

SUPERVISORY LETTER

NATIONAL CREDIT UNION ADMINISTRATION
OFFICE OF EXAMINATION AND INSURANCE
1775 DUKE STREET, ALEXANDRIA, VA 22314

DATE: November 2007 **Supervisory Letter No.:** 07-02

TO: All Field Staff

SUBJECT: Reincorporating Federal Credit Union Bylaws into NCUA Rules and Regulations

NCUA reincorporated the Federal Credit Union (FCU) Bylaws into the NCUA Rules and Regulations as Appendix A of Part 701. The revisions to Part 701 are effective November 30, 2007. This action was taken 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.

Reincorporating the Bylaws into NCUA's Rules and Regulations imposes no new regulatory burden, as all FCUs are already required to have NCUA-approved bylaws. Under the risk-based examination system in use for FCUs, examiners do not currently, nor will they with the reincorporation of the Bylaws, inquire into an FCU's bylaw disputes unless the FCU's management raises the issue.

This Supervisory Letter reiterates the standards for NCUA involvement and dispute resolution process in bylaw matters as provided in the preamble of the final rule reincorporating the bylaws into regulation.

If you have any questions regarding this subject, you should contact your immediate supervisor.

Sincerely,

David M. Marquis,
Director, Office of Examination and Insurance



Supervisory Letter



Reincorporating Federal Credit Union Bylaws into NCUA Rules and Regulations

Background

NCUA removed the Bylaws from NCUA Rules and Regulations in 1982 as part of a general deregulatory effort. However, the Bylaws remained incorporated in the NCUA Rules and Regulations by reference in Section 701.2 until its deletion in 1999.

The Bylaws are now being reincorporated into NCUA Rules and 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.

Standards for NCUA Involvement

The Bylaws were reincorporated to provide clear authority to act if a bylaw violation threatened a fundamental, material credit union member right. The agency will limit its involvement to bylaw disputes including a member's 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 revised Introduction to the Bylaws (NCUA Rules and Regulations Part 701 Appendix A) explains NCUA's discretion to intervene in disputes involving fundamental, material credit union member rights by stating in Section D:

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.

Dispute Resolution Process

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. 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). Since one of the supervisory committee's roles is to review member complaints and they have substantial experience in investigating and resolving member complaints, the committee is well-suited to address bylaw disputes.

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. 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 evaluate various factors, as it would with any regulatory violation, including the specific facts and circumstances in a case; alternatives, such as regional office correspondence; the willingness of the parties to cure a violation; and the seriousness of the violation.

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 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).

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. FCU members still have the right to seek enforcement of the Bylaws in court. However, FCU members do not need to seek judicial relief before reporting a bylaw dispute to NCUA.

It remains NCUA's intent that FCUs and their members continue to attempt to resolve bylaw disputes internally as reiterated in the revised Introduction to the Bylaws quoted above.

Examiner Responsibilities

Incorporating the FCU Bylaws into NCUA's Rules and Regulations does not mean NCUA will routinely become involved in bylaw disputes. Credit union officials and members should be able to work together to resolve the vast majority of bylaw and internal governance disputes. Under the risk-based examination system in use for FCUs, examiners do not currently, nor will they with the reincorporation of the Bylaws, inquire into an FCU's bylaws unless the FCU's management raises the issue.

Examiners will not investigate bylaw disputes unless requested by their regional office or supervisor. However, under the risk-based examination system, examiners may continue to review an FCU's Bylaws as the need arises.