

GC/JMA/SAA:bhs
08-0538R

TO: []

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

SUBJ: Proposed Bylaw Amendment – [] FCU

DATE: June 17, 2008

Under NCUA Delegations of Authority, Supervision 12, you have asked for our concurrence regarding several proposed bylaw amendments from [] Federal Credit Union (FCU). We discuss each change below, in the order it appears in the Bylaws, and provide our concurrence or disagreement. In our discussion the word "Act" refers to the Federal Credit Union Act.

Article II, Section 4

The FCU proposes to change the first sentence of this section from "Once a person becomes a member that person..." to "Once a person or organization becomes a member that person or organization ..."

We concur with your determination to approve this amendment. We have no legal objection to this amendment and believe it may provide clarification for the FCU's members.

The applicable section will now read as follows: "Once a person or organization becomes a member that person or organization may remain a member until the person or organization chooses to withdraw or is expelled in accordance with the Act and Article XIV of these bylaws."

Article III, Section 1

The FCU proposes to delete the reference to installments in the first sentence of this section.

We concur with your determination to approve this amendment. We have no legal objection to this amendment and believe it clarifies the article by accurately reflecting the practices of the FCU.

The applicable sentence of this sections will now read as follows: "*Par Value*. The par value of each share will be \$____. Subscriptions to shares are payable at the time of subscription."

Article III, Section 3

The FCU proposes to amend this section so that a member must pay for one full share at the time of admission.

We disagree with your determination to approve this amendment. This amendment is unnecessary and will not clarify this section. The staff commentary to this article states that the Act does not require FCUs to offer the option of paying for membership in installments. If the FCU chooses not to offer installments it can insert zero for the number of installments. See Staff Commentary on Shares, Article III(i).

Various Articles

The FCU proposes to delete all references to the credit committee used in the Bylaws. The FCU currently does not have a credit committee nor intends to have one in the future.

We disagree with your determination to deny these amendments. The Federal Credit Union Act (the Act) specifically contemplates that an FCU may choose not to have a credit committee. 12 U.S.C. §1761c. While not necessary, we appreciate the Bylaws have numerous references to a credit committee and could be confusing because this FCU does not have one. We have no legal objection to deleting references to the credit committee and believe the amendment may add clarity by accurately reflecting the practice of the FCU for members.

Article IV, Section 4(b)

The FCU proposes to add the words "annual and any special" before the word "meeting."

We concur with your determination to approve this amendment. We have no legal objection and believe this amendment may aid the FCU and its members by providing for a review of minutes from any special meetings.

This section will now read as follows: "Reading and approval or correction of the minutes of the last annual or any special meeting."

Article IV, Section 4(c)

The FCU proposes to delete the second sentence that refers to the Community Development Revolving Loan Program (Program), because it is not an eligible participant.

We disagree with your determination not to approve this amendment. We have no legal objection and believe the amendment may clarify this section of the bylaws for members, who might be confused by this reference, where their FCU cannot participate in the Program.

Article IV, Section 4(d); Article VII, Section 1; Article VII, Sections 6, 7, 8, 9, and 10; Article IX, Section 4

The FCU proposes to change all references to the "financial officer" and "management official" to "treasurer" and "chief executive officer," respectively.

We concur with your determination to approve these amendments. We have no legal objection and the amendments will correspond with the current practice of the FCU.

Article V, Section 3

The FCU proposes to delete this section and renumber the remainder of the article.

We agree with your determination to deny this amendment. The FCU may, as previously stated, delete references to the credit committee, provided the numbering of the Bylaws remains unchanged. We suggest that the FCU delete the reference to the credit committee so that this section reads as follows: "*Order of nominations*. Nominations may be in the following order: (a) Nominations for directors."

Article VI, Section 2

The FCU proposes the following changes to this section:

1. Amend this section to state that directors or executive, supervisory, or nominating committee members cannot be paid employees of the credit union.

