

National Credit Union Administration
SUPPORTING STATEMENT

Federal Credit Union Bylaws
(Appendix A to Part 701)
OMB No. 3133-0052

Summary of rulemaking:

The NCUA published a final rule on October 4, 2019, at 84 FR 53278, to update, clarify, and simplify the federal credit union (FCU) bylaws and conform the Federal Credit Union Bylaws to legal opinions issued by the NCUA's Office of General Counsel and/or provide greater flexibility to FCUs. The final rule also makes other changes that are designed to remove outdated or obsolete provisions.

The rule amends information collection requirements under several articles to encourage greater participation by members by requiring FCUs to post annual meeting notices online (if they have a website) and in a conspicuous place in the FCU's physical location, publicize the call for nominations to all members, and post this information on FCU website along with the bylaws and any adopting amendments to their website, if applicable.

A. JUSTIFICATION

1. Circumstances that make the collection of information necessary.

Section 108 of the Federal Credit Union (FCU) Act (12 U.S.C. 1758) requires the National Credit Union Administration (NCUA) Board to prepare bylaws before an FCU's charter is complete. The form bylaws are established to simplify the organization of a FCU and establish uniformity regarding FCU operations and member rights. The NCUA Board adopted the Bylaws and incorporated them into NCUA's regulations at 12 CFR 701.2 and as Appendix A to Part 701, in 2007.

2. Purpose and use of the information collection.

The bylaws address a broad range of matters concerning: an FCU's organization and governance; the FCU's relationship to members; and the procedures and rules an FCU follows. The FCU uses the information it collects and maintains pursuant to the bylaws in its operations and to provide services to its members. The NCUA uses the information both to regulate FCUs to protect consumers and monitor their safety and soundness to protect the National Credit Union Share Insurance Fund.

3. Use of information technology.

FCUs use available information technology to retain records and to provide records to NCUA electronically.

4. Duplication of information.

The bylaws supplement broad provisions of: an FCU's charter, which establishes an FCU's existence; the FCU Act, which establishes FCU powers; and other NCUA regulations, which implement the FCU Act. The bylaws' information collection requirements supplement the ones in these aforementioned provisions, but are not duplicated anywhere.

5. Efforts to reduce burden on small entities.

There is no impact on small entities.

6. Consequences of not conducting the information collection.

As a legal matter, an FCU's bylaws must conform to and cannot be inconsistent with any provision of its charter, the FCU Act, NCUA regulations, or other laws or regulations applicable to the FCU's operations.

7. Inconsistencies with guidelines in 5 CFR 1320.5(d)(2).

There are no special circumstances. This collection is consistent with the guidelines in 5 CFR 1320.5(d)(2).

8. Efforts to consult with persons outside the agency.

A Paperwork Reduction Act (PRA) notice was published in the preamble of the proposed rulemaking on November 13, 2018, at 83 FR 56640, providing an opportunity for the public to comment on the information collection requirements prescribed by this rule.

There were no direct comments received in response to the PRA notice; but PRA comments were received in response to the proposed rule. The comments made were associated with the new information collection requirement prescribed by amended Appendix A to Part 701 and discussed in the preamble of the final rule as follows:

- Article IV – Meetings of Members. Article IV addresses procedures related to annual and special meetings of an FCU's membership. In the ANPR, the Board specifically requested comments on methods to encourage member attendance at annual and special meetings. The proposed rule made several changes to Article IV to encourage greater member participation, including enhanced notice requirements and adjustments to quorum requirements.

To ensure that members receive adequate notice of an annual or special meeting, the proposed rule required that the notice for the annual meeting be posted in a conspicuous place in the FCU's physical office, such as at teller windows or on the front door of the FCU's office, at least 30 calendar days before the meeting.

The notice must also be prominently displayed on the FCU's website if the FCU then maintains a website. An FCU is not required to establish and maintain a website solely for this purpose; however, most commenters stated that an FCU should be required either to post the notice in a conspicuous place or on its website, but not both. The Board disagrees. The Board believes that these changes are appropriate because members are more likely to participate in annual and special meetings if the notice is widely announced. One commenter also asked if posting a meeting notice on its online calendar was considered conspicuous. The Board is clarifying that adding it as a date on a credit union calendar is considered conspicuous, so long as the calendar is easily accessible from the FCU's main webpage.

