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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Chapter VII

Federal Credit Union Bylaws

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of Federal Credit Union Bylaws.

SUMMARY: NCUA is adopting changes to update, clarify and simplify the Federal Credit Union (FCU) Bylaws. The changes eliminate unnecessary provisions and increase the readability of the Bylaws by adding staff commentary on frequently-asked questions, new section headings and increased use of plain English. FCUs who have previously adopted Bylaws may adopt these Bylaws in whole or in part, or they may retain their current Bylaws.

DATES: These Federal Credit Union Bylaws are effective April 26, 2006.

FOR FURTHER INFORMATION CONTACT: Elizabeth Wirick, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428 or telephone: (703) 518-6540.

SUPPLEMENTARY INFORMATION:

A. Background

On June 30, 2005, the Board issued a Notice and Request for comments on proposed revisions to the Federal Credit Union Bylaws (Proposal). 70 FR 40924 (July 15, 2005). The Proposal was developed after reviewing comments received in response to the Board's notice and request for comments on bylaw-related matters, issued September 23, 2004 (Request). 69 FR 58203 (Sept. 29, 2004). The Board received comments on the various issues raised in the Proposal as well as numerous other suggestions for improving the

Bylaws and NCUA's process for issuing the Bylaws and reviewing amendments.

B. Comments

General

NCUA received thirty comment letters in response to the Proposal. Fifteen federal credit unions, nine credit union trade organizations, three attorneys, one bank trade organization, one other organization, and one individual submitted comments. Most of the commenters praised NCUA's efforts to make the FCU Bylaws more understandable and many particularly expressed appreciation for the addition of section headings and staff commentary. Specific comments regarding the revisions and suggestions to alter other bylaw provisions are discussed below in the Article-by-Article Analysis.

General Comments

Several commenters repeated comments made in response to the Request. These commenters requested greater flexibility in the FCU Bylaws and argued the FCU Act only requires FCU incorporators to use bylaws prepared by NCUA and does not require FCUs to continue to use NCUA-approved Bylaws after incorporation. Five commenters questioned the level of detail NCUA currently uses in the FCU Bylaws and the need for NCUA to prepare a set of bylaws for use by all FCUs. Two commenters recommended allowing FCUs to draft their own bylaws and submit them to NCUA for approval. Three commenters suggested NCUA issue a regulation with general content guidelines for bylaws rather than form bylaws. Another commenter suggested maintaining a list of approved bylaws on the NCUA Web site and allowing FCUs to adopt bylaws from this list. Another commenter stated that many of the bylaw provisions could be eliminated as duplicative of the FCU Act and NCUA regulations.

Section 108 of the FCU Act requires NCUA to prepare form bylaws and to approve proposed bylaws before an FCU's charter is complete. The language of Section 108 is arguably subject to different interpretations. NCUA's longstanding position has been that Section 108 expresses a congressional desire for uniformity regarding FCU operations and member rights.

Rosenberg v. AT&T Employees FCU, 726

F. Supp. 573, 578 (D.N.J. 1989).

Accordingly, NCUA views Section 108 as providing authority to issue form bylaws that apply to all FCUs, not only newly chartered FCUs, and to review proposed bylaw amendments. NCUA also believes its responsibility to approve bylaws before an FCU can engage in business is given greater effect by its authority to issue form bylaws for all FCUs and review proposed bylaw amendments. Finally, NCUA's practices of issuing form FCU bylaws and reviewing proposed amendments parallel the Office of Thrift Supervision's practices related to thrift bylaws. See 12 CFR 552.6.

NCUA also believes there are several benefits to issuing FCU Bylaws for all FCUs. The form FCU Bylaws address the member protections the Act affords and function as a contract between the FCU and its members; the FCU Bylaws give members notice of their rights, particularly when they are unfamiliar with the FCU Act. The FCU Bylaws also ensure that all FCUs use essentially the same rules for governing themselves, consistent with the requirements and limitations in the Act. This uniformity enhances the significance of the federal charter and has the practical benefit of reducing the amount of examiner time spent reviewing bylaws. Finally, FCUs may request approval to amend their bylaws when appropriate on a case-by-case basis. The amendment process gives FCUs flexibility to adjust as necessary.

NCUA acknowledges that several Bylaw provisions repeat requirements of the Act or regulations. NCUA agrees that most requirements of the Act or regulations do not belong in the Bylaws and has eliminated unnecessary repetition. In examining Bylaw provisions that repeat statutory requirements, NCUA considered if officials, members and employees needed the information in the bylaw provision and if that information was accessible elsewhere. The statutory and regulatory provisions that remain serve to inform FCU officials, employees and members of important rights and responsibilities.

Recommending Bylaw Charges To Address Charter Conversions

Although the issue of conversion to other types of financial institution charters by FCUs was not part of the

Proposal, NCUA received a number of comments on this topic. Four commenters expressed concern about the ease with which credit unions can convert to other types of financial institutions, contending the end result of these conversions is that the equity that belongs to all credit union members is redistributed to insiders. Current law allows conversion based on a simple majority vote of credit union members voting. 12 U.S.C. 1785(b)(2)(B). The commenters voiced concern that members are often inadequately informed of their rights as credit union members and how conversion to another type of financial institution affects these rights.

These commenters suggested a variety of bylaw amendments designed to protect members' rights during the conversion process. Two commenters suggested allowing credit unions to set the percentage of members required to approve a conversion vote and prohibiting amendments to this provision without notice to members or another member vote. Two commenters specifically suggested the FCU Bylaws should require a vote of at least 50% of all members for conversion. One commenter also asked that the FCU Bylaws include easily adoptable check-off options for the conversion process that would: (1) Guarantee dissenting members the opportunity and means to discuss the conversion proposal; (2) authorize full or partial distribution of equity to dissenting voters after a conversion vote and ensure that members are informed of their right to apportionment of the equity after conversion; (3) permit only members with no conflict of interest to initiate the conversion process; and (4) allow credit unions to set a minimum percentage of member signatures required for a conversion petition.

While NCUA appreciates the commenters' concerns, these comments and recommendations are beyond the scope of the proposed amendments to the FCU Bylaws that the Board issued for public comment. Therefore, the Board will not consider adding these types of provisions either as a change to the form Bylaws or as options that FCUs could adopt. Nevertheless, the Board believes this is an area of internal governance, and the members, as the owners of an FCU, have an important stake in the voting requirements for such a fundamental change. The Board believes it is more appropriate for individual credit unions to consider how they want to address this issue and suggests that FCUs interested in including a bylaw provision related to conversion voting requirements should

avail themselves of the process for seeking an amendment. In any case, proposed amendments cannot be inconsistent with the requirements of the FCU Act regarding conversions. The amendment process requires an FCU to request approval from its Regional Director and this process is now fully described in the Introduction to the FCU Bylaws the Board is adopting today.

C. Article-by-Article Analysis of Comments

Introduction—Bylaw Amendment Process

The Proposal included a revised introduction, which gave specific instructions on how FCUs may obtain bylaw amendments. NCUA recently received a request to clarify whether changes to provisions that include blanks for an FCU's board to fill in are considered bylaw amendments. The final version of the bylaws adds a new paragraph to the introduction clarifying that changes to "fill-in-the-blank" provisions are amendments to the bylaws and, as such, require a two-thirds vote of an FCU's board. The FCU need not, however, submit such changes to NCUA for approval, provided the change is within the range of permissible options.

Article I, Section 2—Purposes

One commenter suggested listing the unique characteristics of credit unions as set forth in the Credit Union Membership Access Act of 1998. The Board agrees that listing these characteristics is useful for FCU members, staff and officials and has added them to this section.

Article II, Section 2—Membership Application Procedures

The Proposal did not make any substantive changes to this section, which describes the requirements for joining an FCU. One commenter suggested deleting references to the uniform entrance fee and paying the initial share in installments. The FCU Act, however, requires a uniform entrance fee and allows the payment of the initial share in installments. 12 U.S.C. 1759(a). Reiterating these requirements in the Bylaws is useful for FCU staff and members. The same commenter also suggested that the requirement for the board to approve membership forms is outdated and not a proper board function. Because the board is responsible for the general direction and control of the credit union, it is appropriate to retain the requirement that the board approve membership application forms.

Article II, Section 3—Maintenance of Membership Share Required

One commenter found Sections 3 and 4 of Article II inconsistent, because Section 3 says members cease to be members if they fail to bring their account back to par value within the specified period, while Section 4 permits members to remain members until they choose to withdraw or are expelled. NCUA does not view these provisions as inconsistent. If members fail to bring their account back to par value within the time provided, they have also chosen to withdraw their membership.

One commenter stated it is unclear what actions constitute withdrawal and suggested it would be helpful to clarify what happens to joint account holders who fall below joint minimums of two times par value. The term withdrawal is self-explanatory, and joint account holders who draw down their account below the joint account par value should be treated like other members who draw down their accounts below par value.

