

March 28, 2006

Steven Bisker, Esq.  
2800 Eisenhower Avenue  
Suite 100  
Alexandria, VA 22314

Re: Special Meetings of Members.

Dear Mr. Bisker:

You have asked several questions related to requirements for special meetings of members of a federal credit union (FCU). Our views on the issues you raised follow.

**Form of a Written Request for a Special Meeting.**

You asked if there is a required form for a written request by members for a special meeting, such as whether it must be in the form of a petition. A request for a special meeting must be “written” but the title or form of a written request is immaterial as long as the request: clearly indicates it is a request for a special meeting; states the reason or purpose for calling a special meeting; identifies the members supporting the written request with sufficient information to enable the FCU to verify a member’s identity; and indicates some affirmative act by a member, such as a signature, to verify a member’s support for the request.

The FCU Bylaws require the chair to call a special meeting of members upon receipt of “a written request” that has the requisite support of members as provided in the FCU Bylaws, namely, the written request must be made by 5% of the members, with a minimum of 25 and a maximum of 500 required. FCU Bylaws, Article IV, §3. The FCU Bylaws do not identify the written request as a petition and do not otherwise describe the contents, style or requirements of a written request. Our interpretation is pragmatic: an FCU’s chair needs to be able to determine from the written request that the requisite membership support exists for the request and that the request is for a proper purpose.

**Verification of Member Support.**

You asked if members must sign the written request or if some other form of acknowledgement by a member would suffice and, further, you also asked about the types of identifying information members should supply to permit verification of them as members.

A written request must include the member’s name in legible type or handwriting, accompanied by sufficient identifying information to enable the credit union to verify the membership status of the requesters and prevent the listing of

members without their permission. In light of technological advances, members seeking a special meeting may also enlist support by electronic means, and a hard-copy script or “wet” signature is not necessarily required.

Regardless of the form, a special meeting request needs to include some additional information about a member identified as supporting the request so that an FCU will be able to confirm the identity of the member. What additional information will suffice will depend on how member support is solicited. For example, if organizers solicit wet signatures, a printed name along with some other information a member is willing to provide such as a telephone number or address or the last four digits of a social security number would likely be sufficient. For obvious privacy and information security reasons, request organizers should not include, and the FCU may not require, account numbers or as a means of verifying identity. OGC Opinion 03-0106 (Feb. 6, 2003). Likewise, neither request organizers nor the FCU should use a full social security number as a means of verifying identity.

One way of verifying a member’s identity is to compare the member’s signature on the request with the signature card for the member, but, if members seeking a special meeting circulate a request by email or the internet, they will have to solicit individual information from a member that provides another way to authenticate the member’s identity. Most members probably lack the technology to send an electronic signature from their computers, and without an actual script signature, an FCU must use other means to authenticate a member’s identity. For requests circulated electronically, therefore, use of a personal identifier, such as the last four digits of a member’s social security number, will be particularly important to authenticate the member’s identity.

You also asked if the request should include the date each member's name was added. NCUA believes this information is unnecessary, since the FCU will be verifying whether a supporter is a member when the special meeting request is submitted. If a listed supporter is a member at the time the FCU is verifying the membership status of request supporters, the member must be included in the tally of request supporters.

Although you did not specifically ask this question, we note that request organizers may have concerns about the privacy of member information appearing together on a request. One solution would be to have the information related to each member supporting the request unavailable to other potential supporters. This could be accomplished by having each member’s signature and information on a separate page for hard copies or making the information about other supporters unavailable for view electronically.

### **Purpose of the Special Meeting.**

You have asked how much information about the purpose of the special meeting the written request must have and, specifically, if a previous legal opinion issued in 1998 addressing the specificity of a written request and the basis for members removing a director remains our view.

The FCU Bylaws specifically provide for removal of a director by the members upon an affirmative vote at a special meeting called specifically for the purpose of removal but only after the director has an opportunity to be heard. FCU Bylaws, Article XVI, §3. Therefore, a written request that calls for the removal of a director or directors states a proper purpose but the request must have additional information. We reiterate our prior advice that the request must:

[S]tate that the members are requesting a special meeting to vote on removal; identify the directors whose removal the members are seeking; and specify the reasons for removal. This information is necessary for the directors to have an opportunity to prepare a response prior to the vote.

OGC Opinion 98-0950 (Dec. 29, 1998). Neither the FCU Act, corporate common law, nor the FCU Bylaws, however, impose standards on when members or shareholders may seek a removal vote. Members may request a special meeting for a removal vote for any reason. Id.

While the FCU Act and FCU Bylaws give members the power to remove directors, members do not have unlimited authority to request special meetings. For example, members may not request a special meeting to ask members to override a decision of the directors. The only way for FCU members to force directors to reconsider an issue is to request a special meeting for removal and seek to remove the directors with whom they disagree. The inclusion of a reason for the special meeting request allows the FCU to ensure that the members' request falls within their authority under the FCU Act and FCU Bylaws.

### **Time and Place of Special Meeting**

You asked about the meaning of the FCU Bylaw provision requiring the chair to "call" a special meeting within 30 days of receipt of a written request. FCU Bylaws, Article IV, §3. We read this provision in conjunction with the requirement in the FCU Bylaws that members are entitled to at least seven days advance notice of a special meeting, id. Article IV, §2, and conclude: a special meeting

must be held within 30 days of receipt of a written request, and an FCU must send written notice to members at least seven days before the meeting.

We note that the FCU Bylaws track the FCU Act and NCUA regulations and use the terms “call” and “hold” interchangeably. For example, the provisions of the FCU Act and NCUA regulations allowing NCUA to appoint FCU directors to replace suspended directors provides that the temporary directors must “call” a special meeting within thirty days after their appointment, unless the FCU’s regular annual meeting is scheduled within that period or the suspensions resulting in the appointment of temporary directors are terminated. 12 U.S.C. §1786(i)(2); 12 C.F.R. §747.302. Similarly, NCUA’s regulation on FCU mergers allows members of a merging FCU to vote on the merger proposal at a special meeting “to be called within 60 days of NCUA approval” unless the FCU’s annual meeting is scheduled within 60 days after NCUA approval. 12 C.F.R. §708b.106(1). These provisions use the term “call,” but because the special meeting need not be called if the annual meeting is scheduled within the prescribed period, the term “call” means that the special meeting must be held within the prescribed period. Likewise, in the context of the special meeting bylaw, the term “call” would be meaningless unless it refers to the time period when the meeting must occur.

Because it would not make sense to send the notice of a special meeting until the FCU has verified the list of supporters of the request, the seven-day notice requirement, combined with the requirement to hold the meeting within 30 days means, as a practical matter, an FCU has no more than 23 days after receiving a request to verify the names and send the notice.

You also asked about guidelines on the location and time of day for a special meeting. While it is impossible to prescribe guidelines for every situation, an FCU that receives 500 or more signatures on a special meeting request should consider holding the special meeting in the same location as the annual meeting, or in a similarly-sized venue. Likewise, the usual time of the annual meeting is a good measure of the most convenient time for most FCU members. For example, if an FCU typically holds annual meetings in the evening and most of its members work Monday through Friday during the day, it should not schedule a special meeting during business hours during the week.

We recognize the cost and burden of special meetings can be significant, but credit unions’ unique structure as not-for-profit financial cooperatives places special responsibilities on FCU directors and management to consider and accommodate the views of the FCU’s member-owners.

Mr. Steven Bisker  
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If you have further questions, please feel free to contact me.

Sincerely,

/S/

Sheila A. Albin  
Associate General Counsel

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