- **Article V – Elections.** Article V addresses procedures for electing FCU Board members, and allows FCUs to select one of four options for conducting nominations and elections. For each of the four options for conducting nominations and elections, the proposed rule amended the procedures for the nominating committee, including adding a requirement that the nominating committee widely publicize the call for nominations to all members and interview every member who volunteers. The Board sought specific comments on this change. Commenters were divided on whether to widely publicize to all FCU members the call for nominations. Most commenters objected to this policy, though a few supported it as encouraging member participation. In addition, the Board sought comments on whether the secretary should post the nominations by petition along with those of the nominating committee on the FCU's website (if the credit union maintains a website). A few commenters stated that posting the nominations in a conspicuous place in each FCU office and on the FCU's website was unduly burdensome. The Board continues to believe that widely publicizing the nomination process and posting the nominations by petition on the FCU's website is only a nominal burden, but will provide more opportunities for member participation. Therefore, the Board is finalizing this provision as proposed.
- **Article XVI – General.** The proposed rule also amended section 6 to require FCUs with websites to post their bylaws on the website. The Board believed that adding this new requirement would ensure that members without access to an FCU's physical location where they can request a copy of the bylaws can still have access to the FCU's corporate governance documents. Some FCUs operate over a wide geographic area, employing shared branch networks and/or online banking as a way to provide fast and reliable services to their members. It may be difficult for members of these FCUs, particularly in rural areas, to travel to the nearest branch office to request a copy of the FCU's bylaws. Accordingly, the Board believes that, to the extent an FCU maintains a website, an FCU should post its current bylaws on that website to provide these members with immediate access.

Commenters overwhelmingly disapproved of this proposed change. One commenter went so far as to suggest that such a requirement would only benefit a potentially litigious law firm. One commenter raised concerns with privacy and cybersecurity. This commenter suggested requiring that the FCU post a disclosure of the right to inspect all books of account and records, including a copy of the bylaws. One commenter stated that posting bylaws online may present a burden for smaller FCUs, even if those FCUs maintain an online presence. The Board disagrees. Allowing members to access the FCU's bylaws on its website provides a significant benefit to members and assists them in fulfilling their oversight role as member-owners of the FCU. The Board also believes that the compliance burden for FCUs will be minimal. On balance, commenters have not presented persuasive arguments why the NCUA should not require an FCU to post its bylaws on its website (if it maintains a website). Accordingly, the Board is adopting this aspect of the proposed rule without amendment. One commenter requested clarification on whether the FCU could post a copy of the bylaws within a password-protected, members-only access area of the website. The Board is clarifying that the bylaws can be posted in a password-protected, members-only access area of a FCU's website.

9. Payment or gift to respondents.

There is no intent by NCUA to provide any payment or gift to respondents.

10. Assurance of confidentiality.

There is no assurance of confidentiality other than that provided by law.

11. Questions of a sensitive nature.

These are recordkeeping and disclosure requirement. No personally identifiable information (PII) is collected.

12. Burden of information collection.

As a preliminary matter, those persons choosing to organize a new FCU must comply with certain information collection requirements upon starting the FCU and first adopting these bylaws. Over the past three years, organizers have established an average of approximately three new FCUs each year. We estimate each new FCU must spend approximately 20 hours to initially comply with the bylaws' information collection requirements, for a total annual collection of 60 hours.

For current FCUs, it has been a usual and customary business practice, since their initial charter dates, to collect and maintain any information as specified the bylaws. To determine the current annual burden hours for this collection, NCUA staff reviewed each Article of the FCU Bylaws and have identified the following articles as containing information collection requirements.

The new information collection requirements prescribed by this rule requires FCU to post annual meeting notices in a conspicuous place and in the FCU's physical location and on its website, publicize the call for nominations to all members, and post this information on FCU website along with the bylaws and any adopting amendments to their website, if applicable. There is an initial one-time burden to those FCU who maintain a website to post their bylaw to their site. The NCUA estimates that 97%, or 3,235 FCU have a web presence. The proposed changes to the information collection requirements associated with this proposed rule are shaded in the table below.

