

TO:

FROM: Sheila A. Albin, Associate General Counsel

SUBJ: Nonstandard Bylaw Amendment, [ ] FCU

DATE: March 10, 2004

You have asked for our concurrence on a nonstandard bylaw amendment to [ ] Federal Credit Union's (FCU's) bylaws that would allow the FCU to prohibit an individual from serving on both the board of directors and the credit committee. We have no objection to the FCU's proposed bylaw.

The proposed bylaw adds a provision to the FCU's bylaws that prohibits a member from serving as both a board director and a credit committee member by requiring the member to resign from one of the two positions within three days after the election. The purpose of the amendment is to avoid any potential conflict between the two positions and to ensure that an individual has sufficient time to devote to the duties of either a director or credit committee member. As explained in OGC Legal Opinion 91-0526, dated July 11, 1991, because the "bylaw does not affect eligibility to be elected to the board but requires" an individual once elected to make a choice between two positions, it is permissible.

The FCU has asked to place this amendment in Article V of its bylaws. We suggest placing it in Article VI at the end of Section 2. This provision addresses how many board members and family members may be paid employees of the FCU and whether the management official may serve on the board. It is somewhat analogous to the proposed prohibition on a director serving on the credit committee.