We disagree with your determination to deny this amendment. This amendment does more than what the FCU can already accomplish by filling in zero for the number of directors or committee members who may be a paid employee of the FCU. This amendment specifies that members of certain committees cannot be paid employees but may allow members of other committees to be paid employees. Distinguishing between committees does not present a legal concern. The FCU will, however, have to account for other committees that are not included in the proposed amendment, such as the loan review or investment

committees. We suggest the FCU use language similar to that in the Bylaws to account for other committee members. A suggested version with applicable amendments follows the discussion of this section.

2. The FCU proposes to amend this section by repeating the word "immediate" each time there is a reference to "family members."

We have no legal objection to this amendment. The Bylaws refer to "immediate family members" in this section and thereafter refer to "family members" in a way where it is sufficiently clear the phrases have the same meaning. Given the other changes we determine to be permissible, this minor change, however, may add some clarity and is consistent with the definitions in Article XVIII of the Bylaws.

3. The FCU proposes to amend this section to state that immediate family members of a director or supervisory or nominating committee members cannot be a paid employee of the credit union.

For the reasons stated in number one, above, we disagree with your determination to deny this amendment. As stated above, the FCU must still account for members of committees other than the supervisory or nominating committees, by using language similar to that found in this section of the Bylaws. Our suggested revision follows the discussion of this section.

4. The FCU proposes to amend this section by changing the third sentence to read as follows: "In no case may immediate family members constitute a majority of the board." This amendment changes this sentence to reflect the amendment above that no employees may be members of the board.

We disagree with your determination to deny this amendment. This amendment provides consistency with the amendment, stated above, stating that no director can be a paid employee of the credit union, to which we have no legal objection.

5. The FCU proposes to amend this section to state that the board may appoint a chief executive officer and one or more assistant management officials who may not be members of the board.

We concur with your determination to deny this amendment. The Bylaws already allow an FCU to select "may" or "may not" to indicate that management officials cannot serve on the board. This amendment is unnecessary and will not provide substantive clarification.

This section should now read as follows: "*Composition of board.* No director or member of the executive, supervisory, or nominating committees may be a paid employee of the credit union. _____ (Fill in the number, which may be zero) members of committees other than the executive, supervisory or nominating

committees may be a paid employee of the credit union. No immediate family members of a director may be a paid employee of the credit union. No immediate family members of a member of the supervisory or nominating committee may be a paid employee of the credit union. _____(Fill in the number, which may be zero) immediate family members of committee members other than the supervisory or nominating committees may be a paid employee of the credit union. In no case may immediate family members constitute a majority of the board. The board may appoint a chief executive officer who _____ (may or may not) be a member of the board and one or more assistant management officials who _____(may or may not) be a member of the board. If the chief executive officer or assistant management official is permitted to serve on the board, he or she may not serve as the chair."

Article VI, Section 5

The FCU proposes to add the word "board" before the word "meetings".

We agree with your determination to deny this amendment. The proposed amendment is unnecessary in the context of this Article titled "Board of Directors" and will not provide substantive clarification.

Article VI, Section 6(h)

The FCU proposes to amend this section in two ways. First, the amendments would allow the chief executive officer (CEO), rather than the board, to appoint the members of the loan committee and, also, to appoint two alternates. Second, the amendments would add the following two sentences: "The committee may be made up of any number of lending professionals within the organization provided that no loan officer may review any loan that he or she has denied. Review of loan details must be made by at least three members none of whom have been a party to denying the loan."

We concur with your determination to approve this amendment. Neither the Act nor the Bylaws require a loan review committee. Because it is within the board's discretion to establish one, we think the board can delegate to the CEO the authority to appoint the members of a loan review committee. Further, the proposed bylaw has sufficient safeguards against conflicts of interest and retains a member's ability to appeal to the board.

This section will now read as follows: "In its discretion, delegating to the chief executive officer the authority to appoint a loan review committee to review loan denials and delegating to the committee the power to overturn denials of loan applications. The committee will function as a mid-level appeal committee for the board. Any denial of a loan by the committee must be reviewed by the board upon written request of the member. The committee must consist of three members and two alternates and the regular term of office of the committee

members will be for two years. The committee may be made up of any number of lending professionals within the organization provided that no loan officer may review any loan that he or she has denied. Review of loan denials must be made by at least three members none of whom have been a party to denying the loan."

