

nonprofit school food service account funds adhere to the standards set forth in this part and §§ 3016.36(b) through 3016.36(i), 3016.60 and §§ 3019.40 through 3019.48 of this title, as applicable, and the applicable Office of Management and Budget Circulars. School food authority procedures must include a written code of standards of conduct meeting the minimum standards of § 3016.36(b)(3) or § 3019.42 of this title, as applicable.

(1) *Pre-issuance review requirement.* The State agency may impose a pre-issuance review requirement on a school food authority's proposed procurement. The school food authority must make available, upon request of the State agency, its procurement documents, including but not limited to solicitation documents, specifications, evaluation criteria, procurement procedures, proposed contracts and contract terms. School food authorities shall comply with State agency requests for changes to procurement procedures and solicitation and contract documents to ensure that, to the State agency's satisfaction, such procedures and documents reflect applicable procurement and contract requirements and the requirements of this part.

(2) *Prototype solicitation documents and contracts.* The school food authority must obtain the State agency's prior written approval for any change made to prototype solicitation or contract documents before issuing the revised solicitation documents or execution of the revised contract.

(3) *Prohibited expenditures.* No expenditure may be made from the nonprofit school food service account for any cost resulting from a procurement failing to meet the requirements of this part.

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(e) *Cost reimbursable contracts—(1) Required provisions.* The school food authority must include the following provisions in all cost reimbursable contracts, including contracts with cost reimbursable provisions, and in solicitation documents prepared to obtain offers for such contracts:

(i) Allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates and other applicable credits accruing to or received by the contractor or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the school food authority;

(ii)(A) The contractor must separately identify for each cost submitted for payment to the school food authority the amount of that cost that is allowable

(can be paid from the nonprofit school food service account) and the amount that is unallowable (cannot be paid from the nonprofit school food service account), or;

(B) The contractor must exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification;

(iii) The contractor's determination of its allowable costs must be made in compliance with the applicable Departmental and Program regulations and Office of Management and Budget cost circulars;

(iv) The contractor must identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the school food authority for payment and identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. If approved by the State agency, the school food authority may permit the contractor to report this information on a less frequent basis than monthly, but no less frequently than annually;

(v) The contractor must identify the method by which it will report discounts, rebates and other applicable credits allocable to the contract that are not reported prior to conclusion of the contract; and

(vi) The contractor must maintain documentation of costs and discounts, rebates, and other applicable credits, and must furnish such documentation upon request to the school food authority, the State agency, or the Department.

(2) *Prohibited expenditures.* No expenditure may be made from the nonprofit school food service account for any cost resulting from a cost reimbursable contract that fails to include the requirements of this section, nor may any expenditure be made from the nonprofit school food service account that permits or results in the contractor receiving payments in excess of the contractor's actual, net allowable costs.

■ 4. Redesignate §§ 220.18 through 220.21 as §§ 220.19 through 220.22, respectively; and add a new § 220.18 to read as follows:

§ 220.18 Withholding payments.

In accordance with Departmental regulations at § 3016.43 and § 3019.62 of this title, the State agency shall withhold Program payments, in whole

or in part, to any school food authority which has failed to comply with the provisions of this part. Program payments shall be withheld until the school food authority takes corrective action satisfactory to the State agency, or gives evidence that such corrective actions will be taken, or until the State agency terminates the grant in accordance with § 220.19. Subsequent to the State agency's acceptance of the corrective actions, payments will be released for any breakfasts served in accordance with the provisions of this part during the period the payments were withheld.

Dated: October 4, 2007.

Nancy Montanez Johner,

Under Secretary for Food, Nutrition and Consumer Services.

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Federal Credit Union Bylaws

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is issuing a rule reincorporating the Federal Credit Union (FCU) Bylaws into NCUA regulations. This change clarifies NCUA's ability to use a range of enforcement authorities, in appropriate cases, to enforce the FCU Bylaws. In addition, NCUA is adding a bylaw provision on director succession, an issue it has previously addressed in legal opinions, and is revising the introduction to the Bylaws to conform it to these changes.

DATES: This rule is effective November 30, 2007.

