



December 2, 2022

Ms. Melane Conyers-Ausbrooks
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

Re: Comments on Notice of Proposed Rulemaking IN 3133-AF51
Federal Credit Union Bylaw Updates to Allow for Member Expulsion

Dear Ms. Conyers-Ausbrooks:

On behalf of Virginia's 106 credit unions and their 15 million members, we write to the National Credit Union Administration (NCUA) today regarding the proposed rule to amend the federal credit union (FCU) bylaws on member expulsion.

Earlier this year, Congress passed the Credit Union Governance Modernization Act (CUGMA), which requires the NCUA to develop a policy by which an FCU's Board of Directors could vote to expel a member for cause. While it may only be invoked rarely, we encourage the NCUA to implement a simpler process than has been laid out in this rulemaking. The rule that the NCUA has proposed is complex, burdensome and could even prove to put up more roadblocks that exist today that could impact employee safety. Credit unions exist to support their members, and expelling a member is only a matter of last resort. The Board of Directors is an extension of the membership and the members delegate governance and oversight of the credit union's affairs to that body.

As part of its proposed rule, the NCUA details the process by which a member expulsion for cause would occur and seeks feedback on certain aspects of the process. Feedback on specific elements of the proposed rule is below. Credit unions already have experience with responding to abusive, dangerous, or fraudulent behavior through a limitation of services policy. Credit unions should be able to have the flexibility to follow the CUGMA and their bylaws and take decisive action when necessary to protect their employees, members, and assets.

Member in Good Standing

We believe the limitation of services policy should remain in the FCU bylaws. Having both a limitation of services policy and a member expulsion policy will allow an FCU to create an escalated policy which tailors the appropriate remedy to the member's behavior. We also believe the requirement of a "logical relationship between the objectionable activities and the services to be suspended" is unnecessary and overly restrictive and should not be retained. We also oppose requiring the abusive conduct to occur at the FCU. In an increasingly digital world with more channels for credit union members to interact with a credit union, abusive behavior can occur over the phone, on social media, or through other channels that may not fit this physical location definition.

Notice of the Expulsion Policy

Regarding the method of delivery of notices, we believe disclosure should be required only in the method by which the member has chosen to receive statements and communications with the credit union. Requiring both electronic and main notices can contradict the member's stated preferences and is duplicative.

Expulsion Vote and Notice of Pending Expulsion

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Under the proposed rule, if an FCU's board votes to expel a member, the member must be notified of the pending expulsion, along with the reason for such expulsion. The proposed rule would require that the reason for the expulsion be specific and not just include conclusory statements. Statements such as the member's behavior has been deemed abusive or the member violated the membership agreement would not be sufficient. Instead, the notice would require dates and descriptions of the abusive behavior or specific information about how the member violated the membership agreement.

We agree that members should have an understanding of why they are being expelled, however, credit unions have significant experience with limiting services to abusive members in accordance with policy and we question whether we need this level of specificity. If a member's behavior rises to the severity of requiring expulsion from the credit union, management will be able to clearly state the reason for expulsion in a notice. The NCUA should allow credit unions to communicate with their members as they have when required to limit services.

Hearing

We strongly believe an in-person hearing should not be required as part of the member expulsion process and support flexibility for FCU to conduct hearings as appropriate for the situation. Hearings can be conducted in a fair, reasonable, and consistent manner whether they occur in-person, virtually, or telephonically. An in-person hearing could be dangerous if the expulsion is due to abusive or violent behavior or could be impractical if a member lives far away or has a conflict with the meeting time. We support giving an FCU flexibility on how to conduct a hearing to protect the best interests of volunteer board members, staff, and members.

For Cause

Regarding fraud, we believe the NCUA should not provide a definition of fraud or attempted fraud and should not require a criminal conviction to terminate membership on fraud grounds. We support FCUs having the flexibility to make these judgements and protect themselves against future potential losses. Fraud and attempted fraud can have various shades of gray and the credit union is in the best position to determine if a member's actions warrant expulsion, regardless of the status of criminal charges.

Reinstatement

We are opposed to a Board of Directors being required to vote on a member's reinstatement more than once. The proposed rulemaking asks if FCU boards should be required to reconsider reinstatement requests only every six, twelve, or eighteen months. Member expulsion is a serious remedy, requiring egregious behavior to warrant it. Requiring FCU Boards to repeatedly re-consider reinstatement requests is overly burdensome and unnecessary.

Conclusion

On behalf of Virginia's 106 credit unions and their 15 million members, we thank you for your consideration of this important matter. No credit union wants to expel a member. Member expulsion is a serious remedy but is at times necessary for the safety and security of credit union employees, members, and assets. While we feel that an FCU's management is in the best position to make these important decisions, giving this ability to the Board of Directors is a positive step. If you have any questions about our comments, please don't hesitate to contact me.

Sincerely,



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