

GC/EAW:bhs
05-0712

TO: Kelly Frerichs, Director of Insurance, Region I
FROM: Sheila A. Albin, Associate General Counsel
SUBJ: Bylaw Amendments – [] FCU
DATE: August 30, 2005

You requested concurrence from the Office of General Counsel with your inclination to approve three bylaw amendments [] recently proposed. The proposed amendments would: (1) clarify that being an owner of a joint account is insufficient to establish membership; (2) specify that terms of office for directors are three years; and (3) delete the provision allowing one board officer to be compensated. We agree that the proposed amendments are permissible.

Requiring separate account for membership

We agree that [] may require the purchase and maintenance of at least one share in a separate account in order to establish membership in []. In fact, the recently proposed revisions to Article III, Section 7 of the standard FCU Bylaws will allow credit unions to select this as an option. 70 Fed. Reg. 40931 (July 15, 2005). The language [] has proposed is taken from the language of the proposed revisions.

Establishing three-year terms for directors

We agree that [] may change the language of Article VI, Section 3, to specify that terms of office for directors are three years. The standard bylaw language permits the board to determine whether terms of office are two or three years. FCU Bylaws, Art. VI, §3. We have no legal objection to the amendment although we agree with you that the proposed amendment is unnecessary as the standard bylaw permits the board to select either two or three year terms. We have previously approved similar amendments, most recently in OGC Legal Opinion 04-0927a, dated November 4, 2004.

Prohibiting compensation for serving as elected or appointed official

We agree that [] may adopt an amendment to Article VII, Section 1 to prohibit compensation of board or committee members for performing their

elective or appointive duties. The FCU Act and NCUA regulations provide that only one board officer may be compensated as such and that no other official may receive compensation for serving as a board or committee member. 12 U.S.C. §1761(c), 1761a; 12 C.F.R. §701.33(b). Neither the Act nor the regulations, however, require that one board officer be compensated, so the credit union may prohibit compensation to all board officers. The credit union's proposed amendment also would prohibit compensation to any other elected or appointed official; this portion of the amendment is unnecessary as it merely restates the requirements of the Act and NCUA regulation, but we have no legal objection to it.