

GC/EAW:bhs  
05-0912R; 05-1235R

TO: [ ]

FROM: Sheila A. Albin, Associate General Counsel /S/

SUBJ: Proposed Bylaw Amendment – [ ] and [ ] FCUs

DATE: November 28, 2007

You have asked this office to review proposed bylaw amendments from [ ] Federal Credit Union and [ ] Federal Credit Union (FCUs) that would: (1) require a majority of the members to approve a proposal to convert to a mutual savings bank or a form of organization other than a credit union; and (2) require a majority vote of members to amend this bylaw. We agree with your inclination to deny the amendment.

The Federal Credit Union Act (Act) requires only an affirmative vote by a majority of members voting to approve a proposal to convert to a mutual savings bank. 12 U.S.C. §1785(b)(2)(B). When Congress adopted this provision of the Act in 1998, NCUA's regulations required an affirmative vote by a majority of all credit union members to approve a conversion proposal. 12 C.F.R. §708a.5(b) (1998). In changing the statute to require only a majority of members voting, Congress overrode NCUA's regulation. 144 Cong. Rec. H 7043, 7044 (daily ed. Aug. 4, 1998) (statements of Reps. LaFalce and Kanjorski). The FCUs' proposal to require an affirmative vote by a majority of all members to approve a conversion proposal would impose the same voting requirement Congress rejected in adopting this provision. Accordingly, at this time we share your view that the proposed bylaw amendment is inconsistent with the Act.

NCUA has approved a bylaw amendment on this topic that may be of interest to the FCUs. The bylaw amendment prevents an FCU's board from considering a conversion proposal without a request of the members made at a special meeting convened for this purpose. Of course, directors could later change this provision, but this amendment at least allows the current board to set out its position on the issue. If the FCUs wish to adopt this amendment, the language we have previously approved, as new Section 9 to Article XVI, is as follows:

Section 9. The Board of Directors shall not consider a conversion to a non-credit union without the request of its membership made at a special meeting of the membership called in accordance with the provisions set forth in these bylaws.

Another alternative the FCUs may want to consider instead of or in addition to this amendment is adopting a board policy directing the nominating committee to nominate only candidates who sign a statement agreeing not to propose, or vote for, a conversion to another type of financial institution. Section 113 of the FCU Act permits the board to prescribe conditions and limitations for any committee it appoints. 12 U.S.C. §1761b(14). Prior OGC opinions also affirm the board's right to establish policies and criteria for the nominating committee. E.g. Op. 97-0831 (Nov. 13, 1997); 02-0567 (June 18, 2002). Adoption of a board policy does not require NCUA action.