



December 2, 2022

Melane Conyers-Ausbrooks, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Re: Comments on Federal Credit Union Bylaws – Member Expulsion; RIN 3133-0132

Dear Ms. Conyers-Ausbrooks:

I am writing on behalf of the California and Nevada Credit Union Leagues (Leagues), whose combined strength makes up one of the largest state trade associations for credit unions in the United States, representing the interests of approximately 230 credit unions and their more than 11.6 million members.

Under the Federal Credit Union Act (FCU Act) and standard FCU Bylaws (FCU Bylaws), there are currently only two ways a member may be expelled: (1) A two-thirds vote of the membership present at a special meeting called for that purpose, and only after the individual is provided an opportunity to be heard; and (2) for non-participation in the affairs of the credit union, as specified in a policy adopted and enforced by the board. In March 2022, Congress enacted the Credit Union Governance Modernization Act of 2022 (CUGMA). In September 2022, the National Credit Union Administration (NCUA) proposed to amend the standard FCU Bylaws to adopt a policy by which a federal credit union (FCU) member may be expelled for cause by a vote of two-thirds of a quorum of an FCU's board of directors. The proposed rule would also make conforming changes to Article II of the FCU Bylaws regarding members in good standing.

The Leagues welcome the opportunity to provide comments to the NCUA on the proposed rule regarding member expulsion. We applaud the NCUA Board (Board) for its efforts to make it easier for FCUs to expel problematic members, such as those that engage in violent, abusive or illegal behavior. While we generally support the objectives of the proposed rule, we do have some concerns, and we respectfully offer the following comments and recommendations.

Proposed Rule

- **Member in Good Standing/Limitation of Services**

The 2019 Bylaws Final Rule codified the concept of a “member in good standing.” So long as a member remains in good standing, that member retains all of the rights and privileges associated

with FCU membership. A member not in good standing, however, may be subject to an FCU's limitation of services policy. The primary reason for permitting FCUs to adopt a limitation of services policy was to provide FCUs with an alternative to holding a special meeting to address certain egregious member behavior, which approach we supported due to the time, expense, and logistical burdens associated with calling a special meeting.

The passage of the CUMGA has now provided FCU boards of directors with direct authority (subject to the NCUA Board promulgating a policy) to expel a member for cause.

The proposed rule would retain the member in good standing provisions. The Leagues agree and support this approach. And while we support leaving the limitation of services policy in the FCU bylaws, we are concerned that it is insufficient to address a pending expulsion for cause.

In the case of a violent or abusive member, the proposed rule provides the option for expulsion through board action, but only after required notices have been provided along with an opportunity to be heard and a 60-day waiting period. The FCU may use the limitation of services policy in the case of a violent or abusive member whose expulsion is pending. While we agree that a credit union should only expel a member as a last resort, the ability to do so in a prompt and efficient manner is of particular importance when it comes to members who are physically or verbally abusive to other members and staff, or who have engaged in fraud or other illegal activities against the credit union. The delays created by the need to hold a board meeting, then provide the requisite 60 days' notice, possibly a hearing, and then another board meeting to vote, are significant.

Therefore, the Leagues encourage the NCUA to consider an approach comparable to that of California's state-chartered credit unions. In California, state chartered credit unions are permitted to expel members for a number of causes, including: (A) conviction of a criminal offense involving moral turpitude; (B) failure to carry out contracts, agreements, or obligations with the credit union; (C) refusal to comply with the provisions of this division or of the bylaws; and (D) abusive, threatening, or harassing behavior toward credit union staff, volunteers, or members, or the abuse of credit union systems or property.¹ In addition, an expulsion under part (D) may take effect immediately, without advance notice or an opportunity to be heard if the board of directors, or its designee determines that immediate expulsion is reasonably necessary for the protection of the credit union or its staff, volunteers, or members.² However, an expelled member must be provided notice of the expulsion within five (5) business days after action is taken and has the right to appeal to the board of directors, as the initial expulsion decision may be delegated by the board to a membership or executive committee.

We believe that a similarly expedited process would help give FCUs the ability to quickly remove a dangerous member to protect staff and other members.