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 May 24, 2007, the Board issued a Notice and Request for comments on the proposed reincorporation of the Federal Credit Union Bylaws (proposal). 72 FR 30984 (June 5, 2007). The proposal also included bylaw provisions on director succession, an expedited approval process for bylaw amendments previously approved for other FCUs,

and revisions to the Introduction to the FCU Bylaws to reflect these changes. *Id.* On July 2, 2007, the Board extended the original comment period an additional two weeks. 72 FR 37122 (July 9, 2007).

NCUA is reincorporating the FCU Bylaws into NCUA regulations to clarify NCUA's authority to use a range of administrative actions to enforce bylaw violations in the rare cases where bylaw disputes cannot be resolved within an FCU. As discussed in the proposal, NCUA removed the Bylaws from its regulations in the 1980's. 72 FR 30984, 30985 (June 5, 2007). NCUA is concerned that the policy of requiring members to enforce rights granted in the Bylaws in state courts has resulted in members being unable to enforce rights granted in the Bylaws. The proposal limits NCUA intervention to cases where a fundamental, material member right is at issue and outlines a dispute resolution process.

The **Federal Register** requires the FCU Bylaws to be published as an Appendix to Part 701 rather than being incorporated by reference in the regulatory text. Accordingly, § 701.2 of the final rule has been revised from the proposal and specifically reincorporates the FCU Bylaws into NCUA's regulations as an Appendix.

B. Comments

General

NCUA received 32 comment letters in response to the proposal. Nine credit union members, nine state credit union leagues, eight federal credit unions, two national credit union trade organizations, one law firm, one consultant, and two other organizations submitted comments. Sixteen commenters supported reincorporating the Bylaws into NCUA regulations and 16 commenters opposed reincorporation. Both supporters and opponents of reincorporation sought changes to the revised Introduction to the FCU Bylaws, the standards for limiting NCUA's involvement, and the dispute resolution process. Many commenters also discussed the proposed bylaw provisions on director succession and the expedited approval process for certain bylaw amendments; the comments on these provisions overwhelmingly favored the proposal. Finally, several commenters asked NCUA to increase the cap on the number of members required to call a special meeting. The comments on each subject are discussed below.

Reincorporation of FCU Bylaws Into NCUA Regulation, Standards for NCUA Involvement, and Dispute Resolution Process

Most commenters opposing reincorporation cited concerns over increased regulation and oversight. The NCUA Board reiterates its position that reincorporating the Bylaws into NCUA's regulations imposes no new regulatory burden, as all FCUs are already required to have NCUA-approved bylaws. NCUA publishes form bylaw language and all FCUs have adopted some version of the form language. Further, as the preamble to the proposal stated, under the risk-based examination system in use for FCUs, examiners do not currently, nor will they once the Bylaws are incorporated in the regulations, inquire into an FCU's bylaws unless management raises the issue.

In contrast, commenters supporting reincorporation cited the lack of other realistic options for bylaw enforcement and the potential for credit union boards to violate bylaws with impunity. The most common theme was dissatisfaction with NCUA's policy of requiring members to enforce bylaws under state contract law. Commenters cited the expense and time required to bring suit as well as the possibility courts will find members lack standing to litigate bylaw disputes.

The commenters were split on the issue of whether NCUA needs to reincorporate the FCU Bylaws to clarify its ability to use its full range of enforcement actions.

Five commenters expressed the view that NCUA already has authority to use its full range of enforcement actions to enforce the Bylaws. Three commenters stated the FCU Act gives no authority to NCUA to enforce bylaw violations other than by charter suspension or revocation. Based on its analysis of the FCU Act, the Board concludes reincorporating the Bylaws is necessary to provide clear authority for NCUA to use its full range of enforcement actions for Bylaw violations.

