

# Regulatory Bulletin 4.1-104 Amending By-Laws in Regard to Credit Union Membership

**DATE:**

10/7/22

**REFERENCED SOURCES:**

G.L. c. 171 s. 2, as amended by Chapter 338 of the Acts of 2020

G.L. c. 171 s. 9, as amended by Chapter 338 of the Acts of 2020

G.L. c. 171 s. 10, as amended by Chapter 338 of the Acts of 2020

G.L. c. 171, s. 11, as amended by Chapter 338 of the Acts of 2020

## TABLE OF CONTENTS

[1.0: Applicability and scope](#)

[2.0: Policy](#)

[3.0: Historical notes](#)

[4.0: Authority](#)

### 1.0 Applicability and Scope

The terms and conditions of this bulletin govern amendments to the conditions of residence, occupation, or association which qualify persons for membership in a state-chartered credit union. Such conditions are set out in a credit union's by-laws as required by G.L. c. 171, s. 9. Any amendments to such conditions are required to meet the provisions of G.L. c. 171, s. 10, which include a majority vote of the members present and entitled to vote, and the approval of the Division of Banks (Division). The Division notes that Chapter 338 of the Acts of 2020 (Credit Union

Modernization) amended G.L. c. 171, s. 11, regarding annual and special meetings, to allow for electronic voting, as follows: “A member may vote (i) in person; (ii) by mail; or (iii) by electronic means; provided however, that each credit union shall set forth in its by-laws the method of voting to be used by its members...” References herein relative to such votes shall be to “majority vote of members present or otherwise participating and entitled to vote.” The matters addressed herein will also be helpful to those seeking to establish a state-chartered credit union pursuant to G.L. c. 171, s. 2.

The clarity of the by-law governing membership is vital to a credit union and the Division. Since the governance of a credit union is vested in its membership, there must be certainty as to eligibility to participate in its affairs. From a regulatory compliance standpoint, the credit union must be able to determine to whom it may make loans and from whom it may receive deposits.

The Division has issued this bulletin to assist in these matters and to facilitate the regulatory approval process. The bulletin supplements and provides commentary on the statutory requirements and the application procedures necessary to complete the process to amend the membership by-law.

The Division notes that Chapter 338 amended G.L. c. 171 s. 10 to delete the requirement for prior approval by the Commissioner of Banks for amendments to by-laws specifically changing the name or location of a credit union. The Division further notes that a credit union must still receive the written consent of the Commissioner to change the location of its main office under G.L. c. 171, s. 8. The Division requests that a credit union seeking to change its name, or use a d/b/a, send a courtesy notification to the Division.

## **2.0 Policy**

### **A. Procedural Matters**

#### **1. Vote**

The significance of the by-law on membership is evidenced in statute by the requirement that a change necessitates a majority vote of the membership present or otherwise participating and entitled to vote on the matter. Concurrent with that required vote is the expectation that the membership is knowledgeable on the extent of the changes before them. It is the position of the Division that such knowledge can be ensured by clear language and defined terms set out directly in the by-law. The result of such drafting will benefit both the membership and the Division's review of compliance with applicable laws.

#### **2. Meetings**

A vote on a membership by-law change must occur at the credit union's annual meeting or at a special meeting. Notice and posting and/or publication of either such meeting must comply with other provisions of G.L. c. 171 as well as any by-laws of the credit union. Such meetings have time and expense considerations which are recognized by the Division. However, prior to any such meeting of the members the amendment on membership qualification will have been voted on favorably by the credit union's board of directors (board).

#### **3. Submission to the Division**

All submissions for a change to the membership by-law must be submitted and addressed to the Commissioner. As is the standard existing policy of the Division, a credit union may send a courtesy copy to any staff of the Division it chooses.

A credit union may seek the Division's approval through one of the following three processes:

a. **Option 1**

A credit union proceeding under this option would be subject to the following:

It should take a vote of the membership to amend the proposed by-law change to meet the comments of regulators during the application process.

- i. A majority vote of members present or otherwise participating and entitled to vote on the amended membership by-law proposal and compliance with all other provision of law and the credit union's by-laws;
- ii. Submission of a complete application; and
- iii. Review and decision by the Division.

b. **Option 2**

- i. Board vote and submission of amended language;
- ii. Review but not approval by the Division with comment to the credit union;
- iii. Submission of a complete application; and
- iv. Review and decision by the Division.

c. **Option 3**

- i. Board vote; submission of amended language and complete application;
- ii. Review of complete filing by the Division requiring changes as necessary; and
- iii. Decision by the Division.

