

GC/EAW:bhs  
06-0829R

TO:

FROM: Sheila A. Albin, Associate General Counsel

SUBJ: Proposed Bylaw Amendment – [ ] FCU

DATE: September 11, 2006

You have asked for our concurrence regarding a proposed bylaw amendment from [ ] Federal Credit Union (FCU) under NCUA Delegations of Authority, Supervision 12. The proposed amendment would allow the FCU's board to change the number of loan review committee members and stagger the terms of committee members to provide for continuity of membership on the committee. We have no legal objection to this amendment, but suggest several changes.

The FCU Bylaws permit FCU boards to establish a mid-level loan review committee to provide initial review of denied loans. FCU Bylaws, Art.VI, §6(h). The FCU Bylaws require the loan review committee to have three members with two-year terms. *Id.* The proposed amendment would give greater discretion to the FCU's board in determining the size of the committee by allowing the committee to include three, five or seven members. The proposed amendment would also give the FCU's board discretion to appoint committee members for one, two or three years in order to "prevent a complete turnover of committee members." Finally, the amendment would specify that decisions of the loan review committee will be made by a "quorum" of loan review committee members present at a meeting. Your request notes the FCU believes adopting this bylaw will give it greater flexibility and ensure that the committee has a sufficient number of members.

We review several issues in more detail below and include our suggested language for this amendment.

Number of committee members; length and expiration of terms

The FCU Act and NCUA Regulations do not specify the number or terms of loan review committee members, or whether terms must be staggered. The FCU Bylaws provide for a three-member committee with two-year terms, but do not specify whether or not terms must be staggered. *Id.* We have previously approved a bylaw amendment increasing the size of the loan review committee and changing committee members' terms. OGC Opinion Letter 05-0707 (July 19, 2005). The proposed amendment would give the FCU's board the option to increase the size of the loan review committee, and the option to vary terms, and

we believe these provisions are comparable to the previously approved amendment. We also believe the FCU may specify that terms should be staggered in order to provide for continuity of membership on the committee.

Unlike the previously approved bylaw amendment, which sets a fixed number of loan review committee members, the current proposed amendment would allow the FCU to change the number of loan review committee members. Because the FCU may change the number of loan review committee members, we suggest conforming the proposed amendment language to the provisions of the form FCU Bylaws that allow an FCU's board to change the number of credit committee members. FCU Bylaws, Art. VIII, §1. Boards of FCUs with credit committees may change the number of credit committee members by board resolution, and a copy of the board resolution must be on file with the official copy of the FCU's bylaws. Id. Accordingly, the amendment should spell out that the board, by resolution, may change the number of committee members. Also, the amendment should require filing a copy of the board's resolution covering any increase or decrease in the number of committee members with the official copy of the credit union's bylaws. These changes will ensure that members remain informed as to the number of loan review committee members.

#### Manner of making decisions

The proposed amendment states, "Decisions will be made by a quorum of the Loan Review Committee members attending a meeting." We believe it is permissible to specify how the committee will make decisions, although we suggest substituting the term "majority vote" for the word "quorum" for clarity. Quorum means the minimum number of members, usually but not always a majority of members, of the committee that must be present to transact business. Black's Law Dictionary, 8<sup>th</sup> Ed. (2004). The FCU Bylaws use the term quorum only in the board of directors article and, in keeping with the general definition, define a quorum as a majority of all director positions. FCU Bylaws, Art. VI, §7. The proposed amendment's use of the term quorum is inconsistent with the phrase "members attending a meeting." We confirmed with your staff that the proposed amendment intended to allow the loan review committee to act by majority vote of members present, and not to require a majority of members to be present for the loan review committee to act. Because the term quorum, as commonly used, defines the number of members required to be present, substituting the term "majority vote" for the word "quorum" clarifies the meaning of the proposed amendment.

In summary, our suggested language for this amendment, to be inserted between the existing third and fourth sentences of Article VI, Section 6(h), is below.

The board may, by resolution, change the number of committee members to an odd number no less than three and no more than

seven. The board will determine the length of each committee member's term upon appointment and stagger terms as necessary to prevent a complete turnover of committee members. A copy of the resolution of the board covering any increase or decrease in the number of committee members must be filed with the official copy of the bylaws of this credit union. The committee will act by majority vote of members present at a meeting.

Please call Staff Attorney Elizabeth Wirick or me if you have any questions.