NCUA does not agree with the commenters who assert its authority to enforce the Bylaws using the full range of administrative actions is clear under the current system. The FCU Act gives NCUA explicit authority to suspend or revoke the charter of any FCU, or place the FCU into involuntary liquidation, for a violation of any provision of its bylaws. 12 U.S.C. 1766(b)(1). A charter revocation or suspension, however, is a very extreme remedy and is unlikely to be an appropriate remedy for any bylaw violation. The resultant loss of credit union service would likely result in far

more harm to members than the FCU's failure to follow its bylaws. The FCU Act also allows NCUA to place FCUs into conservatorship for reasons including protection of members' interests. 12 U.S.C. 1786(h)(1). Conservatorship, like charter suspension or liquidation, is an extreme remedy NCUA would prefer not to use if other enforcement options are available. The FCU Act, however, does not explicitly provide for such other options.

In contrast, the FCU Act explicitly provides NCUA authority to take other, less severe administrative actions for other types of violations. A cease and desist order, for example, identifies the violation, gives the credit union a deadline to come into compliance, and may prescribe procedures to come into compliance. NCUA may issue cease and desist orders for violations of "a law, rule, or regulation." 12 U.S.C. 1786(e)(1). Before promulgating its proposed regulation, NCUA considered whether the authority to issue cease and desist orders extended to bylaw violations that did not also violate a statutory or regulatory requirement or pose a threat to the safety and soundness of the FCU. As discussed in the proposal, previous Board actions removed the Bylaws from NCUA regulations. 72 FR 30984, 30985 (June 5, 2007).

As a result, NCUA has concluded it should now reincorporate the Bylaws to give it clear authority to act if a bylaw violation threatens a fundamental, material credit union member right.

Some commenters suggested NCUA simply change its policy on enforcement of Bylaws violations not involving another violation or a safety and soundness threat without adopting a regulation. Agencies are entitled to change their positions, as long as they explain the new position and the reasons necessitating the change. *Motor Vehicle Manufacturers Ass'n v. State Farm Ins. Co.*, 463 U.S. 29, 41-42 (1983). Courts take a dim view of reversals of agency positions adopted without public notice, such as agency interpretations adopted in the course of litigation. *Bowen v. Georgetown University Hosp.*, 488 U.S. 204, 212 (1988). NCUA believes an abrupt reversal of prior policy, could leave any enforcement action taken for a Bylaw violation not involving an issue of safety and soundness or violations of other regulations vulnerable to challenge. Instead, the Board is using the rulemaking process to adopt its revised policy—which is actually a return to the Bylaws' original status as a regulation—to allow for public notice and input.

In summary, the FCU Act's explicit provisions for enforcing Bylaw violations include only limited and drastic options, and the Act's provisions for other, less severe remedies do not explicitly cover Bylaw violations. The Board has concluded that its authority in this area is not clear unless the Bylaws are again incorporated in NCUA regulations. Because the reincorporation of the Bylaws changes NCUA's most recent policy regarding Bylaws enforcement and returns the Bylaws to their original status as regulation, the Board is adopting the change using the rulemaking process.

One commenter who argued NCUA's existing authority would allow the use of the full range of actions for bylaw violations suggested that if, in fact, the Act provided authority only to liquidate or conserve FCUs for bylaw violations, NCUA could not create authority to use other actions by adopting the Bylaws as a regulation. Several other commenters generally questioned NCUA's authority to adopt this rule reincorporating the Bylaws. NCUA disagrees with these comments, as the FCU Act provides separate authority for it to adopt regulations. Section 120 of the FCU Act gives the NCUA Board broad, general authority to "prescribe rules and regulations for the administration of [the FCU Act]." 12 U.S.C. 1766. This authority is in no way limited by the separate authority to suspend or revoke an FCU's charter or place an FCU into conservatorship for failing to follow its bylaws. Moreover, several provisions of the FCU Act clearly contemplate that FCUs will follow their bylaws. The FCU Act's references to bylaws include the following requirements:

- FCUs must adopt bylaws prescribed by NCUA. 12 U.S.C. 1758.
- FCUs may impose late charges as permitted by their bylaws. 12 U.S.C. 1757(10).
- FCUs must hold their annual meetings at the time and place prescribed by their bylaws. 12 U.S.C. 1760.
- An FCU's bylaws must prescribe the number of and the procedures for electing directors, and may provide for a credit committee. 12 U.S.C. 1761; 1761c(a), (b).
- An FCU's bylaws must specify the number of board officers and identify the compensated officer, if any. 12 U.S.C. 1761a.
- An FCU's board of directors must follow bylaw provisions allowing for an elected or appointed credit committee, the appointment of loan officers, the hiring and compensation of officers and employees, the appointment of an executive committee, and information it

is required to review at monthly meetings. 12 U.S.C. 1761b(4), (5), (10), (11), (13), (15).

