

OGC/EAW/SAA:bhs  
07-0728R

TO: [ ]  
FROM: Sheila A. Albin, Associate General Counsel /S/  
SUBJ: Proposed Bylaw Amendments – [ ] Federal Credit Union (FCU)  
DATE: August 8, 2007

Under NCUA Delegations of Authority, Supervision 12, you have asked for our concurrence regarding several proposed bylaw amendments from [ ] FCU. We agree with your inclination to permit some of the amendments and deny others and discuss the specific amendments below.

Article X, Organization meeting

We agree with your inclination to permit the FCU to delete the text of this section, but mark it “Reserved” in order to preserve the numbering system.

The organization meeting provisions are in the form FCU Bylaws because newly chartered credit unions use them but we understand why some established credit unions might want to delete this Article.

If an established FCU wants to delete this Article, we have no objection but we agree it should be marked “Reserved” in order to keep the numbering consistent with the form FCU Bylaws. Consistency in numbering makes it easier for examiners to review and reference an FCU’s bylaws and for an FCU to review legal opinion letters and other NCUA documents that reference specific bylaw provisions.

Article XIII, Reserved

When NCUA revised the form FCU Bylaws in 2006, we deleted the contents of this Article, but designated it “Reserved” to preserve the numbering system. We agree with your inclination to require the FCU to retain this section marked “Reserved.” As noted above, retaining a consistent numbering system aids in bylaw review and research.

Article II, §4, Continuance of membership

We agree with your inclination to deny the FCU's request to renumber the cross-reference to Article XIV. If the FCU retains Articles X and XIII as "Reserved" there is no need to renumber the cross-reference to Article XIV in this section.

Article V, §7, Minimum age requirement

The FCU is proposing to change the determination of a member's age from the date of the meeting to the date the notice of the meeting is sent. The FCU's rationale for requesting this change is its view that, under Article IV, §2, notices only are sent to members eligible to vote as of the notice date, while Article V, §7 defines members eligible to vote as those who reach the minimum age by the date of the meeting. The FCU is concerned members who reach the minimum age by the meeting date but did not receive notice of the meeting might then challenge the results of an election.

We do not agree with the FCU's interpretation of Article IV, §2. The notice of the upcoming meeting or election should go to all members who meet or will meet the minimum age requirement by the date of the meeting, not only to members who meet the minimum age requirement by the date of the notice. As you note, the FCU's amendment would reduce the number of members entitled to vote by shifting the age calculation date.

We think the above-cited provisions are clear and the FCU's rationale for requesting this amendment is without merit and, on that basis, concur in your inclination to disapprove this requested change.

Article VII, §§6, 7 and 9, Duties of financial officer and management official

The FCU is requesting amendments to this Article to delineate the responsibilities of officials more clearly. We have no legal objections to these amendments, and they provide additional information to members about the exact division of duties at their credit union, so we agree with your inclination to approve them.

We also agree with your suggested modifications to the credit union's request, which retains §9 as in the form FCU Bylaws, places the revised language in §7 and retains the portions of §7 discussing the board's authority regarding assistant management officials. In summary, the language we would approve is as follows:

**Section 6. Duties of financial officer.** The financial officer shall review the credit union's financial reports and ensure the reports are filed with the Administration and reported to the members at the Annual Meeting.

Section 7. **Duties of CEO and assistant management official.** The board shall appoint a management official with the title of President/Chief Executive Officer (CEO) who is under the direction and control of the board. Subject to limitations, controls and delegations the board may impose, the CEO will:

[insert paragraphs (a) through (f) of Article VII, §6 of form FCU Bylaws]

In addition to the CEO, the board may employ one or more assistant management officials. The board may authorize assistant management officials under the direction of the CEO to perform any of the duties devolving on the CEO, including the signing of checks. When designated by the board, any assistant management official may also act as management official during the management official's temporary absence or temporary inability to act.

#### Article III, §4, Transferability

By way of background, the need for this section to spell out how shares can be transferred arises from the nature of shares; namely, member funds represent the purchase of shares in the credit union and, similar to stock in a closely held corporation, cannot be "transferred" except to another member. This provision simply states that the "instrument" to accomplish that transfer will be established by the board of directors. Such an instrument would need to certify that the transferee is, in fact, another member of the credit union. As a practical matter, payments (rather than a transfer of shares) between members may likely be accomplished by check or other withdrawal followed by a deposit rather than by a special instrument.

We agree with your inclination to deny the FCU's proposal to delete the provision requiring an "instrument" to transfer shares from one member to another. All credit unions will have some system for recording and authorizing transfers between members, to which the term "instrument" refers, and includes records of transfer instructions received by telephone or electronically.

#### Article III, §5(c), Withdrawals

We agree with your inclination to deny the FCU's proposal to delete the last sentence of this paragraph. The sentence clarifies shares held in irrevocable trusts may not be subjected to withdrawal restrictions if a member becomes delinquent on a loan. Paragraph 5(c) allows an FCU to restrict withdrawals on share accounts of members who are delinquent on loan payments. The sentence the FCU proposes to delete clarifies irrevocable trust accounts are not subject to the potential effects of a delinquency unless addressed in the trust agreement. We do not understand the FCU's assertion that this sentence

causes wasted time and could lead to potential operational errors, since it only requires an FCU to follow the trust agreement, which it must do in any case.

#### Article III, §6, Trusts

We agree with your inclination to deny the FCU's proposal to delete this entire section because they do not accept shares from pension plans. The first three sentences of this section state the membership requirements applicable to revocable and irrevocable trusts and provide useful information to members.

Regarding the last sentence, you note your inclination is to permit the FCU to delete it because the FCU states it "does not permit shares to be issued to a pension plan." We think the FCU may have misread the phrase in this section stating "shares issued pursuant to a pension plan authorized by the rules and regulations will be treated as an irrevocable trust." NCUA regulations provide, for example, that Coverdell Education Savings Accounts (formerly Education IRAs) are irrevocable trust accounts and may be separately insured. We think the FCU may be thinking this provision means that a pension plan, itself, is a member.

We have no legal objection to the FCU deleting the last sentence of this section, but suggest it re-consider whether it does have some application to its current activities.

#### Article VII, §8, Board powers regarding employees

The FCU proposes deleting this entire section because it has delegated this authority to the president and views the section as conflicting with the president's authority. We agree with your inclination to deny the request.

The first sentence of this section allows the board to delegate duties to the management official and so does not conflict with the FCU's practice. Further, the rest of this section prohibits the board, financial officer and management official from hiring, supervising or removing loan officers appointed by the credit committee and those providing supervisory and accounting assistance to the supervisory committee. These provisions are critical internal controls and must be retained.

#### Article XVI, §6, Availability of credit union records

The FCU proposes deleting the provision requiring the credit union to provide a copy of its bylaws to members for "a reasonable fee" because it does not charge members for copies of its bylaws. We agree with your inclination to deny this request. Although the FCU has determined for now that zero is a reasonable fee, we think it is important that members know any fee the board may decide to impose in the future must be reasonable.