin
President/CEO
New York Credit Union Association