Under Option 3, any approval granted by the Division will be conditioned upon the following:

- aa. The subsequent approval of a majority vote of the membership of the credit union present or otherwise participating and entitled to vote on the matter;
- bb. That the vote of the membership must occur within one year from the date of the Division's approval;
- cc. The vote must occur at a duly called annual or special meeting of the membership which meets all requirements of law and the by-laws of the particular credit union;
- dd. A statement of the clerk of the credit union certifying that the requirements of (a) and (c) inclusive, above, have been met must be submitted to the Division, as soon as possible, along with a statement of the number of members necessary for a quorum, the number of members present or otherwise participating and entitled to vote and voting, and a copy of the notice of the meeting or special meeting relative to the membership by-law.

#### **4. Effective Date**

Under G.L. c. 171, s. 10, a membership by-law provision becomes effective upon compliance with applicable law and approval by the Division. This bulletin establishes two alternative procedures to the standard application process for obtaining the Division's approval. However, under each alternative, such approval will be affirmatively conditioned upon the subsequent compliance with the statutory requirement for a membership vote. Accordingly, upon the occurrence of a membership vote in favor of the amendment which meets all requirements of law, the by-law will become operative.

The filings required under Section 3 above will serve only to evidence to the Division that statutory compliance has been attained and to ensure that the records of the Division are complete relative to the

transaction and the by-laws of the credit union. The Division reserves the right to revoke any prior approval if the filings under said Section 3 reflect a failure to comply with all applicable provisions.

## **5. Application Process**

- a. To eliminate issues relating to when a membership by-law has been submitted, the Division will adhere to the following provisions:
  - i. A formal, complete application must be submitted to the Division in order for the application process to begin.
  - ii. The application process will be deemed to begin so that an application is listed on the monthly Activity Report as follows:
    - aa. Under Option 1, upon the submission of an application referenced in clause (ii) addressed and submitted to the Division;
    - bb. Under Option 3, upon the submission of the documents referred to in clause (i) addressed and submitted to the Division.
  - iii. The following acts do not constitute an application:
    - aa. A telephone discussion with staff of the Division;
    - bb. The mere submission of a letter with an attached vote of the board of directors.
- b. Certain changes to the membership by-law provision may be reviewed by the Division and determined to be de minimis so that an expedited application process may be applicable. If an amendment is made that would not significantly change the conditions which qualify a person for membership in the credit union, the credit union should write directly to the Commissioner detailing the change and its ramifications. A

case-by-case review of such requests will be conducted by the Division.

- c. Upon the submission of an application under Options 1 or 3, the Division reserves the right, as it does on all applications, to determine that it is incomplete, complete, or sufficiently complete for purpose of publication and posting of notice. If an application is determined to be incomplete, the applicant will be notified of the deficiencies within three weeks of the submission and the matters determined to be incomplete. If a submission is determined to be complete or sufficiently complete, the applicant will be notified in writing and the application listed on that month's Activity Report.

Any by-law submission which violates any provision of this bulletin will be denied until the violation is corrected. Additionally, as is the case on all applications, the Division's decision will not be based solely on the documents submitted. Internal reports on the operations of the credit union will be reviewed by the Division and could be the basis of a denial or a deferral. An applicant's record of satisfying their continuing and affirmative obligation to help meet the credit needs of the communities they serve under the Community Reinvestment Act (CRA) will also be a factor in the decision process.

- d. Should a credit union seek to expand its field of membership outside of Massachusetts, the Division will coordinate with the applicable regulator of the other state.

## **B. Contents**

As discussed herein, the contents of the membership by-law must have certainty to both the credit union and the Division in order to obtain the dual goals of membership governance and compliance with applicable laws. Accordingly, the language, word choice, and punctuation used should be clear and appropriate. All terms must be defined within the by-law. The following are examples of insufficiently defined terms:

## **1. Family Relationships**

A recurring issue concerns an intent to include a credit union member's family within the eligibility for services as a member of the credit union. However, family, immediate family, or similar wording is not clear since the degree of kinship is not set out. Therefore, all specific relationships intended must be specifically mentioned, such as spouse, son, daughter, mother, father, sister, or brother, for example.

