

November 14, 2002

The Honorable Robert L. Ehrlich, Jr.

Congress of the United States

House of Representatives

Washington, D.C. 20515-2002

Re: Federal Credit Union Act Election Requirements.

Dear Congressman Ehrlich:

You have inquired on behalf of your constituent, about the procedures for electing a federal credit union's (FCU's) board of directors and his concern that the FCU Bylaws may conflict with the requirements for electing a board of directors in the FCU Act. As explained below, these two provisions complement rather than conflict with each other.

Currently, §111 of the FCU Act requires the board of directors "to be elected annually as the bylaws provide." 12 U.S.C. §1761. Your constituent interprets this provision to require that all directors must be elected annually and believes there is a conflict because the FCU Bylaws provide for staggered terms for directors. FCU Bylaws, Article VI, Section 3.

The legislative history of §111 indicates that the intent of this provision was to allow for staggered terms for directors. Section 11 of the FCU Act, which was enacted in 1934, provided for annual director elections with staggered terms. Federal Credit Union Act of 1934, Pub. L. No. 73-467, c. 750, 48 Stat. 1216 (June 26, 1934). The FCU Act was amended in 1937 to provide for annual elections "for such terms, respectively, as the bylaws may provide." Pub. L. No. 75-416, 51 Stat. 4 (December 6, 1937). The standard bylaws for FCUs, since their creation in 1937, have provided for staggered terms. FCU Bylaws, Article VII, Section 1, April 1937. In 1982, Congress made several amendments to the FCU Act, including deleting the words "for such terms, respectively" from §111 (previously §11). Garn-St. Germain Depository Institutions Act of 1982, Pub. L. No. 97-320, 96 Stat. 1469 (October 15, 1982). The intent of the amendments was to provide "greater operating flexibility for federal credit unions." S. Conf. Rep. No. 641, 97<sup>th</sup> Cong., 2d Sess. (September 30, 1982). There is no indication in the legislative history that Congress intended to require that all board members be elected annually.

Based on the language in the statute allowing the bylaws to dictate how the annual elections will be conducted, we believe the correct interpretation is to allow for staggered terms for directors. Please feel free to contact me if you have any additional questions.

Sincerely,

Sheila A. Albin

Associate General Counsel

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