

**From:** Administration Mailbox  
**To:** [Regulatory Comments](#)  
**Subject:** Regulatory Comment re NCUA 12 CFR Part 701 Appendix A, Federal Credit Union Bylaws  
**Date:** Monday, January 14, 2019 9:59:40 PM

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We please request that the NCUA consider the following with respect to the proposed changes to 12 CFR Part 701, Appendix A, Federal Credit Union Bylaws:

1. Article II, Sections 4 and 5 – Disruptive Behavior: Section 4 explicitly includes disruptive behavior. Please add disruptive behavior to Section 5 also.

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

Section 5. Member in good standing. A member in good standing retains all their rights and privileges in the credit union. A member in good standing is a member who maintains at least the minimum share set forth in Article III, Section 1 of these bylaws; who is not delinquent on any credit union loan; who has not had any account with this credit union closed due to ***abuse or negligent behavior***; who has not been ***belligerent or abusive*** to any duly elected or appointed official or employee when that official or employee is carrying out their duties as set in the Act, the rules and regulations, the charter, and bylaws of this credit union; and who has not caused a financial loss to this credit union. Subject to Article XIV of these bylaws and any applicable limitation of services policy approved by the board, members not in good standing retain their right to attend, participate, and vote at the annual and special meetings of the members and maintain a share account.

2. Article III, Section 6(c) – Irrevocable Trust Accounts and Delinquencies: It is not apparent why an exception to the withdrawal restrictions is appropriate for irrevocable trusts and obligations incurred by such trusts. Please delete the last sentence of Article III(6)(c), so that credit unions may withhold from withdrawals the amounts owed to the credit union by the irrevocable trust.

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

(In the commentary, the NCUA states that “the trustee [of an irrevocable trust] has no ownership interest in the account.” (P. 56,642.) It may be more appropriate under property law to say that the trustee of an irrevocable trust has no beneficial ownership interest in the account.

3. Article III, Section 7 – Trusts. It would be helpful if the bylaws or commentary address the following:
  - a. If a member has a revocable trust account and dies, may the credit union continue that account as an irrevocable trust account automatically and indefinitely upon death of the member without regard to the membership of beneficiaries?
  - b. If a (master) trust account exists, may accounts be established for subtrusts created pursuant to the terms of the (master) trust without regard to the membership of beneficiaries?
  - c. If a member has an individual account but no trust account at the credit union, after the member’s death, may an irrevocable trust account be established because the settlor was a member of the credit union at the time of death, without regard to the membership of beneficiaries? If so, how much time may elapse between death and the opening of the trust account?
  - d. If membership of an irrevocable trust account is established based on the beneficiaries of the trust, are those primary beneficiaries (and may contingent beneficiaries be disregarded if the contingency has not occurred at the time of opening the account)?
  - e. May an irrevocable trust qualify for membership as a SEG?
4. Article IV, Meeting of Members (p 56,642): If hybrid meetings must always include an option for in-person attendance, then it would seem that members who do not have access to electronic devices or who live in remote areas without access to broadband internet would be protected by the in-person requirement. Please provide an option for a blanket bylaw amendment instead of requiring credit unions to request individual waivers.

The Board is sympathetic to the commenters’ arguments. Due to its concerns about member disenfranchisement, however, the Board does not currently support adopting this position in a rulemaking that affects all FCUs. The Board is particularly concerned with the rights of members that do not have access to electronic devices or that may live in areas without access to broadband internet. . . . Therefore, FCUs holding hybrid meetings must always offer an option for in-person attendance as well as online.

5. Article V, Section 1 (All Options) – Interviews: Please revise the interview requirement so that the Nominating Committee need not conduct interviews if it accepts all volunteers (or those who meet the Nominating Committee’s requirements); or so that the Nominating Committee need not conduct an interview with anyone whom the Committee accepts.

The nominating committee must widely publicize the call for nominations to all members by any medium and **interview each member who volunteers.**

6. Article XIV, Section 1 – Expulsion and Withdrawal: Please clarify what information the Credit Union may provide with respect to the proposed expulsion or withdrawal without the member’s consent. For example, may the Credit Union make a statement that expulsion of member X is sought because of alleged [disruptive behavior] [abusive or negligent behavior] [causing a significant financial loss to the Credit Union (defined as more than \$\_\_\_)] [repeated suspicious transactions]? The same comment applies with respect to the suspension of any director, board officer or credit committee member under Article IX, Supervisory Committee, Section 5. Otherwise, it is difficult to have members respond to a notice for a meeting, or to provide any sort of substantive comment at the meeting where the member, director or committee member declines to consent to the ability of the Credit Union to make any comment.

Thank you.

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