

GC/EAW:bhs
06-0337R

TO:

FROM: Sheila A. Albin, Associate General Counsel

SUBJ: Proposed Bylaw Amendment – [] FCU

DATE: May 11, 2006

Under NCUA Delegations of Authority, Supervision 12, you have asked for our concurrence regarding a proposed bylaw amendment from [] FCU (FCU). The amendment would add a new section 10 to Article VI to create the position of Director Emeritus. Individuals would be eligible to become a director emeritus after serving on the board for at least 15 years. We agree with you that the amendment is permissible, but suggest appointing the directors emeritus as an advisory committee. We also suggest the amendment clarify the directors emeritus' advisory role.

We have previously determined that an FCU's board of directors may appoint an advisory committee under Section 113(3) of the FCU Act that consists of individuals given director emeritus status. See OGC 03-1029 (October 23, 2003). We have no legal objection to a bylaw providing for the appointment of directors emeritus to function as an advisory committee.

Consistent with our previous advice, the FCU's proposal seems designed to limit the directors emeritus to an advisory role. For clarity, however, we suggest the bylaw amendment state directors emeritus are not members of any other committee, may not vote on matters before the board or any committee of the FCU, and are limited to providing advice.

We suggest the following alternate language:

Section 10. The Board of Directors may appoint any former director who served on the Board at least 15 years as "Director Emeritus." The individuals appointed directors emeritus function as an Advisory Committee to the Board of Directors. Terms for directors emeritus are three years. The Board may increase or decrease the number of directors emeritus, or shorten or extend any director emeritus's term, by resolution. Unless separately elected or appointed, directors emeritus are not members of any other Committee of the credit union. Directors emeritus are not

members or officers of the Board of Directors and may not vote on any matter before the Board or any other Committee of the credit union, may not receive any compensation from the credit union, and may not be required to attend any meetings or authorized to perform any duties other than providing advice to the credit union's Board, staff and other Committees as needed.

If you have any further questions, please feel free to contact Staff Attorney Elizabeth Wirick or me.