

GC/CJL/SAA:bhs
SSIC 3700
01-0952

TO:

FROM: Sheila A. Albin, Associate General Counsel

SUBJ: Nonstandard Bylaw Amendments, []FCU

DATE: October 29, 2001

You have asked this office to review a request by [] Employees Federal Credit Union (FCU) to amend its election bylaw to eliminate nominations from the floor at the annual meeting. The FCU has Option A4, which provides for nominations only by a nominations committee or petition. It provides for voting only by electronic or mail ballots; it does not provide for voting at the annual meeting. Option A4 does not permit nominations from the floor. Although unnecessary, we do not object to the proposed amendments, as they are merely a clarification for the FCU.

The FCU wants to clarify that it will not accept nominations from the floor at the annual meeting if there are insufficient nominees for the vacancies. Although Option A4 requires the nominations committee to nominate at least one member for each vacancy and, also, provides for nominations by petition, the situation of having insufficient nominees can arise if someone withdraws or is otherwise unable to serve after the nominations process has ended. In these situations, this office has advised federal credit unions that the resulting vacancy may be filled by the elected directors under the authority of Article VI, Section 4, which permits the board of directors to fill a vacancy until the next annual meeting.

Option A4 provides for a written notice to members before the election that tells members about the nominees selected by the nominating committee and tells them about how to submit a nomination petition. The language in Option A4 the FCU wants to amend also states:

The written notice must indicate that the election will not be conducted by ballot and there will be no nominations from the floor when there is only one nominee for each position to be filled.

Option A4 has no other mention of nominations from the floor. Our reading of the above-quoted language is that it informs members that, if there is only one nominee for a position, no election will be held and there will be no nominations from the floor. It does not provide for nominations from the floor if there is a vacancy because a nominee has withdrawn or is unable to serve before the election is completed.

By comparison, Option A2 specifically provides for nominations from the floor in just the circumstances that concern the FCU, namely, when "insufficient nominations have been made by the nominating committee or by petition to provide for one nominee for each position to be filled or circumstances prevent the candidacy of the one nominee for a position to be filled." The only other election option that specifically provides for nominations from the floor at the annual meeting is Option A1.

The FCU would like to alter the above-quoted sentence to read:

The written notice must indicate that the election will not be conducted by ballot unless there are more nominees than the number of positions to be filled, and that there will be no nominations

from the floor.

Our view is that this does not change the meaning of the sentence in Option A4 and we have no objection.

The FCU would also like to address specifically what will happen if there are insufficient nominees for vacancies on the board and include a cross-reference to the general provision of Article VI, Section 4 that permits the board of directors to fill vacancies. The FCU proposes to add the following paragraph to its election bylaw:

If, at the time of the annual meeting, there are fewer qualifying nominees than vacancies on the board, the vacancies remaining after the annual meeting will be filled in accordance with Article VI, Section 4.

We have no objection to this addition and believe it may be helpful.