

GC/EAW:bhs
06-0323R

TO:

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

SUBJ: Proposed Bylaw Amendment – [] FCU

DATE: May 5, 2006

Under NCUA Delegations of Authority, Sup 13, your region asked us to review a proposed bylaw amendment from [] FCU. The amendment would add new sections to Article II that would: prohibit anyone who caused a loss to the credit union and closed their account from rejoining the credit union or being a joint owner of another member's account and prohibit former employees who caused a loss to the credit union from joining the credit union or being a joint owner of another member's account. We concur with your inclination to deny this amendment because the credit union can address these issues through policies.

As you note, a 2005 OGC legal opinion stated the credit union could limit or prohibit services to a joint account owner who is not a member on the basis that the individual had caused a loss to the credit union. OGC Opinion 05-0723 (September 20, 2005) (The opinion has various cautions a credit union should consider in adopting this type of policy). The credit union established a written policy its lawyer approved but now seeks a bylaw amendment. We agree the bylaw amendments the credit union seeks are unnecessary. In our recent revisions to the FCU Bylaws, we tried to eliminate provisions that are better addressed in policy, and we view the proposed bylaw amendments as policy matters.

Additionally, we find the proposal regarding employees to be unclear. This provision could be construed to revoke the membership of employees who have caused a loss, which would conflict with the FCU Act. Credit unions may adopt policies restricting services to members, including employees, who have caused a loss, but unless the member withdraws or is expelled in accordance with the Act, the member has a right to maintain a share account and vote in annual and special meetings. 12 U.S.C. §1759.