

GC/EAW:bhs  
05-0432

TO: Mark Treichel, Director, Region I

FROM: Sheila A. Albin, Associate General Counsel

SUBJ: Nonstandard Bylaw Amendment –  
[name of credit union deleted]

DATE: May 17, 2005

You have indicated you intend to approve a nonstandard bylaw amendment proposed by [ ] FCU that would prohibit credit union employees from serving as directors and have asked for concurrence from the Office of General Counsel. FCU Bylaws Article VI, Section 2.

We agree the prohibiting credit union employees from serving on the board is permissible but suggest the credit union retain language in Section 2 involving the board's duty to appoint a management official.

The request also notes that the FCU wants to allow employees to serve on committees except for the supervisory committee. We concur with this request but suggest the addition of clarifying language since employees may serve on most committees but may not serve as directors.

#### Prohibiting employees from serving as directors

We agree that the addition of the proposed prohibition on employees serving as directors is permissible. It was previously a standard bylaw amendment option and is consistent with prior opinions of this office. See, e.g. OGC 97-0720, 96-0432, and 95-1125 (available on the website).

The 1999 revision of the bylaws included a blank space for the number of employees permitted to be directors to allow boards the option simply of inserting "0" or "No" before the word "employees." Accordingly, the credit union would not actually need NCUA's permission to prohibit employees from serving as directors.

#### Proposed deletion of provisions regarding management official

We would not recommend approving the credit union's request to delete the last two sentences of Section 2 regarding the board's duty to appoint a management official and whether that official may be a director. Although this provision may

seem redundant given the total prohibition on employees serving as directors, a subsequent board could reverse the prohibition. If the prohibition barring employees from serving as directors is changed, it is important that the board chooses whether or not to permit the management official to serve on the board. OGC 03-0626 (available on the website).

#### Permitting employees to serve as committee members

The credit union wants to allow employees to serve on committees other than the supervisory committee. Currently, the vice president of lending serves on the credit committee and the marketing director serves on the marketing committee. The bylaws prohibit employees from serving on the supervisory committee but do not prohibit employees from serving on other committees. FCU Bylaws, Article IX, §1; Article XII, §1; Article VII, §11. The bylaws, however, require the board to insert a limit on the number of committee members who may be paid employees and family members of paid employees. *Id.* Article VI, §2. Retaining language memorializing the limit on the number of employees who may be committee members is important, but this language would be lost under the credit union's proposed amendment.

Because the credit union is adopting a different policy for its board (no employees permitted) than for its committees (some employees permitted), we suggest the credit union add two sentences to the amendment. The sentences should address the number of employees who may serve on committees and the number of immediate family members of committee members who may be paid employees.

In summary, we recommend the credit union adopt a nonstandard bylaw amendment for Article VI, Section 2 as follows, with our suggested changes italicized:

No director may be a paid employee of the credit union. No immediate family member of a director may be a paid employee of the credit union. *\_\_\_\_ committee members may be paid employees of the credit union. \_\_\_\_ immediate family members of a committee member may be a paid employee of the credit union.* In no case may employees and family members constitute a majority of the board. *The board may appoint a management official who \_\_\_\_ (may or may not be) a member of the board and one or more assistant management officials who \_\_\_\_ (may or may not be) a member of the board. If the management official or assistant management official is permitted to serve on the board, he or she may not serve as the chair.*