

OGC/CJL:bhs
SSIC 6100
00-1025

TO:

FROM: Sheila A. Albin, Associate General Counsel

SUBJ: Nonstandard Bylaw Amendments

DATE: October 18, 2000

You have requested comment on a nonstandard bylaw amendment submitted for approval by [] Federal Credit Union. The credit union proposes to amend its bylaws by prohibiting a director or committee member from being employed by the credit union for a minimum of two years from the date the official terminates such position. We have no legal objection to this bylaw amendment. This request is similar to one submitted by [] Federal Credit Union. For your convenience, we have attached a copy of our May 12 response to [], as well as a letter to Scott Pfaff of PALCO Federal Credit Union regarding this issue.

cc: All Regional Directors

Attachments

OGC/CJL:bhs
SSIC 6100
00-0403

TO: Layne L. Bumgardner, Regional Director

FROM: Sheila A. Albin, Associate General Counsel

SUBJ: Hartford Federal Credit Union
Nonstandard Bylaw Amendments

DATE: May 12, 2000

You have requested comments on four nonstandard bylaw amendments submitted for approval by Hartford 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.

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

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

April 18, 2000

D. Scott Pfaff, President/CEO
PALCO Federal Credit Union
948 Broad Street
Montoursville, PA 17754-0330

Re: Adoption of Standard Bylaw Amendments.

Dear Mr. Pfaff:

You have asked whether there are any special procedures needed to adopt multiple "standard bylaw amendments" for the same section within the Federal Credit Union Bylaws. You specifically noted two amendments that your federal credit union (FCU) desires to adopt. Generally, there are no special procedures required to adopt approved amendments for a particular section of the Federal Credit Union Bylaws, provided the amendments do not result in inconsistent or conflicting bylaw provisions. You should note, however, that an FCU may no longer adopt amendments from the recently replaced Federal Credit Union Standard Bylaw Amendments and Guidelines.

On October 14, 1999, the NCUA Board issued a new version of the Federal Credit Union Bylaws. 64 Fed. Reg. 55,760 (1999). These revised bylaws replace the former Federal Credit Union Bylaws, issued December 1987 and the Federal Credit Union Standard Bylaw Amendments and Guidelines, issued October 1991. The new version of the bylaws incorporates as options many of the standard bylaw amendments and previously approved nonstandard amendments. An FCU may either adopt the revised bylaws in their entirety or adopt selected portions while retaining any bylaw provisions approved by the FCU prior to October 14, 1999.

Your FCU wants to adopt two of the prior standard bylaw amendments prohibiting directors and committee members from being compensated and from becoming employed by the FCU within two years from terminating a position as a director or committee member. Your FCU must either adopt similar provisions from the revised bylaws or apply for a nonstandard bylaw amendment through your NCUA Regional Office. 12 U.S.C. §1758. The current FCU Bylaws allow an FCU to determine the number of directors, committee members and immediate family members who can be paid employees of the FCU, including a determination that none may be paid. FCU Bylaws, Art. VI, Sec. 2. The current bylaws, however, do not contain a provision to prohibit directors or committee members from becoming paid employees of the FCU after terminating their volunteer positions with the FCU. To include such a provision, your FCU should file a request with your NCUA regional office.

I have enclosed a copy of the forward to the Federal Credit Union Bylaws that details the adoption process. The revised bylaws are available on our web site at www.ncua.gov.

Sincerely,

Sheila A. Albin
Associate General Counsel

GC/CJL:bhs
SSIC 3700
00-0341

Enclosure