

OGC/RMM:bhs
08-0215R

TO: []
FROM: Associate General Counsel Sheila Albin /S/
SUBJ: Bylaw Amendments: [] Federal Credit Union (FCU)
DATE: March 5, 2008

You requested our concurrence with your approval of [] FCU's proposed bylaw amendment requiring a special meeting of its membership to consider conversion to another type of financial institution and your denial of its proposed bylaw amendment adding a new subsection to increase the quorum requirement for a special meeting of members for considering such a conversion. We agree with your analysis that the first proposed amendment is permissible and that the second one contradicts the FCU Act and NCUA's regulations. We have no objections to an alternative amendment and board policy if the credit union chooses to adopt them.

Proposed Amendment to Require a Special Meeting of Membership to Consider a Conversion

The credit union's proposed bylaw amendment to Article VI, section 6(f), would prohibit the board of directors from considering a conversion to another type of financial institution without a request of the members made at a special meeting convened for this purpose. We have no legal objections to this proposed bylaw amendment and have previously approved this type of request but we recommend the amendment be added to Article XVI, General, rather than Article VI, Board of Directors.

Proposed Amendment Requiring a Quorum of Fifty Percent of Members for a Special Meeting for a Conversion Vote

The credit union's proposed amendment to Article XVI of its bylaws would create a new Section 9 requiring a quorum of fifty percent of members for a special meeting to vote on conversion to another type of financial institution. This requirement contradicts the FCU Act, which requires only a majority vote of voting members for conversion. 12 U.S.C. §1785(b)(2). We note this provision of the FCU Act, part of the Credit Union Membership Access Act of 1998, was enacted to override NCUA's existing regulation requiring a majority vote of all members for conversion to a mutual savings bank. 144 Cong. Rec. H7043 (daily

ed. Aug. 4, 1998) (statement of Rep. LaFalce) (requiring a majority vote of all members for conversion would directly contradict congressional intent).

In the Region III Director's comments to you on [] FCU's proposals, he suggested you offer an alternative, and we agree with him. You could suggest the FCU board adopt a 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. We have no legal objections to this proposal. Section 113 of the FCU Act allows 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. See, e.g., OGC Op. 97-0831 (Nov. 13, 1997) and 02-0567 (June 18, 2002) (available on NCUA's website).