
NCUA – Member Expulsion Executive Summary

The National Credit Union Administration (NCUA) is issuing a proposed rule that would amend the standard federal credit union (FCU) bylaws to adopt a policy by which a FCU member may be expelled for cause by a two-thirds vote of a quorum of the FCU's board of directors. Under the Credit Union Governance Modernization Act of 2022, enacted by Congress on March 15, 2022, the NCUA has until September 15, 2023, to develop a final rule that FCUs may adopt to expel a member for cause.

Background

Federal Credit Union Act (FCU Act) and FCU Bylaws – Currently, under the Federal Credit Union Act (FCU Act) and standard FCU Bylaws, there are only two ways a member may be expelled:

1. A two-thirds vote of the membership present at a special meeting called for that purpose, and only after the individual is provided an opportunity to be heard; and
2. For non-participation in the affairs of the credit union, as specified in a policy adopted and enforced by the board.

These requirements are set out in the standard FCU Bylaws in Appendix A to part 701 of the NCUA's regulations.

Member in Good Standing – Under 12 CFR part 701, App. A. Art. II, Sec. 5, it indicates that so long as a member remains in good standing, that member retains all of the rights and privileges associated with FCU membership. A member not in good standing, however, may be subject to an FCU's limitation of services policy.

For example, an FCU may limit all or most credit union services, such as ATM services, credit cards, loans, share draft privileges, preauthorized transfers, and access to credit union facilities to a member who has engaged in conduct that has caused a loss to the FCU or that threatens the safety of credit union staff, facilities, or other members in the FCU or its surrounding property.

However, certain actions warrant immediate limitation of services or access to credit union facilities, such as violence against other credit union members or credit union staff in the credit union facility or the surrounding property. An FCU may immediately take actions such as contacting local law enforcement, seeking a restraining order, or pursuing other lawful means to protect the credit union, credit union members, and staff. Nothing in the FCU Act or the FCU Bylaws prevents an FCU from using whatever lawful means it deems necessary to address circumstances in which a member poses a risk of harm to the FCU, its members, or its staff.

2022 Governance Modernization Act – In March 2022, Congress enacted the Governance Modernization Act to revise the FCU Act procedures for expelling members, which focused on FCUs' concerns that their ability to address violent and aggressive behaviors of certain members was inadequate. To address these concerns, the Governance Modernization Act provides FCUs with the option for expelling a member for cause by a two-thirds vote of a quorum of the board of directors.

Key Overview

The NCUA is now issuing a proposed rule to adopt a policy by which a federal credit union (FCU) member may be expelled for cause by a vote of two-thirds of a quorum of an FCU's board of directors. The proposed rule would also make conforming changes to Article II of the FCU Bylaws regarding members in good standing. These proposed changes are discussed in detail below.

- **Definitions**

The following are key definitions:

- **Cause** – The term “**cause**,” means:
 - a) A substantial or repeated violation of the membership agreement of the credit union;
 - b) A substantial or repeated disruption, including dangerous or abusive behavior (as defined by the National Credit Union Administration Board pursuant to a rulemaking), to the operations of a credit union; or
 - c) Fraud, attempted fraud, or other illegal conduct that a member has been convicted of in relation to the credit union, including the credit union's employees conducting business on behalf of the credit union.
- **Dangerous or abusive behavior** – (1) Violence, intimidation, physical threats, harassment, or physical or verbal abuse of officials or employees of the credit union, members, or agents of the credit union (this includes actions while on FCU premises and through use of telephone, mail, e-mail or other electronic method); (2) Behavior that causes or threatens damage to FCU property; and (3) Unauthorized use or access of FCU property.

- **Member in Good Standing**

The proposed rule would retain the member in good standing provisions. First, through a limitation of service policy, an FCU may pursue a more targeted approach to deal with certain disruptive behaviors that may not otherwise warrant expulsion. Second, an FCU may use the limitation of services policy in the case of a violent or abusive member who has yet to be expelled.

So, an FCU may use its limitation of services policy, in conjunction with its ability to expel a member for cause, to immediately address circumstances in which a member poses a risk of harm to the FCU, its staff, or its members. Therefore, the proposed rule has retained the member in good standing provisions in Article II, Section 5 of the FCU Bylaws. Finally, use of a limitation of service policy does not require a board vote. Therefore, it may be easier and more expeditious for FCUs to exercise these restrictions.

The proposed rule would also replace the existing list of behaviors of disruptive, abusive, or violent behaviors. Moreover, the proposed rule would define a member not in good standing as a member who has engaged in any of the conduct listed in the Governance Modernization Act.

- **Expulsion and Withdrawal**

- a. *Notice of the Expulsion Policy*

As per the Governance Modernization Act, an FCU's directors may expel a member only if the FCU has provided, in written or electronic form, a copy of NCUA's expulsion policy to each member of the credit union. Additionally, the Governance Modernization Act states that the policy has to be provided in written or electronic form.

