

GC/CJL:bhs
03-0944R

TO:

FROM: Sheila A. Albin, Associate General Counsel

SUBJ: Nonstandard Bylaw Amendments, [] FCU

DATE: October 17, 2003

You have asked this office to review and comment on proposed nonstandard bylaw amendments submitted for approval by [] Federal Credit Union that will reduce the number of days in the federal credit union's (FCU's) election process and address the order of candidates on the ballots. FCU Bylaws, Article V (Rev. 1/99). We have no legal concerns with this FCU's proposed amendments due to the size of the credit union. We address this issue more fully below.

The FCU proposes to reduce all of the time frames in Article V, Option A4. Currently, this option requires the board to appoint the nominating committee 120 days before the annual meeting; the nominating committee to file nominations 90 days before the meeting; the secretary to issue the nomination notice to members 75 days before the meeting; the closing date for nominations petitions to end at least 30 days from the date the nomination notice is mailed; the filing date for petitions to be set at least 40 days before the meeting; the posting of nominees names in the credit union at least 35 days before the meeting; the ballots to be sent at least 30 days before the meeting; and the receipt of ballots no later than five days before the meeting.

The FCU proposes to reduce the number of days set forth in Article V, Option A4 by requiring: the board to appoint the nominating committee 80 days before the annual meeting; the nominating committee to file nominations 60 days before the meeting; the secretary to issue the nomination notice to members 55 days before the meeting; the closing date for nominations petitions to end at least 21 days from the date the nomination notice is mailed; the filing date for petitions to be set at least 34 days before the meeting; the posting of nominees names in the credit union at least 30 days before the meeting; the ballots to be sent at least 24 days before the meeting; and the receipt of ballots no later than three days before the meeting. The credit union believes that the shortened election process provide sufficient time for the membership to engage in the election process while maintaining a high level of integrity and democracy.

Nothing in the FCU Act or our regulations requires the use of the 120-day time frame for elections, but NCUA has suggested this time period as a minimum since 1991. In previous opinions, we determined that credit unions could adjust the various time frames for the election process provided that members have an adequate amount of time to vote. See OGC 92-0126, dated February 6, 1992; OGC 01-0653, dated July 6, 2001; and OGC 01-0841, dated September 5, 2001. In the attached memorandum, OGC 02-1125, dated December 12, 2002, we supported a bylaw amendment that altered the amount of time the FCU would have to count ballots because members retained a minimum of 30 days to vote.

We believe that, due to [] FCU's relatively small membership size of 8,237 members, the FCU may reduce the number of days in its election process. By shortening the time frames, the FCU may burden its staff because they will have less time to print notices, verify petitions, and mail ballots. The proposed amendments may also affect the membership by reducing the amount of time a member can collect petition signatures or return a ballot. The FCU has determined, however, that the shortened time frames are manageable.

While the shortening of the time frame for the submission of petitions may impact the democratic process for larger credit unions, we believe the effect is not as great for this particular FCU. Under the proposed amendments, members are given approximately a two-week period to obtain signatures for a nomination petition from the date they receive the nominations notice. Due to the small size of the FCU's membership, a petitioner need only collect 82 signatures. If the member needed to collect 500 signatures in the time frame proposed, this office would likely object to the negative impact the proposed amendment would have on the democratic process.

The FCU also proposes to amend Article V, Option A4 2(d)(1) so that instead of the ballot listing the candidates' names in order as determined by the draw of lots, the ballots will list first the nominating committee's candidates in alphabetical order followed by the candidates nominated by petition in alphabetical order. In the attached legal opinion, OGC 99-1044, dated December 8, 1999, we determined that the board of directors may make recommendations on the mail ballot and cited another legal opinion allowing ballots to indicate whether a candidate is an incumbent. Similarly, the proposed amendment would eliminate the random process for placing names on the ballot and would allow the nominating committee's candidates to have a more favorable position on the ballot. We have no legal objections to the proposed amendment because it does not conflict with the FCU Act or our regulations.

Attachments