

GC/MFR/SAA:bhs

SSIC 3700

03-0142

TO:

FROM: Sheila A. Albin, Associate General Counsel

SUBJ:

Nonstandard Bylaw Amendment

DATE:

You have asked this office to review and comment on several nonstandard bylaw amendments submitted for approval by Federal Credit Union (FCU). Subject to our comments below, we concur with your recommendations.

You recommend approving the FCU's request to delete the bylaw provision that addresses accumulated payroll deductions. FCU Bylaws, Article III, Section 5(b). This provision, which is an exception to the general provision that shares can be withdrawn on any day shares are paid, states that:

The board may determine that, if shares are paid in under an accumulated payroll deduction plan . . . they may not be withdrawn until credited to members' accounts.

The FCU stated in its letter to the region that it wants to delete the provision because "we do not have an accumulated payroll program in which members could withdraw prior to any posting." We find this statement slightly confusing. If the FCU has an accumulated payroll deduction plan, it should retain this bylaw because it provides authority for the FCU to preclude withdrawals from share accounts. If the FCU has no payroll deduction plan or if the FCU immediately credits payroll deductions when received, then deleting the provision is not a problem.

The FCU wants to delete the provision regarding issuing shares to a revocable or irrevocable trust. FCU Bylaws, Article III, Section 6. The FCU states in its letter to the region that it does not offer trust accounts. Also, in connection with the proposed deletion of Article III, Section (5)(c), discussed below, the FCU states it "does not offer trust services or trust accounts to members, to include irrevocable trusts." The FCU expresses concern about offering trust accounts because of potential liability.

FCUs have very limited trust powers, basically limited to acting as the trustee or custodian of certain types of pension and retirement plans as provided in 12 C.F.R. Part 724. Except as provided in Part 724, they do not have the authority to act as a trustee or provide trust services involving discretionary authority for management of a trust's assets, which are activities that can

create significant potential liability. We are concerned that the FCU may not understand that merely issuing shares in a revocable or irrevocable trust account does not make the FCU a trustee and does not create this kind of liability.

Further, it would be unusual for an FCU not to permit members to establish the simple payable-on-death (POD) accounts that permit a member to establish an account that is payable on the death of the member to a spouse, child, grandchild, parent, or sibling. POD accounts are revocable trust accounts. 12 C.F.R. §745.4. These accounts are the primary way many members are able to expand their account insurance coverage beyond the \$100,000 that is available for single or joint accounts. These accounts are also known as testamentary accounts or Totten trust accounts.

Finally, this section of the bylaws simply addresses membership requirements in order to issue shares in a revocable or irrevocable trust and does not require or permit an FCU to provide trust services or act as a trustee. While we have no legal objection to deleting the provision, we suggest you consult with the FCU about the limited nature of this provision and, specifically, whether the FCU offers simple revocable trust accounts such as the POD accounts. If the FCU offers these types of accounts, the provision in Article III, Section 6 addressing revocable trust accounts should be retained.

You recommend denying the FCU's request to delete its bylaw provision that prohibits a delinquent member's share account from falling below the amount of the member's liability to the FCU. FCU Bylaws, Article III, Section 5(c). You suggest that for safety and soundness reasons, rather than delete this provision, the FCU modify it so that it is consistent with the FCU's overdraft policy. We have no legal concerns with your proposed modification.

You recommend approving the FCU's request to add a Vice-Chair position to its supervisory committee. FCU Bylaws, Article IX, Section 2. We have no legal concerns with this addition.