Under the proposed rule, an FCU could only provide a copy of the policy electronically if the member has elected to receive electronic communications from the FCU.

In addition, the proposed rule indicates that the communication of the expulsion policy, along with all notices required under the proposed rule, must be legible, written in plain language, and reasonably understandable by ordinary members.

b. *Expulsion Vote and Notice of Pending Expulsion*

Under the proposed rule, if an FCU's board votes to expel a member, the member must be notified of the pending expulsion, along with the reason for such expulsion. Such notice shall be provided in person, by mail to the member's address, or electronically. Electronic delivery is only permitted if the member has elected to receive electronic communications from the FCU. The reason for the expulsion be specific and not just include conclusory statements.

The proposed rule would require that the notice to indicate the following information to the member:

- Must include specific information about the how the member violated the agreement and include other relevant information as appropriate.
- Must include sufficient detail for the member to understand why he or she is being subject to expulsion so that the member has a meaningful opportunity to present his or her case against expulsion and an opportunity to respond to the FCU's concerns in a requested hearing.
- Must also tell the member that any complaints related to their potential expulsion should be submitted to the NCUA's website.
- Must also clearly state the member's right to request a hearing, but if a hearing is not requested, membership will automatically terminate after 60 calendar days.

c. *Hearing*

Under the proposed rule, a member has 60 calendar days from the date of receipt of a notification to request a hearing from the board of directors of the FCU. Further, a FCU must maintain a copy of the notice provided for its records. In addition, the member has 60 calendar days to provide the FCU with their intent to have a hearing.

If a member does not request a hearing, the member is automatically expelled after the end of the 60-day period. If a member requests a hearing, the board of directors must provide the member with a hearing. An FCU may determine whether the hearing may in-person or virtual.

Moreover, under the proposed rule, the FCU may not raise any rationale or reason for expulsion that is not explicitly included in the notice to the member. If additional conduct that may warrant expulsion occurs after the expulsion notice is provided to the member, then the FCU may either not discuss the subsequent conduct at the expulsion meeting or provide the member a new notice with a 60-day window to request a hearing that includes the subsequent conduct.

The proposed rule related to the hearing are that it permits the meaningful opportunity for the member to orally present their case to the board and that the FCU board does not raise any new fact or cause for expulsion. However, the member may choose to provide a written submission to the credit union board instead of a hearing with oral statements.

d. *FCU Board Vote*

After the hearing, the FCU board of directors must hold a vote in a timely manner on expelling the member. The proposed rule defines a timely manner as within 30 calendar days.

If a member requests a hearing or provides a written statement, the FCU board must vote twice on the member's expulsion. The board of directors would first vote to expel the member, which initiates the 60-day period after receipt of the notice, and then would vote again after the requested hearing. If a hearing

is not requested, then the member would automatically be expelled 60-days after receipt of the notice and a second board vote would not be required.

e. *Notice of Expulsion*

The proposed rule indicates that the notice of expulsion must provide information on the effect of the expulsion, including information related to account access and any withdrawals by the FCU related to amounts due.

Specifically, the notice should include pertinent information to the member, including that expulsion does not relieve a member of any liability to the FCU and that the FCU will pay all of the member's shares upon their expulsion less any amounts due. The notice should include a line-by-line accounting of any deductions related to amounts due. The notice should also include when and how the member will receive any money in their accounts. The notice must be provided to the member in person, by mail to the member's address, in written form or, if the member has elected to receive electronic communications from the credit union, may be provided electronically.

f. *For Cause*

For a repeated non-substantial violation of the membership agreement, the proposed rule states a FCU must have provided written notice to the member at least one time prior to the notice of expulsion, and the member must have repeated the violation after having been notified of the violation. Further, the written notice must state the specific nature of the violation and that if the conduct occurs again the member may be expelled from the FCU.

Under the proposed rule, a member may also be expelled by an FCU board for a substantial or repeated disruption, including dangerous or abusive behavior, to the operations of a credit union.

The proposed rule indicates that a criminal conviction is not necessary for membership expulsion related to fraud or attempted fraud.

g. *Reinstatement*

Once a member has been expelled pursuant to the Governance Modernization Act, the proposed rule indicates a member will have the right to request reinstatement, which may be achieved by either another two-thirds vote of an FCU's board of directors or by a majority vote of the members of the FCU present at a special meeting.

h. *Class of Members*

Pursuant to the Governance Modernization Act, expulsion of a member must be done individually, on a case-by-case basis. Moreover, an FCU may not expel a class of members. Nor can member be expelled solely due to or in retaliation for their complaints to the NCUA or any other regulatory agencies.

