

OGC/CJL:bhs
SSIC 6100
00-0403

TO:

FROM: Sheila A. Albin, Associate General Counsel

SUBJ: Nonstandard Bylaw Amendments

DATE: May 12, 2000

You have requested comments on four nonstandard bylaw amendments submitted for approval by [] Federal Credit Union. The credit union generally operates under the Federal Credit Union Bylaws issued December 1987.

Article VI, Section 1, Elections

The credit union wants to increase the required number of names on nominating petitions from one percent of the membership to three percent, but capped at 500 signatures. With membership rolls at 10,500, a successful petition would require 315 signatures. You are concerned that this amendment limits the ability of members to run for the board of directors.

NCUA's position, as provided in our form federal credit union bylaws, is that the number of petition signatures should not exceed one percent of the membership or 500 members for credit unions with more than 50,000 members. Federal Credit Union Standard Bylaw Amendments and Guidelines, October 1991, pg. 30. The Federal Credit Union Bylaws, issued October 1999, maintain this standard for nominating petitions. Although the nonstandard bylaw amendment proposed by the credit union does not violate the Federal Credit Union Act (FCUA) or our regulations, we agree that the effect of the proposed amendment is to restrict the ability of members to run for the board of directors, contrary to the intent underlying the one-percent ceiling imposed by the standard bylaws. Therefore, we support the Region's inclination to deny the proposed amendment.

The credit union also wants an amendment providing that only one nominee may be named on a nomination petition. Although this issue is not addressed in the

FCUA or standard bylaws, we agree that each nominee be nominated by a separate petition with the requisite number of signatures. See enclosed memo from James Engel, dated September 10, 1993.

Article VII, Section 8, Board Officers, Management Officials and Executive Cmte.

The credit union proposes to amend its bylaw regarding the suspension of a supervisory committee member by requiring the board to meet with the supervisory committee members before taking action. As you have noted, this amendment is similar to a former standard bylaw amendment once permitted by the agency. Boards should conduct investigations and gather facts necessary to support the decision making process when they consider the suspension of supervisory committee members. We have no legal objections to the proposed amendment.

Article VIII, Section 7, Board Officers, Management Officials and Executive Cmte.

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The credit union proposes to amend its bylaw prohibiting a director or committee member from being employed by the credit union within two years from terminating such position, unless the vacancy is created through death or disability. The credit union proposes to eliminate the death and disability exception. This amendment does not violate the FCUA or regulations, but could restrict the ability of individuals to serve the credit union at times of unforeseen, unusual necessity. The bylaws approved by NCUA on October 14, 1999 do not prohibit directors or committee members from becoming paid employees after terminating their volunteer positions with the credit union. We have no legal objection to the proposed amendment and defer to your judgment as to whether the credit union's concern, that all potential conflicts of interests be removed, warrants the approval of this amendment.

Article III, Section 5(a), Shares of Members

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The credit union proposes to restrict the right of the board of directors to limit withdrawals on share draft accounts. We agree that this amendment is unnecessary because this section currently grants the board discretion to require notice from members of their intent to withdraw money under circumstances the board deems appropriate. While eliminating this discretion is not legally impermissible, we defer to your judgment as to whether the amendment impacts issues of safety and soundness.

cc: All Regional Directors

Attachment