¹ See Cal. Financial Code §14456(b)(1)

² See Cal. Financial Code §14456(b)(3)(A)

- **Notice of the Expulsion Policy**

Under the CUGMA, an FCU's directors may expel a member for cause “pursuant to a policy which the [NCUA] Board shall adopt, pursuant to a rulemaking,” but they may not do so unless the FCU “has provided, in written or electronic form, a copy of the policy adopted by the [NCUA] Board...to each member of the credit union.” Under the proposed rule, before an FCU expels a member for cause, it must send a copy of Article XIV of its bylaws (concerning expulsion) to each member. We are not aware of any statement of an NCUA expulsion policy other than the proposed text of Article XIV of the FCU bylaws. Clarification of this requirement is needed.

The Leagues support the idea of a model standard disclosure of NCUA’s expulsion policy for all FCU members separate and apart from the bylaw language in Article XIV. Having a uniform model disclosure would help ensure the member’s understanding of the expulsion policy and simplify the requirements for FCUs.

The Board asked whether it should also consider requiring both mail and electronic delivery of notices, even if the member has elected to receive electronic communications. The Leagues believe that it is unnecessary to require credit unions to deliver the notices in both mail and electronic formats, even if the member has elected to receive electronic communications. A requirement that would provide the member with both mail and electronic versions is not progressive and does not reflect the way our next generation of members will interact with the credit union.

- **Expulsion Vote and Notice of Pending Expulsion**

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 reason for the expulsion must be specific and not just include conclusory statements. The proposed rule further requires the notice to include a number of key pieces of information to the member. The Board asks how prescriptive the NCUA expulsion policy should be regarding the content of the notice of expulsion.

The Leagues believe that content of the notice as currently proposed is sufficient. The need for further specificity is unnecessary and would cause potential burden to FCUs. However, the Leagues would welcome a model notice that could be utilized by FCUs to help ensure compliance.

- **Hearing and Appeal**

Under the CUGMA, a member has 60 calendar days from the date of receipt of a notification to request a hearing from the board of directors of the FCU, which must be provided upon request. If a member does not request a hearing, the member is automatically expelled after the end of the 60-day period. The statute is silent on whether the hearing must be in person, and the Board does not believe it is necessary to require FCUs to provide an in-person hearing.

The Leagues agree with the NCUA’s belief that an in-person hearing could be problematic in cases of expulsion due to a violence or threatened violence. Our members have expressed concern over any potential requirement for an in-person meeting for cases when a member has been abusive or has threatened violence to credit union staff. Credit unions should be given the room for such flexibility to ensure the safety of employees, members and volunteers, and be allowed to customize an approach to fit the particular circumstances.

Additionally, the CUGMA does not include an explicit appeal right for the member. The NCUA has asked whether the final rule should consider adding an appeal right for members.

The Leagues believe that FCUs should have the ability to adopt reasonable procedures and decide whether such a process is necessary. However, if the final rule should include an appeal process requirement, at a minimum, the NCUA should consider an appeal process that mirrors or is significantly similar to that of state-chartered credit unions in California. For example, under Cal. Financial Code §14456(b)(4)(A), “[a] member who is expelled by the board of directors, or its designee, has the right to appeal therefrom to the board of directors, pursuant to reasonable procedures adopted by the board.” Cal. Financial Code §14456(b)(4)(B) goes on to describe “reasonable procedures” as including: (i) written notice to the expelled member of the effective date of the expulsion; (ii) the right to appeal therefrom and the procedures for doing so; and (iii) written notice of the board’s final determination following an appeal.”

- **FCU Board Vote**

After the hearing, the FCU board of directors must hold a vote in a timely manner on expelling the member. The proposed rule defines a timely manner as within 30 calendar days.

The Leagues believe that the 30-day timeframe for the board to vote following a hearing is too prescriptive. Instead, the Leagues recommend that the timeframe should be left to the discretion of the credit union’s board of directors.

