

TO:

FROM: Sheila A. Albin, Associate General Counsel

SUBJ: Request to Amend its Bylaws.

DATE: September 8, 2000

You have asked for our concurrence on your proposal to approve a nonstandard bylaw amendment to Article VI, Section 1 of [] Federal Credit Union's ([]) bylaws. The Board has delegated to you the authority to approve or disapprove bylaw amendments, with the concurrence of this office. Delegations, COR 6. We have no objection to the proposed bylaw but suggest that the corporate should clarify one of the provisions.

The proposed amendment prohibits the nominating committee from nominating to the board of directors an individual who is an interested party in a business entity that competes with the corporate. Normally, the board of directors establishes criteria for the nominating committee in a board policy rather than a bylaw. This corporate is replacing a previously approved, similar nonstandard amendment that established selection criteria for the nominating committee's nominations. Under the proposed bylaw, individuals may still be nominated by petition. Because it does not serve as an absolute bar to serving on the board, the proposed bylaw is permissible.

The proposal also requires any individual "affiliated" with a competing entity that is nominated by petition and elected, to sever the affiliation before serving on the board. As explained in the attached letter from Hattie M. Ulan to Louis R. Ravetti dated November 20, 1991, a provision that places restrictions on a member serving on the board but does not limit eligibility for election is permissible.

Finally, the intent of the fifth paragraph of the proposal is unclear. It requires directors annually to list their affiliations with business entities that compete with the credit union. It does not state any consequence if a director discloses a competitive affiliation. Unless the director has to resign or sever the competitive affiliation, the provision is inconsistent with paragraph 2 that requires a director elected after being nominated by petition to sever the competitive affiliation. Otherwise, an individual with a competitive affiliation could be elected to the board, sever the affiliation, join the board and then resume the affiliation. You should clarify the intent with the credit union.

Attachment