

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 701

RIN 3313-AE86

### Federal Credit Union Bylaws

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Proposed rule.

**SUMMARY:** The NCUA Board (Board) is proposing to update, clarify, and simplify the federal credit union bylaws (FCU Bylaws). The Board also is proposing changes that will update and conform the FCU Bylaws to legal opinions issued by the NCUA's Office of General Counsel and/or provide greater flexibility to FCUs. Finally, the Board is proposing other changes that are designed to remove outdated or obsolete provisions.

**DATES:** Comments must be received by January 14, 2019.

**ADDRESSES:** You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *NCUA Website:* [http://www.ncua.gov/RegulationsOpinionsLaws/proposed\\_regs/proposed\\_regs.html](http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html). Follow the instructions for submitting comments.

- *Email:* Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include "[Your name] Comments on FCU Bylaws" in the email subject line.

- *Fax:* (703) 518-6319. Use the subject line described above for email.

- *Mail:* Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

- *Hand Delivery/Courier:* Same as mail address.

*Public inspection:* All public comments are available on the agency's website at <http://www.ncua.gov/RegulationsOpinionsLaws/comments> as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library, at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9:00 a.m. and 3:00 p.m. To make an appointment, call (703) 518-6540 or send an email to [OGCMail@ncua.gov](mailto:OGCMail@ncua.gov).

**FOR FURTHER INFORMATION CONTACT:** Benjamin M. Litchfield, Staff Attorney,

Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314, or by telephone at (703) 518-6540.

#### SUPPLEMENTARY INFORMATION:

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- II. Legal Authority
- III. Summary of the Proposed Rule
- IV. Article-by-Article Analysis
- V. Regulatory Procedures

#### I. Background

Section 108 of the Federal Credit Union Act (FCU Act) requires the Board to periodically prepare a form of bylaws to be used by FCU incorporators and to provide that form to FCU incorporators upon request.<sup>1</sup> FCU incorporators must submit proposed bylaws to the NCUA as part of the chartering process. Once the NCUA has approved an FCU's proposed bylaws, the FCU must operate according to its approved bylaws or seek agency approval for a bylaw amendment.<sup>2</sup>

The FCU Bylaws are set out in Appendix A to part 701 of the NCUA's regulations.<sup>3</sup> The Board incorporated the FCU Bylaws into the NCUA's regulations to address concerns regarding bylaw enforcement.<sup>4</sup> As the Board stated in the final rule incorporating the FCU Bylaws, the FCU Act only provides two mechanisms for correcting bylaw violations: (1) Suspension or revocation of an FCU's charter or (2) placing an FCU into conservatorship. Aside from these extreme remedies, when adopting the final rule, the Board was concerned about identifying what, if any, supervisory action the NCUA could take to protect fundamental member rights.<sup>5</sup> By incorporating the FCU Bylaws into the NCUA's regulations, the Board believed that it could use additional regulatory tools, such as the issuance of a cease and desist order, to address material noncompliance with an FCU's bylaws.

FCUs often express concerns that the FCU Bylaws do not provide sufficient operational flexibility to allow an FCU to respond to changing market practices or to address basic corporate governance matters in a prompt and efficient manner. These arguments are well taken. Accordingly, the NCUA has engaged in an ongoing review of the FCU Bylaws to determine what, if any,

changes may be necessary to provide additional flexibility to FCUs.

In 2013, the NCUA's Office of General Counsel consulted with representatives from the credit union industry regarding the FCU Bylaws. The NCUA received many comments during the 2013 consultation, many of which focused on relatively narrow aspects of the FCU Bylaws. For example, FCUs recommended that the NCUA provide more staff commentary on the meaning and interpretation of specific bylaw provisions. They also encouraged the NCUA to make a concerted effort to modernize the FCU Bylaws by using consistent terms throughout and deleting inapplicable language that is no longer useful. Commenters specifically recommended that the NCUA update the preamble to the FCU Bylaws and ensure that the instructions are current.

On March 15, 2018, the Board issued an advance notice of proposed rulemaking (ANPR) soliciting comments on how to update, clarify, and simplify the FCU Bylaws.<sup>6</sup> The Board solicited comment on five specific questions related to: (1) Improving the bylaw amendment process within the NCUA; (2) addressing ambiguities in the FCU Bylaws allowing for an FCU to limit services to a member and expel a member; (3) methods to facilitate recruitment and development of directors; (4) methods to encourage member attendance at annual and special meetings; and (5) eliminating regulatory overlaps between the FCU Bylaws and the NCUA's regulations. The Board also invited general comments on improvements to the FCU Bylaws.

The Board received a wide variety of comments to the ANPR from FCUs, federally insured, state-chartered credit unions, national credit union trade associations, state credit union trade associations, and law firms. Commenters generally appreciated the Board's efforts to provide an enhanced opportunity to participate in the rulemaking process. Nearly all of the commenters raised issues with specific aspects of the FCU Bylaws and requested that the Board provide the greatest amount of regulatory relief permissible under the FCU Act.

Based on the comments the Board has received in response to the ANPR and throughout its ongoing review of the FCU Bylaws, the Board is proposing to make significant revisions to modernize the FCU Bylaws.

<sup>1</sup> 12 U.S.C. 1758.

<sup>2</sup> 12 CFR 701.2(a).

<sup>3</sup> 12 CFR 701, App. A.

<sup>4</sup> 72 FR 61495, 61496 (Oct. 31, 2007).

<sup>5</sup> Specifically, these rights include the right to: (1) Maintain a share account; (2) maintain FCU membership; (3) have access to credit union facilities; (4) participate in the director election process; (5) attend annual and special meetings; and (6) petition for removal of directors and committee members. See 72 FR 30984, 30986 (June 5, 2007) (proposed rule).

<sup>6</sup> 83 FR 12283 (Mar. 21, 2018).

## II. Legal Authority

The Board is issuing this proposed rule pursuant to its specific authority in the FCU Act to adopt a form of bylaws to be used by FCU incorporators when chartering an FCU,<sup>7</sup> as well as its plenary authority to adopt rules and regulations for the administration of the FCU Act.<sup>8</sup> Given the importance of proper corporate governance procedures to the safe and sound operation of FCUs, the Board believes this proposed rule is a necessary and proper exercise of this statutory rulemaking authority.

## III. Summary of the Proposed Rule

The proposed rule incorporates many of the suggestions the Board received in response to the ANPR and throughout the NCUA's ongoing review of the FCU Bylaws. In addition, the proposed rule clarifies provisions that have created confusion in the past, as reflected by the numerous inquiries the NCUA has received from FCUs and members. In some instances, a proposed change offers more detail or further elaboration to help FCU officials, employees, and members better understand a provision.

The proposed rule also makes stylistic and grammatical changes throughout the FCU Bylaws, which provide for a much clearer and more readable document. For example, the proposed rule moves the entire body of staff commentary to the end of the FCU Bylaws, with corresponding references to the articles and section numbers that are the subject of the commentary.

However, the proposed rule does not permit an FCU to draft its own bylaws. The FCU Act requires the Board to develop a form of bylaws that "shall be used" by FCU incorporators and mandates that FCUs operate according to their NCUA-approved bylaws.<sup>9</sup> While commenters to the ANPR and throughout the NCUA's ongoing review of the FCU Bylaws have advocated greater flexibility to develop their own bylaws, the Board continues to believe that having a uniform set of FCU Bylaws is more consistent with the spirit of the FCU Act<sup>10</sup> and is necessary to protect fundamental member rights, to avoid confusion among FCUs, and to prevent

the adoption of illegal bylaw provisions.<sup>11</sup>

## IV. Article-by-Article Analysis

### Introduction

This proposed rule modernizes the introductory language to the FCU Bylaws. It changes the instructions for bylaw amendments to reflect that the NCUA's Office of Credit Union Resources and Expansion (CURE) now is the primary office handling bylaw amendments, and consults with the NCUA's Office of General Counsel as necessary. The proposed rule also establishes an explicit 90 calendar day deadline for CURE to reach a decision on a bylaw amendment.

In the ANPR, the Board specifically requested comments on improving the bylaw amendment process. Commenters requested that the Board adopt a deadline for CURE to process bylaw amendments, with a majority favoring 30 calendar days. While the Board agrees that the NCUA should process bylaw amendments as expeditiously as possible to allow the FCU to address any pressing operational concerns, the Board remains concerned that 30 calendar days may be an insufficient amount of time. Accordingly, the proposed rule adopts a 90-calendar day deadline. The Board believes that this time period will provide CURE with sufficient time to consider the bylaw amendment without imposing an undue operational burden on the FCU. The Board requests specific comments on this aspect of the proposed rule including whether another time period, such as 60 calendar days, would be more appropriate to ensure that CURE processes proposed bylaw amendments in a timely manner.

Commenters to the ANPR also requested that the Board automatically approve any bylaw amendment that CURE does not approve within this deadline. The Board does not believe that it is appropriate to automatically approve proposed bylaw amendments, as this could result in adoption of a bylaw that has a material adverse effect on fundamental member rights, poses a safety and soundness risk to the FCU, or is otherwise contrary to law. Instead, the Board believes it is appropriate to treat the failure to approve a bylaw amendment within the prescribed deadline as a denial, which the FCU may then appeal to the Board pursuant to the appeals procedures set out in

subpart B to part 746 of the NCUA's regulations.<sup>12</sup>

### Article I. Name—Purposes

Article I states the FCU's name and mission. The proposed rule amends section 2, which outlines the FCU's purposes, by changing the reference in the second sentence from "consumers" to "members." The Board is proposing to change this term because FCUs are not limited in their mission to serving consumers. There may be small businesses and other organizations within the field of membership that can benefit from the FCU's services, and this change is designed to reflect this benefit.

### Article II. Qualifications for Membership

Article II outlines the requirements for obtaining and continuing FCU membership. The proposed rule includes an expanded discussion in the staff commentary of measures that an FCU may take to address abusive and disruptive members. In addition, to facilitate an FCU's implementation of any limitation of services policy, the proposed rule adds a new section 5, describing the concept of a "member in good standing." As 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.

In the ANPR, the Board specifically requested suggestions on ways to clarify an FCU's right to limit services or restrict access to credit union facilities to disruptive or abusive members. Some commenters recommended that the Board incorporate into the FCU Bylaws prior legal opinions by the NCUA's Office of General Counsel addressing this matter. Those legal opinions state that an FCU may limit services or access to credit union facilities to violent, belligerent, disruptive, or abusive members provided that there is a logical relationship between the objectionable conduct and the services to be suspended. The member must also receive adequate notice of the FCU's limitation of services policy.<sup>13</sup>

The Board agrees that incorporating these legal opinions into the FCU Bylaws is appropriate to provide additional clarity on an FCU's right to limit services or access to credit union facilities. Accordingly, the proposed rule includes staff commentary to Article II, based on these prior legal opinions, that details how an FCU may

<sup>7</sup> 12 U.S.C. 1753.

<sup>8</sup> 12 U.S.C. 1766(a).

<sup>9</sup> 12 U.S.C. 1758.

<sup>10</sup> See 71 FR 24551 (Apr. 26, 2006) ("NCUA's longstanding position has been that [the FCU Act] expresses a congressional desire for uniformity regarding FCU operations and member rights. Accordingly, NCUA views [the FCU Act] as providing authority to issue form bylaws that apply to all FCUs, not only newly chartered FCUs, and to review proposed bylaw amendments.")

<sup>11</sup> See 72 FR 30984, 30985 (June 5, 2007) (proposed rule) (uniform bylaws necessary to protect fundamental member rights, avoid confusion, and prevent adoption of illegal bylaws).

<sup>12</sup> 12 CFR 746, subpart B.

<sup>13</sup> See OGC Op. No. 08-0431 (Aug. 12, 2008).

handle an abusive or disruptive member. The staff commentary notes that there is a reasonably wide range within which an FCU may fashion a limitation of services policy that is tailored to the needs of the individual FCU. An FCU has broad discretion to deny, as it deems appropriate, all or most credit union services such as ATM services, credit cards, loans, share draft privileges, preauthorized transfers, or access to credit union facilities to a member that has engaged in conduct that has caused a loss to the FCU or that threatens the safety of credit union staff, facilities, or other members in the FCU or its surrounding property. Accordingly, an FCU may take immediate action to address situations in which a member is violent, belligerent, disruptive, or poses a threat to the credit union, or other members, or its employees even if the FCU Act prohibits the FCU from immediately expelling the member.

The staff commentary also notes that the policy need not be identical or applied uniformly in all cases, provided that the FCU has a legitimate purpose for any disparate treatment of members. For additional clarity, the staff commentary contains cross references to procedures that FCUs must use to expel a member, and it refers to Article XVI, § 1 of the FCU Bylaws, which contains language reiterating that no member may access or utilize an FCU's services in furtherance of an illegal objective.

To facilitate an FCU's implementation of its limitation of services policy, the proposed rule amends Article II to distinguish between a member that retains all of the rights and privileges associated with FCU membership and a member that is subject to a limitation on services or a restriction on access to credit union facilities. As noted, the proposed rule adds a new section 5, describing the concept of a "member in good standing." A member in good standing retains all the rights of FCU membership. To remain in good standing, a member must be current on credit union loans, avoid engaging in any violent, belligerent, disruptive, or abusive behavior towards credit union staff or other credit union members in the FCU or its surrounding property, and not cause a financial loss to the credit union. A member that fails to observe any of these basic requirements may be subject to reasonable limitations of service or access to credit union facilities pursuant to the FCU's limitation of services policy.

The Board recognizes that terms such as "violent," "belligerent," "disruptive," and "abusive" are subjective and, therefore, may not

provide FCUs with absolute clarity regarding the circumstances under which a limitation of services or access to credit union facilities may be appropriate. The Board believes that, without question, certain actions warrant immediate limitations of service or access to credit union facilities, such as violence against other credit union members or credit union staff in the credit union facility or the surrounding property. In fact, the Board believes that an FCU has an obligation to take immediate action against such individuals. Other actions, such as rude behavior or potential threats of violence, may warrant limitations of service or restrictions of access to credit union facilities based on the specific facts and circumstances of that case. Accordingly, the Board requests comments on ways to clarify these terms, including specific examples of conduct that FCUs believe to be "disruptive," "abusive," and "belligerent." Based on the persuasiveness of the comments, the Board may incorporate examples of "violent," "belligerent," "disruptive," and "abusive" conduct into staff commentary to provide additional clarity for FCUs.

The Board notes that, in addition to the rights granted under Article II, an FCU may immediately take actions such as contacting local law enforcement, seeking a restraining order, or pursuing other lawful means, to protect the credit union, credit union members, and staff. Nothing in the FCU Act or the FCU Bylaws prevents an FCU from using whatever lawful means it deems necessary to address circumstances where a member poses a risk of harm to the FCU, its members, or its staff.

#### *Article III. Shares of Members*

Article III provides basic information about issues related to members' share accounts, including the par value of the membership share, trust accounts, and membership status of joint account holders. The proposed rule adds new language under Section 1 providing representative examples for FCUs to choose in establishing varying par values for different classes of membership (such as students, minors, or non-natural persons), provided that such differences conform to applicable legal requirements established by federal, state, or municipal anti-discrimination laws. The new language also clarifies that FCUs have options regarding whether to require all members to maintain a regular share account, or whether to permit members to base their qualification for membership on some other type of account. Additional staff commentary

elaborates more fully on this option. The proposed rule revises the text of Article III to incorporate plain English writing principles and delete unnecessary provisions.

Commenters to the ANPR requested that the Board provide additional guidance on trust accounts. New staff commentary addresses some of the considerations that apply in the context of trust accounts, including a discussion of the pertinent differences between revocable and irrevocable trusts. It also clarifies that, in the case of a revocable trust, the individual who establishes the trust (also known as the settlor) maintains ownership and control of the funds during that person's lifetime. Thus, the NCUA requires the settlor to join the FCU in order to establish a revocable trust account for that individual, thus requiring the settlor to be within the FCU's field of membership. The staff commentary notes that there is no requirement that the settlor first establish a regular share account to become a member. Rather, the settlor may satisfy the membership through the opening of the revocable trust account itself.

