

GC/RMM/SAA:bhs
09-0704R

TO: []

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

SUBJ: Proposed Bylaw Amendments – [] Federal Credit Union

DATE: September 22, 2009

Under NCUA's Delegations of Authority, Supervision 12, you have asked for our concurrence regarding proposed bylaw amendments from [] Federal Credit Union (FCU) to amend bylaws regarding its annual meeting notice, election procedures, board composition, and board responsibilities.

As described specifically below, we concur with some but not all of the proposed amendments.

Article IV, §2, Notice of Meetings

The FCU Bylaws state an FCU secretary must give the members written notice about the annual meeting at least 30 days but not more than 75 days before the meeting date. FCU Bylaws, Art. IV, §2. [] FCU has requested a wording change to give its members an annual meeting notice in the FCU's second and third quarter newsletters.

The requirement of the 30-day minimum notice is to give members sufficient prior notice and the maximum 75-day requirement is so the notice is not too far in advance.

As described by [] FCU, we have no objection to the proposed wording permitting the FCU to include the annual meeting notice for a meeting to be held in early December in its second and third quarter newsletters, sent respectively in the first week of July and October. The October notice is likely to be around 75 days before the meeting date and the proposal has the advantage of providing two notices for the annual meeting.

Article V, Option A3, § 2(c), (d), Election Procedures

Placement of Ballot Boxes. The FCU Bylaws require an FCU to place an election ballot box at one or more conspicuous locations for 24 hours. FCU Bylaws, Art. V, Option 3A, §2(c). [] FCU has requested revising this bylaw to require ballot boxes be placed at 50% or more of the FCU branch locations for at

least 24 cumulative total voting hours. This amendment does not violate the FCU Act or NCUA's regulations and, although arguably reduces the FCU's flexibility in meeting the requirement, ensures members will have access to a ballot box at least at half the FCU's branches. We assume what the FCU hopes to achieve with the underscored language "at least 24 cumulative total voting hours" is to permit, for example, a ballot box to be available in the lobby of a branch during business hours over a period of days. Our view is that the form bylaw language encompasses that option but we do not object to this FCU wanting to clarify the option.

Announcing the Results of the Vote. The FCU Bylaws generally provide for the "results" of the membership vote to be announced at the annual meeting.¹ [] FCU is requesting a proposed wording change to provide that the FCU chair announce the elected candidates' names in alphabetical order. We object to this change.

You note the requested change is a result of a dispute following the last annual meeting over what information should be provided when the election results are announced. You indicate you reviewed Robert's Rules of Order on this point but, first, we note our reading varies from yours and, second, we think reference to Roberts Rules in these circumstances, while helpful, is not necessary.

Robert's Rules indicates information about the number of votes cast for each candidate is available as part of the teller's report, which is read by the head teller to the assembly, with the chairman then declaring the result. Robert's Rules of Order, 9th ed. (1990) (pages 48-49, 410-11). Thus, Robert's Rules contemplates that the number of votes cast and the number of votes for each candidate will be disclosed.

Our view is announcing the winners in alphabetical order, which is what [] FCU is proposing, is not the same as announcing the "results" of the voting and is significantly different in terms of the information being made available to members and the nominees. Members are entitled to know the results of the voting, not simply who won. Robert's Rules supports our view, noting that disclosure of the specifics of the vote -- i.e., how many votes each nominee receives -- should not be omitted.

Under no circumstances should this [disclosure of actual votes for individual nominees] be omitted in an election or in a vote on a critical motion out of a mistaken deference to the feelings of unsuccessful candidates or members of the losing side.

¹ In Article V, Elections, options A1 and A2 merely say the results are announced without specifying that the chair announces the result. Option A3 states the tellers complete the tally and "the chair will announce the result of the vote," while option A4 states "the chair will make the result of the vote public at the annual meeting."

Id. at page 411. The FCU Bylaws do not specify the form for announcing results of the vote but do provide a format for a teller's report, which lists the candidates in order by those receiving the most votes to those receiving the least. The FCU Bylaws do not specifically address a formal tellers report as part of the annual meeting, either being read aloud or included in the minutes, but our view is Robert's Rules generally supports our position that information about the number of votes cast for each candidate is to be made available at the meeting.

Article IV, §2, Board Composition

[] FCU proposes revising this bylaw to prohibit FCU directors or committee members from becoming paid FCU employees for two years after they terminate their director or committee positions. As you note, our concurrence is not required because we have concurred with substantially identical requests. See, e.g., OGC Op. 00-1025 (Oct. 18, 2000).

Article VI, §6(g), Board Responsibilities

The FCU Bylaws provide the FCU board is responsible, where there is no credit committee, for "[a]ppointing one or more loan officers and delegating to those officers the power to approve or disapprove loans, lines of credit or advances from lines of credit." FCU Bylaws, Art. VI, §6(g).

[] FCU proposes revising this bylaw to delegate "through the President of the Credit Union and to the SVP/Loans the power to approve or disapprove loans, lines of credit or advances from lines of credit and the power to appoint loan officers who can do the same." The stated reason is to make the bylaws consistent with [] FCU's current practices and because the CEO has authority to hire employees and loan officers are employees.

We do not concur with this amendment. A board of directors may delegate to its President/CEO the authority to "limit" further the power of loan officers the board has appointed, Letter to Peter Buck from Steven Bisker (Feb. 12, 1985), and may appoint lending officers by position rather than by individual name, OGC Op. 95-0329 (June 9, 1995), but a board of directors may not delegate its authority to appoint loan officers to an individual. OGC Op. 93-0432 (Aug. 3, 1993).

We recommend you instruct the FCU to conform its current practices to what is permissible. Further, if the board of directors wants to identify loan officers by position or delegate to the President/CEO the authority to limit the authority of loan officers the board appoints, we recommend it address these practices in its lending policies or perhaps by a board resolution. Bylaw amendments require a 2/3 vote by directors to change and NCUA review to adopt and believe these practices are better addressed outside of the bylaws.

Feel free to contact Staff Attorney Regina Metz or me with any questions.