

TO:  
FROM: Sheila A. Albin, Associate General Counsel  
SUBJ: Nonstandard Bylaw Amendment -  
DATE: November 15, 1999

You have asked this office to review a nonstandard bylaw amendment submitted by [ ] Federal Credit Union. The credit union proposes to add a new Section 9 to Article VII of its bylaws. Section 9 prohibits directors at [ ] from serving as a director, committee member, or senior executive staff member at another credit union in the same community. We have no legal objections to the proposed nonstandard bylaw amendment. However, we note some issues the credit union should consider before adopting the bylaw.

Federal law and NCUA regulations specifically permit interlocking relationships in which a management official of one credit union may serve another credit union. 12 U.S.C. §3204(3) and 12 C.F.R. §711.49(c). This is a specific exemption from the prohibitions of the Depository Institution Management Interlocks Act. This exemption allows credit union management officials to share their expertise with other credit unions.

Your memorandum indicates the credit union is requesting this amendment to limit potential conflicts of interest and ensure a director's full participation. The FCU bylaws already contain conflict of interest provisions. Additionally, state general corporation laws and common law place both a fiduciary duty and a duty of loyalty on a credit union's board of directors. Directors must make reasonable business decisions that are in the best interests of the institution. If there is a conflict of interest, the director must recuse him or herself from the discussion and decision-making regarding any issue in which the director has an interest. Members, through their right to elect the board, and the supervisory committee in its watchdog capacity also provide oversight of breaches of directors' fiduciary duty or duty of loyalty.

Finally, we note that the proposed amendment would not preclude a member, who is otherwise eligible to be a director, from running simply because the member was currently serving on another credit union's board. The understanding would be that the member, if elected to [ ] board, would have to resign the other directorship.