In contrast, the staff commentary clarifies that membership requirements for an irrevocable trust account may be met through the settlor, who is the original owner of the funds, or the beneficiary, who obtains an equitable, beneficial interest in the funds once the trust is established. So long as one or the other is eligible for membership and actually joins the FCU, then the FCU may accept the account. As with revocable trusts, the membership obligation can be satisfied through the opening of the trust account itself, so it is not necessary for the beneficiary or the settlor, as applicable, to establish a regular share account as a condition precedent to membership. Furthermore, the trustee need not actually be a member of the FCU. Many irrevocable trusts have a trustee and the NCUA often receives questions on whether membership requirements for an irrevocable trust may be met through the trustee. While the trustee has administrative responsibility for the account, the trustee has no ownership interest in the account and is, therefore, irrelevant for purposes of establishing membership.

The staff commentary also notes that a trust itself, whether revocable or irrevocable, may be a member of an FCU in its own right if all parties to the trust, including the settlors, beneficiaries and trustees, are within the field of membership and actually join the FCU.

#### *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 makes 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 requires that the notice for the annual meeting be posted in a conspicuous place in the FCU's physical office of the FCU, such as at the 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 credit union then maintains a website. An FCU is not required to establish and maintain a website solely for this purpose, however. The proposed rule also deletes the option to waive prior notice if all members entitled to vote waived the notice requirement. 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.

In the staff commentary, the proposed rule encourages FCUs to provide a live webcast of annual and special meetings for interested members, as well as post a video of the annual meeting on the FCU's website. The NCUA encourages this policy only for FCUs with a website at the time of any such meeting; nothing requires FCUs to establish or maintain a website solely for this purpose. This policy encourages members to participate in the annual meeting, while also providing access to members who cannot attend meetings in person.

The proposed rule also adjusts the quorum requirement for meetings. It requires 12 members, excluding the board, credit union staff, and officials, for a quorum. The Board is proposing this adjustment to encourage FCUs to have wider participation from members, rather than allowing credit union staff and board members to control all corporate decision making within the credit union.

The proposed rule, however, does not change the total number of member signatures required to call a special meeting. During the 2013 consultation process with members of the credit union industry, commenters favored increasing the total number of member

signatures required to call a special meeting. They posited that special meetings are expensive and time-consuming to conduct and, thus, should be reserved only for matters of interest to a broad group of members. These comments are well taken. The Board does not believe that adopting a blanket increase is appropriate, however, given its potential to disenfranchise members of smaller FCUs. Accordingly, the Board is not proposing to make any changes to the provisions in Article IV that impose a limit on the total number of member signatures required to call a special meeting. Instead, the Board believes that a preferable approach is to continue the NCUA's current practice of considering requests from individual FCUs to increase this signature requirement on a case-by-case basis.

Furthermore, the proposed rule does not generally allow an FCU to conduct a virtual or hybrid (combined virtual and in-person) annual or special meeting. Commenters to the ANPR noted that at least 22 states currently permit corporations to host virtual or hybrid meetings, with several of those states extending the same flexibility to state-chartered financial institutions. The commenters argued that FCUs with the appropriate size, complexity, and sophistication should be allowed to take advantage of these solutions to provide greater flexibility for their members to attend annual or special meetings. The Board is sympathetic to the commenters' arguments. Due to its concerns about member disenfranchisement, however, the Board does not currently support adopting this position in a rulemaking that affects all FCUs. The Board is particularly concerned with the rights of members that do not have access to electronic devices or that may live in areas without access to broadband internet.

The NCUA will, however, consider bylaw amendment requests allowing for hybrid meetings on a case-by-case basis depending on, among other things, the FCU's size, nature, and field of membership. For example, the NCUA may grant such a bylaw amendment for an FCU that offers a majority of its financial services online or an FCU with a geographically dispersed field of membership. To avoid the possibility of member disenfranchisement, however, the Board does not believe it is appropriate to allow a virtual meeting to completely supplant a member meeting. Therefore, FCUs holding hybrid meetings must always offer an option for in-person attendance as well as online.

The FCU Bylaws already grant an FCU considerable discretion to hold

meetings in a location that is convenient for most of its members. Article IV allows an FCU to hold an annual or special meeting in the county in which any office of the FCU is located or within a radius of 100 miles of such an office, provided that the FCU does not pick a location designed to limit member participation or that has such an effect. Accordingly, the Board believes that an FCU has sufficient flexibility to ensure broad participation from members without the need for entirely virtual meetings and would be reluctant to approve any bylaw amendment allowing for entirely electronic voting. The Board encourages FCUs to be mindful when selecting a location for a member meeting to choose a location that maximizes member participation.

#### *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. During the 2013 consultation process with members of the credit union industry, the NCUA received comments that focused on several discrete aspects of this Article. Commenters suggested that, in regulating the voting process, the NCUA should take modern technology into consideration, including an option for electronic-only voting. Some commenters requested clarification on the appropriate procedures in cases of uncontested elections. Other commenters asked about the procedures for, and permissibility of, imposing additional director qualifications, and how to permit board-established qualifications.

The proposed rule provides staff commentary clarifying electronic voting. The staff commentary states that an FCU may use as many forms of electronic voting (e.g., mobile phone or internet) as it wishes for those members who choose to vote electronically. However, the proposed rule does not allow an FCU to adopt an entirely electronic voting process. While modern technological innovations have changed the way that corporations and other businesses conduct meetings and hold elections, the Board remains concerned that allowing electronic-only voting could disenfranchise those members that do not have access to electronic devices or that may live in areas without access to reliable internet. The NCUA will, however, consider bylaw amendment requests allowing for electronic-only voting on a case-by-case basis.

The proposed rule also provides staff commentary clarifying procedures for

uncontested elections. The staff commentary notes that three of the options for conducting nominations and elections provide for elections by acclamation or consensus when the number of nominees for board positions equals the number of positions to be filled. These options do not permit nominations from the floor at the meeting because members must be provided a ballot in advance of the member vote, so a petition is the only way to nominate a candidate not on the nominating committee's slate. The staff commentary also highlights that section (1)(c) in each of these options requires the notice to members to include the fact that there are no nominations from the floor at the meeting, as well as a notice that the FCU will not conduct a vote by ballot if the number of nominees equals the number of positions to be filled.

Lastly, the proposed rule amends the staff commentary to encourage FCUs to take steps to increase the number of members who vote in FCU elections by increasing the range of voting options. The NCUA recently has approved several bylaw amendments that essentially combine the election options, for example, by adding a provision for mail or electronic ballots to one of the in-person voting options. The Board believes that, where possible, FCUs using one of the in-person voting options should consider offering mail or electronic ballots in addition to in-person voting. Similarly, FCUs conducting elections by mail and electronic means should consider also offering in-person voting. These changes currently require interested FCUs to pursue bylaw amendments individually. Accordingly, the Board seeks comment on whether the FCU Bylaws should include an additional option for conducting elections that would allow FCUs to use a combination of voting methods without needing to make individual requests to do so.

The Board seeks specific comments on whether the FCU Bylaws should require that the nominating committee widely publicize to all FCU members the call for nominations by any medium the FCU determines and interview every member who volunteers to serve. In addition, the Board asks whether the secretary should post the nominations by petition along with those of the nominating committee on the credit union's website (if the credit union maintains a website). The Board believes that widely publicizing the nomination process and posting the nominations by petition on the credit union's website will provide more opportunities for member participation

and is considering adopting such requirements in the final rule.

#### *Article VI. Board of Directors*

This Article provides the requirements related to the board of directors, such as the number of members, the composition of the board, the terms of office, and the responsibilities of the board. It also describes the regular and special meetings of the board. In addition, this Article provides the requirements for quorums, attendance and removal of board or credit committee members, and the suspension of supervisory committee members.

As part of the 2013 consultation process with members of the credit union industry, the NCUA received comments suggesting that the FCU Bylaws be revised to provide specific guidance to FCUs interested in establishing director emeritus and associate director positions. Commenters suggested that greater flexibility in regard to these types of arrangements will enable an FCU to better plan for vacancies in board positions and retirements among current directors. They also recommended enhanced flexibility regarding the composition of the board and reorganization of board duties. Moreover, commenters requested greater flexibility with regard to options concerning attendance by directors at meetings, and criteria and procedures by which incumbent directors may be removed. Commenters to the ANPR reiterated the need for additional guidance on associate director positions.

The Board agrees that an FCU should have the ability to establish, as a matter of FCU board policy, the position of director emeritus for former directors who faithfully fulfilled their responsibilities as members of the board for at least a specified minimum number of years. Accordingly, the proposed rule includes a new section 10 that an FCU may adopt to create such positions. It also includes specific staff commentary to this section that states that the decision to establish a director emeritus position, as well as any selection of individuals to become directors emeriti, is solely within the discretion of the FCU's board. The staff commentary clarifies that a director emeritus may attend and participate in board meetings, but may not vote on any matter before the board or exercise any official duties of a director.

To provide additional guidance to FCUs on associate director positions, the proposed rule clarifies, through staff commentary, that an FCU may establish associate director positions through

board policy. The staff commentary notes that the purpose of these positions is to provide qualified individuals with an opportunity to gain exposure to board meetings and discussions, but without formal director responsibility or the right to vote. As with the director emeritus position, the decision to establish an associate director position, as well as the selection of the individual(s) to become associate directors, is solely within the discretion of the FCU's board.

To provide FCUs with greater flexibility to address concerns regarding director and credit committee member attendance at monthly meetings, the proposed rule amends the option for FCUs to remove a director or a credit committee member for failure to attend regular meetings. The current bylaw language allows FCUs to remove a director or credit committee member that has missed 3 consecutive months, or 4 meetings in a calendar year. Under the proposed rule, an FCU may remove a director or credit committee member for missing 3 consecutive months or for missing 4 meetings within any 12 consecutive months. The Board believes this change provides FCUs with greater flexibility to address situations where a director or credit committee member misses a substantial number of consecutive meetings but would otherwise not qualify for removal because the missed meetings do not all occur within the same calendar year. In addition, the proposed rule adds language to allow FCUs to choose whether directors or credit committee members may be paid employees after such positions end.

The proposed rule also adds language that clarifies the existing restriction on the number of employees and family members of employees who may simultaneously serve on the board. The NCUA has received numerous questions regarding this issue since the FCU Bylaws were first incorporated into the NCUA's regulations in 2007. The current bylaw language prohibits FCU employees, their family members, or a combination of FCU employees and their family members from constituting a majority of the board. The purpose of this restriction is to prevent conflicts of interest that may arise when a majority of the board has a personal or pecuniary interest in a matter currently being reviewed by the board.

The Board has historically interpreted this provision of the FCU Bylaws to prohibit any combination of FCU employees, their family members, or FCU employees and their family members from constituting a majority of the board. To provide FCUs with

additional clarity, the proposed rule states that the total number of current voting directors serving who fall into the following categories must not constitute a majority of the board: (1) Management officials plus assistant management officials plus other employees; (2) immediate family members or persons in the same household as the management officials, assistant management officials, and other employees; or (3) management officials plus assistant management officials plus other employees, plus immediate family members or persons in the same household as management officials, assistant management officials, and other employees. The Board believes that this clarification will provide additional guidance to FCUs on this restriction.

For FCUs that elect not to have a specifically appointed credit committee, the proposed rule adds two new options to provide additional flexibility in addressing an applicant's request for review of a denied loan application. The FCU Act requires a board, at the request of the applicant, to review any application that has been denied by a loan officer.<sup>14</sup> The FCU Bylaws allow the board, in its discretion, to establish subcommittees for the purpose of reviewing, at the request of an applicant, loan applications that have been rejected. These subcommittees are comprised of three members that serve a regular term of two years and function as mid-level appeal committees for the review of denials. The board itself must, at the request of an applicant, continue to review all applications denied by any such subcommittee. These two new options allow for FCUs to choose different ways to form the committee and select terms for the committee members.

Under the first new option, the board may elect to establish a subcommittee of three members and two alternates. The term of office of the subcommittee members may be for up to 3 years. Any number of lending professionals within the credit union may serve on the subcommittee, provided that no loan officer reviews any loan that the loan officer denied. At least 3 members of the subcommittee must review loan denials, none of whom have been a party to denying the loan. Under the second new option, the board may, by resolution, change the number of committee members to an odd number no less than 3 and no more than 7. The board has the

discretion to set the length of each subcommittee member's term upon appointment and stagger terms to prevent a complete turnover of subcommittee members. This option requires the board to file a copy of the resolution covering any increase or decrease in the number of subcommittee members with the official copy of the FCU's bylaws.

The proposed rule also adds staff commentary that encourages FCUs to form a board of directors that reflects the FCU's field of membership. This policy encourages FCUs to consider all members in its leadership. While the Board does not have specific concerns regarding board diversity or representativeness at this time, it believes in the importance of including such statements in the FCU Bylaws to remind stakeholders that credit unions are fundamentally different than many other depository financial institutions. Accordingly, the Board believes that credit unions should strive to have a board that reflects their membership to the greatest extent possible.

Finally, the proposed rule adds staff commentary that encourages FCUs to notify members, through a website posting (if the credit union then maintains a website), whenever the FCU's board adopts a resolution that changes the size of the FCU's board of directors. An FCU that does not then maintain a website can post such a notice in a conspicuous place in the FCU's offices, such as at the teller windows or on the FCU's front doors.

#### *Article VII. Board Officers, Management Officials and Executive Committee*

Article VII provides the requirements related to board officers, such as their election and their terms of office. It lists the duties of the chair, vice chair, financial officer, management officials, and secretary of the board. Article VII also explains the board powers regarding employees and the provisions for an executive committee and an investment committee.

The proposed rule makes certain clarifications and improvements to the readability of the language in this Article. For example, this Article utilizes the term "financial officer," and the NCUA has received comments that this term is confusing. The proposed rule, therefore, modifies the definition of "financial officer" in Article XVIII to mean "treasurer." The proposed rule also updates the language in section 8 to allow different options for addressing when directors or committee members may serve as paid employees of the credit union after their terms as

directors and/or committee members have ended.

The proposed rule adds more staff commentary under this Article, addressing procedural questions that arise in connection with specified board officer positions that may be held by directors, such as the president, vice president, and secretary of the board. The staff commentary clarifies that officers hold their respective board officer positions for a term of one year, until the first board meeting following the next annual meeting of the members. At that board meeting, board officer positions are again filled. Each board officer holds his or her position until the election and qualification of his or her successors. Thus, a board officer who is re-elected to the position the officer is currently holding serves for another year. Where another director is chosen to fill the position, the director takes office effective as of the date of the election, assuming the director is qualified.

The proposed rule adds additional staff commentary to address questions relating to temporary appointments of board officers, succession, replacement of director positions that may have become vacant between election cycles, and notifying members about membership on FCU committees. The staff commentary notes that, in the absence of both the chair and vice chair, those directors who are present at a meeting may select from among themselves an individual director to act as temporary chair for that particular meeting. Actions taken by the board under the direction of the temporary chair have the same validity and effect as if taken under the direction of the chair or the vice chair, provided a quorum of the board, including the temporary chair, is present. There is no requirement for the board to ratify actions taken under the temporary chair at a subsequent meeting of the board where either the chair or vice chair are present.

#### *Article VIII. Credit Committee or Loan Officers*

This Article provides the requirements for the credit committee, if an FCU elects to have one. This Article also lists the requirements for loan officers if an FCU does not have a credit committee. The proposed rule modernizes the language of this Article and incorporates plain English writing principles. In addition, the proposed rule incorporates into the FCU Bylaws several NCUA Office of General Counsel opinion letters permitting FCUs to use automated systems to process,

<sup>14</sup> See 12 U.S.C. 1761c(b) ("If there is not a credit committee, a member shall have the right upon written request of review by the board of directors of a loan application which has been denied.").

underwrite, and fund loans under certain conditions.

