

OGC:AMT/SAA:bhs  
07-1114R

TO: [ ]

FROM: Sheila A. Albin, Associate General Counsel /S/

SUBJECT: [ ] Federal Credit Union  
Nonstandard Bylaw Amendments

DATE: December 12, 2007

Under NCUA Delegations of Authority, Supervision 12, you have asked for concurrence regarding [ ] Federal Credit Union's proposed amendments to Articles XVI, Section 2 and XVI, Section 8 (a) and (b) of its bylaws. You indicate you are inclined to deny [ ]'s proposals to modify certain language, primarily because you view the changes as unnecessary.

We agree with you regarding the indemnification provision, although for a different reason, but have no objection to the proposed change in the confidentiality provision, which we think may clarify the provision for some users.

#### **Article XVI, Section 2 – Confidentiality**

[ ] proposes to add the words "or required" to the last clause so the section will read "...except where permitted or required by state or federal law." [ ] wishes to add these words to emphasize confidential member information may be disclosed by an action of state or federal government, such as a subpoena.

You are inclined to deny this proposed amendment because you think it is unnecessary on the basis that anything required by law is also permitted by the same law. While we think the proposed amendment is not necessary, we can understand that some users of the FCU Bylaws would find this added phrase to be a helpful, although minor, clarification or elaboration. Therefore, we have no objection.

#### **Article XVI, Section 8(a) and (b) – Indemnification**

This provision states that a "credit union *may* elect to indemnify to the extent authorized by" the law of its state or the Model Business Corporation Act certain officials and employees and "*may* purchase insurance on behalf of the

individuals.” [ ] proposes to change the word “may” to “will” in the first sentence of each section, intending to clear up what it describes as an ambiguity in the form bylaw. [ ] intends, with this change, to “cover the gap in the underlying D&O policies” and, thereby, require the credit union to assume any liability in excess of limits in its Directors’ and Officers’ liability policies. [ ] contends the change would remove “an impediment to retain and attract highly qualified Officers and Board of Directors.”

You are inclined to deny the amendment because you do not deem this change necessary, as the credit union can provide this coverage through board policy. We agree you should deny the proposed amendment and, in addition to your view that the subject should be addressed in policies, we object to the amendment because it changes the meaning of the form bylaw language in a significant way. Finally, we defer to your office on safety and soundness matters but are concerned that an FCU’s agreement to provide indemnification beyond that provided in its D&O coverage raises concerns in this area, particularly where, if included as a requirement in its bylaws, it would require a super majority to make a change.

Please feel free to contact me if you have any questions.