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FROM: Assistant General Counsel
Timothy P. McCollum

SUBJECT: Nonstandard Bylaw Amendment (Your August 17, 1988, Memo)

DATE: September 23, 1988

You have asked whether it is permissible for an FCU to amend its bylaws to prohibit members of an elected credit committee from serving consecutive terms. We agree with your determination that where an FCU's bylaws provide for an elected credit committee, the only permitted eligibility requirements for candidates running for the credit committee are those contained in the FCU Act and a minimum age requirement. We concur with your decision to deny the proposed bylaw amendment.

BACKGROUND

An FCU wants to amend Article IX, Section 2 of the FCU Bylaws by adding the provision that members of the credit committee cannot serve consecutive terms. The stated purpose of the amendment is to involve more members and to prevent any person(s) from dominating the credit committee. Credit committee members are elected by the FCU's members.

ANALYSIS

Section 111(a) of the FCU Act [12 U.S.C. §1761(a)], states that FCU board members are to be "elected annually by and from the members." Section 114(a) of the FCU Act [12 U.S.C. §1761c(a)] states:

If the bylaws provide for a credit committee, then pursuant to the provisions of the bylaws, the board of directors may appoint or the members may elect a credit committee which shall consist of an odd number of members of the credit union but which shall not include more than one loan officer. The method used shall be set forth in the bylaws. . . .

The only eligibility requirements for FCU board membership are those contained in the FCU Act and the Bylaws. That is, as long as an individual is a member (Section 111) and has not been convicted of a crime involving dishonesty or breach of trust (Section 205(d)), or if they have been convicted of such a crime the NCUA Board has waived the Section 205(d) prohibition, he or she is eligible to be elected as a director. Article VI, Section 7, of the FCU Bylaws also permits the board to establish a minimum age requirement. NCUA has not generally granted nonstandard bylaw amendments in this area.

We see no reason for interpreting Section 114 any differently from Section 111 or for having a different standard for granting nonstandard bylaw amendments.

As you recognized in your memo, the FCU's nominating committee may consider the fact that a person is completing a term on the credit committee in deciding against including the person as a nominee. However, this is inherent in the discretion given to the nominating committee by Article VI of the Bylaws. Moreover, this discretion is limited by the fact that nominations from the floor or by petition are permitted.

We concur with your decision to deny the FCU's request for a bylaw amendment.