#### *Article IX. Supervisory Committee*

Article IX provides the requirements for the supervisory committee, such as the appointment and membership of the committee, its duties, and the required officers. This Article also lists the powers of the supervisory committee. The FCU Act requires each FCU to have a supervisory committee. The supervisory committee must conduct or arrange for annual audits and verify members' deposits at least once every two years.<sup>15</sup> The NCUA has assigned additional duties to FCUs' supervisory committees, including having them serve as an initial forum for hearing FCU members' complaints.<sup>16</sup>

The proposed rule modernizes the language of this Article. In addition, the proposed rule deletes paragraph (c) of section 3, as it is duplicative of paragraph (b). During the 2013 consultation process, commenters requested a number of changes to this Article to allow for greater flexibility. For example, one commenter requested that the Board amend section 3 to allow an FCU to call a special meeting 30 calendar days after all director positions become vacant, rather than the 7–14 calendar days currently set out in the FCU Bylaws. Another commenter requested that the Board amend section 6 to limit the actions members could take at a special meeting called to consider allegations of unsafe or illegal activity by a credit union director or credit committee member. These requested changes require statutory amendments to the FCU Act, so the proposed rule does not include any other substantive changes to this Article.

#### *Article X. Organization Meeting*

Some commenters have noted that the provisions in Article X, which govern the initial organizational meeting by which the FCU is established, effectively become obsolete and irrelevant after that initial organizational meeting. Although the Board acknowledges that this Article serves a limited purpose, it does not agree that the Article is necessarily irrelevant after the FCU has been established. Nevertheless, the proposed rule includes an option whereby FCUs may eliminate the Article after five years of operation. For FCUs electing this option, Article X will become "reserved" and its language inoperative.

#### *Article XI. Loans and Lines of Credit to Members*

Article XI lists loan purposes for members and addresses member delinquencies on loans. The proposed rule slightly edits the language of this Article for readability, but there are no other substantive changes.

#### *Article XII. Dividends*

Article XII establishes the power of the board to declare dividends. The proposed rule slightly edits the language of this Article for readability. There are no other substantive changes.

#### *Article XIII. Reserved*

The proposed rule makes no changes to this Article.

#### *Article XIV. Expulsion and Withdrawal*

Article XIV addresses the expulsion and withdrawal procedures for members. The Board notes that expulsion from membership is a very serious remedy that may only be accomplished in accordance with the procedures set forth in the FCU Act. An FCU may only expel a member upon a two-thirds majority vote of the membership at a special meeting called for that purpose or by operation of a board-approved nonparticipation policy.<sup>17</sup> The FCU Act allows an FCU's board to adopt, by majority vote of a quorum of directors, and enforce a nonparticipation policy. If the FCU's board adopts such a policy, the FCU must provide written notice of the policy and its effective date to each member at least 30 calendar days prior to the policy's effective date. Each new member also must be provided a written notice of the policy prior to, or upon applying for, membership.

New staff commentary to this Article reiterates that the FCU Act provides only two methods for an FCU to expel a member and clarifies that only in-person voting is permitted in conjunction with a special meeting held for that purpose. This gives the affected member an opportunity to present his or her case against expulsion and an opportunity to respond to the FCU's concerns. The staff commentary clarifies that, short of expulsion, an FCU has a wide range of measures available to address abusive or disruptive members, and it specifically references Article XVI, Section 1 of the FCU Bylaws, which addresses situations when members use their accounts for unlawful purposes.

During the 2013 consultation process with representatives of the credit union industry, commenters pressed for ways

to make the expulsion of a disruptive member easier to accomplish. Commenters to the ANPR reiterated many of the same concerns. Many commenters requested that the Board either amend the FCU Bylaws or include staff commentary interpreting the FCU Act to allow an FCU to expel a member for actions such as filing for bankruptcy, habitual default, or misconduct under the FCU's board-approved nonparticipation policy. The FCU Act does not permit such an interpretation. A word used in a statute is given its ordinary or plain meaning unless context indicates otherwise.<sup>18</sup> The term "nonparticipation" generally refers to a person not being involved with or participating in something. Accordingly, the Board believes that the term "nonparticipation" is best understood in a more limited sense to mean a failure to participate, or a lack of involvement, in credit union affairs. It does not refer to an act of malfeasance.

As the Board notes in the discussion of changes to Article II above, FCUs have the option to address violent, belligerent, disruptive, and abusive members by limiting their access to products and services provided that there is a logical relationship between the objectionable conduct and the services to be suspended and the member has received adequate notice of the FCU's limitation of services policy.<sup>19</sup> Neither the FCU Act nor the NCUA's regulations prohibit an FCU, as it deems appropriate, from denying all or most credit union services such as ATM services, credit cards, loans, share draft privileges, preauthorized transfers, or access to credit union facilities to a member that has engaged in some objectionable conduct that has caused a loss to the FCU or that threatens the safety of credit union staff, facilities, or members. In fact, the Board believes that, without question, certain actions warrant immediate limitations of service or access to credit union facilities, such as violence against other credit union members or credit union staff in the credit union facility or the surrounding property. Consequently, even though the FCU Act does not permit an FCU to immediately expel a member under these circumstances, an FCU may still take immediate action to address situations in which a member is disruptive or poses a threat to the credit

<sup>18</sup> *Sebelius v. Cloer*, 569 U.S. 369 (May 20, 2013) (absent evidence to the contrary, words must receive their ordinary meaning).

<sup>19</sup> See OGC Op. No. 08–0431 (Aug. 12, 2008).

<sup>15</sup> 12 U.S.C. 1761d.

<sup>16</sup> See 12 CFR 715.3.

<sup>17</sup> 12 U.S.C. 1764.

union, its employees, or other members in the FCU or its surrounding property.

Furthermore, as noted in the discussion of changes to Article II above, neither the FCU Act nor the NCUA's regulations prohibit an FCU from using lawful means to immediately protect the credit union, credit union members, and staff such as contacting local law enforcement, seeking a restraining order, or pursuing other forms of legal redress. The Board fully expects that an FCU would use these lawful means in addition to its limitation of services policy to proactively limit security threats or financial harm caused by violent, belligerent, disruptive, or abusive credit union members.

#### *Article XV. Minors*

This Article provides that minors are permitted to own shares and that the rights of minors to transact business with the FCU are governed by state law. The proposed rule slightly edits the language of this Article for readability, but there are no other substantive changes.

#### *Article XVI. General*

Article XVI addresses other general requirements, such as complying with other laws and regulations, confidentiality, and conflicts of interest. It also provides requirements related to records, indemnification, and the removal of directors and committee members.

During the 2013 consultation process with representatives of the credit union industry, the NCUA received comments regarding section 3, requesting a simplified procedure for confirmation by the membership of the suspension of a director or committee member by the supervisory committee. Commenters suggested that the confirmation of suspension be accomplished through balloting rather than a special meeting at which members must vote in person to accomplish the removal. The Board notes, in this respect, that these procedures are mandated by statute. The FCU Act requires that membership confirmation of supervisory committee suspension be accomplished only by majority vote of the members at a special meeting called for that purpose.<sup>20</sup> The proposed rule adds staff commentary explaining these requirements.

The staff commentary also adds new language regarding section 1 of this Article, which specifies that the credit union, its powers and duties, as well as the functions of its members, officers,

and directors, are all strictly circumscribed by law and regulation. It notes that, insofar as section 1 is included in the FCU Bylaws, an FCU need not adopt a specific policy or requirement that members use credit union products or services for lawful purposes. Furthermore, it confirms that this bylaw provision supports an FCU's decision to impose limits on products and services available to any individual who is found to be using the FCU in furtherance of unlawful purposes.

The proposed rule also amends section 6 to require FCUs with websites to post their bylaws on the website. The Board believes that adding this new requirement will 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.

Finally, the proposed rule adds a new section 9 which clarifies the use of singular and plural terms as well as pronouns in the bylaws. The NCUA has received questions in the past in this regard. New section 9 clarifies that, unless the context requires otherwise, words denoting the singular may be construed as denoting the plural, words of the plural may be construed as denoting the singular, and words of one gender may be construed as denoting another gender as appropriate.

#### *Article XVII. Amendments of Bylaws and Charter*

Article XVII provides the requirements for amending an FCU's bylaws or charter. The proposed rule modernizes the language of this Article and incorporates plain English writing principles. In addition, in conjunction with the proposed rule's requirement for an FCU to post its current bylaws on its website (if the FCU maintains a website), the proposed rule requires an FCU to update the posting if it amends its bylaws.

#### *Article XVIII. Definitions*

Article XVIII lists the definitions applicable to all of the FCU Bylaws. The proposed rule makes a few technical

changes to this Article and adds several new definitions, which the Board believes are useful for purposes of clarification. These include new definitions for "Agency," "Charter," "Field of Membership," "Loans," and "Membership Officer." In addition, the definitions include a listing of approved board officers. This article also includes the term "Member," the definition of which identifies the characteristics and actions an individual must take to become a qualified member. Finally, the definitions include the term "Management," which is defined to include the Board, Financial Officer, and Management Official.

## **V. Regulatory Procedures**

### *A. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA)<sup>21</sup> requires the NCUA to provide an initial regulatory flexibility analysis with a proposed rule to certify that the rule will not have a significant economic impact on a substantial number of small entities (defined for the purpose of the RFA to include credit unions with assets less than or equal to \$100 million) and to publish its certification and a short explanatory statement in the **Federal Register** along with the proposed rule. The proposed new bylaw amendments are simply a resource that is available to all FCUs, regardless of size. Except for newly chartered FCUs, there is nothing prescriptive or mandatory about this proposed rule. All FCUs are free to adopt the proposed new bylaws, retain their current bylaws, or adopt some combination of the proposed bylaws and their current bylaws. If an FCU elects to adopt the new proposed version that FCU only needs to adopt a board resolution to that effect. Accordingly, the NCUA hereby certifies this proposed rule will not have a significant economic impact on a substantial number of small credit unions.

### *B. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (PRA) applies to rulemaking in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden.<sup>22</sup> For purposes of the PRA, a paperwork burden may take the form of a reporting, disclosure, or recordkeeping requirement, both referred to as information collection. The NCUA may not conduct or sponsor, and the respondent is not required to respond

<sup>21</sup> 5 U.S.C. 601 *et seq.*

<sup>22</sup> 44 U.S.C. 3507(d); 5 CFR part 1320.

<sup>20</sup> 12 U.S.C. 1761d.

to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The current proposal clarifies many bylaws provisions and adds a few substantive changes.

The amendments under this proposal would affect newly chartered FCUs or FCUs that choose to adopt these provisions. These provisions are:

- Article IV, § 2—The proposed rule would require FCUs to post annual meeting notices in a conspicuous place in the office of the credit union at least 30 days before the annual meeting, and to post the notice on the credit union's website, if the FCU has a website.

- Article V—The nominating committee must widely publicize the call for nominations to all members by any medium and interview each member who volunteers. The secretary must post the nominations by petition along with those of the nominating committee on the credit union's website, if the FCU has a website.

- Article XVI, § 6—If an FCU has a website, the FCU must post the bylaws on the website.

- Article XVII—After adopting amendments, a FCU must update the bylaws posted on its website, if the FCU has a website.

The information collection requirements under OMB control number 3133-0052 will be revised as follows due to the following program changes:

#### Article IV. Meetings of Members

The current information collection requirements under Article IV is related to notices related to member meetings. The NCUA estimated the current burden hours at 3,721. NCUA has determined that the new changes from the proposed rule would only increase the burden for each FCU by 15 minutes.

Each FCU is estimated to spend 10 minutes posting notices for an increase of 620 hours, and each FCU with a website is estimated to spend 5 minutes posting notices to their website for an increase of 301 hours. NCUA estimates that 3,617 of the total number of FCUs have websites. This new disclosure requirement will increase the burden hours associated with the information collection under Article IV by 921 hours; for a total of 4,642 hours.

#### Article V. Elections

The current information collection requirements under Article V covers the burden associated with the recordkeeping requirements for FCU elections. NCUA estimated the current burden hours to be 29,768. The NCUA

has determined that the new changes from the proposed rule would increase the burden for each FCU by 40 minutes. Each FCU is estimated to spend 30 minutes publicizing the call for nominations for an increase of 1,851 burden hours; and each FCU with a website is estimated to spend 10 minutes posting nominations to their website for an increase of 603 hours. The NCUA estimates that 3,617 of the total number of FCUs have websites. This new disclosure requirement will increase the burden hours associated with the information collection under Article V by 2,464 hours; for a total of 32,232 hours.

The information collection requirement associated with section 6 of Article V, Report of Officials, is cleared under OMB control number 3133-0004.

#### Article XVI. General

The current information collection requirements under Article XVI is FCU recordkeeping requirements specified in sections 5 and 6. The proposed rule does not affect the current recordkeeping requirements; however, under section 6 of Article XVI, a one-time burden of 1 hour will be reported for FCU's with a website to post their bylaws. This new disclosure requirements will increase the burden associated with Article XVI by 3,617 hours; for a total of 92,921 hours.

#### Article XVII. Amendments of Bylaws and Charter

A new information collection requirement proposed under Article XVII is that FCU, who maintains a website, would be required to update its bylaws on its website after adopting any amendments. The NCUA estimates that it would take an FCU 30 minutes to update its bylaws on its website annually; for a total of 1,809 burden hours.

The total increase in burden hours due to these proposed program changes is 8,810 and action will be taken to amend OMB control number 3133-0052 to reflect this increase.

*Title of Information Collection:* Federal Credit Union Bylaws, Appendix A to Part 701.

*OMB Control Number:* 3133-0052.

*Estimated number of respondents:* 3,721.

*Estimated total annual responses:* 1,276,965.

*Estimated total annual burden:* 445,424.

*Affected Public:* Private Sector: Not-for-profit institutions.

The Board invites comment on (a) whether the collections of information are necessary for the proper

performance of the agency's function, including whether the information has practical utility; (b) the accuracy of estimates of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information being collected; (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments are a matter of public record. Comments regarding the information collection requirements of this rule should be sent to (1) Dawn Wolfgang, NCUA PRA Clearance Officer, National Credit Union Administration, 1775 Duke Street, Suite 5080, Alexandria, Virginia 22314, or Fax No. 703-519-8572, or Email at [PRAComments@ncua.gov](mailto:PRAComments@ncua.gov) and the (2) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NCUA, New Executive Office Building, Room 10235, Washington, DC 20503, or email at [OIRA\\_Submission@OMB.EOP.gov](mailto:OIRA_Submission@OMB.EOP.gov).

#### C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. The NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. This rule will not have a direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This proposed rule will only apply to FCUs. Accordingly, the NCUA has determined this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

#### D. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105-277, 112 Stat. 2681 (1998).

## List of Subjects in 12 CFR Part 701

Credit, Credit unions, Federal credit union bylaws.

By the National Credit Union Administration Board on October 18, 2018.

**Gerard S. Poliquin,**

*Secretary of the Board.*

For the reasons stated above, NCUA proposes to amend 12 CFR part 701, Appendix A as follows:

### PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

#### ■ 1. The authority for part 701 continues to read as follows:

**Authority:** 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1785, 1786, 1787, 1788, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

#### ■ 2. Appendix A to Part 701 is revised to read as follows:

#### Appendix A to Part 701—Federal Credit Union Bylaws

##### Introduction

1. *Effective date.* The National Credit Union Administration (NCUA) Board first incorporated the Federal Credit Union (FCU) Bylaws as Appendix A to Part 701 of the NCUA's regulations on November 30, 2007. FCUs may retain previously adopted versions of the FCU Bylaws including the November 30, 2007 version. Unless an FCU has adopted bylaws before [insert effective date of final rule], it must adopt these revised bylaws.

2. *Adoption of all or part of these bylaws.* Although FCUs may retain any previously approved version of the FCU Bylaws, the NCUA Board encourages FCUs to adopt the revised bylaws because it believes they provide greater clarity and flexibility for credit unions and their officials and members. FCUs may also adopt portions of the revised bylaws and retain the remainder of previously approved bylaws, but the NCUA Board cautions FCUs to be extremely careful in making the decision. FCUs must be careful because they run the risk of having inconsistent or conflicting provisions because of the various options the revised bylaws provide, as well as other revisions in the text.

