

TO: []

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

SUBJ: Proposed Bylaw Amendments – [] Federal Credit Union

DATE: March 17, 2010

You have requested comment on four bylaws amendments submitted for approval by [] Federal Credit Union (FCU). The proposed amendments would revise Article V, Section 1 and Article IX, Section 1 of the FCU's bylaws. You are inclined to deny all four of the FCU's proposed amendments. We concur with your decision.

Amendment 1

The first proposed amendment would add the following language to Article V, Section 1 of the FCU's bylaws: "No member of [] Federal Credit Union may serve on the Board of Directors and/or Committees whose conduct may expose the Credit Union to legal action and/or financial loss." The proposed amendment is intended to provide the FCU with protection from legal action or financial loss and to give the nominating committee guidance for selecting candidates for the board of directors.

You are inclined to deny the FCU's request for the proposed amendment because the FCU can accomplish its objectives through its operating policies and procedures. You also note the proposed wording is ambiguous and open to legal challenge. We agree with your analysis. The FCU's objective can be achieved by board resolution. Section 113 of the Federal Credit Union Act (the Act) permits the board to prescribe conditions and limitations for any committee it appoints. See, 12 U.S.C. §1761b(14); see also, OGC Ops. 93-0122 (Mar. 9, 1993), 97-0831 (Nov. 13, 1997), 02-0567 (June 18, 2002). The FCU's board can establish policies and criteria for the nominating committee, including qualifications and requirements for nominees, to ensure board candidates do not expose the FCU to litigation and financial loss.

Amendments 2, 3, and 4

The second, third, and fourth proposed amendments would add various language to Article IX, Section 1 of the FCU's bylaws. The amendments are generally intended to avoid conflicts of interests on the supervisory committee and to ensure consistent participation and attendance at supervisory committee meetings.

You would like to deny the FCU's request for the second proposed amendment, which would prevent a former CEO from serving on the supervisory committee. You note that a permanent restriction is unnecessary because the board of directors has discretion to appoint the supervisory committee and, as such, has discretion to preclude former CEOs from serving on the supervisory committee. We agree and note the FCU may achieve its objective by board resolution.

You are also inclined to deny the credit union's third proposed amendment to prohibit a former FCU employee serving on the supervisory committee from voting on an action involving a former or current employee. You believe this amendment should be denied because the board can decide whether a former employee is appointed to the supervisory committee. Also, the board, not the supervisory committee, generally votes on actions involving employees. We concur with your decision to deny the FCU's request for the proposed amendment. The FCU board can establish policies to prevent conflicts involving former employees.

Finally, you are inclined to deny the FCU's fourth proposed amendment to prohibit the FCU from appointing supervisory committee members who fail to attend meetings. As you note, the current bylaws give the board the discretion to suspend or not reappoint supervisory committee members who fail to attend scheduled meetings. The Act also establishes the board's right to suspend supervisory committee members. 12 U.S.C. §1761d. Therefore, we agree with your analysis and concur with your inclination to deny the proposed amendment.

If you have any questions, please feel free to contact Staff Attorney Pamela Yu or me.