- **Notice of Expulsion**

If a member is expelled, either automatically at the end of the 60-day period after receipt of the notice or after the board votes to expel the member after a hearing, the FCU must provide notice of the expulsion. Under the proposed rule, the notice must provide information on the effect of the expulsion, including information related to account access and any withdrawals by the FCU for amounts due. The FCU Act does not require FCUs to accelerate the members' outstanding loans or other obligations if the member is expelled. The NCUA Board asks whether the final rule should include a minimum amount of time before an FCU is permitted to call in an existing obligation or offset amounts owed to the FCU.

The Leagues do not believe that the final rule should include a minimum amount of time before a FCU is permitted to call in an existing obligation or offset amounts owed to the FCU. We recommend that FCUs be afforded the flexibility pursuant to reasonable procedures as adopted by the credit union’s board of directors.

- **For Cause**

Regarding a repeated non-substantial violation of the membership agreement, under the proposed rule the FCU must have provided written notice to the member at least one time prior to the notice of expulsion, and the member must have repeated the violation after having been notified of the violation. The NCUA Board asks whether there should be a limit on the time between the FCU’s notice of a violation and the repeated behavior. For example, that the repeated behavior must occur within two years of the notice.

The Leagues believe that the Board should not impose a time limit and that the notification requirements as proposed are sufficient. The League further recommends that the NCUA consider allowing FCUs to decide the time frame appropriate to their business operations in a manner that is open and fair.

Moreover, the NCUA Board asks if it should consider prohibiting FCUs from expelling members for causing a loss outside of fraudulent or other criminal acts.

The Leagues disagree with this approach and believe that FCUs should have broad discretion to determine whether expelling a member who has caused a financial loss or merely restricting the member’s services is appropriate.

Additionally, a member may be expelled for cause if the member has engaged in “fraud, attempted fraud, or other illegal conduct that a member has been convicted of in relation to the credit union, including the credit union's employees conducting business on behalf of the credit union.” Under the proposed rule, a criminal conviction is not necessary for a member expulsion related to fraud or attempted fraud.

The terms “fraud” and “attempted fraud” are highly fact specific and broad enough to encompass a wide range of dishonest behavior and the Leagues do not believe the Board should attempt to further clarify these terms. Any attempt to define these terms or provide a list of examples would not be exhaustive and could result in limiting a FCUs’ response. We believe that FCUs should have the flexibility to make their own judgement and take the appropriate actions necessary.

Moreover, if a member is convicted of other illegal conduct and the conviction is later overturned, the Leagues believe that the final rule should not provide for automatic reinstatement. The Leagues believe automatic reinstatement would create a significant burden on an FCU. As such, a member

should be allowed to follow the reinstatement process as currently proposed once the member's conviction is overturned or expunged.

- **Reinstatement**

Under the CUGMA, a member expelled by a two-thirds vote of an FCU's board of directors must be given an opportunity to request reinstatement of membership. The member may be reinstated by either a majority vote of a quorum of the directors of the FCU or a majority vote of the members of the FCU present at a meeting. Under the proposed rule, such a meeting would have to be a special meeting.

The Leagues agree with and support a member's ability to request reinstatement of their membership. However, we disagree that this should warrant holding a special meeting. Given the time and expense involved with calling and holding a membership meeting in general, any special meeting requirement is ripe for abuse by a disgruntled former member. FCUs should have the ability to offer the expelled member the option of having their reinstatement request considered by the board at the next regular board meeting or by the members at the next scheduled regular meeting. There should be no expectation to call a special meeting for this purpose.

Additionally, we believe a requirement for an FCU to vote on a member's reinstatement more than once is unnecessary. FCUs should have the ability to make their own determinations as to when and how often a FCU board will consider reinstatement requests in accordance with reasonable policies and procedures.

Conclusion

The Leagues thank the Board for acting to address the FCU Bylaws regarding member expulsion and for the opportunity to comment on the proposed amendments. Each credit union faces different challenges and therefore should be given ample flexibility within their FCU Bylaw structure to conduct and continue business operations.

We hope that you carefully consider our views and recommendations. If you have any questions regarding our comments, please do not hesitate to contact me.

Sincerely,

Diana R. Dykstra
President/CEO
California and Nevada Credit Union Leagues