3. *Bylaw amendments.* a. The FCU Bylaws contain provisions allowing FCU boards to select from an option or range of options or to fill in a blank. The “fill-in-the-blank” provisions are changes to the FCU's bylaws. Thus, they require a two-thirds vote of the FCU's board of directors. As long as the board selects from the permissible options, the FCU does not need to submit the change to the NCUA for its approval.

b. FCUs continue to have the flexibility to request bylaw amendments. The NCUA must approve all bylaw amendments except for the provisions noted above. In the past, the

NCUA has published a “Standard Bylaw Amendments” booklet containing a list of “standard” preapproved and optional amendments not included in the FCU Bylaws. That document remains on the NCUA's website for historical purposes. However, FCUs may not adopt amendments from the “Standard Bylaw Amendments” booklet, as the FCU Bylaws include sufficient flexibility to make a separate list of standard bylaw amendments unnecessary. Thus, the NCUA no longer makes a distinction between “standard” and “nonstandard” bylaw amendments. Consequently, the NCUA considers any change to the FCU Bylaws that is not a “fill-in-the-blank” provision or part of a range of options to be a bylaw amendment that requires the NCUA approval.

c. The procedure for approval of a bylaw amendment is as follows:

i. The FCU must submit its request to the Office of Credit Union Resources and Expansion (CURE).

ii. The request must include:

1. The section of the FCU Bylaws to be amended;

2. The reason for, or purpose of, the amendment;

3. An explanation of why the amendment is desirable and what it will accomplish for the federal credit union; and

4. The specific wording of the proposed amendment.

iii. CURE will advise the credit union within 90 days if it approved the proposed amendment after its review and, if necessary, consultation with the NCUA's Office of General Counsel. If CURE denies a proposed amendment, the credit union may appeal that decision to the NCUA Board in accordance with the procedures set out in subpart B to part 746 of this chapter. For purposes of this provision, if CURE does not reach a decision within 90 days, the proposed amendment is considered to be denied.

d. Federal credit unions considering an amendment may find it useful to review the bylaws section of the agency website, which includes the NCUA's Office of General Counsel opinions on proposed bylaw amendments.<sup>23</sup> Opinions issued after April 2006 include the language of the approved amendment.

e. Because each decision by CURE is made on a case-by-case basis that depends on the unique facts and circumstances applicable to each FCU, the credit union must submit a proposed amendment to the NCUA for review under the procedure listed above, even if the NCUA previously approved an identical or similar amendment for another credit union.

4. *The nature of the FCU Bylaws.* a. The Federal Credit Union Act requires the NCUA Board to prepare bylaws for federal credit unions.<sup>24</sup> The FCU Bylaws address a broad range of matters concerning a credit union's organization and governance, the relationship of the credit union to its

members, and the procedures and rules a credit union follows.

b. The FCU Bylaws supplement the broad provisions of:

- A federal credit union's charter, which establishes the existence of a federal credit union;

- The Federal Credit Union Act, which establishes the powers of federal credit unions; and

- The NCUA's regulations, which implement the Federal Credit Union Act.

As a legal matter, a federal credit union's bylaws must conform to, and cannot be inconsistent with, any provision of its charter, the Federal Credit Union Act, the NCUA's regulations, or other laws or regulations applicable to the credit union's operations.

c. The NCUA expects federal credit unions and their members will make every effort to resolve bylaw disputes using the credit union's internal member complaint resolution process. If a bylaw dispute cannot be resolved internally, credit union officials or members should contact the regional office with oversight over the credit union for assistance in resolving the dispute.

d. The NCUA has discretion to take administrative actions when a credit union is not in compliance with its bylaws. If a potential violation is identified, the NCUA will carefully consider all of the facts and circumstances in deciding whether to take enforcement action. The NCUA will not generally take action against minor or technical violations, but emphasizes that it retains discretion to enforce the FCU Bylaws in appropriate cases, such as safety and soundness concerns or threats to fundamental, material credit union member rights.

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##### Bylaws

Federal Credit Union, Charter No. \_\_\_\_\_  
(A corporation chartered under the laws of the United States)

##### Article I. Name—Purposes

Section 1. *Name.* The name of this credit union is as stated in Section 1 of

<sup>23</sup> <http://www.ncua.gov/Legal/Pages/BylawByYear.aspx>.

<sup>24</sup> 12 U.S.C. 1758.

its charter (approved organization certificate).

Section 2. *Purposes.* This credit union is a member owned, democratically operated, not-for-profit organization managed by a volunteer board of directors. Its stated mission is to meet the credit and savings needs of members, especially individuals of modest means. The purpose of this credit union is to promote thrift among its members by affording them an opportunity to accumulate their savings and to create a source of credit for provident or productive purposes. *The credit union may add business as one of its purposes by placing a comma after "provident" and inserting "business."*

## Article II. Qualifications for Membership

Section 1. *Field of membership.* The field of membership of this credit union is limited to that stated in Section 5 of its charter.

Section 2. *Membership application procedures.* Persons eligible for membership under Section 5 of the charter must sign a membership application on approved forms. The applicant becomes a member upon approval of the application by a membership officer, after subscription to at least one share, payment of the initial installment, and payment of a uniform entrance fee if required by the board. If the membership officer denies a person's membership application, the credit union must explain the reasons for the denial in writing upon written request.

Section 3. *Maintenance of membership share required.* A member who withdraws all shareholdings or fails to comply with the time requirements for restoring his or her account balance to par value in Article III, Section 3, ceases to be a member. By resolution, the board may require persons readmitted to membership to pay another entrance fee.

Section 4. *Continuation of membership.* Once a member, always a member until the person or organization chooses to withdraw its membership or is expelled under the Act and Article XIV of these bylaws. The credit union may limit services and access to its facilities to a member who is disruptive to credit union operations.

Section 5. *Member in good standing.* A member in good standing retains all their rights and privileges in the credit union. A member in good standing is a member who maintains at least the minimum share set forth in Article III, Section 1 of these bylaws; who is not delinquent on any credit union loan; who has not had any account with this

credit union closed due to abuse or negligent behavior; who has not been belligerent or abusive to any duly elected or appointed official or employee when that official or employee is carrying out their duties as set in the Act, the rules and regulations, the charter, and bylaws of this credit union; and who has not caused a financial loss to this credit union. Subject to Article XIV of these bylaws and any applicable limitation of services policy approved by the board, members not in good standing retain their right to attend, participate, and vote at the annual and special meetings of the members and maintain a share account.

## Article III. Shares of Members

Section 1. *Par value.* The par value of each share is \$ \_\_\_\_\_. Subscriptions to shares are payable at the time of subscription, or in installments of at least \$ \_\_\_\_ per month. *FCUs may establish differing par values for different classes of members or types of accounts (such as students, minors, or non-natural persons), provided this action does not violate any federal, state or local antidiscrimination laws. Below are some options an FCU can choose. The FCU may also establish differing par values for other classes of members not listed below. List all established par values in Section 1.*

\_\_\_\_\_ Option. *Par value for minors.* The par value of each share for members \_\_\_\_\_ years of age or younger is \$ \_\_\_\_\_. Subscriptions to shares are payable at the time of subscription, or in installments of at least \$ \_\_\_\_ per month.

\_\_\_\_\_ Option. *Par value for students.* The par value of each share for students is \$ \_\_\_\_\_. Subscriptions to shares are payable at the time of subscription, or in installments of at least \$ \_\_\_\_ per month. A student is defined as anyone enrolled   full-time or   part-time in \_\_\_\_\_.

\_\_\_\_\_ Option. *Par value for non-natural persons.* The par value of each share for non-natural persons is \$ \_\_\_\_\_. Subscriptions to shares are payable at the time of subscription, or in installments of at least \$ \_\_\_\_ per month.

Section 2. *Establishing membership.* To establish membership, the member must subscribe to one par value of share. The share does not have to be in a regular share account. The board may choose the best account for the characteristics of its membership. Below are some options an FCU can choose. Select one option and check the box corresponding to that option.

\_\_\_\_\_ Option A—*Regular Share account required to establish membership.* To

establish membership in the credit union, the member must subscribe to one share in a regular share account.

\_\_\_\_\_ Option B—\_\_\_\_\_ *account required to establish membership.* To establish membership in the credit union, the member must subscribe to one share in the stated account or accounts (note the account(s) in the blank above).

Section 3. *Cap on shares held by one person.* The board may establish, by resolution, the maximum amount of shares that any one member may hold.

Section 4. *Time periods for payment and maintenance of membership share.* The credit union will terminate from membership a member who:

- Fails to complete payment of one share within \_\_\_\_\_ of admission to membership, or
- Fails to complete payment of one share within \_\_\_\_\_ from the increase in the par value of shares, or
- Reduces the share balance below the par value of one share and does not increase the balance to at least the par value of one share within \_\_\_\_\_ of the reduction.

Section 5. *Transferability.* Members may transfer shares to another member in any form approved by the board. Shares that accrue credits for unpaid dividends retain those credits when transferred.

Section 6. *Withdrawals.* Members may withdraw money paid in on shares provided that:

(a) The board has the right, at any time, to require members, or a subset of members, to give up to 60 days written notice of intention to withdraw all or part of the amounts they paid in.

(b) Reserved.

(c) A member delinquent on any loan or obligation to the credit union may not withdraw their shares below the delinquent amount without the written approval of the credit committee or loan officer. This withdrawal restriction also applies if the member is a comaker, endorser, or guarantor of a delinquent loan. Coverage of overdrafts under an overdraft protection policy does not constitute delinquency for purposes of this paragraph. Shares issued in an irrevocable trust as provided in Section 6 of this article are not subject to withdrawal restrictions except as stated in the trust agreement.

(d) The share account of a deceased member (other than one held in joint tenancy with another member) may be continued until the close of the dividend period in which the administration of the deceased's estate is completed.

(e) The board can impose a fee for excessive share withdrawals from

regular share accounts. By resolution, the board can set the number of withdrawals not subject to a fee and the amount of the fee subject to regulations relevant to the advertising and disclosure of terms and conditions on member accounts.

Section 7. *Trusts*. Shares may be issued in a revocable or irrevocable trust, subject to the following:

(a) Shares issued in a revocable trust—the settlor must be a member of this credit union in his or her own right.

(b) Shares issued in an irrevocable trust—either the settlor or the beneficiary must be a member of this credit union.

(c) Both a revocable and irrevocable trust must state the name of the beneficiary.

A trust may be a member of the credit union as an entity if all parties to the trust, including all settlors, beneficiaries and trustees, are within the credit union's field of membership.

(d) Shares issued through a pension plan authorized by the rules and regulations will be treated as an irrevocable trust unless otherwise indicated in the rules and regulations.

Section 8. *Joint accounts and membership requirements*. Select one option and check the box corresponding to that option.

\_\_\_ *Option A—Separate account not required to establish membership*

Owners of a joint account may both be members of the credit union without opening separate accounts. For joint membership, both owners are required to fulfill all of the membership requirements including each member purchasing and maintaining at least one share in the account and filling out the membership card.

\_\_\_ *Option B—Separate account required to establish membership*

Each member must purchase and maintain at least one share in a share account that names the member as the sole or primary owner. Being named as a joint owner of a joint account is not sufficient to establish membership.

#### Article IV. Meetings of Members

Section 1. *Annual meeting*. The board must hold the annual meeting of the members [insert time for annual meeting, for example, “during the month of March/on the third Saturday of April/no later than March 31”], in the county in which any office of the credit union is located or within a radius of 100 miles of an office, at the time and place as the board determines and announces in the notice of the annual meeting.

Section 2. *Notice of meetings required*. a. The secretary must give

written notice to each member at least 30 but no more than 75 days before the date of any annual meeting. The secretary must give written notice to each member at least 7 days before the date of any special meeting of the members and at least 45 but no more than 90 days before the date of any meeting to vote on a merger with another credit union. The secretary may deliver the notice in person, by mail to the member's address, or, for members who have opted to receive statements and notices electronically, by electronic mail. The secretary must give notice of the annual meeting by posting the notice in a conspicuous place in the office of this credit union where members may read it at least 30 days before the meeting. The secretary must also prominently display the notice on the credit union's website if such credit union maintains a website.

b. All special meeting notices must state the purpose of the meeting. The officials and members may only transact business related to the stated purpose at the meeting.

Section 3. *Special meetings*. a. The board chair, the board of directors by majority vote, or the supervisory committee as provided in these bylaws may call a special meeting of the members. The chair must call and hold a special meeting within 30 days of the receipt of a written request from 25 members or 5% of the members as of the date of the request, whichever number is larger. However, a request of no more than 750 members may be required to call a special meeting.

b. The credit union may hold a special meeting at any location permitted for the annual meeting.

Section 4. *Items of business for annual meeting and rules of order for annual and special meetings*. The suggested order of business at annual meetings of members is—

(a) Ascertain that a quorum is present.

(b) Reading and approval or correction of the minutes of the last meeting.

(c) Report of directors, if there is one. For credit unions participating in the Community Development Revolving Loan Program, the directors must report on the credit union's progress on providing needed community services, if required by NCUA Regulations.

(d) Report of the financial officer or the chief management official.

(e) Report of the credit committee, if there is one.

(f) Report of the supervisory committee, as required by Section 115 of the Act.

(g) Unfinished business.

(h) New business other than elections.

(i) Elections, as required by Section 111 of the Act.

(j) Adjournment.

(k) To the extent consistent with these bylaws, the board will conduct all meetings of the members according to \_\_\_\_\_. The order of business for the annual meeting may vary from the suggested order, provided it includes all required items and complies with the rules of procedure adopted by the credit union.

*The credit union must fill in the blank with one of the following authorities, noting the edition to be used: Democratic Rules of Order, The Modern Rules of Order, Robert's Rules of Order, or Sturgis' Standard Code of Parliamentary Procedure.*

Section 5. *Quorum*. Except as otherwise provided, 12 members excluding the board, credit union staff, and officials, constitute a quorum at annual or special meetings. If a quorum is not present, the board may adjourn to a date at least 7 but not more than 14 days thereafter. The members present at any adjourned meeting will constitute a quorum, regardless of the number of members present. The board must give the same notice for the adjourned meeting as prescribed in Section 2 of this article for the original meeting, except that they must give notice at least 5 days before the date of the meeting fixed in the adjournment.

#### Article V. Elections

*The Credit Union must select one of the four voting options. The board may print the credit union's bylaws with the option selected or retain this copy and check the box of the option selected. All options continue with Section 3 of this article.*

*Option A1—In-Person Elections; Nominating Committee and Nominations From Floor*

Section 1. *Nomination procedures*. At least 30 days before each annual meeting, the chair will appoint a nominating committee of three or more members. The nominating committee will nominate at least one member for each vacancy, including any unexpired term vacancy, for which elections are being held, and determine that the members nominated are agreeable to the placing of their names in nomination and will accept office if elected. The nominating committee must widely publicize the call for nominations to all members by any medium and interview each member who volunteers.

Section 2. *Election procedures*. After placing the nominations of the nominating committee before the members, the chair calls for

nominations from the floor. When nominations are closed, the chair appoints election tellers. The election tellers distribute the ballots, collect the ballots and tally the votes, and the chair announces the results. Except when there is only one nominee for each open office, all elections are by ballot and determined by the plurality of vote. If there is only one nominee for each open office, the chair may take a voice vote or declare the election of each nominee by general consent or acclamation.

*Option A2—In-Person Elections; Nominating Committee and Nominations by Petition*

Section 1. *Nomination procedures.* a. At least 120 days before each annual meeting the chair will appoint a nominating committee of three or more members. The nominating committee will nominate at least one member for each vacancy, including any unexpired term vacancy, for which elections are being held, and determine that the members nominated are agreeable to the placing of their names in nomination and will accept office if elected. The nominating committee must widely publicize the call for nominations to all members by any medium and interview each member who volunteers.

b. At least 90 days before the annual meeting, the nominating committee files its nominations with the secretary of the credit union. At least 75 days before the annual meeting, the secretary notifies, in writing, all members eligible to vote that they may make nominations for vacancies by petition signed by 1% of the members with a minimum of 20 and a maximum of 500. The secretary may use electronic mail to notify members who have opted to receive notices or statements electronically.

c. The written notice must specify that the credit union will not conduct the election by ballot and there will be no nominations from the floor when the number of nominees equals the number of open positions.

d. The notice will include, in a form approved by the board of directors, a brief statement of qualifications and biographical data for each nominee submitted by the nominating committee. Each nominee by petition must submit a similar statement of qualifications and biographical data with the petition.

e. The written notice must state the closing date for receiving nominations by petition. At least 40 days before the annual meeting, nominee(s) must file the nomination petition with the secretary of the credit union. To be effective, nominee(s) must include a signed certificate with the nomination petition stating that they are agreeable to

nomination and will serve if elected to office.

f. At least 35 days before the annual meeting, the secretary will post the nominations by petition along with those of the nominating committee in a conspicuous place in each credit union office and on the credit union's website.