Article II, Section 4—Continuation of Membership

The Proposal added a sentence to this section stating disruptive members may be subject to limitations on services and access to credit union facilities. Five commenters generally agreed including notice that credit unions may restrict service to disruptive members is an improvement. One of these five commenters requested more specific language, such as "threatening or abusive," and one wanted to add that credit unions may restrict services to members who have caused a loss to the credit union. One commenter suggested deleting the proposed language regarding limiting service to disruptive members. This commenter stated credit unions are aware of this power, and including a bylaw provision will lead to debates with members over the meaning of the provision. The addition of the proposed language serves to remind members that they may not disrupt credit union operations and the term "disruptive" is sufficiently specific to give members this notice.

Another commenter noted it is unclear if an FCU that adds restrictions on services to members no longer within its field of membership (FOM), as permitted by the last sentence of Section 4, must submit these restrictions for NCUA's approval under the bylaw amendment process. FCUs that place restrictions on services to members no longer within the FOM may state these

restrictions in this section without submitting them for NCUA approval.

The same commenter deemed the expulsion and withdrawal provisions of this Article incomplete. The commenter suggested reorganizing these provisions and moving them to Article XIV so all provisions regarding member rights, responsibilities and qualifications are in one place. Article II, Section IV of the revised Bylaws now includes a reference to the complete expulsion provisions of Article XIV, and this reference is sufficient clarification.

Article II—Staff Commentary

One commenter disagreed with the commentary's repetition of the Act's requirement to charge a uniform entrance fee, saying his credit union wants authority to charge a lower entrance fee to minors. NCUA reiterates that, if FCUs charge an entrance fee, the FCU Act requires the fee to be the same for all members. 12 U.S.C. 1759(a).

Article III, Section 1—Par Value

One commenter suggested the reference to paying the initial share in installments is irrelevant and should be deleted. The FCU Act permits membership after the payment of an initial installment. 12 U.S.C. 1759(a). By way of historical background, from the 1930s until the mid 1980s, the FCU Bylaws set the par value at \$5.00 and provided for installments of at least \$.25 per month. Since the mid 1980s, the Bylaws have given FCUs flexibility in determining whether to permit payment of the initial share in installments by having a blank for the amount of the par value and a blank for the amount of installment payments to be made on a monthly basis. Thus, an FCU can, for example, can fill in the blank for the par value as \$10.00 and also state that \$10.00 is the amount of an installment, thus establishing that a series of installment payments will not be permitted but that payment of a full initial share is required for membership. To the extent that prior legal opinions have indicated that an FCU is required to permit payment of the initial share in installments, those opinions are superseded. Nevertheless, the comment demonstrates this provision should remain in the Bylaws for informational purposes.

Article III, Section III—Time Periods for Payment and Maintenance of Membership Share

Three commenters found this provision inconsistent with Article II, Section 2, because this provision says a member "may" be terminated for failing to maintain par value, while Article II,

Section 2 says a member who fails to maintain par value "ceases to be a member." NCUA agrees the word "may" in Article III, Section 3 is misleading, since FCU membership requires maintenance of the membership share, and has changed it to "will."

Article III, Section 4—Transferability

One commenter thought this section on transfers of shares between members unnecessary and said it reflects a reference to corporate law that is generally inapplicable to credit unions. While this issue may arise infrequently, it is important for members to know that any earned but uncredited dividends will transfer with transferred shares.

Article III, Section 5—Withdrawals

One commenter suggested Section 5 addresses issues covered by regulation and state laws and could be simplified. One commenter termed paragraphs (c), (d) and (e) operational issues that do not belong in the Bylaws. The Proposal eliminated paragraph (b) of Section 5, leaving paragraphs (a), (c), (d), and (e). NCUA has retained these provisions because they provide important information to FCU members and staff.

NCUA has retained paragraph (a), Which allows the board to require 60 days written notice before funds are withdrawn, because it is important for members to understand the board has this right. Paragraph (c), which prohibits delinquent borrowers from withdrawing funds below the amount of their liability without approval from the credit committee or loan officer, provides notice to members about a possible consequence of loan delinquency. Paragraph (d), as revised, eliminates the arbitrary 4-year cutoff for accounts of a deceased member and allows the account to continue until the administration of the estate is completed. Stating guidelines for handling the accounts of deceased members is useful to both credit union staff and members. Paragraph (e), which gives the board the right to impose a fee for excessive share withdrawals subject to other regulations requiring disclosure of account terms, also provides important information to members. In the interest of informing FCU members and staff about basic rights and responsibilities regarding withdrawals, NCUA is retaining these bylaw provisions at this time.

Article III, Section 6—Trusts

This section, which was unchanged by the Proposal, clarifies membership requirements for shares owned by trusts. Two commenters found this provision unnecessary. NCUA has retained this

provision because it provides useful information to credit union staff and members.

Article III, Section 7—Joint Accounts and Membership Requirements

The Proposal included an option to permit FCUs to decide whether to allow joint account holders to be members without each opening a separate account. Five commenters supported the proposed option because it permits FCUs to determine how they want to institute their membership policies and manage their accounts. One commenter opposed the change and said joint account holders should not be permitted to become members without opening a separate account. One commenter suggested the meaning of the terms "joint membership" and "primary owner" are unclear and suggested the option refer only to the "sole owner." This same commenter noted the Section fails to disclose the requirements for membership and the consequences of not being a member.

NCUA has not changed the language from the Proposal. The commenter who opposed allowing joint account holders to become members without opening a separate account is free to encourage her FCU's board to choose that option. NCUA disagrees that the term "joint membership" is unclear, since the remainder of the sentence spells out the requirements for joint membership. Further, retaining the term "primary owner" is necessary because a joint account owner opening a separate account to establish membership may also want to open a joint account. Finally, information on membership requirements and the consequences of not being a member are available elsewhere in the Bylaws.

Article IV, Section 1—Annual Meeting

The Proposal amended Section 1 to delete the requirement that the annual meeting be held "within the period authorized by the Act" because the Act no longer specifies a time period for holding the annual meeting. Instead, the Proposal added a blank space for an FCU to insert the time period of its annual meeting in order to give members notice of the time frame for the annual meeting.

Two commenters supported the Proposal's addition of a blank space for the board to fill in the date of the annual meeting. One commenter found the blank space "too restrictive" and proposed substituting "no later than May 31 (or June) of each year." The last commenter misinterpreted the effect of the amendment, which allows an FCU to insert the approximate time of its

annual meeting and does not dictate a specific time period. NCUA clarifies that the examples of meeting dates listed in the instruction are examples, and the credit union may insert other dates if it prefers to have its annual meeting at other times of the year. FCUs should strive to be as specific as possible in listing the date of its meeting in the interests of providing this information to members.

Article IV, Section 2—Notice of Meetings Required

One commenter requested amendments to Section 2 to permit electronic notice of meetings to members who have opted to receive other credit union information electronically. NCUA agrees that FCUs should be able to notify members of meeting electronically if members prefer this method of notification. Accordingly, this section, as amended, permits electronic notice of meetings if a member has affirmatively consented to receive notices and statements electronically.

Article IV, Section 3—Special Meetings

One commenter stated requiring 30 days notice for a special meeting is inconsistent with the requirement that the supervisory committee call a special meeting within 7 to 14 days after the suspension of a director, officer or member, as provided in Article IX, Section 5. The commenter appears to be confusing the notice requirement for a special meeting, which is 7 days, with the requirement that the board chair call a special meeting within 30 days of receiving a written request from the greater of 25 members or 5% of the members. Because the required notice for a special meeting is 7 days, there is no conflict with the requirement to call a special meeting within 7 to 14 days after the suspension of a director, officer or member.

The Proposal increased the maximum number of member signatures required to call a special meeting from 500 to 750. Three commenters opposed this change and asked that the maximum number of members required to request a special meeting remain at 500. Two commenters supported the change. Ten commenters favored an increase; one of these commenters also suggested increasing the maximum number to 1000 while the other nine commenters suggested a cap based on a percentage of total members without an absolute numerical cap. Another commenter requested the Bylaws impose a time limit for collecting the signatures for a special meeting petition, such as 60 days.

The final bylaw revisions include the provision increasing the maximum number of signatures required to call a special meeting to 750. In practice, this increase in the cap means that for credit unions with 15,000 or more members, the maximum number of signatures required on a special meeting request is 750. For smaller credit unions, the number of signatures required on a special meeting request is 5% of members or 25 members, whichever is greater. The Board believes this increase is appropriate, because, unlike nominations by petition, there is no time limit for obtaining the requisite number of signatures. Special meetings are expensive and time-consuming to conduct. Increasing the limit will ensure special meetings are called only when an issue is of interest to a broad group of FCU members, but the increase is not so high it will prevent members from obtaining a special meeting.

