

OGC/CJL/SAA:bhs
SSIC 6100
00-0941

TO:

FROM: Sheila A. Albin, Associate General Counsel

SUBJ: Nonstandard Bylaw Amendments

DATE: October 3, 2000

You have asked for our concurrence on several nonstandard bylaw amendments submitted for approval by [] Federal Credit Union ([]). You have made this request under a delegation of authority that requires the prior concurrence of our office before a region approves or disapproves nonstandard bylaw amendments. Delegations of Authority, Supervision 12.

We have reviewed your memorandum and letter to the credit union. We agree with your view on the proposed amendments except for [] proposal concerning the nominating committee bylaw, which you indicate you are unwilling to approve. Our view is that the proposed amendment is permissible.

Special Meetings

- The Federal Credit Union (FCU) Bylaws adopted in October 1999 provide that a special meeting of members must be called on the written request of "25 members or 5% of the members . . . whichever number is larger" but "a request of no more than 500 members may be required." FCU Bylaws, Article IV, Section 3.

[] still uses, as is permissible, the [] previously approved provision that sets the upper limit for required signatures at 200 rather than 500. [] wants to increase the base number of members required to call a special meeting from 25 to 50 but proposes to delete the "or 5 percent of the members. . . whichever is larger. . . provided, however that a request of no more than 200 members shall be required for such a meeting." By removing the five percent alternative measure, the effect for [], with a membership of 3,600, is that it will be easier for members to request special meetings. We have no objection to this amendment.

Modifications Adopting Language From Revised Bylaws

- We also agree that the minor modifications to [] bylaws reflecting changes in the title "executive officer" to "chairman," as well as language used in the revised bylaws regarding nominees are permissible. Federal Credit Union Bylaws, Art. V (1999).

Nominating Committee

- The FCU Bylaws provide that "[i]t is the duty of the nominating committee to nominate at least one member for each vacancy." FCU Bylaws, Article V, Section 2. [] wants to delete the phrase "at least." The effect of the amendment would be that the committee would still have to nominate "at least one member." We have no objection to this proposed amendment.

NCUA's long-standing position is that the FCU Act and the FCU Bylaws contain the only eligibility requirements for membership on an FCU's board. However, neither the FCU Act nor the FCU Bylaws prohibit a board of directors from establishing reasonable criteria for a nominating committee to follow in making its nominations, such as financial experience or conflict of interest provisions. Under that same rationale, a board of directors has the flexibility to adopt a policy that the nominating committee should put forward the best candidates from those it considers and nominate only one qualified individual per vacancy.

We do not agree that eliminating the phrase "at least" necessarily precludes the nominating committee from nominating more than one individual per vacancy. The letter from the credit union does not state why it wanted to make this change. If an FCU wanted to preclude more than one nomination per vacancy, the language in the bylaw should be more precise, for example, stating that the nominating committee must nominate one, and no more than one, candidate for each vacancy. As noted above, we would have no objection to a bylaw limiting the nominating committee to presenting one candidate per vacancy.

You indicate your concern that the amendment limits member involvement and could delay the election process if the sole nominee withdraws. Member involvement is safeguarded through the requirement that the FCU bylaws must provide either for nominations by petition or from the floor at the annual meeting. While nominees may withdraw, the standard bylaw does not require multiple candidates so that is a potential problem that exists in any event. Moreover, we note that another provision [] proposes to add mitigates the potential of candidates withdrawing. [] proposes to add to its bylaw a provision requiring the nominating committee to determine "that the persons nominated are agreeable to the placing of their names in nomination and will accept office if elected." This provision is part of the standard FCU Bylaws adopted in October 1999.

Definition Of "Members Of Their Immediate Families"

[] wants to amend its current bylaw regarding the definition of immediate family member. Specifically, [] wants to include "any domestic partner or companion living . . . in the same household with a credit union member" within its definition that includes "any relative by blood or marriage." [] request indicates that it was unaware that FCUs could no longer write their own definition of immediate family member.

Prior to the enactment of the Credit Union Membership Access Act (CUMAA), FCUs could define "immediate family member" in their bylaws. CUMAA required the NCUA to define immediate family member by regulation. 12 U.S.C. §1759(e)(1). You have correctly noted in your letter to [], dated September 7, 2000, that the NCUA's Chartering and Field of Membership Manual now provides definitions of "immediate family member" and "household."

In responding to [], we suggest you clarify that, as a result of amendments to the FCU Act, FCUs may not have a definition of immediate family member any broader than that provided in the Chartering Manual. You may want to note that the FCU Bylaws adopted in October 1999 have the same definitions of immediate family member and household as are contained in the Chartering Manual. You may also want to note that the definition of "household" in the Chartering Manual may be sufficiently broad to accomplish the goal [] sought to achieve through the proposed amendment and, therefore, you may want to suggest that the credit union adopt the definitions provided in the Art. XVIII, Sec. 2 of the FCU Bylaws.

cc: All Regional Directors