

# NCUA Finalizes Member Expulsion Rule

July 24, 2023

The National Credit Union Association (“NCUA”) has adopted a **final rule** (“Final Rule”) permitting a federal credit union (“FCU”) to expel a member for cause by a two-thirds vote of a quorum of the FCU’s board of directors. The Final Rule follows the enactment of the Credit Union Governance Modernization Act (“Governance Modernization Act”), which required the NCUA to develop a policy by which an FCU member may be expelled.

## **I. Overview**

The current steps for removing an FCU member involve either a two-thirds majority vote of members present at a meeting especially convened for that purpose or a lack of participation defined and adopted in a policy by the FCU’s board of directors. Under the Final Rule, an FCU can expel a member for cause with a two-thirds majority vote by a quorum of directors, provided the FCU amends its bylaws to allow for such expulsion and follows the required procedure for expulsion. The primary purpose of this change is to provide a more practical way for FCUs to expel members who exhibit aggressive or violent behavior towards FCU employees.

## **II. The Final Rule**

### ***Member Not in Good Standing***

The Final Rule clarifies what constitutes “a member not in good standing” to match the disorderly behaviors listed in the Governance Modernization Act.

### ***For Cause***

Under the Governance Modernization Act, an FCU’s board of directors may expel a member for cause, which means the following:

- A substantial or repeated violation of the membership agreement of the FCU;
- A substantial or repeated disruption, including dangerous or abusive behavior (which includes violence, intimidation, physical threats, harassment, or physical or verbal abuse of officials or employees of the FCU, members, or agents of the FCU), to the operations of an FCU; or
- Fraud, attempted fraud, or conviction of other illegal conduct in relation to the FCU, including the FCU’s employees conducting business on behalf of the FCU.

The Final Rule notes that the legislative history of the Governance Modernization Act describes an FCU’s need for using this authority to expel a member as a rare option that should be focused on more extreme examples of member behavior.

### ***Notice of the Expulsion Policy***

Under the Final Rule, a member may be expelled for cause by a two-thirds vote of a quorum of the FCU's board of directors. Please note that an FCU may only use this process to expel a member after the FCU has adopted the related standard bylaw amendment.

Additionally, the directors may vote to expel a member for cause only if the FCU has provided a written copy of the new expulsion policy or the optional standard disclosure notice to each member of the FCU. The NCUA has developed a form of the optional disclosure for an FCU to use.

### ***Notice of Pending Expulsion***

If a member will be subject to expulsion, the member must be notified in writing in advance, along with the reason for such expulsion. Specifically, the Final Rule provides that relevant dates, sufficient detail for the member to understand the grounds for expulsion, how to request a hearing, the procedures related to the hearing and, if applicable, a general statement on the effect of expulsion related to the member's accounts or loans at the FCU must be included in the pending expulsion notice.

The notice must also tell the member that any complaints related to the member's potential expulsion should be submitted to NCUA's Consumer Assistance Center if the complaint cannot be resolved directly with the FCU.

The FCU must maintain a copy of the provided notice for its records.

### ***Non-substantial Violations/Disruptions***

If an FCU is considering expulsion of a member due to repeated *non-substantial* violations of the membership agreement or repeated *non-substantial* disruptions to the FCU's operations, the FCU must provide written notice to the member at least once prior to the notice of expulsion (discussed above), and the violation or conduct must be repeated within two years after the member was notified of the violation. The written notice must state the specific nature of the violation or conduct and that if the violation or conduct occurs again, the member may be expelled from the FCU.

### ***Hearing***

A member has 60 calendar days from the date of receipt of the required notification to request a hearing from the board of directors of the FCU. A member is not entitled to attend the hearing in person, but the member must be provided a meaningful opportunity to present the member's case orally to the FCU's board of directors through a videoconference hearing. The member may also choose to provide a written submission to the board of directors instead of a hearing with oral statements.

If a member does not request a hearing or provide a written submission, the member shall be deemed expelled after the end of the 60-day period after receipt of the notice. If a member requests a hearing, the board of directors must provide the member with a hearing. At the hearing, the board of directors may not raise any rationale for expulsion that is not explicitly included in the notice to the member.

### ***FCU Board Vote***

After the hearing, the board of directors of the FCU must hold a vote within 30 calendar days on expelling the member. If a member is expelled, either through the expiration of the 60-day period or a vote to expel the member after a hearing, written notice of the expulsion must be provided to the member in person, by mail to the member's address, or, if the member has elected to receive electronic communications from the FCU, electronically.

The notice must provide information on the effect of the expulsion, including information related to account access and any deductions by the FCU related to amounts due. The notice must also tell the member that any complaints related to the expulsion should be submitted to NCUA's Consumer Assistance Center if the complaint cannot be resolved directly with the FCU. The notice must also state that the member has an opportunity to request reinstatement.

### ***Reinstatement***

The FCU may act on the former member's reinstatement request through a majority vote of a quorum of the directors of the FCU, a majority vote of the members of the FCU present at a special meeting, or a majority vote of members at an annual meeting, provided the annual meeting occurs within 90 days of the member's reinstatement request. An FCU is only required to hold a board vote or special meeting in response to a member's first reinstatement request following expulsion.

### ***Record Keeping***

Under the Final Rule, an FCU is required to maintain records related to the expulsion for six years.

### **III. Conclusion**

With this Final Rule, the NCUA has streamlined the process that FCUs adopting the required bylaw amendment may use to expel troublesome members. However, please note that the NCUA has stressed that powers granted in the Governance Modernization Act must not be used as a tool to facilitate financial exclusion. Therefore, FCUs must ensure that their implementation of the authority to expel members for cause is consistent and does not violate anti-discrimination laws or regulations.

The Final Rule is effective 30 days after publication in the Federal Register.

This advisory is a general overview of the Final Rule and is not intended as legal advice. The Final Rule is very detailed and should be reviewed in its totality.

If you have any questions about the Final Rule, please feel free to contact Joseph D. Simon at (516) 357-3710 or via email at [jsimon@cullenllp.com](mailto:jsimon@cullenllp.com), Kevin Patterson at (516) 296-9196 or via email at [kpatterson@cullenllp.com](mailto:kpatterson@cullenllp.com), Elizabeth A. Murphy at (516) 296-9154, or via email at [emurphy@cullenllp.com](mailto:emurphy@cullenllp.com), or Gabriela Morales at (516) 357-3850 or via email at [gmorales@cullenllp.com](mailto:gmorales@cullenllp.com).

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