The final bylaw revisions also include edits to the second sentence of this section to clarify that, if members obtain the requisite number of signatures on a special meeting request, the meeting must be held within 30 days. NCUA was recently asked if the phrase “a special meeting must be called by the chair within 30 days” means that the meeting must occur within 30 days. The FCU Bylaws track the FCU Act and NCUA regulations in using the terms “call” and “hold” interchangeably. For example, the provisions of the FCU Act and NCUA regulations allowing NCUA to appoint FCU directors to replace suspended directors provides that the temporary directors must “call” a special meeting within thirty days after their appointment, unless the FCU’s regular annual meeting is scheduled within that period or the suspensions resulting in the appointment of temporary directors are terminated. 12 U.S.C. 1786(i)(2); 12 CFR 747.302. Similarly, NCUA’s merger regulation allows members of a merging FCU to vote on the merger proposal at a special meeting “to be called within 60 days of NCUA approval” unless the FCU’s annual meeting is scheduled within 60 days after NCUA approval. 12 CFR 708b.106(1). These provisions use the term “call,” but, because the special meeting need not be called if the annual meeting is scheduled within the prescribed period, the term “call” means the special meeting must be held within the prescribed period. Accordingly, the final bylaw revisions now clarify the requirement to “call” a special meeting within 30 days means the meeting must occur within 30 days.

Article IV, Section 4—Items of Business for Annual Meeting

The Proposal included a new sentence at the end of Section 4 to notify members of the rules of order or procedure the FCU will use when conducting member meetings. 70 FR 40926–27 (July 15, 2005). Members are entitled to know which rules will govern the process for conducting the meeting and making decisions. FCU members may make a motion for member action if the Act has entrusted members with such action. *Id.* Members may also make a motion for a member vote to recommend Board action on other matters. *Id.*

Five commenters supported listing the rules of order an FCU uses. Another commenter suggested that, while adopting a particular set of rules will provide further guidance, most rules of order will be inadequate because of credit unions’ unique nature. While the Board agrees credit unions are different from corporate and parliamentary bodies for which most rules of order are devised, it finds sufficient parallels to make the selection and use of rules of order useful to members.

Four commenters—one banking trade group, one state credit union and two charter conversion proponents—opposed the addition of the rules of order provision because they believe it would allow all member motions to be heard. These commenters contended allowing all motions to be heard would exceed members’ statutory authority and increase annual meeting costs and time. One of these commenters stated it is not clear what actions the FCU Act entrusts to members and allowing matters to come up for the first time at a meeting would not give members notice of issues possibly under discussion. Two other commenters, while not expressing direct opposition, found the rules of order provision vague and possibly subject to misinterpretation.

Commenters opposed to the rules of order provision misread the authority it gives to members. Members may only make motions for action by the membership on issues where they have authority to act. The FCU Bylaws provide only for members to vote for the election of directors, the removal of directors and committee members, and the expulsion of members. FCU Bylaws, Articles IV, XIV, XVI. Although not addressed in the FCU Bylaws, the FCU Act and NCUA regulations establish the member’s right to vote on the following matters:

- Conversion to state charter, 12 U.S.C. 1771;

- Conversion to mutual savings bank, 12 U.S.C. 1785;
- Conversion to private insurance, 12 U.S.C. 1786; and
- Merger where an FCU is acquired, 12 CFR 708b.106.

Accordingly, members may make motions calling for a member vote only if the motions relate to the issues noted here.

Nevertheless, and in addition, members may make other advisory motions requesting an FCU's board to take a specific action on other topics. If a member has followed the rules of order chosen by an FCU and moves for a membership recommendation to the board, the chair must recognize the motion even though the board is not bound to adopt the recommendation. Member participation in the governance of an FCU will be enhanced by the rules of order provision, which will serve to inform members of their right to be heard on fundamental issues affecting them. Accordingly, the Board adopts this Section as proposed.

The Proposal also added the Community Development Revolving Loan Program's requirement of a report to members on providing needed community services to the report of directors section. One commenter said this addition was better addressed in a regulation. This requirement is addressed in NCUA's regulations, but NCUA added it to the Bylaws to inform members this may be a requirement for credit unions participating in the Community Development Revolving Loan Program. To accommodate potential revisions to the Revolving Loan Program regulation, the final bylaw is revised to state that the report to members is required if the Revolving Loan Program requires it.

One commenter suggested creating separate sections for annual and special meetings. Another commenter suggested it was unclear if the rule of order provision applies to special meetings since the heading for Section 4 includes only annual meetings. The Section heading for Section 4 has been changed to "Items of business for annual meeting and rules of order for annual and special meetings."

Article IV, Section 5—Quorum

Two commenters stated that requiring only 15 members for a quorum for an annual or special meeting potentially allows an inappropriately small number of members to wield disproportionate influence. One of these commenters suggested allowing credit unions to choose a number for a quorum between 15 and 100, while the other commenter stated credit unions should be able to

set their own quorum level. Because one way to expel members is by holding a special meeting, and it is often difficult for credit union managers to get 15 members to attend an expulsion meeting, NCUA has retained the quorum of 15 for the standard Bylaws. NCUA will consider requests for individual bylaw amendments to increase this number.

Article V, Options A2–A4, Section 1—Nomination Procedures

One commenter suggested allowing FCUs to deliver the notice regarding the nominating committee's nominees and nominations by petition electronically, for those members who consent, in Options A2 and A3. The Proposal added the option of delivering these notices electronically in Option A4. NCUA agrees that FCUs may deliver this notice electronically to members who consent regardless of which election option the FCU uses. The final version of the Bylaws revises Section 1 of Options A2 and A3 to allow electronic delivery of this notice.

The Proposal retained the current bylaw provision allowing members to petition to run for board seats by obtaining the signatures of 1% of members with a minimum of 20 and a maximum of 500. Four commenters requested changes to the 500 signature cap. Two suggested eliminating the maximum and requiring the signatures of a straight percentage of the membership regardless of the credit union's size. Another commenter suggested changing the provision to require the signatures of 750 members, or 0.5% of members, whichever is greater. Another commenter suggested increasing the cap to 750 signatures.

The Board believes that eliminating or increasing the 500 signature cap would make it too difficult for members of larger credit unions to be nominated by petition. Because the membership of many FCUs is geographically dispersed and many members transact much of their business electronically, the requirement to obtain at least 500 signatures is a significant hurdle to a member seeking nomination. Also, members seeking nomination by petition have only the time between mailing of the written notice to members that nominations for vacancies may be made by petition and 40 days before the annual meeting, which may be as few as 30 days. After considering these factors, the Board declines to increase the 500 signature maximum.

Article V, Option A4, Section 2(c)(2)—Election Procedures

The Proposal added a requirement to include a mail ballot with electronic election procedure instructions, rather than require a member without the requisite electronic device to request a ballot. Two commenters supported this change. Twelve commenters opposed placing this requirement in the Bylaws. Some commenters found the change unnecessary because members can request the mail ballot. They stated that FCUs should have the option of changing their policies. Others stated the proposal would defeat the purpose of electronic ballots.

Several of the commenters suggested other alternatives to requiring an FCU to mail a paper ballot to all members. Two commenters suggested FCUs be allowed to omit the paper ballot for members who have agreed to receive electronic ballots and another commenter suggested FCUs be allowed to omit the paper ballot for members who have agreed to receive statements and notices electronically. Another commenter suggested allowing members to request a paper ballot by phone and require earlier notice to members of alternatives to electronic voting.

The Board continues to believe members who lack access to electronic devices should be provided paper ballots without having to make a separate request. NCUA's examiners and regional offices initially suggested the paper ballot requirement, because they had concerns that members who have to take additional steps to vote are less likely to do so. The Board agrees with the suggestion that FCUs should not be required to send paper ballots to members who receive other credit union communications electronically. The final bylaw does not require inclusion of a mail ballot with electronic election procedure instructions for members who have chosen to receive other credit union communications electronically.

Article V, Option A4, Section 2(d)(1)—Election Procedures

The Proposal changed the requirement that the order of names on ballots be determined by the drawing of lots. The proposed bylaw instead required that names be in some random order, and the staff commentary to this section noted that the randomizing procedure should be consistent from year to year to avoid favoritism. One commenter said the bylaw provision should be consistent with the staff commentary allowing any random order, instead of requiring names to be ordered by the drawing of lots. NCUA

confirms that the bylaw does not require ordering names by the drawing of lots.

Article V, Section 7—Minimum Age Requirement

The current version of the Bylaws requires a board to establish the minimum age for eligibility to vote by a separate board resolution. In the interests of providing as much useful information as possible to members in the Bylaws, the Proposal replaced this provision with a blank space for the board to fill in. Five commenters supported this change. Two of these five commenters, however, suggested NCUA amend the provision or provide guidance to clarify that the age the board selects may not be greater than 18, or the age of majority under state law. This is a useful clarification and it has been added as an item in the staff commentary to Article V.

One commenter also suggested allowing credit unions to establish reasonable cut-off dates before the election for purposes of determining eligibility to vote. Because it would be difficult to establish a cut-off time frame that works for all credit unions, this provision is not included in this provision. Individual bylaw amendment requests will be considered as necessary. Another commenter suggested adding provisions allowing a credit union to bar members who have caused a loss or have been disruptive from voting. These provisions are impermissible under the FCU Act, which gives members the right to vote as long as they are members. 12 U.S.C. 1760.

