

GC/LKD:bhs
09-1046R

TO: []

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

SUBJ: Proposed Bylaw Amendment – [] FCU

DATE: November 20, 2009

Under NCUA's Delegations of Authority, Supervision 12, you have asked for our concurrence regarding [] Federal Credit Union's (FCU's) proposal to amend the following bylaw provisions: Article IV, Section 3; Article VI, Section 5; and, Article VIII, Section 4.

We do not object to Article IV, Section 3, but recommend wording changes to remove an ambiguity and redundancy. As discussed below, we do not concur with the proposed language for Article VI, Section 5, and suggest alternative wording, and do not fully concur with Article VIII, Section 4.

Article IV, Section 3

The FCU wants to remove the current language allowing the FCU's chair to call a special meeting of the members. The FCU believes the chair should not be able to call a special meeting unilaterally. We have no legal objection to the proposal but believe the proposed language continues to provide the chair with some discretion. For example, the word "may" implies the chair is not required to call the meeting. The proposed language also creates a redundancy: a special meeting called by the chair with board approval is the same as a special meeting called by the board of directors upon a majority vote. The FCU can achieve the result it wants more clearly by simply removing the words "by the chair or" from the opening sentence.

Article VI, Section 5

The FCU wants to include a provision that board meetings will be conducted with reference to Robert's Rules of Order. We have no objection to this addition and note with approval that this addition states Robert's Rules will be used "[t]o the extent consistent with these bylaws."

The FCU wants to require an in-person board meeting once each calendar quarter and establish additional requirements for meetings conducted via audio or video teleconference. The proposal and the additional requirements are not worded clearly

and could create operational problems. The FCU did not address whether some board members may participate using audio or video teleconference if a quorum is present at an in-person meeting; in other words, it is not clear if an “in-person” meeting can proceed as long as there is, at least, a quorum physically present, permitting some members to participate electronically, or if all members must be physically present. We assume the FCU intends for at least a quorum to be physically present. We would object to a requirement that all directors would have to be present in order for a meeting to proceed because it would conflict with other bylaws that permit boards to act at a meeting as long as a quorum is present. Also, the first criterion for an audio or video meeting --that a regular meeting be convened at least once a quarter-- is awkward because it is stated as a precondition to having the audio or video meeting.

The proposal also drops the last sentence of the standard bylaws that specifically says special meetings can be conducted by audio or teleconference methods. This may have been an oversight. We think it is important to include this provision for clarity; often, a special meeting, given its nature, is called with limited notice and directors will not be able to travel in time for an in-person meeting. For that reason we also object to the requirement in the proposed (b) that seven days before “each audio or video teleconference meeting,” the directors are to receive minutes, reports, etc. The FCU may not have intended this result but, as worded, it would also apply to a special meeting. Also, this requirement, given that the burden falls on the secretary, would be better placed in the Article VII, Section 9, *Duties of the secretary*.

Additionally, we question the utility and operational practicality of proposed subparagraph (c) that would require directors who participate by video or teleconference to sign the minutes at the “next regularly convened in-person meeting at which the conferee is present.” Requiring this action meets no clear objective because under most rules of procedure, including Roberts Rules, the previous meeting’s minutes are either circulated before the next meeting so they can be approved quickly at the next subsequent meeting or they are read and approved as the first order of business. At a subsequent meeting, the directors approve or address inaccuracies or clarifications in the previous meeting’s minutes. It is also possible a director never attends an in-person meeting or does not attend in person for several months. We are unaware of any legal implications in a conferee’s signing meeting minutes attended using electronic methods. For those reasons, we do not concur with this additional requirement.

We suggest the FCU could meet its objectives and we would concur with the adoption of the following:

In Article VI, Section 5. *Regular and special meetings*.

A regular meeting of the board must be held each month at the time and place fixed by resolution of the board. One regular meeting each calendar quarter must be conducted in person. If a quorum is present in person for the quarterly in person meeting, the remaining board members may participate using audio or video teleconference methods. The other

regular meetings may be conducted using audio or video teleconference methods. The chair, or in the chair's absence the ranking vice chair, may call a special meeting of the board at any time and must do so upon written request of a majority of the directors then holding office. Unless the board prescribes otherwise, the chair, or in the chair's absence the ranking vice chair, will fix the time and place of special meetings. Notice of all meetings will be given in the manner the board may from time to time by resolution prescribe. Special meetings may be conducted using audio or video teleconference methods.

In Article VII, Section 9, *Duties of the secretary*, inserted as the second sentence.

At least seven (7) days before a regularly scheduled audio or video teleconference meeting, the secretary shall cause the following to be distributed to each director: minutes of the previous meeting; reports of officers, standing committees, or of any special committees; special orders, or matters which have been assigned priority; and any written information on unfinished business or new business that has been given to the secretary by any director.

Article VIII, Section 4

The FCU desires to consolidate the loan officer reports into a single report produced by the senior loan officer. The FCU also wants to reduce the reporting frequency to once a month, delivered within seven days of the end of the month. We do not have a legal objection to consolidation of the loan officers' reports but defer to your office and the regional offices as to whether it raises any internal control issues. We do not concur with shortening the time frame as it provides insufficient time for the committee to meet Regulation B requirements.

Where an FCU has a credit committee, only the credit committee can deny a loan. Consequently, all applications not approved by a loan officer are forwarded to the committee for final action. Regulation B requires a lender, within 30 days of receiving a completed application, to notify the applicant of its decision to approve, counteroffer, or deny the application. 12 C.F.R. §202.9. The seven-day time frame may place some loans outside the required notice period.

Conclusion

Finally, we note the FCU is proposing to adopt amendments that would limit the term of office of the chair and permit directors emeriti. As you note, we have previously approved similar amendments and concur with your approval.

Please contact Staff Attorney Linda Dent or me with any questions.