Section 2. *Election procedures.* a. The secretary must place all persons nominated by either the nominating committee or by petition before the members. When nominations are closed, the chair appoints the election tellers. The election tellers distribute the ballots, collect the ballots, and tally the votes, and the chair announces the results. Except when there is only one nominee for each open office, all elections are by ballot and determined by the plurality of vote.

b. There are no nominations from the floor if there are sufficient nominations by the nominating committee or by petition to provide at least one nominee for each open position. If there are nominations from the floor and they result in more nominees than open positions, the chair will close nominations, and appoint election tellers. The election tellers distribute the ballots, collect the ballots and tally the votes, and the chair announces the results. If there is only one nominee for each open office, the chair may take a voice vote or declare the election of each nominee by general consent or acclamation.

*Option A3—Election by Ballot Boxes or Voting Machine; Nominating Committee and Nomination by Petition*

Section 1. *Nomination procedures.* a. At least 120 days before each annual meeting, the chair will appoint a nominating committee of three or more members. The nominating committee will nominate at least one member for each vacancy, including any unexpired term vacancy, for which elections are being held, and determine that the members nominated are agreeable to the placing of their names in nomination and will accept office if elected. The nominating committee must widely publicize the call for nominations to all members by any medium and interview each member who volunteers.

b. At least 90 days before the annual meeting, the nominating committee files its nominations with the secretary of the credit union. At least 75 days before the annual meeting, the secretary notifies, in writing, all members eligible to vote that they may make nominations for vacancies by petition signed by 1% of the members with a minimum of 20 and a maximum of 500. The secretary may use electronic mail to notify members

who have opted to receive notices or statements electronically.

c. The written notice must specify that the credit union will not conduct the election by ballot and there will be no nominations from the floor when the number of nominees equals the number of open positions.

d. The notice will include, in a form approved by the board of directors, a brief statement of qualifications and biographical data for each nominee submitted by the nominating committee. Each nominee by petition must submit a similar statement of qualifications and biographical data with the petition.

e. The written notice must state the closing date for receiving nominations by petition. At least 40 days before the annual meeting, nominee(s) must file the nomination petition with the secretary of the credit union. To be effective, nominee(s) must include a signed certificate with the nomination petition stating that they are agreeable to nomination and will serve if elected to office.

f. At least 35 days before the annual meeting, the secretary will post the nominations by petition along with those of the nominating committee in a conspicuous place in each credit union office and on the credit union's website.

Section 2. *Election procedures.* The plurality of the vote determines all elections. The election is conducted by ballot boxes or voting machines, subject to the following conditions:

(a) The board of directors will appoint the election tellers;

(b) At least 10 days before the annual meeting, the secretary will direct the preparation and placement of ballot boxes, printed ballots, or voting machines if there are sufficient nominations made by the nominating committee or by petition to provide more nominees than open positions. The secretary will place the boxes or voting machines in conspicuous locations as determined by the board of directors. The secretary will post the names of the candidates near the boxes or voting machines. The posting will include a brief statement of the candidates' qualifications and biographical data in a form approved by the board of directors;

(c) The members have 24 hours to vote at conspicuous locations as the board determines. After 24 hours, election tellers will open the ballot boxes or voting machines, tally the vote, place the tally in the ballot boxes, and reseal the ballot boxes. The election tellers are responsible at all times for the integrity of the vote. The election tellers will keep a record of all persons voting

and must assure themselves that each person voting is entitled to vote; and

(d) The election tellers will take the ballot boxes to the annual meeting and place them in conspicuous locations with the names of the candidates posted near them. At the annual meeting, the election tellers will distribute printed ballots to those in attendance who have not voted. Members will deposit their votes in the ballot boxes placed by the election tellers. After giving the members an opportunity to vote at the annual meeting, the chair will close balloting. The election tellers will open the ballot boxes, tally the vote, and add the vote to the previous count. The chair will then announce the result of the vote.

*Option A4—Election by Electronic Device (Including But Not Limited to Telephone and Electronic Mail) or Mail Ballot; Nominating Committee and Nominations by Petition*

Section 1. *Nomination procedures.* a. At least 120 days before each annual meeting, the chair will appoint a nominating committee of three or more members. The nominating committee will nominate at least one member for each vacancy, including any unexpired term vacancy, for which elections are being held, and determine that the members nominated are agreeable to the placing of their names in nomination and will accept office if elected. The nominating committee must widely publicize the call for nominations to all members by any medium and interview each member who volunteers.

b. At least 90 days before the annual meeting, the nominating committee files its nominations with the secretary of the credit union. At least 75 days before the annual meeting, the secretary notifies, in writing, all members eligible to vote that they may make nominations for vacancies by petition signed by 1% of the members with a minimum of 20 and a maximum of 500. The secretary may use electronic mail to notify members who have opted to receive notices or statements electronically.

c. The written notice must specify that the credit union will not conduct the election by ballot and there will be no nominations from the floor when the number of nominees equals the number of open positions.

d. The notice will include, in a form approved by the board of directors, a brief statement of qualifications and biographical data for each nominee submitted by the nominating committee. Each nominee by petition must submit a similar statement of qualifications and biographical data with the petition.

e. The written notice must state the closing date for receiving nominations by petition. At least 40 days before the annual meeting, nominee(s) must file the nomination petition with the secretary of the credit union. To be effective, nominee(s) must include a signed certificate with the nomination petition stating that they are agreeable to nomination and will serve if elected to office.

f. At least 35 days before the annual meeting, the secretary will post the nominations by petition along with those of the nominating committee in a conspicuous place in each credit union office and on the credit union's website (if the credit union maintains a website).

Section 2. *Election procedures.* The plurality of vote determines all elections. The election is conducted by electronic device or mail ballot, subject to the following conditions:

(a) The board of directors will appoint the election tellers;

(b) At least 30 days before the annual meeting, the secretary will ensure either a printed ballot or notice of ballot is mailed to all members eligible to vote if there are sufficient nominations made by the nominating committee or by petition to provide more nominees than open positions. The secretary may use electronic mail to provide the notice of ballot to members who have opted to receive notices or statements electronically;

(c) If the credit union conducts its elections electronically, the secretary will ensure the transmission of the following materials to each eligible voter using the following procedures:

(1) One notice of balloting stating the names of the candidates for the board of directors and the candidates for other separately identified offices or committees. The notice must include a brief statement of qualifications and biographical data for each candidate in a form approved by the board of directors. The secretary may use electronic mail to provide the notice of ballot to members who have opted to receive notices or statements electronically.

(2) One mail ballot that conforms to Section 2(d) of this article, as well as instructions for the electronic election procedure, including how to access and use the system and the timeframe for voting. The instructions will state that members without the requisite electronic device necessary to vote on the system may vote by submitting the enclosed mail ballot and specify the date the mail ballot must be received by the credit union. For members who have opted to receive notices or statements electronically, the mail ballot is not

required and the secretary may use electronic mail to provide the instructions for the electronic election procedure.

(3) The election tellers verify, or cause to be verified, the name of the voter and their credit union account number as registered in the electronic balloting system. The election tellers will test the integrity of the balloting system at regular intervals during the election period.

(4) Election tellers must receive ballots no later than midnight, 5 calendar days before the annual meeting.

(5) Election tellers will tally the vote and the chair will make the result of the vote public at the annual meeting.

(6) If the electronic balloting system malfunctions, the board of directors may, in its discretion, hold the election by mail ballot only. The mail ballots must conform to Section 2(d) of this article and the secretary must mail them once more to all eligible members 30 days before the annual meeting. The board may make reasonable adjustments to the voting time frames above, or postpone the annual meeting when necessary, to complete the elections before the annual meeting.

(d) If the credit union conducts its election by mail ballot, the secretary will ensure the mailing of the following materials to each member using the following procedures:

(1) One ballot, clearly identified as the ballot, with the names of the candidates for the board of directors and the candidates for other separately identified offices or committees printed in random order. A brief statement of qualifications and biographical data for each candidate, in a form approved by the board of directors, will accompany the ballot;

(2) One ballot envelope, with instructions to place the completed ballot placed in the envelope and seal the envelope;

(3) One identification form the member completes that includes their name, address, signature and credit union account number;

(4) One mailing envelope that instructs the member to insert the sealed ballot envelope and the identification form. The mailing envelope must have prepaid postage and be preaddressed for return to the election tellers;

(5) When properly designed with features that preserve the secrecy of the ballot, the ballot, identification form, and prepaid postage and preaddressed return envelope may be combined;

(6) The election tellers will verify, or cause to be verified, the name and credit union account number of the voter as

appearing on the identification form. The tellers will retain the verified identification form and the sealed ballot envelope until the vote count is completed. In the event of a questionable or challenged identification form, the tellers must retain the identification form and sealed ballot envelope together until the verification or challenge is resolved;

(7) Election tellers must receive ballots mailed to them no later than midnight 5 days before the date of the annual meeting;

(8) The election tellers will tally the vote. They will verify the result at the annual meeting and the chair will make the result of the vote public at the annual meeting.

#### *All Options Continue Here*

Section 3. *Order of nominations.* Nominations may be in the following order:

(a) Nominations for directors.

(b) Nominations for credit committee members, if applicable. Elections may be by separate ballots following the same order as the above nominations or, if preferred, may be by one ballot for all offices.

Section 4. *Proxy and agent voting.* Members cannot vote by proxy. A member other than a natural person may vote through an agent designated in writing for the purpose.

Section 5. *One vote per member.* Respective of the number of shares, no member has more than one vote.

Section 6. *Submission of information regarding credit union officials to NCUA.* The secretary must forward the names and business addresses of board members, board officers, executive committee, credit committee members, if applicable, and supervisory committee members to the Administration in accordance with the Act and regulations in the manner as required by the Administration.

Section 7. *Minimum age requirement.* Members must be at least \_\_\_\_\_ years of age by the date of the meeting (or for appointed offices, the date of appointment) in order to vote at meetings of the members, hold elective or appointive office, sign nominating petitions, or sign petitions requesting special meetings.

The credit union may select the following option:

Section 7. Members must be at least \_\_\_\_\_ years of age by the date of the meeting in order to vote at meetings of the members, sign nominating petitions, or sign petitions requesting special meetings. Members must be at least \_\_\_\_\_ years of age to hold elective or appointive office.

*The Credit Union's board should adopt a resolution inserting an age no greater than 18, or the age of majority under the state law applicable to the credit union, in the blank space for voting, or not greater than 21 for holding elective or appointive office.*

*The Credit Union may select the absentee ballot provision in conjunction with the selected voting procedure. The board may do this by printing the credit union's bylaws with this provision or by retaining this copy and checking the box.*

\_\_\_\_ Section 8. *Absentee ballots.* The board of directors may authorize the use of absentee ballots in conjunction with the other procedures authorized in this article, subject to the following conditions:

(a) The board of directors will appoint the election tellers;

(b) If there are sufficient nominations made by the nominating committee or by petition to provide more than one nominee for each open position, at least 30 days before the annual meeting, the secretary will ensure a printed ballot is mailed to all members of the credit union who are eligible to vote and who have submitted a written or electronic request for an absentee ballot;

(c) The secretary will ensure the following materials are mailed to each eligible voter who submitted a written or electronic request for an absentee ballot:

(1) One ballot, clearly identified as the ballot, with the names of the candidates for the board of directors and the candidates for other separately identified offices or committees printed in random order. A brief statement of qualifications and biographical data for each candidate, in a form approved by the board of directors, will accompany the ballot;

(2) One ballot envelope clearly marked with instructions to place the completed ballot placed in the envelope and seal the envelope;

(3) One identification form the member completes that includes their name, address, signature and credit union account number;

(4) One mailing envelope that instructs the member to insert the sealed ballot envelope and the identification form. The mailing envelope must have prepaid postage and be preaddressed for return to the election tellers;

(5) When properly designed with features that preserve the secrecy of the ballot, the ballot, identification form, and prepaid postage and preaddressed return envelope may be combined;

(d) The election tellers will verify, or cause to be verified, the name and credit

union account number of the voter as appearing on the identification form. The tellers will retain the verified identification and the sealed ballot envelope until the vote count is completed. In the event of a questionable or challenged identification form, the tellers must retain the identification form and the sealed ballot envelope together until the verification or challenge is resolved. If more than one voting procedure is used, the tellers must verify that no eligible voter voted more than one time;

(e) Election tellers must receive ballots mailed to them no later than midnight 5 days before the date of the annual meeting;

(f) Members or authorized personnel will deposit absentee ballots in the ballot boxes taken to the annual meeting or included in a precourt in accordance with procedures specified in Article V, Section 2; and

(g) If a member has chosen to receive statements and notices electronically, the credit union may provide notices required in this section by email and provide instructions for voting via electronic means instead of mail ballots.

#### **Article VI. Board of Directors**

Section 1. *Number of members.* The board consists of \_\_\_\_\_ directors, all of whom must be members. By resolution, the board may change the number of directors to an odd number not fewer than 5 or more than 15. The board may not reduce the number of directors unless there is a corresponding vacancy as a result of a death, resignation, expiration of a term of office, or other action provided by these bylaws. The board must file a copy of the resolution covering any increase or decrease in the number of directors with the official copy of the bylaws.

Section 2. *Composition of board and committees.* a. \_\_\_\_ (Fill in the number, which may be zero) director(s) may be a paid employee of the credit union. The board may appoint a management official who \_\_\_\_\_ (may or may not) be a member of the board and one or more assistant management officials who \_\_\_\_\_ (may or may not) be a member of the board. If the board permits the management official or assistant management official(s) to serve on the board, he or she may not serve as the chair.

b. \_\_\_\_ (Fill in the number, which may be zero) immediate family members, or those persons living in the same household, of a director may be a paid employee of the credit union.

c. The total number of directors serving who fall into each of the

categories below must not constitute a majority of the board:

- Management official plus assistant management official(s) plus other employees;
- Immediate family members or persons in the same household as the management official, assistant management official(s), and other employees; or
- Management official plus assistant management official(s) plus other employees, plus immediate family members or persons in the same household as management officials, assistant management officials and other employees.

d. \_\_\_\_ (Fill in the number, which may be zero) committee member(s) may be a paid employee of the credit union.

\_\_\_\_ (Fill in the number, which may be zero) immediate family members, or those persons living in the same household, of a committee member(s) may be a paid employee of the credit union.

*The board may also choose the option below:*

\_\_\_\_ No director or committee member, who is not then a paid employee of the credit union, may become a paid employee of this credit union for a minimum of \_\_\_\_ (Fill in the number, which may be zero) years from the date the official terminates his or her position as a director or committee member.

*You can also add “unless the employee position to be filled exists as a result of a death or disability” after committee member.*

*For this section, you can correct the syntax by omitting the plural(s) if applicable.*

Section 3. *Terms of office.* Terms for directors are for periods of 2 or 3 years as decided by the board. All terms must be for the same number of years and until the election and qualification of successors. Terms are set and staggered at the first meeting, or when the number of directors changes, so that approximately an equal number of terms expire at each annual meeting.

Section 4. *Vacancies.* The directors, by majority vote, will fill any vacancy on the board, credit committee, if applicable, or supervisory committee as soon as possible. If all director positions become vacant at once, the supervisory committee immediately becomes the temporary board of directors and must follow the procedures in Article IX, Section 3. Directors and credit committee members appointed to fill a vacancy hold office only until the next annual meeting. The FCU’s members then vote to select a candidate to fill the

remainder of the original director’s unexpired term. Members of the supervisory committee appointed to fill a vacancy on the supervisory committee hold office through the remainder of the unexpired term.

Section 5. *Regular and special meetings.* The board must hold a regular meeting each month at the time and place fixed by resolution. The board must conduct one regular meeting each calendar year in person. If a quorum of the board is present at the in person meeting, the remaining board members may participate by audio or video teleconference. The board may conduct the other regular meetings by audio or video teleconference. The chair, or in the chair’s absence the ranking vice chair, may call a special meeting of the board at any time and must do so upon written request of a majority of the directors. The chair, or in the chair’s absence the ranking vice chair, will fix the time and place of special meetings unless the board directs otherwise. The board will give notice of all meetings in the manner set by resolution. The board may conduct special meetings by audio or video teleconference. The board may take action and vote on resolutions without a meeting. The board must first obtain unanimous consent for the action in writing or by electronically recorded means.