Article V, Section 8—Absentee Ballots

One commenter suggested the Bylaws should allow members to request and submit absentee ballots by electronic means. NCUA agrees and has added a new paragraph to the end of this section to clarify that members who have chosen to receive notices and statements electronically may obtain ballots and vote by electronic means. Paragraphs (b) and (c) of this section are revised to clarify that members may request absentee ballots by electronic means.

Article V—Staff Commentary

One commenter suggested the commentary clarify that director candidates must be “members in good standing” and be “bondable.” As discussed in the commentary section titled “Eligibility Requirements,” the FCU Act provides the only requirements for director candidates. NCUA regulations require bond coverage for all directors. 12 CFR 713.3(b). Whether a director candidate is “bondable” may not be apparent before the application

for bond coverage, and so this requirement would be impossible to enforce for director candidates. Elected directors may not be seated as directors unless they qualify for bond coverage, but neither the FCU Act nor NCUA’s regulations prevent those who might not qualify from being candidates.

Article VI, Section 2—Composition of Board

One commenter asked that this provision clarify that an FCU may fill in “none” for the number of paid employees or family members who can serve on the board. NCUA agrees this clarification would be useful and has changed the parenthetical instruction after the blank space from “Fill in the number” to “Fill in the number, which may be zero” in the final version of the Bylaws.

Article VI, Section 4—Vacancies

The Proposal replaced the current requirement that vacancies on the board be filled within a “reasonable time” with a requirement that vacancies be filled as soon as possible but no later than the next regularly scheduled board meeting. Twenty commenters opposed this change. Most expressed concern that imposing an arbitrary deadline would hamper efforts to identify the best-qualified candidates. Several of the objectors also noted this deadline would be impossible to meet if a vacancy occurred immediately before a scheduled board meeting. Eight of the commenters preferred to have no absolute deadline. Other suggestions for the deadline included a blank for the credit union to fill in or a range of 30 to 180 days.

The Board believes it is crucial for FCUs to appoint members to fill vacant board spots quickly, but appreciates the requirement that vacancies be filled no later than the next regularly scheduled board meeting may be too rigid a requirement. Instead, the final version of the Bylaws will require board vacancies to be filled “as soon as possible.”

Article VI, Section 6—Board Responsibilities

The Proposal added a requirement that FCU boards establish a policy to address training for board members and other volunteers in areas including ethics and fiduciary responsibility, regulatory compliance and accounting. Two commenters supported the inclusion of the training requirement, noting it would enhance director knowledge and make members aware of directors’ duties. Five commenters opposed the requirement or questioned

its placement in the Bylaws, arguing it would make finding volunteers more difficult. One of those opposed also noted that including a training requirement in the Bylaws could lead to unproductive “second guessing” by examiners. The Board believes the training requirement will assist board members in carrying out their duties and make service on an FCU board more attractive, not less so. Accordingly, the final version of the Bylaws includes the training policy requirement.

Article VII, Section 2—Election and Term of Office

The Proposal sought comment on whether requiring a board to conduct its organizational meeting within seven days of the annual meeting was too onerous. NCUA received only four comments on this matter and the comments were divided. The Board has retained the seven-day deadline in the final version of the Bylaws, but FCUs may consider requesting individual bylaw amendments if necessary to lengthen this period.

Article VII, Section 4—Approval Required

The Proposal did not amend this section, which requires the board to approve all individuals authorized to issue orders for disbursement of funds. One commenter found this provision unclear and termed it an operational matter that does not belong in the Bylaws. The FCU Act requires boards to provide fidelity coverage for officers and employees having custody of or handling funds. 12 U.S.C. 1761b(2). Retaining this section of the Bylaws provides useful information to an FCU’s board about its responsibilities under the Act.

Article VII, Section 6—Duties of Financial Officer

The Proposal retained the current requirement for credit unions to post monthly financial statements in a conspicuous place in the credit union’s office. Three commenters supported continuing this requirement, with one commenter saying each credit union should be allowed to determine what constitutes a conspicuous place and manner of posting, such as the credit union’s Web site. One commenter found this requirement outdated and suggested its removal. The Board agrees with the majority of commenters that actual posting of the monthly financial statement provides useful information to members and this requirement remains in the Bylaws.

Article VII, Section 8—Board Powers Regarding Employees

The Proposal did not substantively amend this section, which recognizes the board's power to hire, compensate and fire employees or delegate this function to the financial officer or management official. One commenter suggested deleting this section and allowing each credit union to determine its own policies. NCUA has retained this provision because it provides useful information to FCU officials and staff.

Article VII, Section 10—Executive Committee

The Proposal amended this section to clarify that the FCU Act permits boards to appoint executive committees and requires specificity in these delegations. These changes were made after reviewing comments on the Request. One commenter stated it is unnecessary to require that the board be specific about the executive committee's duties and stated this provision could be construed as requiring limits on a delegation. FCU boards should be as specific as possible when delegating their responsibilities to executive committees.

Article VIII, Option 1, Section 4 and Option 2, Section 1—Credit Committee/Loan Officers

This section repeats the FCU Act's prohibition on loan officers disbursing funds for loans that they have approved. 12 U.S.C. 1761c(b). One commenter suggested making this an optional bylaw provision, but repeating the statutory prohibition provides useful information to FCU officials, staff and members.

Article IX, Section 1—Supervisory Committee

The Proposal amended Section 1 to prohibit the compensated officer and the financial officer from serving on the supervisory committee. Three commenters expressed support for this change, and the amended language is included in the final version of the Bylaws.

Article XI, Section 2—Delinquency

The Proposal did not amend this section, which allows the board to impose late charges for delinquent loans. One commenter termed this an operational issue that should be deleted from the Bylaws. While treatment of delinquent loans is no doubt covered in more detail in loan agreements between a member and an FCU, repetition of the basic concept that delinquency may result in late fees is helpful to some members and has been retained.

Article XIII—Deposit of Funds

This section is deleted from the final version of the Bylaws, as proposed. NCUA believes this article is obsolete because FCUs should be able to deposit funds properly without guidance in the FCU Bylaws.

Article XIV, Section 1—Expulsion and Withdrawal

The Proposal expanded Section 1 by including the two methods to expel a member under the FCU Act. One commenter specifically supported this change and the final version of the Bylaws includes the change as proposed.

Article XV—Minors

The Proposal retained the provision allowing shares to be issued in the name of a minor and added language clarifying that state law governs transactions between FCUs and minors. One commenter agreed that including this information is useful to members and the final version of the Bylaws includes this clarification.

Article XVIII, Section 1—Definitions

The Proposal deleted the definitions of "household" and "organizations of such persons" and moved the definition of "immediate family member" to Section 1 of this Article. One commenter noted the Bylaws should include definitions of "organizations of such persons" and "immediate family member" because the Bylaws are more accessible than the Field of Membership Manual. NCUA clarifies that the definition of immediate family member remains in the bylaws, and that the term is only used in Article VI, Section 2, which allows an FCU to restrict the number of immediate family members of paid employees on the board. Upon consideration, NCUA believes that its instruction for this section permitting an FCU to insert a more restrictive definition of "immediate family member" or "household" for field of membership purposes is confusing, and has deleted this instruction from the final version of the bylaws. A member who desires more precise information about the FCU's field of membership can obtain it from other readily accessible sources, such as the FCU's Web site or advertising materials, so the bylaws do not need to address field of membership information.

By the National Credit Union Administration Board on April 20, 2006.

Mary F. Rupp,
Secretary of the Board.

The Federal Credit Union Bylaws*Introduction*

Effective date. After consideration of public comment, the National Credit Union Administration (NCUA) Board adopted these bylaws on _____. Unless a federal credit union has adopted bylaws before _____, it must adopt these revised bylaws.

Adoption of all or part of these bylaws. Although federal credit unions may retain any previously approved version of the bylaws, the NCUA Board encourages federal credit unions to adopt the revised bylaws because it believes they provide greater clarity and flexibility for credit unions and their officials and members. Federal credit unions may also adopt portions of the revised bylaws and retain the remainder of previously approved bylaws, but the NCUA Board cautions federal credit unions to be extremely careful. Federal credit unions 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.

Bylaw amendments. The FCU Bylaws contain several provisions allowing FCU boards to select from an option or range of options and fill in a blank. Changes to "fill-in-the-blank" provisions are, in fact, changes to the FCU's bylaws and require a two-thirds vote of the board. As long as the FCU selects from the permissible options for completing the blank, the FCU need not submit the change for NCUA approval using the process outlined below.

Federal credit unions continue to have the flexibility to request other bylaw amendments if the need arises. NCUA must approve any bylaw amendments; federal credit unions may no longer adopt amendments from the "Standard Bylaw Amendments" booklet because the 1999 revisions to the bylaws included sufficient flexibility to make the separate list of standard bylaw amendments superfluous. Thus, NCUA no longer differentiates between "standard" and "nonstandard" bylaw amendments.

The procedure for approval of bylaw amendments is as follows:

- The federal credit union wishing to adopt a bylaw amendment must file a request with its regional director.
- The request must include the section of the bylaws to be amended; the reason for or purpose of the amendment,

including an explanation of why the amendment is desirable and what it will accomplish for the credit union; and the specific, proposed wording of the amendment.