## **2. Geographical References**

Similarly, geographic words or terms must be precise. References to the "immediate area" or "Eastern Massachusetts" can lead to questions on a person's eligibility that cannot be resolved. Such terms require further clarification which can be provided by a listing of individual municipalities or a larger recognized geographical area such as a county.

## **3. Corporate References**

The most problematic issues presented to the Division concern terms related to business relationships. Various submissions have included references to "subsidiaries," "affiliate," "spin-off," "service related," "industry," and "successor" without any definition of such terms or identification of a corporate organization chart or agreement which would clarify such terms. To eliminate the problems and delays created by such undefined terms this bulletin establishes two clear alternatives to a credit union seeking to amend its by-laws to cover such possibilities.

The first alternative is for the board of a credit union to define each such term within the membership by-law. Those definitions would be reviewed by the Division on a case-by-case basis and resolution of the definitions would occur prior to the membership vote. Subsequent to final approval of the by-law provision, the board will be authorized to extend membership to employees of such entities if the board is able to articulate specific and complete facts which



reflect that the entity meets an applicable defined term in the by-law, the exact term is identified and the record of this analysis is set out in the minutes of the board's meeting on this matter.

The second alternative for a credit union is to specifically list by name each company, corporation, group or entity to be covered by the membership by-law. Under this option any additions to the listing will require a separate vote of the membership. The Division will not approve a by-law submission under this option if it delegates authority to the board alone to add entities to the membership by-law.

## **C. Other Matters**

### **1. Current Credit Union Employees**

Membership in a credit union cannot be extended or made available to employees of the credit union who are otherwise not so eligible without following the procedures set out in this Bulletin. Such procedures include the required vote of the membership and approval by the Division. The statute does not grant automatic membership to such employees.

### **2. Former Credit Union Employees**

a. Two separate and distinct situations are raised under this category. The matters are distinguishable by the fact of whether a person was a member of the credit union at the time his or her employment ended. This bulletin addresses each situation as follows:

i. A former employee who was a member of the credit union at the time his or her employment ended remains a member and is eligible to remain a member thereafter or until his membership is interrupted. The Division has and continues to recognize the doctrine of once a member always a member, whether or not this language appears in the by-laws. At the credit union's option,

specific language on this matter may be included in the membership by-law.

- ii. A former employee who was not a member of the credit union at the time his or her employment ended is not eligible for membership in a credit union unless the membership by-law specifically, and not by implication, refers to the eligibility for membership by former employees.

- b. The policy set out in (a) above is also applicable to issues relating to determinations of eligibility of retired employees.

### **3. Joint Accounts**

By operation of law, regardless of whether it is stated in the membership by-law, a credit union may receive deposits in the name of a member on a joint account with a non-member. Such other person shall not be deemed a member.

## **D. Prohibited Practices**

1. It is inconsistent with the philosophy of a credit union and G.L. c. 171 to distinguish between members of a credit union in any way. Therefore, no by-law submission will be approved which contains any such distinctions or refers to members as full members, associate members, or any other such terminology.
2. It is generally inconsistent with the philosophy of a credit union and G.L. c. 171 to distinguish between the rights of members of a credit union. Chapter 338 made one exception to that philosophy with regard to potentially limiting the number of credit union employees who may serve the board of directors of a credit union. It remains the case that all members must be eligible to be elected to the board of directors of the credit union, provided that they meet all other requirements of applicable law. However, as of the effective date of Chapter 338 (4/12/21), credit unions now have the option of limiting the number of credit union employees who may serve on the board of directors if this limitation is set forth in their by-laws.

### **3.0 Historical notes**

This bulletin was first issued in March 1995 as Administrative Bulletin 35-1 and was revised on January 15, 1998. The bulletin was revised on May 8, 2012 and is now revised primarily to incorporate amendments set forth in Chapter 338 of the Acts of 2020, *An Act Modernizing the Credit Union Laws*, as of October 4, 2022.

### **4.0 Authority**

G.L. c. 171, ss. 2, 9, 10, and 11.

#### **REFERENCED SOURCES:**

[G.L. c. 171 s. 2](#); [G.L. c. 171 s. 9](#); [G.L. c. 171 s. 10](#); [G.L. c. 171 s. 11](#)