Section 6. *Board responsibilities.* The board has the general direction and control of the affairs of this credit union. The board is responsible for performing all the duties customarily done by boards of directors. This includes but is not limited to:

(a) Directing the affairs of the credit union in accordance with the Act, these bylaws, the rules and regulations and sound business practices.

(b) Establishing programs to achieve the purposes of this credit union as stated in Article I, Section 2, of these bylaws.

(c) Establishing lending policies, a loan collection program, and authorizing the charge-off of uncollectible loans.

(d) Establishing policies to address training for directors and volunteer officials in areas such as ethics and fiduciary responsibility, regulatory compliance, and accounting.

(e) Ensuring that staff and volunteers who handle the receipt, payment or custody of money or other property of this credit union; or property in its custody as collateral or otherwise, are properly bonded in accordance with the Act and regulations.

(f) Performing additional acts and exercising additional powers as required

or authorized by applicable law and regulation.

*If the credit union has an elected credit committee, you do not need to check a box. If the credit union has no credit committee check Option 1, and if it has an appointed credit committee check Option 2.*

\_\_\_\_ *Option 1. No Credit Committee.*

(g) Reviewing denied loan applications of members who file written requests for review.

(h) Appointing one or more loan officers and delegating to those officers the power to approve or disapprove loans, lines of credit or advances from lines of credit.

(i) In its discretion, appointing a loan review (the credit union may fill in another name if desired) committee to review loan denials and delegating to the committee the power to overturn denials of loan applications. The committee will function as a mid-level appeal committee for the board. The board must review all loans denied by the committee upon written request of the member.

*The credit union may select one of three options for the makeup and term of the committee. Enter the option selected \_\_\_\_\_.*

\_\_\_\_ *Option A.* The committee must consist of three members with a term of office of \_\_\_\_ (enter no more than 3) years. The committee may not have more than one loan officer.

\_\_\_\_ *Option B.* The committee must consist of three members and two alternates. The term of office of the committee members will be for \_\_\_\_ (enter no more than 3) years. The board may appoint any number of lending professionals within the organization to the committee, provided that no loan officer may review any loan that he or she denied. At least 3 members of the committee must review loan denials, none of whom have been a party to denying the loan.

\_\_\_\_ *Option C.* The board may, by resolution, change the number of committee members to an odd number no less than three and no more than seven. The board will determine the length of each committee member’s term upon appointment and stagger terms as necessary to prevent a complete turnover of committee members. The board must file a copy of the resolution covering any increase or decrease in the number of committee members with the official copy of the bylaws of this credit union. The committee will act by majority vote of members present at a meeting. The committee may not have more than one loan officer.

\_\_\_\_ *Option 2. Appointed Credit Committee.*

(g) Appointing an odd number of credit committee members as provided in Article VIII of these bylaws.

Section 7. *Quorum.* A majority of directors, including any vacant positions, constitutes a quorum for the transaction of business at any meeting. A majority of the directors holding office constitutes a quorum to fill any vacancies as stated in Section 4 of this article. Less than a quorum may adjourn from time to time until a quorum is in attendance.

Section 8. *Attendance and removal.* a. If a director or a credit committee member, if applicable, fails to attend regular meetings of the board or credit committee, respectively, for 3 consecutive months, (choose one of the following) \_\_\_\_\_ or 4 meetings within a calendar year, or \_\_\_\_\_ 4 meetings within any 12 consecutive meetings or otherwise fails to perform any significant duties as a director or a credit committee member, the board may declare the office vacant and fill the vacancy as provided in the bylaws.

b. The board may remove any board officer from office for failure to perform any significant duties as an officer. Prior to removal, the board must give the officer reasonable notice and an opportunity to respond to the issues.

c. When any board officer, membership officer, executive committee member or investment committee member is absent, disqualified, or otherwise unable to perform the duties of the office, the board may by resolution designate another member of this credit union to fill the position temporarily. The board may also, by resolution, designate another member or members of this credit union to act on the credit committee when necessary in order to obtain a quorum.

Section 9. *Suspension of supervisory committee members.* The board may suspend any member of the supervisory committee by a majority vote. In the event of a suspension, the board must hold a special meeting of the members at least 7 but no more than 14 days after any suspension. The members will decide whether to remove or to restore the suspended committee member of the supervisory committee.

*The credit union may add the optional Section 10 if desired.*

Section 10. *Director Emeritus.* The board of directors may appoint any former director who served on the board at least \_\_\_\_\_ (fill in the number) years as "Director Emeritus." The board may substitute suitable volunteer service

time for some of the board service time provided the candidate has served at least \_\_\_\_\_ (fill in the number) years on the board. The individuals appointed directors emeritus function as an advisory committee to the board of directors. Terms for directors emeritus are \_\_\_\_\_ (fill in the number) years. The board may increase or decrease the number of directors emeritus, or shorten or extend any director emeritus's term, by resolution. Unless separately elected or appointed, directors emeritus are not members of any other committee of the credit union. Directors emeritus are not a member or officer of the board of directors; they may not vote on any matter before the board or any other committee of the credit union; they may not receive any compensation from the credit union; and they are not required to attend any meetings or authorized to perform any duties other than providing advice to the credit union's board, staff and other committees as needed.

**Article VII. Board Officers, Management Officials and Executive Committee**

Section 1. *Board officers.* The board elects the following officers from their number: A chair, one or more vice chairs, a financial officer, and a secretary. The board determines the title and rank of each board officer and records them in the addendum to this article. The board may compensate one board officer, the \_\_\_\_\_, for services as they determine. If the board elects more than one vice chair, the board determines their rank as first vice chair, second vice chair, and so on. The same person may hold the offices of the financial officer and secretary. If the board permits a management official or assistant management official to serve on the board, he or she may not serve as the chair. Unless removed as provided in these bylaws, the board officers elected at the first meeting of the board hold office until the first annual meeting of the members and until the election and qualification of their respective successors.

Section 2. *Election and term of office.* The board must hold a meeting not later than 7 days after the annual meeting to elect officers. Board officers hold office for a 1-year term and until the election and qualification of their respective successors. Any person elected to fill a vacancy caused by the death, resignation, or removal of an officer is elected by the board to serve only for the unexpired term of that officer and until a successor is duly elected and qualified.

Section 3. *Duties of Chair.* The chair presides at all meetings of the members and at all meetings of the board, unless disqualified through suspension by the supervisory committee. The chair also performs other duties customarily assigned to the office of the chair or duties directed to perform by resolution of the board that are not inconsistent with the Act, regulations, and these bylaws.

Section 4. *Approval required.* The board must approve all individuals authorized to sign all notes, checks, drafts, and other orders for disbursement of credit union funds.

Section 5. *Vice chair.* The ranking vice chair has and may exercise all the powers, authority, and duties of the chair during the chair's absence or inability to act.

Section 6. *Duties of financial officer.* i. The financial officer manages this credit union under the control and direction of the board unless the board has appointed a management official to act as general manager. Subject to limitations, controls and delegations the board may impose, the financial officer will:

(a) Have charge over all funds, securities, valuable papers and other assets of this credit union.

(b) Provide and maintain full and complete records of all the assets and liabilities of this credit union in accordance with prescribed law, regulation, and Administration guidance.

(c) Within 20 days after the close of each month, prepare and submit to the board a financial statement showing the condition of this credit union as of the end of the month, including a summary of delinquent loans; and post a copy of the statement in a conspicuous place in the office of the credit union where it will remain until replaced by the next month's financial statement.

(d) Ensure that financial and other reports the Administration may require are prepared and sent.

(e) Within standards and limitations set by the board, employ sufficient staff to run the credit union, and have the power to remove these employees.

(f) Perform other duties customarily assigned to the office of the financial officer or duties assigned by board resolution that are not inconsistent with the Act, regulations, and these bylaws.

ii. The board may employ one or more assistant financial officers, none of whom may also hold office as chair or vice chair. The board may authorize them, under the direction of the financial officer, to perform any of the duties falling to the financial officer, including the signing of checks. When

designated by the board, any assistant financial officer may also act as financial officer during the financial officer's temporary absence or temporary inability to act.

Section 7. *Duties of management official and assistant management official.* The board may appoint a management official who is under the direction and control of the board or of the financial officer as determined by the board. The board may assign any or all of the responsibilities of the financial officer described in Section 6 of this article. The board will determine the title and rank of each management official and record them in the addendum to this article. The board may employ one or more assistant management officials. The board may authorize assistant management officials under the direction of the management official, to perform any of the duties falling to the management official, including the signing of checks. When designated by the board, any assistant management official may also act as management official during the management official's temporary absence or temporary inability to act.

Section 8. *Board powers regarding employees.* The board employs, fixes the compensation, and prescribes the duties of employees as necessary, and has the power to remove employees, unless it has delegated these powers to the financial officer or management official. Management does not have the power or duty to employ, prescribe the duties of, or remove necessary clerical and auditing assistance employed or used by the supervisory committee or remove any loan officer appointed by the credit committee.

*The credit union may select one of the following options and add it to the end of Section 8:*

*Option A.* No director or committee member, who is not then a paid employee of the credit union, may become a paid employee of this credit union for a minimum of \_\_\_\_\_ (Fill in the number, which may be zero) years

from the date the official terminates his or her position as a director or committee member.

*Option B.* No director, committee member, immediate family member of a director or committee member, or person in the same household as a director or committee member, who is not then a paid employee of this credit union, may become a paid employee of the credit union for a minimum of \_\_\_\_\_ (Fill in the number, which may be zero) years from the date the official terminates his or her position as a director or committee member.

*Option C.* No director, committee member, immediate family member of a director or committee member, or person in the same household as a director or committee member, who is not then a paid employee of the credit union, may become a paid employee of this credit union for a minimum of \_\_\_\_\_ (Fill in the number, which may be zero) years from the date the official terminates his or her position as a director or committee member, unless the employee position to be filled exists as a result of a death or disability.

*Option D.* No official, who is not already a paid employee of this credit union, may become a paid employee of this credit union for a minimum of \_\_\_\_\_ (Fill in the number, which may be zero) years from the date the official terminates his or her position as a director or committee member, unless the employee position to be filled exists as a result of death or disability. The term "official" in this bylaw means a person who is a member of the board of directors, supervisory committee, or other volunteer committee established by the board of directors.

Section 9. *Duties of secretary.* The secretary prepares and maintains full and correct records of all meetings of the members and of the board. The secretary will prepare a record of each respective meeting within 7 days after its completion. The secretary must promptly inform the Administration in writing of any change in the address of

the office of this credit union or the location of its principal records. The secretary provides the proper notice of all meetings of the members in the manner prescribed in these bylaws. The secretary also performs other duties as directed by resolution of the board that are not inconsistent with the Act, regulation, and these bylaws. The board may employ one or more assistant secretaries, none of whom may also hold office as chair, vice chair, or financial officer, and may authorize them under direction of the secretary to perform any of the duties assigned to the secretary.

Section 10. *Executive committee.* As authorized by the Act, the board may appoint an executive committee of not fewer than three directors to serve at its pleasure, to act for it with respect to the board's specifically delegated functions. When making delegations to the executive committee, the board must be specific with regard to the committee's authority and limitations related to the particular delegation. The board may also authorize any of the following to act upon membership applications under conditions the board and these bylaws may prescribe: An executive committee; a membership officer(s) appointed by the board from the membership, other than a board member paid as an officer; the financial officer; any assistant to the paid officer of the board or to the financial officer; or any loan officer. The board may not compensate the executive committee member or membership officer as such.

Section 11. *Investment committee.* The board may appoint an investment committee composed of not less than two, to serve at its pleasure to have charge of making investments under rules and procedures established by the board. The board may not compensate any member of the investment committee as such.

*Addendum: The board must list the positions of the board officers and management officials of this credit union. They are as follows:*

Position	Credit union title	Officer or Official name
Board Chair. Vice Chair. Treasurer. Secretary. Management Official. Other 1. Other 2. Other 3. Other 4.		

*Select Option 1 if the credit union has a credit committee and Option 2 if it does not have a credit committee.*

### **Article VIII. Option 1 Credit Committee**

Section 1. *Credit committee members.* The credit committee consists of \_\_\_\_\_ members. All the members of the credit committee must be members of this credit union. The board determines the number of members on the credit committee, which must be an odd number and may be fewer than 3 and no more than 7. The board may not reduce the number of members unless there is a corresponding vacancy as a result of a death, resignation, expiration of a term of office, or other action provided by these bylaws. The board must file a copy of the resolution covering any increase or decrease in the number of committee members with the official copy of the bylaws of this credit union.

Section 2. *Terms of office.* Regular terms of office for elected credit committee members are for periods of either 2 or 3 years as the board determines. All regular terms are for the same number of years and until the election and qualification of successors. The board will fix the regular terms at the beginning or upon any increase or decrease in the number of committee members so that approximately an equal number of regular terms expire at each annual meeting. The board determines the periods for the regular terms of office for appointed credit committee members and records these periods in the board's minutes.

Section 3. *Officers of credit committee.* The credit committee chooses from their number a chair and a secretary. The secretary of the committee prepares and maintains full and correct records of all actions taken by it. They must prepare those records within 3 days after the action. The same person may hold the offices of the chair and secretary.

Section 4. *Credit committee powers.* The credit committee may, by majority vote of its members, appoint one or more loan officers to serve at its pleasure. The committee may delegate to them the power to approve loan applications, share withdrawals, releases and substitutions of security, within limits specified by the committee and within limits of applicable law and regulations. The committee may not appoint more than one of its members as a loan officer. Each loan officer must furnish to the committee a record of each approved or not approved transaction within 7 days of the date of the filing of the application or request. This record becomes a part of the

committee's records. The committee must act on all applications or requests not approved by a loan officer. No individual may disburse funds of this credit union for any application or share withdrawal that the individual has approved as a loan officer.

Section 5. *Credit committee meetings.* The credit committee must hold at least one meeting a month and as frequently as required to complete the business of this credit union. The committee will give notice of meetings to its members in the manner it prescribes by resolution.

Section 6. *Credit committee duties.* For each loan, the credit committee or loan officer must review the character and financial condition of the applicant and their surety, if any. The credit committee or loan officer will ascertain the applicant's ability to fully and promptly repay the loan. The credit union may use an automated loan processing system to conduct this review, subject to the conditions set forth in Section 7, below. Where appropriate, the credit committee or loan officers should provide, or refer applicants to, financial counseling assistance.

Section 7. *Unapproved loans prohibited.* The credit committee must approve all loans. If the credit union uses an automated lending system, the credit committee must review all loan applications the system has denied and review at least a sample of approved loans to screen for fraud and ensure the automated system is functioning within the lending policies the board has established.

Section 8. *Lending procedures.* The credit committee, loan officer, or automated system determines the required security, if any, and the terms of repayment for each application. All lending decisions and loan terms must comply with applicable law and regulations, these bylaws, and board policy. The security furnished must be adequate in quality and character as well as consistent with sound lending practices. When the credit union does not have the funds available to make all the loans requested, the credit committee should give preference, in all cases, to the smaller applications if the need and credit factors are nearly equal.

### **Article VIII. Option 2 Loan Officers (No Credit Committee)**

Section 1. *Records of loan officer; prohibition on loan officer disbursing funds.* Each loan officer must maintain a record of each approved or not approved transaction within 7 days of the filing of the application or request. This record then becomes a part of the

records of the credit union. No individual may disburse funds of this credit union for any application or share withdrawal that the individual has approved as a loan officer.

Section 2. *Loan officer duties.* For each loan, the loan officer must review the character and financial condition of the applicant and their surety, if any. The loan officer will ascertain the applicant's ability to fully and promptly repay the loan. The credit union may use an automated loan processing system to conduct this review, subject to the conditions set forth in Section 3, below. Where appropriate, the loan officer should provide, or refer applicants to, financial counseling assistance.

Section 3. *Unapproved loans prohibited.* The loan officer must approve all loans. Loan terms and rates must comply with applicable law and regulations. If the credit union uses an automated lending system, the loan officer must review all loan applications the system has denied, and review at least a sample of approved loans to screen for fraud and ensure the automated system is functioning within the lending policies the board has established.