- After review by the regional director and consultation within the agency, the regional director will advise the credit union if a proposed amendment is approved.

Federal credit unions considering an amendment may find it useful to review the section of the agency Web site on bylaws that has opinions issued by the Office of General Counsel about particular bylaw amendments. Even if an amendment has been previously approved, the credit union must submit a proposed amendment to NCUA for review under the procedure listed above to ensure the amendment is identical.

The nature of the bylaws. The Federal Credit Union Act requires the NCUA Board to prepare bylaws for federal credit unions. 12 U.S.C. 1758. The 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. The 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 NCUA 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, NCUA regulations or other laws or regulations applicable to its operations.

NCUA's long standing view is the bylaws, among other effects, function as a contract between a credit union and its members. While NCUA provides guidance and interpretations of the bylaws, generally state corporate law, to the extent it is consistent with the Federal Credit Union Act and NCUA regulations, determines disputes regarding the enforcement of bylaw provisions. Therefore, NCUA generally does not become involved in resolving internal governance disputes in federal credit unions involving bylaw disputes unless a matter presents a safety and soundness concern.

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 the charter (approved organization certificate) of this credit union.

Section 2. Purposes. This credit union is a member-owned, democratically operated, not-for-profit organization managed by a volunteer board of directors, with the specified mission of meeting the credit and savings needs of consumers, especially persons 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 for them 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. Applications for membership from persons eligible for membership under Section 5 of the charter must be signed by the applicant on forms approved by the board. The applicant is admitted to membership after approval of an application by a majority of the directors, a majority of the members of a duly authorized executive committee, or by a membership officer, and after subscription to at least one share of this credit union and the payment of the initial installment, and the payment of a uniform entrance fee if required by the board. If a person whose membership application is denied makes a written request, the credit union must explain the reasons for the denial in writing.

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 becomes a member that person may remain a

member until the person or organization chooses to withdraw or is expelled in accordance with the Act and Article XIV of these bylaws. A member who is disruptive to credit union operations may be subject to limitations on services and access to credit union facilities. *A credit union that wishes to restrict services to members no longer within the field of membership should specify the restrictions in this section.*

Staff commentary on qualifications for membership:

Entrance fee—FCUs may not vary the entrance fee among different classes of members because the Act requires a uniform fee. FCUs may, however, eliminate the entrance fee for all applicants.

Article III. Shares of Members

Section 1. Par value. The par value of each share will be \$_____. Subscriptions to shares are payable at the time of subscription, or in installments of at least \$_____ per month.

Section 2. 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 3. Time periods for payment and maintenance of membership share. A member who fails to complete payment of one share within _____ of admission to membership, or within _____ from the increase in the par

value of shares, or a member who 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 will be terminated from membership.

Section 4. Transferability. Shares may only be transferred from one member to another by an instrument in a form as the board may prescribe. Shares that accrue credits for unpaid dividends retain those credits when transferred.

Section 5. Withdrawals. Money paid in on shares or installments of shares may be withdrawn as provided in these bylaws or regulation on any day when payment on shares may be made, provided, however, that

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

(b) Reserved.

(c) No member may withdraw any shareholdings below the amount of the member's primary or contingent liability to the credit union if the member is delinquent as a borrower, or if borrowers for whom the member is comaker, endorser, or guarantor are delinquent, without the written

approval of the credit committee or loan officer. 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 will have the right, at any time, to impose a fee for excessive share withdrawals from regular share accounts. The number of withdrawals not subject to a fee and the amount of the fee will be established by board resolution and will be subject to regulations applicable to the advertising and disclosure of terms and conditions on member accounts.

Section 6. Trusts. Shares may be issued in a revocable or irrevocable trust, subject to the following:

When shares are issued in a revocable trust, the settlor must be a member of this credit union in his or her own right. When shares are issued in an irrevocable trust, either the settlor or the beneficiary must be a member of this credit union. The name of the beneficiary must be stated in both a revocable and irrevocable trust. For purposes of this section, shares issued pursuant to 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 7. 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.

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 insufficient to establish membership.

Staff commentary on shares:

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

Par value—FCUs may establish differing par values for different classes of members or types of accounts, 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 should be stated in Section 1.

Reduction in share balance below par value—When a member's account balance falls below the par value, Section 3 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, Section 3.

Article IV. Meetings of Members

Section 1. Annual meeting. The annual meeting of the members must be held [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. At least 30 but no more than 75 days before the date of any annual meeting or at least 7 days before the date of any special meeting of the members, the secretary must give written notice to each member. Notice may be by written notice delivered in person or by mail to the member's address, or, for members who have opted to receive statements and notices electronically, by electronic mail. Notice of the annual meeting may be given by posting the notice in a conspicuous place in the office of this credit union where it may be read by the members, at least 30 days before the meeting, if the annual meeting is to be held during the same month as that of the previous annual meeting and if this credit union maintains an office that is

readily accessible to members where regular business hours are maintained. Any meeting of the members, whether annual or special, may be held without prior notice, at any place or time, if all the members entitled to vote, who are not present at the meeting, waive notice in writing, before, during, or after the meeting.

Notice of any special meeting must state the purpose for which it is to be held, and no business other than that related to this purpose may be transacted at the meeting.

Section 3. Special meetings. Special meetings of the members may be called by the chair or the board of directors upon a majority vote, or by the supervisory committee as provided in these bylaws. The chair must call a special meeting, meaning the meeting must be held, within 30 days of the receipt of a written request of 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.

The notice of a special meeting must be given as provided in Section 2 of this article. Special meetings may be held 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) Ascertainment 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.

To the extent consistent with these bylaws, all meetings of the members will be conducted 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, 15 members constitute a quorum at annual or special meetings. If no quorum is present, an adjournment may be taken 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 same notice must be given for the adjourned meeting as is prescribed in Section 2 of this article for the original meeting, except that the notice must be given at least 5 days before the date of the meeting as fixed in the adjournment.

Article V. Elections

The Credit Union must select one of the four voting options. This may be done by printing the credit union's bylaws with the option selected or retaining this copy and checking 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. It is the duty of the nominating committee to nominate at least one member for each vacancy, including any unexpired term vacancy, for which elections are being held, and to determine that the members nominated are agreeable to the placing of their names in nomination and will accept office if elected.

Section 2. Election procedures. After the nominations of the nominating committee have been placed before the members, the chair calls for nominations from the floor. When nominations are closed, the chair appoints the tellers, ballots are distributed, the vote is taken and tallied by the tellers, and the results announced. All elections are determined by plurality vote and will be by ballot except where there is only one nominee for the office.

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

Section 1. Nomination procedures. At least 120 days before each annual meeting the chair will appoint a nominating committee of three or more members. It is the duty of the nominating committee to nominate at least one member for each vacancy, including any unexpired term vacancy, for which elections are being held, and to determine that the members nominated are agreeable to the placing of their names in nomination and will accept office if elected.

The nominating committee files its nominations with the secretary of the credit union at least 90 days before the annual meeting, and the secretary notifies in writing all members eligible to vote at least 75 days before the annual meeting that nominations for vacancies may also be made 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.

The written notice must indicate that the election will not be conducted by ballot and there will be no nominations from the floor when the number of nominees equals the number of positions to be filled. A brief statement of qualifications and biographical data in a form approved by the board of directors will be included for each nominee submitted by the nominating committee with the written notice to all eligible members. Each nominee by petition must submit a similar statement of qualifications and biographical data with the petition. The written notice must state the closing date for receiving nominations by petition. In all cases, the period for receiving nominations by petition must extend at least 30 days from the date that the petition requirement and the list of nominating committee's nominees are mailed to all members. To be effective, nominations by petition must be accompanied by a signed certificate from the nominee or nominees stating that they are agreeable to nomination and will serve if elected to office. Nominations by petition must be filed with the secretary of the credit union at least 40 days before the annual meeting and the secretary will ensure that nominations by petition, along with those of the nominating committee, are posted in a conspicuous place in each credit union office at least 35 days before the annual meeting.

Section 2. Election procedures. All persons nominated by either the nominating committee or by petition

must be placed before the members. When nominations are closed, the chair appoints the tellers, ballots are distributed, the vote is taken and tallied by the tellers, and the results announced. All elections are determined by plurality vote and will be by ballot except where there is only one nominee for each position to be filled.

If sufficient nominations are made by the nominating committee or by petition to provide at least as many nominees as positions to be filled, nominations cannot be made from the floor. In the event nominations from the floor are permitted and result in more nominees than positions to be filled, when nominations have been closed, the chair appoints the tellers, ballots are distributed, the vote is taken and tallied by the tellers, and the results announced. When the number of nominees equals the number of positions to be filled, the chair may take a voice vote or declare each nominee elected by general consent or acclamation at the annual meeting.

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

Section 1. Nomination procedures. At least 120 days before each annual meeting, the chair will appoint a nominating committee of three or more members. It is the duty of the nominating committee to nominate at least one member for each vacancy, including any unexpired term vacancy, for which elections are being held, and to determine that the members nominated are agreeable to the placing of their names in nomination and will accept office if elected.