- An FCU's supervisory committee may call a special meeting of the members to consider a bylaw violation. 12 U.S.C. 1761d.
- The amount to be refunded to expelled members is to be determined according to the bylaws. 12 U.S.C. 1764(c).
- Shares issued to minors are subject to conditions prescribed in the bylaws. 12 U.S.C. 1765.

The FCU Act provisions noted above require an FCU's bylaws to provide procedures and rules for an FCU's structure and operation, at the time of chartering and going forward. Under its general rulemaking authority NCUA is charged with administering the FCU Act. This authority is not restricted by the separate authority for charter revocation or suspension, or conservatorship, for bylaw violations. The FCU Act's many references to the FCU Bylaws demonstrate the Act requires FCUs to follow their bylaws. As the FCU Act allows NCUA authority to administer its provisions, and the FCU Act requires FCUs to have and follow bylaws, the NCUA Board finds reincorporating the FCU Bylaws into NCUA regulations will assist in its administration of the FCU Act.

Accordingly, the NCUA Board concludes reincorporating the Bylaws will clarify its authority without imposing any new regulatory burden on FCUs, and the final rule reincorporates the FCU Bylaws into NCUA regulations as an Appendix to Part 701.

Commenters were also split on whether the proposal adequately defined and limited the situations in which NCUA has discretion to take action. Seven commenters found the standard adequate or supported limiting NCUA intervention to disputes involving fundamental, material member rights, as described in the preamble to the proposal. Eight other commenters found the standard too broad and expressed concern NCUA would start to intervene in all bylaw disputes. The NCUA Board reiterates the agency will limit its involvement to bylaw disputes involving a fundamental, material credit union member right, including the right to: Maintain a share account; maintain credit union membership; have access to credit union facilities; participate in the director election process; attend annual and special meetings; and petition for removal of directors and committee members. The proposal added language to the Introduction to the Bylaws explaining NCUA's

discretion to intervene in disputes involving fundamental, material credit union member rights; the final rule includes minor revisions to this language to further clarify the Board's intent.

The preamble to the proposal explained FCUs and FCU members should continue to attempt to resolve bylaw disputes within the credit union, and contact the regional office with jurisdiction for the FCU if a bylaw dispute cannot be resolved internally. 72 FR 30984, 30986 (June 5, 2007). Six commenters—both supporters and opponents of reincorporation—sought additional details regarding the resolution of bylaw disputes.

Four commenters requested additional information on the internal procedures FCUs and their members should use to resolve bylaw disputes. FCUs and FCU members should attempt to resolve bylaw disputes with the usual procedures for addressing member complaints, such as requesting review by the supervisory committee. Every FCU must have a supervisory committee, appointed from among its members. 12 U.S.C. 1761(b). One of the supervisory committee's roles is reviewing member complaints, and the Board believes the supervisory committee is well-suited to address bylaw disputes, since it has substantial experience in investigating and resolving member complaints.

Several commenters also raised questions about how NCUA will determine when to take an enforcement action related to a bylaw dispute. The NCUA Board reiterates NCUA's regional offices will analyze disputes to see if they affect a fundamental, material credit union member right. A determination that a fundamental, material member right may be affected allows NCUA the discretion to intervene, but does not require intervention. As noted previously in this preamble and in the preamble to the proposal, the Board's view is the agency will only become involved in bylaw disputes that involve fundamental, material credit union member rights. In considering whether to initiate formal administrative action, the agency will consider various factors, as it would with any regulatory violation, including the specific facts and circumstances in a case; alternatives, such as a supervisory letter; the willingness of the parties to cure a violation; and the seriousness of the violation.

