

GC/RD:bhs
6100

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FROM: Assistant General Counsel
Hattie M. Ulan

SUBJ: Nonstandard Bylaw Amendment -- Indemnification of Officials
(Your March 13, 1989, Memo)

DATE: April 14, 1989

You indicated your support of [] request for this Office to develop a standard bylaw amendment for indemnification of FCU officials. This Office and the [] are in the process of developing such a standard amendment which will eventually be added to the Federal Credit Union Standard Bylaw Amendments and Guidelines. Attached is our memo to the Office of [] concerning the project. We will solicit comments from all [] on the amendment before it is made final. When the standard amendment is finalized, we anticipate distributing it to FCU's via a Letter to Credit Unions.

Attachment GC/JT: sg

3700

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FROM: Acting Assistant Counsel
Hattie M. Ulan

SUBJECT: Proposed Nonstandard Bylaw Amendment for Indemnification of FCU Officials and Employees

DATE: March 30, 1989

Several of the [] have requested that a nonstandard bylaw amendment providing for indemnification of FCU officials and employees be adopted. They have been receiving numerous requests for approval of indemnification bylaws. Rather than submitting a bylaw that simply states the intention of the FCU to indemnify and the method of indemnification it has chosen, FCU's are submitting substantive indemnification provisions for the Regions to review. In effect, the [] are being asked to determine whether the proposed bylaw complies with the relevant state law or the Model Business Corporation Act.

We suggest that a standard bylaw amendment providing for indemnification be adopted. Enclosed is a copy of a memorandum from this Office to [] in which we discuss the need for a standard bylaw amendment and propose language for such an amendment. The proposed standard bylaw, once approved by your Office and the [] could be made available to FCU's through a Letter to Credit Unions. The Letter to Credit Unions could be prepared either by this Office or your Office. Please advise us on how you wish to proceed on this matter.

Attachment

GC/JT:sg
3700

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FROM: Acting Assistant General Counsel
Hattie M. Ulan

SUBJECT: Nonstandard Bylaw Amendment indemnification of Officials
(Your January 30, 1989, Memo)

You have requested that this office- develop a standard bylaw amendment for the indemnification of officials and employees. We agree that this action should be taken. We are enclosing proposed language for such a bylaw. We have forwarded a copy of the proposed bylaw to the [] for their review. We have suggested to them that a nonstandard bylaw amendment providing for indemnification be made available to FCU's through a Letter to Credit Unions.

BACKGROUND

You have received a nonstandard bylaw amendment for indemnification of officials, employees and agents from the [] amendment is quite lengthy and complex. You have suggested that rather than having the [] continue to review these bylaw amendments and then circulate them to the other [] and this Office for comment, a standard bylaw amendment providing for indemnification of officials and employees be drafted.

We agree that the review of these proposed indemnification bylaw has become a time-consuming process, and, ultimately, one that NCUA should not be involved in as it requires NCUA to make a determination in each case as to compliance with a state law or the Model Business Corporation Act. We will suggest to the [] which has in the past prepared and published the standard bylaw amendments, that a standard bylaw amendment be made available on indemnification of officials and employees. We suggest the following language:

Section 1. Officials and/or current or former employees of the credit union may be indemnified by the credit union for any liability asserted against them and expenses reasonably incurred by them in connection with judicial or administrative proceedings which they are or may become parties by reason of the performance of their official duties to the extent authorized by _____.

Section 2. The credit union may purchase and maintain insurance on behalf of its officials and/or employees against any liability asserted against them and expenses reasonably incurred by them in their official capacities and arising out of the performance of their official duties to the extent such insurance is permitted by _____.

Section 3. The term "official" in this bylaw means a person who is or was a member of the board of directors, credit committee or supervisory committee, or other volunteer committee established by the board of directors.

The credit union will be given the option of determining whether it will provide indemnification to officials and/or employees. It will also be given the option of filling in the blanks with either "the Model Business Corporation Act" or "the _____ law for indemnification applicable to state-chartered credit unions." The credit union will fill in this second blank with the name of the state in which it is located. If approved, the bylaw amendment could be made immediately available to FCU's through a Letter to Credit Unions.

Finally, we suggest that in the case of [] you encourage the FCU to adopt a bylaw similar to that contained herein, and advise them that the possibility of a standard bylaw being made available is under consideration. You should point out to the FCU that Section 701.33 of NCUA's Rules and Regulation authorizes indemnification of officials and employees. It does not authorize indemnification of FCU agents. The FCU's proposed bylaw includes agents. Also, the proposed bylaw refers to officers who are not directors. This has no relevance since all FCU officers are not directors.