The nominating committee files its nominations with the secretary of the credit union at least 90 days before the annual meeting, and the secretary notifies in writing all members eligible to vote at least 75 days before the annual meeting that nominations for vacancies may also be made 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.

The written notice must indicate that the election will not be conducted by ballot and there will be no nominations from the floor when the number of nominees equals the number of positions to be filled. A brief statement of qualifications and biographical data in a form approved by the board of directors will be included for each nominee submitted by the nominating committee with the written notice to all eligible members. Each nominee by

petition must submit a similar statement of qualifications and biographical data with the petition. The written notice must state the closing date for receiving nominations by petition. In all cases, the period for receiving nominations by petition must extend at least 30 days from the date of the petition requirement and the list of nominating committee's nominees are mailed to all members. To be effective, nominations by petition must be accompanied by a signed certificate from the nominee or nominees stating that they are agreeable to nomination and will serve if elected to office. Nominations by petition must be filed with the secretary of the credit union at least 40 days before the annual meeting and the secretary will ensure that nominations by petition along with those of the nominating committee are posted in a conspicuous place in each credit union office at least 35 days before the annual meeting.

Section 2. Election procedures. All elections are determined by plurality vote. The election will be conducted by ballot boxes or voting machines, subject to the following conditions:

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

(b) If sufficient nominations are made by the nominating committee or by petition to provide more nominees than positions to be filled, the secretary, at least 10 days before the annual meeting, will cause ballot boxes and printed ballots, or voting machines, to be placed in conspicuous locations, as determined by the board of directors with the names of the candidates posted near the boxes or voting machines. The name of each candidate will be followed by a brief statement of qualifications and biographical data in a form approved by the board of directors;

(c) After the members have been given 24 hours to vote at conspicuous locations as determined by the board of directors, the ballot boxes or voting machines will be opened, the vote tallied by the tellers, the tallies placed in the ballot boxes, and the ballot boxes resealed. The tellers are responsible at all times for the ballot boxes or voting machines and the integrity of the vote. A record must be kept of all persons voting and the tellers must assure themselves that each person voting is entitled to vote; and

(d) The tellers will take the ballot boxes to the annual meeting. At the annual meeting, printed ballots will be distributed to those in attendance who have not voted and their votes will be deposited in the ballot boxes placed by the tellers, before the beginning of the meeting, in conspicuous locations with the names of the candidates posted near

them. After those members have been given an opportunity to vote at the annual meeting, balloting will be closed, the ballot boxes opened, the vote tallied by the tellers and added to the previous count, and the chair will 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. At least 120 days before each annual meeting, the chair will appoint a nominating committee of three or more members. It is the duty of the nominating committee to nominate at least one member for each vacancy, including any unexpired term vacancy, for which elections are being held, and to determine that the members nominated are agreeable to the placing of their names in nomination and will accept office if elected.

The nominating committee files its nominations with the secretary of the credit union at least 90 days before the annual meeting, and the secretary notifies in writing all members eligible to vote at least 75 days before the annual meeting that nominations for vacancies may also be made 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.

The notice must indicate that the election will not be conducted by ballot and there will be no nominations from the floor when the number of nominees equals the number of positions to be filled. A brief statement of qualifications and biographical data in a form approved by the board of directors will be included for each nominee submitted by the nominating committee with the notice to all eligible members. Each nominee by petition must submit a similar statement of qualifications and biographical data with the petition. The notice must state the closing date for receiving nominations by petition. In all cases, the period for receiving nominations by petition must extend at least 30 days from the date of the petition requirement and the list of nominating committee's nominees are mailed to all members. To be effective, nominations by petition must be accompanied by a signed certificate from the nominee or nominees stating that they are agreeable to nomination and will serve if elected to office. Nominations by petition must be filed with the secretary of the credit union at least 40 days before the annual meeting

and the secretary will ensure that nominations by petition, along with those of the nominating committee, are posted in a conspicuous place in each credit union office at least 35 days before the annual meeting.

Section 2. Election procedures. All elections are determined by plurality vote. All elections will be by electronic device or mail ballot, subject to the following conditions:

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

(b) If sufficient nominations are made by the nominating committee or by petition to provide more nominees than positions to be filled, the secretary, at least 30 days before the annual meeting, will cause either a printed ballot or notice of ballot to be mailed to all members eligible to vote. Electronic mail may be used to provide the notice of ballot to members who have opted to receive notices or statements electronically;

(c) If the credit union is conducting its elections electronically, the secretary will cause the following materials to be transmitted to each eligible voter and the following procedures will be followed:

(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 name of each candidate must be followed by a brief statement of qualifications and biographical data in a form approved by the board of directors. Electronic mail may be used 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 and one instruction sheet stating specific instructions for the electronic election procedure, including how to access and use the system, and the period of time in which votes will be taken. The instruction 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 electronic mail may be used to provide the instructions for the electronic election procedure.

(3) It is the duty of the tellers of election to verify, or cause to be verified the name of the voter and the credit union account number as they are registered in the electronic balloting system. It is the duty of the teller to test

the integrity of the balloting system at regular intervals during the election period.

(4) Ballots must be received no later than midnight, 5 calendar days before the annual meeting.

(5) The vote will be tallied by the tellers. The result must be verified at the annual meeting and the chair will make the result of the vote public at the annual meeting.

(6) In the event of malfunction of the electronic balloting system, the board of directors may in its discretion order elections be held by mail ballot only. The mail ballots must conform to Section 2(d) of this article and must be mailed 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 is conducting its election by mail ballot, the secretary will cause the following materials to be mailed to each member and the following procedures will be followed:

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

(2) One ballot envelope clearly marked with instructions that the completed ballot must be placed in that envelope and sealed;

(3) One identification form to be completed so as to include the name, address, signature and credit union account number of the voter;

(4) One mailing envelope in which the voter, following instructions provided with the mailing envelope, must insert the sealed ballot envelope and the identification form, and which must have postage prepaid and be preaddressed for return to the tellers;

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

(6) It is the duty of the tellers to verify, or cause to be verified, the name and credit union account number of the voter as appearing on the identification form; to place the verified identification form and the sealed ballot envelope in a place of safekeeping pending the count of the vote; in the case of a

questionable or challenged identification form, to retain the identification form and sealed ballot envelope together until the verification or challenge has been resolved;

(7) Ballots mailed to the tellers must be received by the tellers no later than midnight 5 days before the date of the annual meeting;

(8) The vote will be tallied by the tellers. The result will be verified 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. Irrespective of the number of shares, no member has more than one vote.

Section 6. Submission of information regarding credit union officials to NCUA. The names and addresses of members of the board, board officers, executive committee, and members of the credit committee, if applicable, and supervisory committees must be forwarded to the Administration in accordance with the Act and regulations in the manner as may be 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'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.

The Credit Union may select the absentee ballot provision in conjunction with the voting procedure it has selected. This may be done 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 sufficient nominations are made by the nominating committee or by petition to provide more than one nominee for any position to be filled, the secretary, at least 30 days before the annual meeting, will cause printed ballots to be 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 cause the following materials to be mailed to each eligible voter who has submitted a written or electronic request for an absentee ballot:

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

(2) One ballot envelope clearly marked with instructions that the completed ballot must be placed in that envelope and sealed;

(3) One identification form to be completed so as to include the name, address, signature and credit union account number of the voter;

(4) One mailing envelope in which the voter, pursuant to instructions provided with the envelope, must insert the sealed ballot envelope and the identification form, and which must have postage prepaid and be preaddressed for return to the tellers;

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

(d) It is the duty of the election tellers to verify, or cause to be verified, the name and credit union account number of the voter as appearing on the identification form; to place the verified identification and the sealed ballot envelope in a place of safekeeping pending the count of the vote; in the case of a questionable or challenged identification form, to retain the identification form and the sealed ballot envelope together until the verification or challenge has been resolved; and in the event that more than one voting procedure is used, to verify that no eligible voter has voted more than one time;

(e) Ballots mailed to the tellers must be received by the tellers no later than midnight 5 days before the date of the annual meeting;

(f) Absentee ballots will be deposited in the ballot boxes to be 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.

Staff commentary on the election process:

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, Section 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.

Nomination Criteria for Nominating Committee: The FCU 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.

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.

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.

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.

Minimum Age Requirement: The age the board selects may not be greater than the age of majority under the state law applicable to the credit union.

Article VI. Board of Directors

Section 1. Number of members. The board consists of _____ members, all of whom must be members of this credit union. The number of directors may be changed to an odd number not fewer than 5 nor more than 15 by resolution of the board. No reduction in the number of directors may be made unless corresponding vacancies exist as a result of deaths, resignations, expiration of terms of office, or other actions provided by these bylaws. A copy of the resolution of the board covering any increase or decrease in the number of directors must be filed with the official copy of the bylaws of this credit union.

Section 2. Composition of board.

_____(Fill in the number, which may be zero) directors or committee members may be a paid employee of the credit union. _____(Fill in the number, which may be zero) immediate family members of a director or committee member may be a paid employee of the credit union. In no case may employees, family members, or employees and family members constitute a majority of the board. 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 management official or assistant management official is permitted to serve on the board, he or she may not serve as the chair.