Two commenters sought clarification about who may report bylaw disputes to NCUA. As is presently the case, any FCU member or FCU official may report a bylaw dispute within an FCU.

Likewise, any FCU, member, or official may report a bylaw dispute to NCUA.

One commenter asked if FCU members must seek to enforce an FCU's bylaws as a contract, in court, before requesting NCUA intervention. The preamble to the proposal noted FCU members still have the right to seek enforcement of the Bylaws in court. 72 FR 30984, 30985 (June 5, 2007). The NCUA Board clarifies FCU members do not need to seek judicial relief before reporting a bylaw dispute to NCUA.

Two commenters asked if regional directors' decisions on bylaw disputes may be appealed to the NCUA Board. The right to appeal a regional director's decision and to what forum will depend on the nature of the decision, namely, whether a regional director's decision involves formal administrative action. For example, if the agency takes formal administrative action by issuing an immediate cease and desist order directing an FCU to cease activity that violates the Bylaws or directing an FCU to undertake specific actions to cure a violation, then an FCU will have a right to challenge the order in federal court. 12 U.S.C. 1786(e), (f).

The preamble to the proposal stated NCUA's intent that FCUs and their members continue to attempt to resolve bylaw disputes internally. 72 FR 30984, 30986 (June 5, 2007). Several commenters asked for a similar statement to be added to the Introduction to the Bylaws or the text of § 701.2. The Board agrees this would be helpful and the final rule revises the Introduction accordingly.

Director Succession Amendments

The only changes the proposal made to the FCU Bylaws were amendments on director succession; the amendments essentially incorporated NCUA legal opinions. The proposal added a new Section to Article IX to clarify the supervisory committee's responsibilities if an FCU has no remaining directors. If an entire board of directors resigns, is removed simultaneously, or for whatever circumstance is unable to serve, the supervisory committee has the responsibility to act as a board of directors until the members elect new directors. The proposal also cross-references this new language in Article XVI, Section 3, addressing removal of directors by members, and Article VI, Section 4, addressing board of director vacancies.

Seven of eight commenters on this subject generally approved of the new language. Two commenters sought clarifications in the process and one of these commenters suggested alternative language for the amendment to Article

IX. The commenter's alternative language would give the supervisory committee acting as the board the option of holding a special meeting to elect directors if the FCU's annual meeting is already scheduled or would usually occur within the next 45 days. The proposal had required the supervisory committee to serve as the board until the next annual meeting if the annual meeting were scheduled, or would usually occur, within the next 45 days. The final rule adopts the commenter's alternative, as NCUA agrees FCUs in this rare situation should have the option of formally electing directors as soon as possible, even if the next annual meeting will occur shortly.

In addition, the final rule includes certain grammatical changes to the proposal. The proposal used the term "temporary board" to refer to the supervisory committee acting as the board and "interim board" to refer to the new directors elected at the special meeting. A commenter's suggested alternative deletes the references to "temporary" and "interim" boards in Article IX, and instead uses the terms "supervisory committee acting as the board" and "board." The NCUA Board finds these suggestions improve the bylaw and has adopted them.

The proposal prohibited the supervisory committee acting as the board from acting on policy matters. 72 FR 30984, 30987 (June 5, 2007). The intent of this prohibition was to ensure that an elected board makes decisions affecting the direction and future of an FCU. One commenter sought more explanation of permissible actions by the supervisory committee acting as the board, and another commenter requested the prohibition on acting on policy matters be modified to allow for policy action in exigent circumstances. Generally, the Board's view is the supervisory committee acting as the board should maintain the status quo and defer major decisions, such as opening new branches or launching new products, until the FCU's members elect a new board of directors. NCUA believes an exception for exigent circumstances is unnecessary given the short period of service that is likely and the fact that the limitation is only on policy matters. Also, an FCU where the supervisory committee is acting as the board will likely be in contact with its examiner and can seek advice on whether matters should be left to the elected board.