Section 4. *Lending procedures.* The loan officer or automated lending system determine the required security, if any, and the terms of repayment for each application. All lending decisions and loan terms must comply with applicable law and regulation, these bylaws, and board policy. The security furnished must be adequate in quality and character as well as consistent with sound lending practices. When the credit union does not have the funds available to make all the loans requested, the loan officer should give preference, in all cases, to the smaller applications if the need and credit factors are nearly equal.

### **Article IX. Supervisory Committee**

Section 1. *Appointment and membership.* The board appoints the supervisory committee from members of this credit union. One of the committee members may be a director other than the financial officer or the paid officer of the board. The board determines the number of members on the committee, which may not be fewer than 3 or more than 5. No member of the credit committee, if applicable, or employee of this credit union may be appointed to the committee. Terms of committee members are for periods of 1, 2, or 3 years as decided by the board. However, all terms are for the same number of years and until the appointment and qualification of successors. Terms are

set and staggered at the beginning, or on the increase or decrease in the number of committee members so that approximately an equal number of terms expire at each annual meeting.

Section 2. *Officers of supervisory committee.* The supervisory committee members choose from their number a chair and a secretary. The secretary prepares, maintains, and has custody of all records of the committee's actions. The same person may hold the offices of chair and secretary.

Section 3. *Duties of supervisory committee.*

a. The supervisory committee makes, or arranges for, the audits, and prepares and submits the written reports required by the Act and regulations. The committee may employ and use the clerical and auditing assistance required to carry out its responsibilities. The committee may request the board to provide compensation for this assistance. It will prepare and forward to the Administration required reports.

b. If all director positions become vacant at once, the supervisory committee immediately assumes the role of the board of directors. The supervisory committee acting as the board must generally call and hold a special meeting to elect a board. That board will serve until the next annual meeting. They must hold the special meeting at least 7 but no more than 14 days after all director positions became vacant. Nominations for the board at the special meeting are by petition or from the floor. However, the supervisory committee may forego the special meeting if the next annual meeting will occur within 45 days after all the director positions become vacant.

c. The supervisory committee acting as the board may not act on policy matters. However, directors elected at a special meeting have the same powers as directors elected at the annual meeting.

Section 4. *Verification of accounts.* The supervisory committee will cause the verification of the accounts of members with the records of the financial officer from time to time and not less frequently than as required by the Act and regulations. The committee must maintain a record of this verification.

Section 5. *Powers of supervisory committee—removal of directors and credit committee members.* By unanimous vote, the supervisory committee may suspend any director, board officer, or member of the credit committee. In the event of a suspension, the supervisory committee must call a special meeting of the members to act on the suspension. They must hold the

meeting at least 7 but no more than 14 days after the suspension. The chair of the committee acts as chair of the meeting unless the members select another person to act as chair.

Section 6. *Powers of supervisory committee—special meetings.* By majority vote, the supervisory committee may call a special meeting of the members to: Consider any violation of the provisions of the Act, the regulations, the credit union's charter or bylaws; or to consider any practice of this credit union the committee deems to be unsafe or unauthorized.

#### Article X. Organization Meeting

Section 1. *Initial meeting.* When making an application for a federal credit union charter, the subscribers to the organization certificate must meet to elect a board of directors and a credit committee, if applicable. The Agency may revoke the charter for failure to start operations within 60 days after receipt of the approved organization certificate unless the Agency approves an extension of time.

Section 2. *Election of directors and credit committee.* The subscribers elect a chair and a secretary for the meeting. The subscribers then elect a board of directors and a credit committee, if applicable. The elected directors or committee members will hold office until the first annual meeting of the members and until the election of their respective successors. Every person elected under this section or appointed under Section 3 of this article, must become a member within 30 days if they are not already. If any person elected as a director or committee member or appointed as a supervisory committee member does not become a member within 30 days of election or appointment, the office will automatically become vacant and be filled by the board.

Section 3. *Election of board officers.* Promptly after the elections held under the provisions of Section 2 of this article, the board must meet to elect the board officers. The officers will hold office until the first meeting of the board of directors after the first annual meeting of the members and until the election of their respective successors. The board also appoints a supervisory committee at this meeting as provided in Article IX, Section 1, of these bylaws and a credit committee, if applicable. The appointed members hold office until the first regular meeting of the board after the first annual meeting of the members and until the appointment of their respective successors.

*After five years of operation, the credit union may select the following:*

Article X of the bylaws shall be amended to read as follows:

Reserved

#### Article XI. Loans and Lines of Credit to Members

Section 1. *Loan purposes.* The credit union may make loans to members for provident or productive purposes in accordance with applicable law and regulations.

*The credit union may add business as one of its purposes by placing a comma after "provident" and inserting "business."*

Section 2. *Delinquency.* Any member whose loan is delinquent may be required to pay a late charge as determined by the board of directors.

#### Article XII. Dividends

Section 1. *Power of board to declare dividends.* The board sets dividend periods and declares dividends as permitted by the Act and applicable law and regulation.

#### Article XIII. Reserved

#### Article XIV. Expulsion and Withdrawal

Section 1. *Expulsion procedure; expulsion or withdrawal does not affect members' liability or shares.* To expel a member, the credit union must:

- Call a special meeting of the members;
- Provide the member the opportunity to be heard; and
- Obtain a two-thirds vote of the members present at the special meeting.

The credit union may also expel a member under a nonparticipation policy given to each member that follows the requirements found in the Act. Expulsion or withdrawal does not relieve a member of any liability to this credit union. The credit union will pay all of their shares upon their expulsion or withdrawal less any amounts due to this credit union.

#### Article XV. Minors

Section 1. *Minors permitted to own shares.* The credit union may issue shares in the name of a minor. State law governs the rights of minors to transact business with this credit union.

#### Article XVI. General

Section 1. *Compliance with law and regulation.* The members, directors, officers, and employees of this credit union must exercise all power, authority, duties, and functions according to the provisions of these bylaws in strict conformity with the provisions of applicable law and regulations, and the credit union's charter and bylaws.

Section 2. *Confidentiality.* The officers, directors, members of committees and employees of this credit union must keep all member transactions and all information respecting their personal affairs in confidence, unless otherwise directed by state or federal law.

Section 3. *Removal of directors and committee members.* Notwithstanding any other provisions in these bylaws, any director or committee member of this credit union may be removed from office by the affirmative vote of a majority of the members present at a special meeting called for the purpose, but only after an opportunity has been given to be heard. If member votes at a special meeting result in the removal of all directors, the supervisory committee immediately becomes the temporary board of directors and must follow the procedures in Article IX, Section 3.

Section 4. *Conflicts of interest prohibited.* a. No director, committee member, officer, agent, or employee of this credit union may participate in any manner, directly or indirectly, in the consideration or determination of any question affecting his or her pecuniary or personal interest or the pecuniary interest of any corporation, partnership, or association (other than this credit union) in which he or she is directly or indirectly interested.

b. If the board receives a matter affecting any director's interest, the director must withdraw from the consideration or determination of that matter. If the remaining qualified directors present at the meeting plus the disqualified director or directors constitute a quorum, the remaining qualified directors, by majority vote, may exercise with respect to this matter all the powers of the board. In the event of the disqualification of any member of the credit committee, if applicable, or the supervisory committee, that committee member must withdraw from the deliberation or determination.

Section 5. *Records.* The board must preserve copies of the organization certificate of this credit union, its bylaws, any amendments to the bylaws, and any special authorizations by the Administration. The board must attach copies of the organization certificate and field of membership amendments as an appendix to these bylaws. The board must record all returns of nominations, elections, and proceedings of all regular and special meetings of the members and directors in the minutes of this credit union. The respective chair or presiding officer and the person serving as secretary of the meeting must sign all minutes of the meetings of the members, the board, and the committees. All

copies and records maintained under this section may be stored physically or electronically provided that the information is readily accessible to the directors, committee members of this credit union, members, and the Administration. Moreover, signatures may be provided electronically where permissible under federal or state law.

Section 6. *Availability of credit union records.* All books of account and other records of this credit union must be available upon request at all times to the directors, committee members of this credit union, and members provided they have a proper purpose for obtaining the records. If this credit union maintains a website currently or in the future, the board must post the bylaws of this credit union on the website. The board must also make the charter and bylaws of this credit union available for inspection by any member, upon request. If the member requests a copy of the charter or bylaws, the board will provide a copy to the member. The board may provide this copy to the member in physical or electronic copy. If the member requests a physical copy, the board may charge a reasonable fee for the physical copy.

Section 7. *Member contact information.* Members must keep the credit union informed of their current mailing address or, if the member has elected to receive electronic communications, their current email address.

Section 8. *Indemnification.* (a) Subject to the limitations in § 701.33(c)(5) through (c)(7) of the regulations, the credit union may elect to indemnify to the extent authorized by (check one):

- Law of the State of \_\_\_\_\_
- Model Business Corporation Act:

The following individuals from any liability asserted against them and expenses reasonably incurred by them in connection with judicial or administrative proceedings to which they are or may become parties by reason of the performance of their official duties (check as appropriate).

- Current officials.
- Former officials.
- Current employees.
- Former employees.

(b) The credit union may purchase and maintain insurance on behalf of the individuals indicated in (a) above against any liability asserted against them and expenses reasonably incurred by them in their official capacities and arising out of the performance of their official duties to the extent such insurance is permitted by the applicable State law or the Model Business Corporation Act.

(c) The term "official" in this bylaw means a person who is a member of the board of directors, credit committee, supervisory committee, other volunteer committee (including elected or appointed loan officers or membership officers), established by the board of directors.

Section 9. *Pronouns, Singular and Plural.* Unless the context requires otherwise, words denoting the singular may be construed as denoting the plural, words of the plural may be construed as denoting the singular, and words of one gender may be construed as denoting such other gender as is appropriate.

## Article XVII. Amendments of Bylaws and Charter

Section 1. *Amendment procedures.* The board may adopt amendments of these bylaws by an affirmative two-thirds vote of the directors. Written NCUA approval is required for the amendment of the bylaws to become effective. After adopting amendments, the credit union will update the bylaws posted on its website (if such credit union maintains a website) and ensure that members seeking to inspect the bylaws receive the most current version of the bylaws. To adopt amendments to the credit union's charter, members must vote at a duly held meeting after receiving prior written notice of the meeting and a copy of the proposed amendment or amendments with the notice. Written NCUA approval is required for the amendment to the charter to become effective.

## Article XVIII. Definitions

Section 1. *General definitions.* When used in these bylaws the terms:

"Act" means the Federal Credit Union Act, as amended.

"Administration" means the National Credit Union Administration.

"Agency" means the Regional Director, the Director of the Office of National Examinations and Supervision, or the Director of the Office of Credit Union Resources and Expansion.

"Applicable law and regulations" means the Federal Credit Union Act and rules and regulations issued thereunder or other applicable federal and state statutes and rules and regulations issued thereunder as the context indicates.

"Board" means board of directors of the federal credit union.

"Board officers" means:

1. "Chair" means Presiding Board officer, President of the Board, Presiding Board Officer, or Chairperson.
2. "Vice Chair" means Vice President.
3. "Financial Officer" means Treasurer.

4. “Secretary” means Recording Officer.

5. “Management Official” means General Manager, Manager, President, or Chief Executive Officer.

“Charter” means the approved organization certificate and field of membership issued by the National Credit Union Administration or one of its predecessors. It is the document that authorizes a group to operate as a credit union, defines the fundamental limits of its operating authority, and includes the persons the credit union is permitted to accept for membership.

“Field of membership” means the persons (including organizations and other legal entities) a credit union is permitted to accept for membership.

“Immediate family member” means spouse, child, sibling, parent, grandparent, grandchild, stepparents, stepchildren, stepsiblings, and adoptive relationships.

“Loans” means any type of loan product the credit union offers. This includes, but is not limited to, consumer loans, lines of credit, credit cards, member business loans, commercial loans, and real estate loans.

“Management” means the Board, Financial Officer, and Management Official.

“Member” means a person must:

1. Be eligible for membership under Section 5 of the charter;
2. Sign membership forms as approved by the credit union board;
3. Subscribe to at least one share (par value) of stock;
4. Pay the initial installment;
5. Pay an entrance fee, if required; and
6. Be eligible to vote upon reaching the minimum age the credit union establishes for voting and participation in the affairs of the credit union.

“Membership Officer” means a majority of the board of directors, a majority of the members of a duly authorized executive committee, or an individual(s) appointed by the board of directors to serve as such.

“NCUA Board” means the Board of the National Credit Union Administration.

“Person in the same household” means an individual living in the same residence maintaining a single economic unit.

“Regulation” or “regulations” means rules and regulations issued by the NCUA Board.

“Share” or “shares” means all classes of shares and share certificates that may be held in accordance with applicable law and regulations.

Official NCUA Commentary—Federal Credit Union Bylaws

## Article II. Qualifications for Membership

*i. Entrance fee:* FCUs may not vary the entrance fee among different classes of members (such as students, minors, or non-natural persons) because the Act requires a uniform fee. FCUs may, however, eliminate the entrance fee for all applicants.

*ii. Membership application procedures:* Under section 113 of the Act,<sup>25</sup> the board acts upon applications for membership. However, the board can appoint membership officers from among the members of the credit union. Such membership officers cannot be a paid officer of the board, the financial board officer, any assistant to the paid officer of the board or to the financial officer, or any loan officer. As described under section 2 of this Article, an applicant becomes a member upon approval by a membership officer and payment of at least one share (or installment or uniform entrance fee).

*iii. Violent, belligerent, disruptive, or abusive members:* a. Many credit unions have confronted the issue of handling a violent, belligerent, disruptive, or abusive individual. Doing so is not a simple matter, insofar as it requires the credit union to balance the need to preserve the safety of individual staff, other members, and the integrity of the workplace, on one hand, with the rights of the affected member on the other. In accordance with the Act and applicable interpretations by the NCUA’s Office of General Counsel, there is a reasonably wide range within which FCUs may fashion a policy that works in their case. Thus, an individual that has become violent, belligerent, disruptive, or abusive may be prohibited from entering the premises or making telephone contact with the credit union, and the individual may be severely restricted in terms of eligibility for products or services. So long as the individual is not barred from exercising the right to vote at annual meetings and is allowed to maintain a regular share account, the FCU may fashion and implement a policy that is reasonably designed to preserve the safety of its employees and the integrity of the workplace.<sup>26</sup> The policy need not be identical nor applied uniformly in all cases—there is room for flexibility and a customized approach to fit the particular circumstances. In fact, the NCUA anticipates that some circumstances, such as violence against another member or credit union staff in

the FCU or its surrounding property, an FCU may take immediate action to restrict most, if not all, services to the violent member. In other situations, such as a member that frequently writes checks with insufficient funds, the FCU may attempt to resolve the matter with the member before limiting check writing services. Once adopted, the FCU must disclose the policy to new members when they join, and, as required by the Act,<sup>27</sup> notify existing members of the policy at least 30 days before it becomes effective. The FCU’s board has the option to adopt the optional amendment addressing members in good standing.

b. FCUs should also make specific note of Article XIV, § 1 of the bylaws, which spells out in detail the procedure required to expel an individual from membership. This procedure is mandated by the Act.<sup>28</sup> Furthermore, this Article specifies that the credit union, its powers and duties, and the functions of its members, officers and directors, are all strictly circumscribed by law and regulation. The commentary for this Article provides more details on members using accounts for unlawful purposes.

## Article III. Shares of Members

*i. Installments:* FCUs may insert zero for the number of installments. The Act allows membership upon the payment of the initial installment of a membership share, but the NCUA no longer views this provision as requiring FCUs to offer the option of paying for the membership share in installments.

*ii. Par value:* FCUs may establish differing par values for different classes of members or types of accounts (such as students, minors, or non-natural persons), provided this action does not violate any federal, state or local antidiscrimination laws. For example, an FCU may want to establish a higher par value for recent credit union members, without requiring long-time members to bring their accounts up to the new par value. A differing par value may also be permissible for different types of accounts, such as requiring a higher par value for a member with only a share draft account. If a credit union adopts differing par values, all of the possible par values must be stated in section 1. The FCU Bylaws include several options for differing par values. The credit union may select one or more of these or establish its own.

