

GC/RMM
11-0107R

TO: []

FROM: Hattie Ulan, Associate General Counsel /S/

SUBJ: Proposed Bylaw Amendments — [] FCU

DATE: April 11, 2011

Under NCUA's Delegations of Authority, Supervision 12, your office requires our concurrence to approve a proposed bylaw amendment from [] Federal Credit Union (FCU) to amend two of its bylaws provision: one, to allow FCU members to know which candidates the nominating committee has vetted and recommends; and two, to attempt to prevent unnecessary motions from the floor. Region IV sent the incoming request to us, but we are replying to you since you recently took over review of Region IV Division of Insurance bylaws issues. You previously responded to Region IV's request for comments and agreed with Region IV's inclination to approve the request. As described below, we concur with Region IV's inclination, provided the annual meeting written notice indicates there will be no motions from the floor at the meeting.

The FCU previously adopted the revised 2007 NCUA FCU Bylaws. 72 Fed. Reg. 61495, 61500 (Oct. 31, 2007). The FCU currently seeks NCUA approval to amend its FCU Bylaws, Article V, Option A4, Section 2(d)(1), to identify on the election ballot which candidates the nominating committee vetted and recommended. The proposed wording would allow the FCU to identify on election ballots the "Candidates Nominated by the Nominating Committee" and have them appear first in random order, followed by "Candidates Nominated by Petition," also in random order. The FCU believes it would not create favoritism since it is factual information. The FCU would use this method going forward.

This proposed amendment is consistent with prior OGC bylaw opinions. See attached OGC Op. 03-0944 (Oct. 17, 2003); OGC Op. 99-1044 (Dec. 9, 1999); and OGC Op. 87-0219 (Feb 19, 1987). In OGC Op. 03-0944, NCUA permitted a bylaw amendment so that an FCU's election ballot would list the nominating committee's candidates in alphabetical order followed by the candidates nominated by petition in alphabetical order. Our office, in that 2003 opinion, cited a prior one, OGC Op. 99-1044, permitting the FCU board to make recommendations on the mail ballot, if it changed its bylaws to do so. The 1999 opinion cited a 1987 opinion, OGC Op. 87-0219, allowing ballots to list on the election ballot: incumbent directors' names first, with the word incumbent; and board recommendations on the ballot.

We have no legal objections to the proposed amendment because it does not conflict with the FCU Act or with NCUA regulations or otherwise directly or indirectly deny the members the right to vote.

Second, the FCU is seeking NCUA approval to amend its FCU Bylaws, Article IV, Section 4, to include the statement that “No motions are permitted from the floor of the annual meeting.” The FCU believes this amendment will help it to conduct orderly meetings and is necessary to prevent motions from the floor on topics not subject to membership vote, such as, dividend rates, loan rates, fees, and employment decisions. You believe the requested amendment is unnecessary, since an orderly meeting can be achieved through implementation of Robert’s Rules of Order, according to which the FCU has chosen to conduct all member meetings. However, Region IV is inclined to approve the request if there is no legal prohibition against the proposed amendment, and you agreed.

The FCU Act requires that an FCU hold its annual meeting at such time and place as its bylaws prescribe. 12 U.S.C. 1760. Neither the FCU Act nor NCUA’s regulations require motions from the floor at the annual meeting. The FCU Bylaws Article IV establishes the parameters for annual meetings. Section 4 lists items of business for the annual meeting, including the item of “new business”, and provides for a suggested order for the items. Article IV does not, however, require the FCU to offer members the chance to make motions from the floor during the annual meeting.

The proposed amendment does not conflict with the FCU Act or with NCUA regulations. Moreover, this proposed amendment does not limit fundamental, material credit union member rights. The NCUA’s preamble to the 2007 FCU Bylaws regulation identifies these rights as:

including the right to: Maintain a share account; maintain credit union membership; have access to credit union facilities; participate in the director election process; attend annual and special meetings; and petition for removal of directors and committee members.

72 Fed. Reg. 61497.

Accordingly, we have no legal objection to the FCU’s requested change, provided the annual meeting written notice indicates that there will be no motions from the floor at the meeting. This statement in the notice would help to manage member expectations about the annual meeting and its purpose. In addition, Article IV provides FCU members with the ability to call special meetings to make motions.

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

Attachments

cc: Region IV Director