NCUA also clarifies that newly chartered FCUs and FCUs defined as "troubled" under § 701.14 of NCUA's regulations must follow the procedures under § 701.14 and notify NCUA of changes in their boards. NCUA

recognizes these bylaw provisions may not afford sufficient time to notify NCUA 30 days before the effective date of the change in board members as required by § 701.14, but the supervisory committee acting as the board should notify the Regional Office of the change as soon as possible. The regulation also provides a waiver of the prior notice requirement for board members elected at a members' meeting, if the Regional Office receives notice within 48 hours of the election. 12 CFR 701.14(c)(2)(i). A newly chartered or troubled FCU that loses all its directors will likely be in contact with its examiner and can seek further advice on compliance with § 701.14.

The sole commenter opposing these provisions argued NCUA lacks authority to adopt them because they are inconsistent with the FCU Act's requirement for FCUs to be governed by a board of directors and for vacancies on the board to be filled by the remaining directors. NCUA believes the commenter misunderstood the proposal and its intent. The bylaw applies only in the rare circumstance of an FCU losing all its directors simultaneously and does not conflict with the FCU Act's requirement for director vacancies to be filled by other directors. The FCU Act is silent about how to proceed when an FCU has no remaining directors, leaving NCUA discretion to address this matter through regulation.

Expedited Approval Process for Previously Approved Bylaw Amendments

The proposed rule also outlined an expedited review process for bylaw amendments previously approved for other FCUs, which NCUA is adopting as proposed. NCUA will post the actual language of bylaw amendments approved since the last major revision of the FCU Bylaws in April 2006 on its website. Other FCUs seeking to adopt identical language will receive a response from NCUA's regional offices within 15 business days. All seven commenters on this topic endorsed the proposal.

One commenter also suggested NCUA post the language for all previously approved bylaw amendments that remain consistent with current NCUA guidance, not only amendments approved since April 2006. Because NCUA's Office of General Counsel staff has received only a handful of requests for bylaw amendment language predating the 2006 revisions, the Board has determined posting actual language for all bylaw amendments would not be the most productive use of staff resources. Further, FCUs seeking exact

language for an approved bylaw amendment that predates 2006 can access the Opinion Letters on NCUA's Web site and contact their regional office or the Office of General Counsel to obtain the exact language of any approved amendments.

Number of Members Required To Call a Special Meeting

Although the proposal did not explicitly ask for comments on the 750-member cap on the number of members required to call a special meeting, it noted the NCUA Board has decided it may consider individual FCUs' requests to increase this number through the bylaw amendment process outlined in the Introduction to the FCU Bylaws. 72 FR 30984, 30986 (June 5, 2007). Six of the eight commenters on this subject urged NCUA to adopt amendments to the FCU Bylaws increasing the cap to either a percentage of members, regardless of size, or a higher maximum number for larger credit unions. One commenter opposing an increase noted, although some increase in the cap may be appropriate for very large credit unions, setting the cap too high would disenfranchise members just as much as an FCU board ignoring the members' request for a special meeting.

The NCUA Board understands concerns some commenters expressed about the potential for a relatively small number of members to make disruptive requests for special meetings. NCUA also agrees with the commenter who expressed concern about the potential for disenfranchisement of FCU members resulting from a higher cap. The cap recently increased from 500 to 750 members. 71 FR 24551, 24554 (April 26, 2006). More time is needed to assess the appropriateness of this figure for large FCUs. Obtaining 750 signatures to request a special meeting is a significant undertaking, and NCUA is not aware of any actual instances since 2006 where members obtained this number of signatures to require a board of directors to hold a special meeting for a frivolous reason. NCUA repeats any necessary changes in this area should be handled through the bylaw amendment process explained in the introduction to the Bylaws. Any FCU requesting such an amendment should have documented, verifiable reasons why an increase in the cap is necessary, such as a history of members' abuse of the special meeting request process at that particular FCU.