Section 3. Terms of office. Regular terms of office for directors must be for periods of either 2 or 3 years as the board determines. All regular terms must be for the same number of years and until the election and qualification

of successors. Regular terms must be fixed at the first meeting, or upon any increase or decrease in the number of directors, so that approximately an equal number of regular terms must expire at each annual meeting.

Section 4. Vacancies. Any vacancy on the board, credit committee, if applicable, or supervisory committee will be filled as soon as possible by vote of a majority of the directors then holding office. Directors and credit committee members appointed to fill a vacancy will hold office only until the next annual meeting, at which any unexpired terms will be filled by vote of the members, and until the qualification of their successors. Members of the supervisory committee appointed to fill a vacancy will hold office until the first regular meeting of the board following the next annual meeting of members, at which the regular term expires, and until the appointment and qualification of their successors.

Section 5. Regular and special meetings. A regular meeting of the board must be held each month at the time and place fixed by resolution of the board. One regular meeting each calendar year must be conducted in person. If a quorum is present in person for the annual in person meeting, the remaining board members may participate using audio or video teleconference methods. The other regular meetings may be conducted using audio or video teleconference methods. 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 then holding office. Unless the board prescribes otherwise, the chair, or in the chair's absence the ranking vice chair, will fix the time and place of special meetings. Notice of all meetings will be given in the manner the board may from time to time by resolution prescribe. Special meetings may be conducted using audio or video teleconference methods.

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

(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 a loan collection program and authorizing the chargeoff of uncollectible loans.

(d) Establishing a policy to address training for newly elected and incumbent directors and volunteer officials, in areas such as ethics and fiduciary responsibility, regulatory compliance, and accounting and determining that all persons appointed or elected by this credit union to any position requiring the receipt, payment or custody of money or other property of this credit union, or in its custody or control as collateral or otherwise, are properly bonded in accordance with the Act and regulations.

(e) Performing additional acts and exercising additional powers as may be required or authorized by applicable law.

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*

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

(g) 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.

(h) In its discretion, appointing a loan review 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. Any denial of a loan by the committee must be reviewed by the board upon written request of the member. The committee must consist of three members and the regular term of office of the committee member will be for two years. Not more than one member of the committee may be appointed as a loan officer.

____ *Option 2—Appointed Credit Committee*

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

Section 7. Quorum. A majority of the number of directors, including any vacant positions, constitutes a quorum for the transaction of business at any meeting, except that vacancies may be filled by a quorum consisting of a majority of the directors holding office as provided in Section 4 of this article. Fewer than a quorum may adjourn from time to time until a quorum is in attendance.

Section 8. Attendance and removal. 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, or 4 meetings within a calendar year, or otherwise fails to perform any of the duties as a director or a credit committee member, the office may be declared vacant by the board and the vacancy filled as provided in the bylaws.

The board may remove any board officer from office for failure to perform the duties thereof, after giving the officer reasonable notice and opportunity to be heard.

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. Any member of the supervisory committee may be suspended by a majority vote of the board of directors. The members of this credit union will decide, at a special meeting held not fewer than 7 nor more than 14 days after any suspension, whether the suspended committee member will be removed from or restored to the supervisory committee.

Article VII. Board Officers, Management Officials and Executive Committee

Section 1. Board officers. The board officers of this credit union are comprised of a chair, one or more vice chairs, a financial officer, and a secretary, all of whom are elected by the board and from their number. The board determines the title and rank of each board officer and records them in the addendum to this article. One board officer, the _____, may be compensated for services as determined by the board. If more than one vice chair is elected, the board determines their rank as first vice chair, second vice chair, and so on. The offices of the financial officer and secretary may be held by the same person. If a management official or assistant management official is permitted 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

meeting of the board following the first annual meeting of the members and until the election and qualification of their respective successors.

Section 2. Election and term of office. Board officers elected at the meeting of the board next following the annual meeting of the members, which must be held not later than 7 days after the annual meeting, hold office for a term of 1 year and until the election and qualification of their respective successors: provided, however, that 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 he or she is directed to perform by resolution of the board not inconsistent with the Act and regulations and these bylaws.

Section 4. Approval required. The board must approve all individuals who are authorized to sign all notes of this credit union and all 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. 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 custody of 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 forms and procedures prescribed in regulations and other guidance approved by the Administration, including, for small credit unions, the Accounting Manual for Federal Credit Unions.

(c) Within 20 days after the close of each month, ensure that a financial statement showing the condition of this credit union as of the end of the month, including a summary of delinquent loans is prepared and submitted to the board 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 financial statement for the next succeeding month.

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

(e) Within standards and limitations prescribed by the board, employ tellers, clerks, bookkeepers, and other office employees, and have the power to remove these employees.

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

The board may employ one or more assistant financial officers, none of whom may also hold office as chair or vice chair, and may authorize them, under the direction of the financial officer, to perform any of the duties devolving on 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 management official may be assigned 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 devolving on 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. Neither the board, the financial officer, nor the management official has the power or duty to employ, prescribe the duties of, or remove necessary clerical and auditing assistance

employed or used by the supervisory committee and, if there is a credit committee, the power or duty to employ, prescribe the duties of, or remove any loan officer appointed by the credit committee.

Section 9. Duties of secretary. The secretary prepares and maintains full and correct records of all meetings of the members and of the board, which records will be prepared within 7 days after the respective meetings. 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 will give or cause to be given, in the manner prescribed in these bylaws, proper notice of all meetings of the members, and perform other duties he or she may be directed to perform by resolution of the board not inconsistent with the Act, regulations 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 approve 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. No executive committee member or membership officer may be compensated 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. No member of the investment committee may be compensated as such.

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

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

Option 1—Article VIII. 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 number of members of the credit committee must be an odd number and may be changed to not fewer than 3 nor more than 7 by resolution of the board. No reduction in the number of members may be made unless corresponding vacancies exist as a result of deaths, resignations, expiration of terms of office, or other actions provided by these bylaws. A copy of the resolution of the board covering any increase or decrease in the number of committee members must be filed 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: provided, however, that all regular terms are for the same number of years and until the election and qualification of successors. The regular terms are fixed at the beginning, or upon any increase or decrease in the number of committee members, that approximately an equal number of regular terms expire at each annual meeting.

Regular terms of office for appointed credit committee members are for periods as determined by the board and as noted 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, and those records must be prepared within 3 days after the action. The offices of the chair and secretary may be held by the same person.

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, and delegate to them the power to approve application for loans or lines of credit, share withdrawals, releases and substitutions of security, within limits specified by the committee and within limits of applicable law and regulations. Not more than one member of the committee may be appointed 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, and this record becomes a part of the records of the committee. All applications or requests not approved by a loan officer must be acted upon by the committee. No individual may disburse funds of this credit union for any application or share withdrawal which the individual has approved as a loan officer.

Section 5. Credit committee meetings. The credit committee holds meetings as the business of this credit union may require, and not less frequently than once a month. Notice of meetings will be given to members of the committee in a manner as the committee may from time to time, by resolution, prescribe.

Section 6. Credit committee duties. For each loan or line of credit, the credit committee or loan officer must inquire into the character and financial condition of the applicant and the applicant's sureties, if any, to ascertain their ability to repay fully and promptly the obligations incurred by them and to determine whether the loan or line of credit will be of probable benefit to the borrower. The credit committee and its appointed loan officers should endeavor diligently to assist applicants in solving their financial problems.

Section 7. Unapproved loans prohibited. No loan or line of credit may be made unless approved by the committee or a loan officer in accordance with applicable law and regulations.

Section 8. Lending procedures. Subject to the limits imposed by applicable law and regulations, these bylaws, and the general policies of the board, the credit committee, or a loan officer, determines the security, if any, required for each application and the terms of repayment. The security furnished must be adequate in quality and character and consistent with sound lending practices. When funds are not available to make all the loans and lines of credit for which there are applications, preference should be given, in all cases, to the smaller applications if the need and credit factors are nearly equal.

Option 2—Article VIII. 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, and that record 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 which the individual has approved as a loan officer.

Section 2. Duties of loan officer. For each loan or line of credit, the loan officer must inquire into the character and financial condition of the applicant and the applicant's sureties, if any, to ascertain their ability to repay fully and promptly the obligations incurred by them and to determine whether the loan or line of credit will be of probable benefit to the borrower. The loan officers should endeavor diligently to assist applicants in solving their financial problems.

Section 3. Unapproved loans prohibited. No loan or line of credit may be made unless approved by a loan officer in accordance with applicable law and regulations.

Section 4. Lending procedures. Subject to the limits imposed by law and regulations, these bylaws, and the general policies of the board, a loan officer determines the security if any required for each application and the terms of repayment. The security furnished must be adequate in quality and character and consistent with sound lending practices. When funds are not available to make all the loans and lines of credit for which there are applications, preference should be given, in all cases, to the applications for lesser amounts if the need and credit factors are nearly equal.

