



National Credit Union Administration

March 29, 2013

Mr. Steven Bisker, Attorney at Law
5002 Margaret Court
Annandale, VA 22003

Dear Mr. Bisker:

Re: Balloting at Special Meetings of Members

You have asked if a federal credit union (FCU) may allow the use of mail ballots in connection with a special meeting called to remove one of its directors from office. No, the use of mail ballots in a director removal election violates the FCU Bylaws.¹ You have also asked what role state law plays in determining governance issues in instances where the FCU Bylaws are clear and unambiguous. State law plays no role in determining governance issues where the FCU Bylaws are clear and unambiguous. Our analysis follows.

I. Use of Mail Ballots Not Permitted in Director Removal Elections

The FCU Bylaws articulate the process by which members may remove a director.² Specifically, the FCU Bylaws state:

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.³

The use of the phrase “present at a special meeting” precludes the possibility of voting in absentia by mail to remove a director. The FCU Bylaws contemplate that members voting on a director’s removal will be present at the meeting so they can hear the director’s position on the matter before voting. If voting by mail were allowed in lieu of being present, members would be denied the opportunity to observe the director’s demeanor, hear the director’s defenses, and ask

¹ FCU Bylaws, §XVI.3.

² 12 C.F.R. Part 701, App. A. The director removal provisions derive from provisions of the FCU Act related to special meetings, the Supervisory Committee’s authority to suspend directors, and requirements for expulsion of FCU members. 12 U.S.C. §§1760 (special meetings held in the manner indicated in the bylaws); 1761d (members must have the opportunity to vote on the Supervisory Committee’s suspension of a director); and 1764(a) (FCU members may be expelled by vote of members present at a meeting called for that purpose).

³ 12 C.F.R. Part 701, App. A §XVI.3 (emphasis added).

the director questions. The give and take that is part of being present at a special meeting provides a director with more due process and better informs the membership.

II. FCU Bylaws as Federal Regulations

NCUA incorporated the FCU Bylaws into its regulations in 2007, in part to clarify NCUA's authority to take action on bylaw violations. At that time, NCUA stated that incorporating the bylaws into its regulations would give NCUA the ability to take action on bylaw violations not only when related to safety and soundness, but also when "a bylaw violation poses a threat to fundamental, material, credit union member rights."⁴ The term "fundamental, material, credit union member rights" includes a member's right to participate in the election of directors and the right to petition for removal of directors and committee members.⁵

NCUA has full authority to interpret and enforce the FCU Bylaws. State law has no role where the FCU Bylaws are clear and unambiguous. However, NCUA may choose to defer to state law on certain issues where the FCU Act and FCU Bylaws are silent or sufficiently ambiguous to warrant state law consideration.⁶ In this instance, the FCU Bylaws clearly and unambiguously provide that in-person voting is required at a meeting called to consider removal of a director.

Sincerely,



Michael J. McKenna
General Counsel

⁴ 72 Fed. Reg. 30984, 30986 (June 5, 2007).

⁵ Id.

⁶ See, e.g., Letter from Sheila Albin to David Adams (Feb. 6, 2006) (directing inquirer to state law on the issue of access to membership lists because the FCU Act and NCUA Bylaws are silent on FCU members' right to access membership lists).