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October 25, 2018

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

Re: 12 CFR Part 701 Appendix A – Comments on Notice of Proposed Rulemaking re: Federal Credit Union Bylaws; RIN 3133-AE86

On behalf of the members of the MD| DC Credit Union Association and the 125 Credit Unions and their 2.2 million members that we represent, we appreciate the opportunity to comment on the National Credit Union Administrations proposed rule to update, clarify and simplify the federal credit union bylaws.

Improvements to the By-Law Amendments Process:

MD|DC CUA credit unions continue to overwhelmingly support a timelier process for bylaw amendment review. Most of our credit union have requested that this time be between 14 and 56 days (2 and 8 weeks). The 90-day recommendation, while it is better than the prior bylaw which provided no timeframe, is still too long. With most credit unions favoring 30 calendar days, and our members falling within that timeframe, we ask the Board to re-consider. We understand that this is a burdensome task, but if our credit unions want to make operational changes to strengthen their financial positions and best serve the members, we must avoid unreasonable delay. As to the specific question posed, “is 60 calendar days more appropriate than the proposed 90 calendar days?”, the answer is yes but it may still be too long.

The Board should remove the limitation of services provisions from the bylaws.

The Federal Credit Union Act is silent as to how credit union may limit services when they feel it is necessary to protect the credit union, it’s members and employees. All rights to alter or amend the act are expressly reserved to congress (12 U.S.C. §1769(b)). For this reason, all limitation of services provisions should be removed from the by-laws unless and until congress amends the act to allow for board to create these rules.

Limitation of services has been addressed in several legal opinions written by the NCUA General Counsel’s Office.

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1. The first opinion mentioning limitation of services was in 1991. In OGC Op. No 90-0119 (February 20, 1991) General Counsel Fenner, in response to a letter requesting an amendment of the FCUA to change the expulsion procedure, stated "as an alternative to expulsion of the member in question, we suggest limiting the FCU services available to him. The Act grants all FCU members two basic rights: the right to maintain a share account, and the right to vote at annual and special meetings. However, nothing in the Act precludes an FCU from restricting the availability of certain services, provided that there is a rational basis for doing so." This suggestion was directed to the CEO of the Credit Union and its board of directors to make an internal business decision. A mere suggestion such as this does not, on its face, seem to exceed the authority granted to the NCUA.

2. In 1999, OGC Op. No. 99-0435 (June 23, 1999) the NCUA expanded this "limitation" authority by disagreeing with the way a credit union determined that it would be best to limit the services of a member to protect itself. The letter uses the rationale that the restriction of the account to a single share did not address the problem and therefor was not "reasonable" and violates the NCUA's longstanding view that "all FCU members have two basic rights: to maintain a share account and the right to vote at annual and special meetings." This causes two concerns. First, the question of reasonableness should be left to the credit union board. The NCUA has no routine contact with the members of most of credit unions which they regulate and cannot determine what is "reasonable" on a case by case basis because of the fact specific nature of the question. These judgement calls should be left to the credit union executives and employees who see these members often and know them. Second, the question remains whether the restriction of a members account, and if the account is not terminated, qualifies as "maintaining" an account. Reasonably restricting a members account for a finite duration while moving through the expulsion process, in our view, does not affect voting rights or the ability to maintain an account. The member may be restricted from modifying the account, but that is not prohibited by the act.

3. Finally, in 2008, OGC Op. No. 08-0431 (August 12, 2008) General Counsel Albin stated, following a series of examples on appropriate way to suspend accounts, "We caution that mere suspicion regarding a member's activities would not constitute a rational basis for suspending member services without more direct evidence of the member causing actual harm or loss to the FCU." Here, not only is the opinion further constricting the decision-making abilities and discretion of the FCU board, but it is also contrary to the current mindset regarding account suspension based on suspicious acts. Many states are introducing and enacting laws that protect credit

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unions from liability for suspending accounts of members if there is suspicion of elder abuse or potential acts of terrorism or other national security threats. It then follows logically, that if there is reasonable suspicion that a member is causing harm or loss (physical or monetary) to the credit union or its employees, this discretion to suspend the account should stand. These scenarios are often factually detailed and dangerous. Harm to the credit union itself and harm to an employee, elder individual etc., could very well be one in the same. The credit union boards need to have the ability to act in the manner most likely to protect the other members.

What started as a mere suggestion in an General Counsel's opinion has morphed into black letter regulation. This is an improper overreach by the NCUA. If the NCUA determines that it needs to be able to regulate how Credit Unions limit services of their members, they should request that Congress amend the act and conduct more detailed analysis into the benefits and drawbacks of this type of regulation.

Annual or Special Meetings through teleconference:

The board should be allowed, but not be required, to conduct an annual or special meeting using different technological platforms such as teleconference, web-based platforms etc. Most members cannot attend meetings in person for several reasons. Allowing more flexible options to attend meetings would likely increase participations and better allow members to exercise their rightful democratic powers. We understand and agree with the NCUA boards concerns about member disenfranchisement but think that there is a much higher chance of disenfranchisement by not adopting our position. As currently written, a member may have to travel significant distances to attend a meeting. The member may have to miss work and could incur substantial costs for lodging, food, gas and other items. The burden that this places on a member likely outweighs the burden placed on limited number of members who do not have access to electronic devices or broadband internet. In the most basic terms, more people have access to the internet than can drive 100 miles for a meeting.

We always appreciate the invitation to comment on regulations and to provide insight. We look forward to continued conversations and remain a committed partner.

Sincerely,

John Bratsakis
President/CEO MD|DC Credit Union Association