OHIO CREDIT UNION LEAGUE

December 2, 2022

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

Re: Federal Credit Union Bylaws; RIN: 3133-AF51

Dear Ms. Conyers-Ausbrooks,

The Ohio Credit Union League (OCUL) represents the collective interests of Ohio's 228 credit unions and their more than three million members. Of those 228 credit unions, 124 are federally chartered; 59 state-chartered, federally insured; and 45 state-chartered, privately insured, with an average asset size of $188 million. OCUL appreciates the opportunity to comment on the National Credit Union Administration (NCUA) notice of proposed rulemaking to establish policies governing the expulsion process for a federal credit union (FCU) member.

Background

Under the current Federal Credit Union Act (FCU Act) and standard 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.[1]

The FCU Bylaws were last amended by the NCUA in 2019 (2019 Bylaws Final Rule).[2] During the 2019 Bylaws Final Rule rulemaking, concerns were raised that the FCU Act expulsion provisions made it difficult to proactively limit security threats or harm caused by violent, belligerent, disruptive, or abusive credit union members; specifically, commenters were concerned about the burden from requiring members to call a special meeting to seek to expel such members. The 2019 Bylaws Final Rule, however, did not modify the procedures for expelling an FCU member due to the FCU Act statute. Instead, the 2019 Bylaws Final Rule added a new section to the FCU Bylaws on limiting services for certain members.[3] So long as a member remains in good standing, that member retains all the rights and privileges associated with FCU membership. A member not in good standing, however, may be subject to the FCU's limitation of services policy.

Most recently, on March 15, 2022, Congress enacted the Credit Union Governance Modernization Act of 2022 (Act). Under the Act, the NCUA was given eighteen (18) months to

[1] 12 U.S.C. 1764
[2] 84 FR 53278 (Oct. 4, 2019)
[3] 12 CFR part 701, app. A. Art. II, sec. 5

develop a policy by which a FCU member may be expelled for cause by a two-thirds vote of a quorum of the FCU's board of directors. The NCUA is now proposing to amend the standard FCU Bylaws in two important ways.

Expedited Expulsion Process

Although extremely rare, OCUL supports granting FCU boards the authority to expel a member that proves to be a threat or engages in dangerous, illegal, or abusive conduct. In some cases, the time and resources previously required for a full vote of credit union membership is impractical and inefficient. NCUA's proposal to allow for potentially violent or aggressive members to be expelled in a timelier fashion demonstrates the NCUA's commitment to member and employee safety. Additionally, this new process establishes several important due process requirements. The proposed rule lays out specific notice, hearing, and voting requirements that allow a member to appeal a decision. This proposed rule balances the interests of both the credit union and the member as it further protects the employees and full membership and ensures people everywhere can receive safe and affordable financial services and products.

By modernizing the expulsion process, federally chartered credit unions will be better empowered to swiftly protect the institution, the staff, and the membership through the democratically elected board of directors entrusted to safely and soundly fulfill the credit union's mission.

Retained Operational Flexibility

Additionally, OCUL supports the NCUA adding safeguards while maintaining FCU board flexibility when it comes to member access and management. While the proposed rule grants an FCU board new authorities in expelling a member, it retains and expands the ability of an FCU Board to restrict the services of a member. While it could be argued the proposed expulsion process presents issues with necessity, efficiency, and potentially an undue burden on the credit union dealing with a potentially dangerous member, OCUL appreciates the proposed rule codifies a legitimate process that can be used in conjunction with several other key safeguards from the 2019 Bylaws Rule on member service limitations.

First, the proposed rule retains the member in good standing provisions and expands and clarifies the definition of a member not in good standing. OCUL believes including both authorities in the FCU Bylaws provides additional flexibility for FCUs to address certain disruptive member behaviors without sacrificing credit union operations or member and employee safety. Specifically, providing for both authorities, when used in conjunction with one another, allows an FCU to limit a member's service in the case of a violent or abusive member who has yet to be expelled. This allows a credit union to navigate the expulsion process while tempering the situation until further review is conducted. Additionally, the use of a limitation of service policy does not require a board vote; therefore, it may be easier and more expeditious for FCUs to exercise these restrictions.

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Second, the proposed rule further codifies the expulsion process and its procedures. OCUL supports clear, bright-line rules especially when it comes to potentially removing a violent, dangerous, or disruptive member. The proposed rule clearly sets forth the expulsion process, including requirements for notification, voting, hearing, and causality. OCUL appreciates the NCUA empowering FCU boards to govern member and employee safety while also setting safeguards to ensure member expulsion is rare, justified, and efficient.

OCUL appreciates the opportunity to engage with the NCUA on ways to modernize FCU Act and supports this proposed rule as it places employee and member safety at the forefront of safety and soundness, and allows credit unions to navigate potentially dangerous situations without sacrificing membership integrity.

Respectfully,

Paul L. Mercer
President

Sean M. Brown, Esq.
Director, Regulatory Affairs