Article	Information Collection	Type of Burden	# Respondents	Frequency	Total Annual Responses	Hours per Response	Total Annual Burden
Introduction: Bylaw amendments	Newly chartered FCU Bylaws collection requirements (adopt amended bylaws must file with CURE)	Reporting	3	1	3	20.00	60.00
Article II. Qualifications for Membership	Membership applications	Record-keeping	3,335	333	1,110,555	0.25	277,638.75
	Membership denial [All FCUs deny one member per year].	Record-keeping	3,335	0.25	834	0.25	208.44
Article IV. Meetings of Members	Notices related to member meetings	Disclosure	3,335	1	3,335	1.00	3,335.00
	All Posting notices related to member meetings	Disclosure	3,335	1	3,335	0.17	555.83
	Additional Posting notices related to member meetings on Website	Disclosure	3,335	1	3,235	0.08	269.58
Article V. Elections	iv. Secret Ballots: Establish an election process that assures members their votes remain confidential an secret,	Record-keeping	3,335	1	3,335	0.17	555.83
	Collecting and maintaining information for FCU elections	Record-keeping	3,335	1	3,335	8.00	26,680.00
	x. Nomination procedures: The nominating committee must widely publicize the call for nominations to all members by any medium.	Disclosure	3,335	1	3,335	0.50	1,667.50
Article VI. Board of Directors	Board meeting notices	Disclosure	3,335	1	3,335	1.00	3,335.00
Article VII. Board Officers, Management Officials and Executive Committee	ii. Publicize the name of the committee members of each FCU.	Disclosure	3,335	1	3,335	0.50	1,667.50
	Sec. 6(c) - post copy of financial statement in a conspicuous place in the office of the CU.	Disclosure	3,335	1	3,335	0.50	1,667.50
Article XVI. General	FCU recordkeeping specified in secs 5 & 6	Record-keeping	3,335	1	3,335	24.00	80,040.00
	ONE-TIME Posting Bylaws to an FCU's Website	Disclosure	3,235	1	3,235	1.00	3,235.00
Article XVII. Amendments of Bylaws and Charter	Post updates to bylaws after adopting amendments	Disclosure	3,235	1	3,235	0.50	1,617.50
Totals			3,235		1,151,112		402,533

NCUA does not believe that FCUs will incur any additional labor costs as a result of the bylaw requirements since these are in accordance with the FCUs' usual and customary business practices. The FCU bylaws address integral parts of an FCU's operations as member-owned, not-for-profit financial cooperatives. Since an FCU could not operate as a federally-chartered and insured credit union without complying with these collections, there is no additional labor cost burden.

13. Capital start-up or on-going operation and maintenance costs.

There are no capital start-up or operation and maintenance costs incurred.

14. Annualized costs to the Federal government.

There is no cost to the Federal government.

15. Reason for changes in burden.

The rule amends the information collection requirements under several articles to encourage greater participation by members by requiring FCU to post annual meeting notices in a conspicuous place and in the FCU's physical location, publicize the call for nominations to all members, and post this information on FCU website along with the bylaws and any adopting amendments to their website, if applicable. As a result of these disclosure requirements, there is an increase of 8,457 burden hours due to these program changes.

Adjustments have been made due to: (1) include burden not previously reported, resulting in an increase of 2,779 burden hours; (2) reduce the number of FCU, resulting in a decrease in burden by 45,317 hours, for to total adjustment of -42,537 burden hours.

A total of 402,533 burden hours requested.

16. Information collection planned for statistical purposes.

There are no plans for publication.

17. Request non-display the expiration date of the OMB control number.

The OMB control number and expiration date associated with this PRA submission will be displayed on the Federal government's electronic PRA docket at www.reginfo.gov.

18. Exceptions to Certification for Paperwork Reduction Act Submissions.

There are no exceptions to the certification statement.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not involve statistical methods.