C. Specific Changes to the FCU Bylaws

The Federal Credit Union Bylaws, as amended by this final rule, are reprinted in their entirety as Appendix A to Part

701. The final rule made very few changes to the text of the FCU Bylaws, and these changes are listed below.

(1) The following paragraph was added to the end of Section 3 of Article IX:

If all director positions become vacant simultaneously, the supervisory committee immediately assumes the role of the board of directors. The supervisory committee acting as the board must generally call and hold a special meeting to elect a board that will serve until the next annual meeting. The special meeting must occur at least 7 but no more than 14 days after all director positions became vacant, and candidates for the board at the special meeting may be nominated by petition or from the floor. However, if the next annual meeting has been scheduled and will occur within 45 days after all the director positions become vacant, the supervisory committee may decide to forego the special meeting and continue serving as the board until the election of new directors at the annual meeting.

If the next annual meeting has not been scheduled, but the month and day of the previous year's meeting plus 7 days falls within 45 days after all the director positions become vacant, the supervisory committee acting as the board may decide to forego the special meeting to elect new directors. In this case, the supervisory committee must schedule the annual meeting within 7 days before or after the month and day of the previous annual meeting and continue to serve as the board until directors are elected at the annual meeting.

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

(2) The following sentence was added to the end of Section 3 of Article XVI:

If member votes at a special meeting result in the removal of all directors, the supervisory committee immediately becomes the temporary board of directors and must follow the procedures in Article IX, Section 3.

(3) The following sentence was inserted after the first sentence of Section 4 of Article VI:

If all director positions become vacant simultaneously, the supervisory committee immediately becomes the temporary board of directors and must follow the procedures in Article IX, Section 3.

(4) The sixth paragraph of the Introduction was deleted and replaced with the following paragraph:

Federal credit unions considering an amendment may find it useful to review

the bylaws section of the agency Web site, which includes Office of General Counsel opinions about proposed bylaw amendments. Opinions issued after April 2006 will include the language of approved 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. Credit unions requesting previously approved amendments will receive notice of the regional office's decision within 15 business days of the receipt of the request.

(5) The last paragraph of the Introduction was deleted and replaced with the following two paragraphs:

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

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

(6) The first paragraph of the Introduction was replaced with the following paragraph:

Effective Date: After consideration of public comment, the National Credit Union Administration (NCUA) Board adopted these Bylaws and incorporated them as Appendix A to Part 701 of NCUA's regulations on [date of final]. Unless a federal credit union has adopted bylaws before [date of final] it must adopt these revised Bylaws.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions, defined as those under ten million dollars in assets. This rule incorporates the Bylaws into NCUA's regulations

without imposing any regulatory burden, since the FCU Act requires FCUs to adopt NCUA-approved bylaws. The rule will not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined the rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget. 44 U.S.C. 3501 *et seq.*; 5 CFR part 1320.

Executive Order 13132

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

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined the rule would not affect family well-being within the meaning of § 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121 (SBREFA), provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the APA. 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of SBREFA. As required by SBREFA, NCUA will file the appropriate reports with Congress and the General Accounting Office so that the final rule may be reviewed.

List of Subjects in 12 CFR Part 701

Credit unions.

By the National Credit Union Administration Board on October 25, 2007.

Mary F. Rupp,

Secretary of the Board.

■ Accordingly, NCUA amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 is revised to read as follows:

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

■ 2. Part 701 is amended by adding § 701.2 to read as follows:

§ 701.2 Federal credit union bylaws.

(a) Federal credit unions must operate in accordance with their approved bylaws. The Federal Credit Union Bylaws are hereby published as Appendix A to part 701 pursuant to 5 U.S.C. 552(a)(1) and accompanying regulations. Federal credit unions may adopt amendments to their bylaws as provided in the Bylaws, with the approval of the Board.

(b) Copies of the Federal Credit Union Bylaws may be obtained at <http://www.ncua.gov> or by request addressed to ogc-mail@ncua.gov or National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

(c) The National Credit Union Administration may issue revisions or amendments of the Federal Credit Union Bylaws from time to time. An historic file of amendments or revisions is maintained and made available for inspection at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

■ 3. Appendix A to 12 CFR Part 701 is added to read as follows:

Appendix A to Part 701—Federal Credit Union Bylaws

Introduction

A. Effective date. After consideration of public comment, the National Credit Union Administration (NCUA) Board adopted these Bylaws and incorporated them as Appendix A to Part 701 of NCUA's regulations on November 30, 2007. Unless a federal credit union has adopted bylaws before November 30, 2007, it must adopt these revised bylaws.