Article IX. Supervisory Committee

Section 1. Appointment and membership. The supervisory committee is appointed by the board from among the members of this credit union, one of whom may be a director other than the financial officer or the compensated officer of the board. The board determines the number of members on the committee, which may not be fewer than 3 nor more than 5. No member of the credit committee, if applicable, or any employee of this credit union may be appointed to the committee. Regular terms of committee members are for periods of 1, 2, or 3 years as the board determines: Provided, however, that all regular terms are for the same number of years and until the appointment and qualification of successors. The regular terms are fixed at the beginning, or upon any increase or decrease in the number of committee members, so that approximately an equal number of regular terms expires at each annual meeting.

Section 2. Officers of supervisory committee. The supervisory committee members choose from among their number a chair and a secretary. The secretary of the supervisory committee prepares, maintains, and has custody of

full and correct records of all actions taken by it. The offices of chair and secretary may be held by the same person.

Section 3. Duties of supervisory committee. The supervisory committee makes, or causes to be made, the audits, and prepares and submits the written reports required by the Act and regulations. The committee may employ and use clerical and auditing assistance required to carry out its responsibilities prescribed by this article, and may request the board to provide compensation for this assistance. It will prepare and forward to the Administration required reports.

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 until the next meeting of the members any director, board officer, or member of the credit committee. In the event of any suspension, the supervisory committee must call a special meeting of the members to act on the suspension, which meeting must be held not fewer than 7 nor 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 the affirmative vote of a majority of its members, the supervisory committee may call a special meeting of the members to consider any violation of the provisions of the Act, the regulations, or of the charter or the bylaws of this credit union, or to consider any practice of this credit union which the committee deems to be unsafe or unauthorized.

Article X. Organization Meeting

Section 1. Initial meeting. When application is made for a federal credit union charter, the subscribers to the organization certificate must meet for the purpose of electing a board of directors and a credit committee, if applicable. Failure to commence operations within 60 days following receipt of the approved organization certificate is cause for revocation of the charter unless a request for an extension

of time has been submitted to and approved by the Regional Director.

Section 2. Election of directors and credit committee. The subscribers elect a chair and a secretary for the meeting. The subscribers then elect from their number, or from those eligible to become members of this credit union, a board of directors and a credit committee, if applicable, all to hold office until the first annual meeting of the members and until the election and qualification of their respective successors. If not already a member, every person elected under this section or appointed under Section 3 of this article, must qualify within 30 days by becoming a member. If any person elected as a director or committee member or appointed as a supervisory committee member does not qualify as 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 following the elections held under the provisions of Section 2 of this article, the board must meet and elect the board officers who will hold office until the first meeting of the board of directors following the first annual meeting of the members and until the election and qualification 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 members so appointed hold office until the first regular meeting of the board following the first annual meeting of the members and until the appointment and qualification of their respective successors.

Article XI. Loans and Lines of Credit to Members

Section 1. Loan purposes. Loans may only be made to members and 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 establishes dividend periods and declares dividends as permitted by the Act and applicable regulations.

Article XIII. Reserved

Article XIV. Expulsion and Withdrawal

Section 1. Expulsion procedure; expulsion or withdrawal does not affect members' liability or shares. A member may be expelled by a two-thirds vote of the members present at special meeting called for that purpose, but only after the member has been given the opportunity to be heard. A member also may be expelled under a nonparticipation policy adopted by the board of directors and provided to each member in accordance with the Act. Expulsion or withdrawal will not operate to relieve a member of any liability to this credit union. All amounts paid in on shares by expelled or withdrawing members, before their expulsion or withdrawal, will be paid to them in the order of their withdrawal or expulsion, but only as funds become available and only after deducting any amounts due to this credit union.

Article XV. Minors

Section 1. Minors permitted to own shares. Shares may be issued 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. All power, authority, duties, and functions of the members, directors, officers, and employees of this credit union, pursuant to the provisions of these bylaws, must be exercised in strict conformity with the provisions of applicable law and regulations, and of the charter and the bylaws of this credit union.

Section 2. Confidentiality. The officers, directors, members of committees and employees of this credit union must hold in confidence all transactions of this credit union with its members and all information respecting their personal affairs, except when permitted 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.

Section 4. Conflicts of interest prohibited. No director, committee member, officer, agent, or employee of this credit union may participate in any manner, directly or indirectly, in the deliberation upon or the 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. In the event of the disqualification of any director respecting any matter presented to the board for deliberation or determination, that director must withdraw from the deliberation or determination; and if the remaining qualified directors present at the meeting plus the disqualified director or directors constitute a quorum, the remaining qualified directors may exercise with respect to this matter, by majority vote, 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. Copies of the organization certificate of this credit union, its bylaws and any amendments to the bylaws, and any special authorizations by the Administration must be preserved in a place of safekeeping. Copies of the organization certificate and field of membership amendments should be attached as an appendix to these bylaws. Returns of nominations and elections and proceedings of all regular and special meetings of the members and directors must be recorded in the minute books of this credit union. The minutes of the meetings of the members, the board, and the committees must be signed by their respective chairmen or presiding officers and by the persons who serve as secretaries of those meetings.

Section 6. Availability of credit union records. All books of account and other records of this credit union must be available at all times to the directors and committee members of this credit union provided they have a proper purpose for obtaining the records. The charter and bylaws of this credit union must be made available for inspection by any member and, if the member requests a copy, it will be provided for a reasonable fee.

Section 7. Member contact information. Members must keep the credit union informed of their current address.

Section 8. Indemnification. (a) 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.

Article XVII. Amendments of Bylaws and Charter

Section 1. Amendment procedures. Amendments of these bylaws may be adopted and amendments of the charter requested by the affirmative vote of two-thirds of the authorized number of members of the board at any duly held meeting of the board if the members of the board have been given prior written notice of the meeting and the notice has contained a copy of the proposed amendment or amendments. No amendment of these bylaws or of the charter may become effective, however, until approved in writing by the NCUA Board.

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.

"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 (such as The Higher Education Act of 1965).

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

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

"NCUA Board" means the Board of the National Credit Union Administration.

"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.

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 707

RIN 3133-AC57

Truth in Savings

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: As required by the Truth in Savings Act, NCUA is finalizing its rule and official staff interpretation to address the uniformity and adequacy of information provided to members when they overdraw their share accounts. The amendments address services referred to as "bounced-check protection" or "courtesy overdraft protection" that credit unions may use to pay members' checks and allow other overdrafts when there are insufficient funds in the account.

DATES: This rule became effective December 8, 2005. To allow time for any necessary system modifications, however, the mandatory compliance date for the final rule is amended to October 1, 2006.

FOR FURTHER INFORMATION CONTACT: Moissette I. Green, Staff Attorney, at National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428 or telephone: (703) 518-6540.

SUPPLEMENTARY INFORMATION:

I. The Interim Rule

The Truth in Savings Act (TISA) requires financial institutions to disclose fees, the annual percentage yield, interest rate, and other terms associated with their accounts. 12 U.S.C. 4301 *et seq.* TISA also requires NCUA to promulgate regulations substantially similar to those promulgated by the Board of Governors of the Federal Reserve System (Federal Reserve) within 90 days of the effective date of the Federal Reserve's rules. 12 U.S.C. 4311(b). In doing so, NCUA is to take into account the unique nature of

credit unions and the limitations under which they may pay dividends on member accounts. In compliance with TISA, NCUA is adopting a final rule substantially similar to the Federal Reserve's May 2005 rule that requires banks to make certain disclosures when they offer or promote courtesy overdraft protection services to consumers. 70 FR 29582 (May 24, 2005).

The Federal Reserve's implementation of TISA, 12 CFR part 230 (Regulation DD), requires banks to disclose rates and fees charged as a part of "bounced-check protection" or "courtesy overdraft protection" programs offered as an alternative to traditional overdraft lines of credit. Regulation DD also requires financial institutions that promote the payment of overdrafts in an advertisement to: (1) Disclose the total fees imposed for paying overdrafts and returning unpaid items on periodic statements for both the statement period and the calendar year to date and (2) include certain other disclosures in advertisements of courtesy overdraft services.

In November 2005, the NCUA Board issued an interim final rule, with a 60-day comment period, that adopted revisions to part 707 and the accompanying official staff interpretation to comply with the Board's obligation under TISA. 70 FR 72895 (December 8, 2005). NCUA's interim rule was substantially similar to Regulation DD, except for some modifications to account for the unique nature of credit unions. The rule consolidated the guidance for credit unions that promote the payment of overdrafts in a new § 707.11 to facilitate compliance. To give credit unions sufficient time to implement the necessary system changes to comply with the regulation, NCUA established that compliance with the final rule would not become mandatory until July 1, 2006.

II. Public Comments

The interim rule solicited comment about current courtesy overdraft services and the estimated burden of the new requirements. NCUA received 16 comments regarding the interim rule from: Seven credit unions, two credit union trade associations, five credit union leagues, a consumer protection group, and one consumer.

Of the comments NCUA received from credit unions, two believed the rule was overly burdensome, and five requested additional time for compliance. Four officials from one credit union provided the same comment, which NCUA has counted as one, that the disclosure requirements of