

GC/MFR:bhs
03-0606

TO:

FROM: Sheila A. Albin, Associate General Counsel

SUBJ: Nonstandard Bylaw Amendments -

DATE:

You have asked this office to review several proposed nonstandard bylaw amendments submitted by FCU. Below are our comments on each of the proposed changes.

Title Changes

The FCU has requested amending its bylaws to indicate that the President and CEO are different individuals. We agree with your suggestion that an amendment is not necessary because Article VII, Sections 1 and 7 require the board to determine the title and rank of each board officer and management official and record them in the addendum to the bylaws.

Article II, Section 4 – Withdrawal of Membership

The proposed changes appear to combine Sections 3 and 4 of Article II to address termination of membership if a member's account falls below par value due to fees. As explained in the attached OGC legal opinion 01-0255, dated March 19, 2001, termination of membership is not permissible under Article II, Section 3 without first allowing the member the time under Article III, Section 3 to increase the share balance to par value. The FCU also proposes changing the "once a member" language in Article II, Section 4 to a longer statement of the policy. In addition, the FCU proposes repeating the language from Section 3 that permits requiring persons readmitted to membership to pay another entrance fee. We recommend denying this proposed amendment in its entirety.

Article III, Section 1 – Payment for Shares

The proposed amendment eliminates the provision allowing the member to pay for its initial share in installments. You recommend approving this change because it "has been approved by at least two other regional offices." As a result of your comment, we have revised the x: drive to indicate that these two 1984 and 1985 amendments are no longer valid. We direct your attention to OGC legal opinion 01-0255 that states the FCU Act requires an FCU to allow for payments of the initial share in installments. We recommend denying this proposed amendment.

Article III, Section 5 – Rules Affecting Accounts

The proposed amendment adds language to this section to clarify that share withdrawals and deposits are also governed by the account agreement. We have no legal concerns with adding this language.

Article III, Section 6 – Identification of Beneficiaries

The proposed amendment deletes the sentence in Article VI, Section 3 that states:

The name of the beneficiary must be stated in both a revocable and irrevocable trust.

We object to deleting the requirement to name the beneficiary but recognize that, as stated, it is not clear where the information must be stated or if it must be stated in the same type of record for both types of account. We think the bylaw should be consistent with the requirements of our share insurance regulation. 12 C.F.R. Part 745. Given the concerns expressed by the credit union --namely, the reluctance of credit union members to disclose the identity of beneficiaries-- we suggest modifying this sentence to reflect the distinction between the requirements for revocable and irrevocable trust accounts.

For a revocable trust account, an FCU's account records must disclose the named beneficiary. We note that this requirement means the actual identity of the beneficiary, not merely that a beneficiary exists or the identification of a category of permissible beneficiary, for example, child or children. For your information, there are proposed changes to the insurance regulation scheduled for the June 2003 Board meeting, including a clarification of the titling of revocable trust accounts and the requirement to identify the beneficiary or beneficiaries of revocable trust accounts in the account records of the credit union.

For irrevocable accounts, it is not necessary that an FCU's account records disclose the named beneficiary but the named beneficiaries must be ascertainable "from the records of either the credit union or the trustee." 12 C.F.R. Part 745, Appendix G.

Therefore, we suggest the following alternate language:

The name of the beneficiary of a revocable trust account must be stated in the account records of this credit union. The name of the beneficiary of an irrevocable trust account must be ascertainable from the records of either the credit union or the trustee.

The proposed amendment also adds a sentence to the end of the section that states:

A trust account may be established pursuant to this section, provided such trust, its terms and conditions are in accordance with the requirements reasonably imposed by the credit union.

The additional sentence, although benign on its face, assumes that the FCU is complying with all applicable laws. If the FCU wants to add this provision, it should include the following language: "and is otherwise in compliance with applicable laws and regulations."

Article XVI, new Section 9 – Statutory Lien

We concur with your decision to deny the request for a new section to address statutory liens, since this issue is already addressed in Article III, Section 5(d).

Attachment