Further, the proposed rule indicates the prohibition on expelling a class of members would explicitly include an FCU board acting to remove all members who engaged in a certain violation of the membership agreement, or all delinquent members or a class of delinquent members in one action. For example, an FCU board may not remove all members who have caused a loss of \$500 to the FCU or have been delinquent for 90 days or more.

The proposal would also require FCUs to maintain records relating to expelled members for five years. The NCUA clarifies that the rule would not specify necessary documents for the record, but it would expect a record to include general documents related to the member, such as their last known contact information, membership agreement, or loan files, and specific documents related to the cause of the member's termination.

i. *Implementation*

FCUs seeking to adopt these authorities would amend their bylaws through a two-thirds vote of their boards of directors. Such FCUs would not need to submit the amendment to the NCUA for its approval provided the amendment is identical to the language included in any final rule issued by the NCUA.

j. *Past Member Conduct as Grounds for Expulsion*

FCUs cannot use member conduct that occurred prior to the effective date of the final rule as grounds for expelling members. The FCU could only expel the member if additional conduct that warrants expulsion occurs after the effective date of the final rule.

Comment Deadline

- December 2, 2022.

Resources

- [Federal Register, 87 FR 59740](#)

Questions to Consider

1. Do you think the current language regarding a member not in good standing should remain in the FCU Bylaws or should the NCUA reference the “for-cause” termination provision in Article XIV?
2. The Board requests comments on whether FCUs should be required to get NCUA approval for all bylaw amendments related to expulsion procedures. Do you think that certain modifications be considered in fill-in-the-blank type provisions and therefore not require NCUA approval?
3. How prescriptive should the NCUA expulsion policy be regarding the content of the notice of expulsion? Would additional requirements on the specificity of the notice be necessary or useful to include in the policy?
4. Should the Board require the FCU to maintain a copy of the notice provided? Is this proposed requirement burdensome for FCUs?
5. Do you support that the hearing may take place other than in person? Are there any fairness or other principles that may call for an in-person hearing?
6. Should the proposed rule include additional requirements related to the structure and procedure of an expulsion hearing? Should the rule specifically provide that a member may request to provide a written response instead of a hearing with oral submissions? Should the final rule include any requirements related to appropriate safety procedures for FCUs choosing to do an in-person hearing?
7. The Governance Modernization Act does not include an explicit appeal right for the member. Should the final rule consider adding an appeal right for members? For example, should the supervisory committee be required to review records related to expelled members?
8. Do you think the proposed rule is too prescriptive and instead of a 30-day timeframe for the board vote following a hearing, should the timeliness be left to FCUs’ discretion?
9. The FCU Act does not require FCUs to call the members’ outstanding loans or other obligations if the member is expelled. Should the final rule include a minimum amount of time before an FCU is permitted to call in an existing obligation or offset amounts owed to the FCU?
10. Should there be a limit on the time between the FCU’s notice of a violation and the repeated behavior?
11. What are typical violations of a membership agreement that cause concern for FCUs? Do FCUs consider causing a loss to be a substantial violation of their membership agreement? Would FCUs consider any loss a substantial violation? Or would only material losses be considered a substantial violation? If so, please describe what threshold constitutes a material loss.
12. Should the Board try to define substantial violations versus more minor or immaterial violations? An earlier version of the Governance Modernization Act expressly permitted expulsion for causing material losses to FCUs. This express authority was removed, which may imply that FCUs cannot expel a member for causing a loss. However, under the current version of the Governance

Modernization Act, members may be expelled for substantial or repeated violation of the FCU's membership agreement.

13. Should the Board define fraud or attempted fraud? Should FCU boards be permitted to terminate membership only when a member has been convicted of fraud or attempted fraud?
14. If a member is convicted of other illegal conduct and the conviction is later overturned, should the rule provide for automatic reinstatement or otherwise include a required procedure to allow for reinstatement in this circumstance? Alternatively, does the Governance Modernization Act's reinstatement process adequately cover this scenario by affording an expelled member the right to seek reinstatement?
15. Should the Board require FCUs to vote on members' reinstatement more than once? For example, should the proposed rule state that FCU boards need to reconsider reinstatement requests only every six, twelve, or eighteen months?
16. Should the possibility of FCUs expelling some members but not others for engaging in certain behavior be a cause for concern?
17. Should the Board include a record retention requirement related to expelled members? Do you think there should be an alternative to a record retention requirement? Should the Board choose a shorter or longer retention period than five years? If so, how long should the Board require FCUs to retain their expulsion records, and why?
18. Should the Board consider alternative dates for which member conduct may be considered as grounds for expulsion? Should the date be related to when notice of the policy is provided to members, when the FCU board adopts the Bylaws, or when the Governance Modernization Act was enacted?

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