*iii. Regular share account:* To establish membership, the member must subscribe to one par value of share. The

<sup>25</sup> See 12 U.S.C. 1761b.

<sup>26</sup> See OGC Op. No. 08–0431 (Aug. 12, 2008).

<sup>27</sup> See 12 U.S.C. 1764.

<sup>28</sup> *Id.*

share does not have to be in a regular share account. The bylaws include two options. One option requires the member to have a regular share account to open membership, and one option allows them to use any other account. The board may select which option to use. If the board does not select an option, the member must have a regular share account to open an account. Please note, if the board selects an account other than the regular share, the requirements of Article III, § 3 still apply. The member must maintain one share to remain a member. If the share balance falls below the par value and does not increase the balance within the time set by the board, membership is terminated. If the board decides to allow the members to use a share draft account, this section still applies if the member overdrafts the account below the par value.

*iv. Reduction in share balance below par value:* When a member's account balance falls below the par value, section 3 of this article requires FCUs to allow members a minimum time period to restore their account balance to the par value before membership is terminated. FCUs may not delete this requirement or delete references to this requirement in Article II, § 3.

*v. Trusts:* a. Trusts and shares issued in trust can be a complicated subject. For purposes of the FCU Bylaws, perhaps the main issue is the distinction between revocable and irrevocable trusts. In the case of a revocable trust, the individual who establishes the trust is essentially still in control of the funds during his lifetime. Thus, the account owner can change the designated beneficiary at any time, and he or she can determine whether the identified beneficiary actually receives any money simply by deciding to withdraw the funds before his or her own death. Accordingly, the requirement in the case of revocable trust accounts is simply that the owner of the funds be a member of the FCU. Furthermore, provided the owner of the funds is within the field of membership and eligible for membership, he or she may use the vehicle of the payable-on-death or revocable trust account itself as the method of becoming a member. There is no requirement that the account holder first establish a regular share account to become a member. In accordance with legal opinions issued by the NCUA's Office of General Counsel, an individual may fulfill the requirement of becoming a member by subscribing to the equivalent of the par value of one share, which can be done through the opening

of any type of account the credit union offers.<sup>29</sup>

b. There is no requirement that the beneficiaries be members, since they may never actually come to own the funds or have a right to them. Furthermore, in the case of a revocable trust, since it is essentially indistinguishable from the member, there is no need for the trust to have a separate account number assigned or for it to be viewed as a legal entity separate from the member who set it up.

c. In the case of an irrevocable trust, the requirements are somewhat different. Membership requirements here may be met though either the settlor, who is the original owner of the funds, or the beneficiary, who obtains an equitable, beneficial interest in the funds once the trust is established. So long as one or the other is eligible for membership, the credit union may accept the account. Furthermore, as with revocable trusts, the membership obligation can be met through the opening of the trust account itself; it is not required that the beneficiary or the settlor have previously established a separate, regular share account. Most irrevocable trusts have a trustee who has administrative responsibility for the account, and so the credit union will typically deal with the trustee for purposes such as sending monthly statements and year-end tax reporting. However, the trustee need not actually be a member of the credit union, and the credit union need not necessarily view the trust account as a separate legal entity, with its own separate tax ID number. Instead, it need only verify and confirm the eligibility of either the settlor or the beneficiary (or all of the settlors or all of the beneficiaries in the case of multiple settlors or beneficiaries) to join the credit union.

d. A trust itself, either revocable or irrevocable, may be a member of the credit union in its own right if all parties to the trust, including all settlors, beneficiaries and trustees, are within the field of membership.<sup>30</sup> If all parties to the trust are within a credit union's field of membership, the trust will qualify as "an organization of such persons," which is a standard clause in FCU fields of membership.

#### Article IV. Meetings of Members

*i. Annual and special meetings:* FCUs are encouraged to provide a live webcast of annual and special meetings for interested members, and/or post a video of the annual meeting on the FCU's website. The NCUA Board encourages

this policy for FCUs that currently have a website.

#### Article V. Elections

*i. Eligibility requirements:* The Act and the FCU Bylaws contain the only eligibility requirements for membership on an FCU's board of directors, which are as follows:

(a) The individual must be a member of the FCU before distribution of ballots;

(b) The individual cannot have been convicted of a crime involving dishonesty or breach of trust unless the NCUA Board has waived the prohibition for the conviction; and

(c) The individual meets the minimum age requirement established under Article V, § 7 of the FCU Bylaws.

Anyone meeting the three eligibility requirements may run for a seat on the board of directors if properly nominated. It is the nominating committee's duty to ascertain that all nominated candidates, including those nominated by petition, meet the eligibility requirements.

*ii. Nomination criteria for nominating committee:* The Act and the FCU Bylaws do not prohibit a board of directors from establishing reasonable criteria, in addition to the eligibility requirements, for a nominating committee to follow in making its nominations, such as financial experience, years of membership, or conflict of interest provisions. The board's nomination criteria, however, applies only to individuals nominated by the nominating committee; they cannot be imposed on individuals who meet the eligibility requirements and are properly nominated from the floor or by petition.

*iii. Candidates' names on ballots:* When producing an election ballot, the FCU's secretary may order the names of the candidates on the ballot using any method for selection provided it is random and used consistently from year to year so as to avoid manipulation or favoritism.

*iv. Secret ballots:* An FCU must establish an election process that assures members their votes remain confidential and secret from all interested parties. If the election process does not separate the member's identity from the ballot, FCUs should use a third-party teller that has sole control over completed ballots. If the ballots are designed so that members' identities remain secret and are not disclosed on the ballot, FCUs may use election tellers from the FCU. In any case, FCU employees, officials, and members must not have access to ballots identifying members or to information that links members' votes to their identities.

<sup>29</sup> See OGC Op. No. 92-0522 (June 15, 1992).

<sup>30</sup> OGC Op. No. 99-1110 (Feb. 25, 2000).

*v. Plurality voting:* At least one nominee must be nominated for each vacant seat. When there are more nominees than seats open for election, the nominees who receive the greatest number of votes are elected to the vacant seats.

*vi. Minimum age requirement:* The age the board selects may not be greater than eighteen or the age of majority under the state law applicable to the credit union, whichever is lower.

*vii. Electronic voting:* Some members lack digital access or wish to have a choice to vote non-electronically. The FCU Bylaws protect members who cannot or choose not to vote electronically. For those members who vote electronically, credit unions have the flexibility to use as many forms of electronic voting (phone, internet, etc.) as they wish.

*viii. Voting methods:* Options A1, A2 and A3 provide for in-person voting at the annual meeting, or, for Option A3, by voting machine. Option A4 provides for remote voting via electronic device or mail ballot. The NCUA has approved several bylaw amendments for FCUs that combine in-person and remote options for member voting. The NCUA encourages FCUs using one of the first three options to consider whether they can also incorporate mail ballots or electronic voting. Likewise, the NCUA encourages FCUs using option A4 to consider whether they can also provide a means to vote for members who come to the annual meeting but have not voted in the election, such as a paper ballot.

*ix. Uncontested elections:* Options A2, A3 and A4 provide for election by acclamation or consensus when the number of nominees for board positions equals the number of positions to be filled. These options do not permit nominations from the floor at the meeting, so a petition is the only way for members to nominate a candidate not on the nominating committee's slate. Accordingly, section (1)(c) in each of these options requires the notice to members to include the fact that there are no nominations from the floor at the meeting, as well as a notice that the credit union will not conduct a vote by ballot if the number of nominees equals the number of positions to be filled. The FCU Bylaws do not require a particular procedure for uncontested elections.

The contents of the notice to members required in section (1)(c) does not alter the basic election procedures the credit union has selected. Should the number of the nominating committee nominees fall below the number of positions to be filled after the member notice is sent, this section does not permit

nominations from the floor. Only option A1 permits nominations from the floor.

*x. Nomination procedures:* Under all options under this Article, the nominating committee must widely publicize the call for nominations to all members by any medium. This requirement can be satisfied by publicizing the information to a large audience, whether by newsletter, email, or any other satisfactory medium that reaches as many members as possible. The NCUA emphasizes that member participation is important during an election, and FCUs must make sure that members are aware of the nomination process.

#### Article VI. Board of Directors

*i. Vacancies:* In accordance with the Act, when a vacancy on the board of directors occurs between annual elections, the remaining directors are to appoint a replacement. This replacement will serve as a director until the next annual meeting. The vacancy is then to be filled at the next annual meeting through the normal membership voting process, with the newly elected director serving out the remainder of the original term.<sup>31</sup> The number of director positions may be changed to any odd number between 5 and 15, inclusive, but a position may not be eliminated if it is currently an occupied position. As the bylaw itself specifies, no reduction in the number of director positions may be made unless there is a corresponding vacancy, caused by death, resignation, expiration of term or other action permissible under the FCU Bylaws. In other words, the FCU may not arbitrarily propose to reduce the number of director positions and terminate one or more incumbent directors.

*ii. Director emeritus:* As a matter of board policy, the board may establish the position of director emeritus for former directors who faithfully fulfilled their responsibilities as members of the board for at least a specified minimum number of years. The board may determine that director emeritus status confers authority to attend board meetings and to participate in discussions and other board events; however, directors emeritus may not vote on any matter before the board or exercise any official duties of a director. The position is essentially an honorary title designed to recognize and reward the good service of those designated and to retain some of their institutional knowledge for the benefit of the board and the FCU. The decision to establish a director emeritus position, as well as

the selection of individuals to become directors emeritus, is solely within the discretion of the board. The board may establish a director emeritus position by adopting either the optional bylaw amendment or a board policy.

To assist them in providing advice, Directors emeriti have access to confidential information, including but not limited to the credit union's examination reports and CAMEL ratings, to the same extent as members of the board. Directors emeriti are also subject to the same confidentiality and conflict of interest standards applicable to directors.

*iii. Associate directors:* a. The board may also establish the position of associate director through board policy. This position is designed to provide qualified individuals with an opportunity to gain exposure to board meetings and discussions but without formal director responsibility or the right to vote. It may be thought of as an apprenticeship position in which the incumbent receives training and knowledge about the business of the board, with the expectation that the experience will prepare him or her for an eventual election to a director position. As with the director emeritus position, the decision to establish an associate director position, as well as the selection of individuals to become associate directors, is solely within the discretion of the board.

b. To assist their learning process, the board may determine to permit associate directors to have access to confidential information, including but not limited to the credit union's examination reports and CAMEL ratings, to the same extent as members of the board. Associate directors are also subject to the same confidentiality and conflict of interest standards applicable to directors.

*iv. Composition of the board:* The NCUA Board encourages the composition of the board of directors to reflect the field of membership of the FCU.

*v. Notice to members of change in size of board:* The NCUA encourages FCUs changing the size of their boards to post a notice of the change on the FCU's website (if the FCU maintains a website). An FCU is not required to establish and maintain a website solely for this purpose, however. An FCU that does not maintain a website can post such a notice in a conspicuous place in the office of the FCU, such as at the teller window or on the front door of the FCU.

#### Article VII. Board Officers, Management Officials and Executive Committee

<sup>31</sup> 12 U.S.C. 1761(a).

*i. Board officers:* a. As specified in this bylaw, members of the board are elected by the credit union membership to the board itself. Once on the board, the directors themselves vote to select individuals from among their number to serve as officers of the board (chair, one or more vice chairs, secretary and financial officer). One board officer may be compensated as such for services he or she performs in that capacity. The offices of financial officer and secretary may be held by the same person.

b. Members of the board must hold the vote for the specified officer positions at the first board meeting following the annual meeting of the members. This board meeting should be held not later than seven days after the annual meeting. The Act requires the credit union to file a record of the names and addresses of the executive offices, members of the supervisory committee, credit committee, and loan officers be filed with the Administration within ten days after election or appointment.<sup>32</sup> The NCUA's regulations also require federally insured credit unions to file NCUA Form 4501 or its equivalent within 10 days after an election or appointment of senior management or volunteer officials.<sup>33</sup>

c. Officers hold their respective officer positions for a term of one year, until the first board meeting that follows the next annual meeting of the members. At that board meeting, officer positions are again filled. Each board officer holds his or her position until the election and qualification of his or her successor. Thus, a board officer who is re-elected to the position he or she is currently holding serves for another year. Where another director is chosen to fill the position, he or she takes office effective as of the date of the election, assuming he or she is qualified—meaning simply that he or she was properly elected by the membership to the board in the first place and is in good standing as a director.

d. As specified in this bylaw, the board chair presides at all board meetings. In the absence of the chair or his or her inability to act, the vice chair presides at the meeting. In the absence or inability to act of both the chair and the vice chair, those directors who are present may select from among their number an individual director to act as temporary chair for that particular meeting. Actions taken by the board under the direction of the temporary chair have the same validity and effect as if taken under the direction of the chair or the vice chair, provided a

quorum of the board, including the temporary chair, is present. If the board secretary is absent for any reason from a meeting, the chair (or acting chair) must select another director to fulfill the secretary's function at the meeting.

*ii. Committee Membership:* The NCUA encourages FCUs to publicize the names of the members of each FCU committee to FCU members. FCUs could provide this information either on the FCU's public website or to the portion of the website only accessible to members after logging in. The NCUA encourages this policy for FCUs that have a website. An FCU is not required to establish and maintain a website solely for this purpose, however. Providing a short description of the committee's duties also assists members in better understanding the leadership structure of the FCU.

#### **Article VIII. Credit Committee or Loan Officers**

*i. Automated lending systems:* Many FCUs now use automated systems for accepting loan applications, loan underwriting, and loan processing, as permitted by several of the NCUA Office of General Counsel's legal opinions. The bylaws reflect that FCUs may use automated lending systems, as long as the credit committee or a loan officer: (1) Reviews the loans the automated system granted for fraud and other purposes; and (2) reviews loans the automated system denied.

#### **Article IX. Supervisory Committee**

*i. Nominations:* The Act requires that the FCU's board appoint the members of the Supervisory Committee. It is permissible for the board to seek nominations from members before making Supervisory Committee appointments.

#### **Article XIV. Expulsion and Withdrawal**

*i. Expulsion procedures:* As noted in the commentary to Article II, there is a fairly wide range of measures available to the credit union in responding to abusive or disruptive members. However, in accordance with the Act, there are 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.<sup>34</sup> Only in-person voting is permitted in conjunction with the special meeting, so that the affected member has an opportunity to present their case and

respond to the credit union's concerns. In addition, FCUs should consider the commentary under Article XVI about members using accounts for unlawful purposes.

#### **Article XVI. General**

*i. Special meeting requirements:* To remove a director under section 3 of this Article requires a majority vote of members present at a special meeting called for the purpose of voting on removal. The bylaw requires that the affected director have the "opportunity to be heard." NCUA interprets this provision as requiring the vote to occur at an in-person meeting rather than by mail ballot. At an in-person meeting, the director subject to the removal vote can make his or her case before the members. The director removal provisions derive from provisions of the Act, as follows:

- The bylaws govern the conduct of special meetings;<sup>35</sup>
- Members must have the opportunity to vote, at a meeting, on the Supervisory Committee's suspension of a director;<sup>36</sup> and
- FCU members may be expelled by vote of members present at a meeting called for that purpose.<sup>37</sup>

*ii. Unlawful purposes:* FCUs expressed concerns that some members may be using their accounts for unlawful purposes. Section 1 of this Article specifies that the credit union, its powers and duties, and the functions of its members, officers and directors, are all strictly circumscribed by law and regulation. Insofar as this provision is included in the bylaws, an FCU need not adopt a specific policy or requirement that members conform their use of credit union products or services to lawful purposes. Furthermore, the existence of this bylaw provides ample support should an FCU determine to impose strict limits on products and services available to any individual who is found to be using the FCU in furtherance of unlawful purposes.

*iii. Posting of bylaws on website:* FCUs that maintain a website must post a copy of the FCU's bylaws on the website. After adopting amendments, FCUs must post an updated copy of the bylaws. An FCU is not required to establish and maintain a website solely for this purpose, however.

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<sup>32</sup> 12 U.S.C. 1761(b).

<sup>33</sup> 12 CFR 741.6.

<sup>34</sup> See 12 U.S.C. 1764.

<sup>35</sup> 12 U.S.C. 1760.

<sup>36</sup> 12 U.S.C. 1761d.

<sup>37</sup> 12 U.S.C. 1764(a).