Article VI, Section 8

The FCU proposes to amend this section by changing the term "calendar year" to "12-month period" in the first sentence of this section and deleting references to the credit committee. As noted above, we have no objection to deleting the references to the credit committee.

We concur with your determination to approve this amendment from "calendar year" to "12-month period." We have no legal objection to this amendment and believe it would clarify this article by reflecting the practices of the credit union.

Although it is not clear if it was intentional or merely an oversight, the FCU's proposed language deletes the designations of paragraphs (a) and (b) within this section. Those designations should remain as they add clarity by distinguishing between declaring a position vacant and removing someone from a position. The FCU's proposed language also underscored the word "temporarily" in what will be the last sentence of the Section as if it were a change from the Bylaws. That word appears in the Bylaws and is not a change.

Article VI, Section 9

The FCU proposes to amend this section by adding language permitting a member of the supervisory committee to be removed by the board, without a special meeting of the members.

We concur with your determination to deny this amendment as it is contrary to the Act. The Act prescribes the method for removal of a supervisory committee member; a member of the supervisory committee may be suspended by a majority vote of the board, but the members of the FCU decide, at a special meeting, whether to remove the suspended member or reinstate him or her. 12 U.S.C. §1761d.

Article VII, Section 1

The FCU proposes to amend this section by prohibiting any board officer from receiving compensation and modifying the last sentence by replacing the words "first meeting" with the words "meeting of the board next following the annual meeting of members."

We concur with your determination not to approve the amendment prohibiting board officers from receiving compensation because this amendment is

unnecessary and will not provide substantive clarification. The FCU can continue to follow its practice of having no compensated board officers, but it is advisable that the FCU fill in language to the effect of "none" in the space provided, to evidence its practice.

We disagree with your determination not to approve the modification to the last sentence of this section. We find no legal reason to deny this modification. This revision would remove language that is only applicable to new credit unions and more accurately reflects the practices of an established credit union.

Article VII, Section 2

The FCU proposes to amend this section by changing the time for holding the next board meeting following the annual meeting from seven days to not later than 40 days after the annual meeting.

We disagree with your determination to approve this amendment. Board officers are elected annually at the first board meeting following the annual election. 12 U.S.C. §1761a. The seven-day time frame is important to provide prompt identification of those directors with the particular responsibilities of officers and ensure a chain of command for efficient operation. Our understanding is many boards of directors hold a board meeting immediately following the annual membership meeting given that the directors will all generally be present for the annual membership meeting. Also, given the option of using teleconferences for board meetings, we see no reason for the directors to delay taking care of this important business within seven days.

Article IX, Section 1

The FCU proposes to amend the first sentence of this section to state that a director cannot also serve on the supervisory committee.

We concur with your determination to deny this amendment. The Act specifically states that a director "may" serve on the supervisory committee. 12 U.S.C. §1761(b). The discretionary language of the Bylaws makes this amendment unnecessary as the FCU can have a practice or policy of not having a director serve on the supervisory committee without making a change to the Bylaws.

Article X, Organizational Meeting

The FCU proposes to amend this section by changing the title to "Organization Meeting for Newly Chartered Federal Credit Unions" and deleting the provisions of this section.

We disagree with your determination to deny this amendment. We have no legal reasons to prohibit this proposed change. An FCU may delete this section

provided that the numbering of the bylaws remains consistent and without change, which is accomplished by this amendment.

This section will now read as follows: "Article X. Organization Meeting for Newly Chartered Federal Credit Unions."

Article XVI, Section 3

The FCU proposes to amend this section by adding the word "supervisory" before all uses of the word "committee."

We concur with your determination to deny the amendment. Limiting this section to only supervisory committee members creates the potential that members of other committees could be removed by the board in a manner contrary to the Act.

Please contact Staff Attorney Justin Anderson or me if you have any questions.