B. 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.

C. Bylaw amendments. 1. 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.

2. 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.

3. The procedure for approval of bylaw amendments is as follows:

a. The federal credit union wishing to adopt a bylaw amendment must file a request with its regional director.

b. 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.

c. 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.

4. Federal credit unions considering an amendment may find it useful to review the bylaws section of the agency Web site, which includes Office of General Counsel opinions about proposed bylaw amendments. Opinions issued after April 2006 will include the

language of approved 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. Credit unions requesting previously approved amendments will receive notice of the regional office's decision within 15 business days of the receipt of the request.

D. The nature of the bylaws. 1. 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.

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

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

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BYLAWS

Federal Credit Union, Charter No. _____

(A corporation chartered under the laws of the United States)

Article I. Name—Purposes

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

i. 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.

ii. 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.

iii. 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.* a. 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.

b. 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.* a. 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.

b. 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.

k. 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.* a. 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.

b. 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.

c. 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.* a. 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.

b. 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.* a. 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.

b. 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.

c. 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.* a. 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.

b. 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.

c. 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:

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

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

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

(c) the individual meets the minimum age requirement established under Article V, 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.

ii. 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.

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

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

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

vi. Minimum Age Requirement: The age the board selects may not be greater than 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. If all director positions become vacant simultaneously, the supervisory committee immediately becomes the temporary board of directors and must follow the procedures in Article IX, Section 3. Directors and credit committee members appointed to fill a vacancy 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.* a. If a director or a credit committee member, if applicable, fails to attend regular meetings of the board or credit committee, respectively, for 3 consecutive months, 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.

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

(a) Have 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.

ii. 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.

Article VIII. Option 1 Credit Committee

Section 1. *Credit committee members.* The credit committee consists of _____ members. All the members of the credit committee must be members of this credit union. The 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.

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

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

b. If all director positions become vacant simultaneously, the supervisory committee immediately assumes the role of the board of directors. The supervisory committee acting as the board must generally call and hold a special meeting to elect a board that will serve until the next annual meeting. The special meeting must occur at least 7 but no more than 14 days after all director positions became vacant, and candidates for the board at the special meeting may be nominated by petition or from the floor. However, if the next annual meeting has been scheduled and will occur within 45 days after all the director positions become vacant, the supervisory committee may decide to forego the special meeting and continue serving as the board until the election of new directors at the annual meeting.

c. If the next annual meeting has not been scheduled, but the month and day of the previous year's meeting plus 7 days falls within 45 days after all the director positions become vacant, the supervisory committee acting as the board may decide to forego the special meeting to elect new directors. In this case, the supervisory committee must schedule the annual meeting within 7 days before or after the month and day of the previous annual meeting and continue to serve as the board until directors are elected at the annual meeting.

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

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

Section 5. *Powers of supervisory committee—removal of directors and credit committee members.* By unanimous vote, the supervisory committee may suspend 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. If member votes at a special meeting result in the removal of all

directors, the supervisory committee immediately becomes the temporary board of directors and must follow the procedures in Article IX, Section 3.

Section 4. *Conflicts of interest prohibited.* 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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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2007-28591; Airspace Docket No. 07-ASO-16]

Amendment of Class E Airspace; Scottsboro, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Scottsboro, AL, to accommodate a new Standard Instrument Approach Procedure (SIAP) that has been developed for Scottsboro Municipal—Word Field Airport. Additional controlled airspace is necessary for the safety and management of Instrument Flight Rules (IFR) operations at Scottsboro Municipal—Word Field Airport.

DATES: *Effective Date:* 0901 UTC, December 20, 2007. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Mark. D. Ward, Manager, System Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5627.

SUPPLEMENTARY INFORMATION:

History

On August 15, 2007, the FAA proposed to amend Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace at Scottsboro, AL, (72 FR 45700). This action provides adequate Class E airspace for IFR operations at Scottsboro Municipal—Word Field Airport, Scottsboro, AL. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in FAA Order 7400.9R, dated August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.