

TO:

FROM: Associate General Counsel Sheila Albin

SUBJ: Nonstandard Bylaw Amendment: [] FCU

DATE: March 11, 2005

You requested our concurrence with your denial of two proposed nonstandard bylaw amendments for [] Federal Credit Union that would (1) require a majority vote of all members for conversion to another type of financial institution; and (2) provide that only the members, not the directors, could change the bylaw requiring a majority vote of all members for any conversion.

We agree with your analysis that the amendments, as proposed, contradict the Federal Credit Union Act (the FCU Act) and NCUA's regulations. We have no objections to your proposed alternative amendment and board policy if the credit union chooses to adopt them.

Proposed Amendment Requiring Majority Vote of All Members for Conversion

The credit union's proposed amendment to Article XVI of its bylaws would create a new Section 9 requiring a majority vote of all members for conversion to another type of financial institution. As you note, this requirement contradicts the FCU Act, which requires only a majority vote of voting members for conversion. 12 U.S.C. §1785(b)(2). Further, this provision of the FCU Act, part of the Credit Union Membership Access Act of 1998, was enacted to override NCUA's then-existing regulation requiring a majority vote of all members for conversion to a mutual savings bank. 144 Cong. Rec. H7043 (daily ed. Aug. 4, 1998) (statement of Rep. LaFalce). Requiring a majority vote of all members for conversion would directly contradict congressional intent.

Proposed Amendment Requiring Member Approval to Change Voting Requirement

The credit union's proposed amendments to Articles XVI and XVII would require a majority vote of all members to change the proposed conversion bylaw and prohibit directors from changing it. Generally, directors establish the bylaws and can amend them, with NCUA's approval. We agree with your conclusion that

allowing members to amend the bylaws would create an undesirable precedent. While removing the board's authority to amend these sections of the bylaws might appear advantageous in this particular instance, the Office of General Counsel agrees that only the credit union board has the power to amend the bylaws.

Region IV Alternative Proposals

You suggested an alternative bylaw amendment and adoption of a board policy to assist the credit union in achieving its goal of making conversion to another type of financial institution more difficult. Your proposed bylaw amendment would prohibit the board of directors from considering a conversion to another type of financial institution without a request of the members made at a special meeting convened for this purpose. We have no legal objections to this proposed bylaw amendment, but note that the word "provision" should probably be "provisions." Of course, directors can change this provision but your proposal allows the current board to set out its position on the issue.

You also suggest that the board adopt a policy directing the nominating committee to nominate only candidates who sign a statement agreeing not to propose, or vote for, a conversion to another type of financial institution. We have no legal objections to this proposal. Section 113 of the FCU Act allows the board to prescribe conditions and limitations for any committee it appoints. 12 U.S.C. §1761b(14). Prior OGC opinions also affirm the board's right to establish policies and criteria for the nominating committee. E.g. OGC 97-0831, 02-0567 (available on the agency website).