

TO: Edward Dupcak, Region II Director
FROM: Sheila A. Albin, Associate General Counsel
SUBJ: [] Federal Credit Union Bylaw Amendment
DATE: October 13, 2005

You have asked us to review a proposed bylaw amendment from [] Federal Credit Union (FCU) that would add term limits for the board president to Article VII, Section 3 of the bylaws. We agree with you that the substance of the proposed amendment is permissible but offer some drafting suggestions. We also agree with you that the amendment should be in Section 2 of Article VII.

The proposed amendment would limit the board president to three consecutive one-year terms and then require a minimum absence of one year from the office. After this one-year absence, the board member would again be eligible to serve another three consecutive one-year terms as president, but no further service in the position would be permitted.

The Federal Credit Union Act and NCUA regulations do not prohibit credit unions from imposing term limits for board officers, and we have previously approved a similar bylaw amendment allowing a credit union to limit the term of its board chairman. Accordingly, we have no legal objection to approving a bylaw amendment that would limit the term of the board president. Because Section 2 of Article VII addresses election of board officers, we agree that the amendment should be in Section 2.

We do, however, suggest some revisions to the draft amendment. First, the phrase “notwithstanding any provision to the contrary in the Bylaws” is unclear and should be deleted. This clause could operate to prevent the replacement of the board president with the most qualified candidate if the office becomes vacant. The bylaws allow the election of board officers outside of the normal cycle if an office becomes vacant due to the death, resignation or removal of an officer. Federal Credit Union Bylaws, Article VII, §2. If a president suddenly dies, resigns, or is removed, the most qualified person to take over the remaining time of the term may be a former president serving on the board. The bylaw amendment should not preclude service by a former president in this situation.

The draft amendment fails to address if service as president resulting from unexpected events is included in calculating the required one-year lapse. It also fails to address service by the vice-president if the president is absent or unable to act. Id. Art. VII, §5. If a former president is vice president and must act as president, or is reelected president due to the death, resignation or removal of the president, it is not clear from the draft amendment if serving as president in this situation is included in calculating the required one-year lapse. We added a third sentence to the draft amendment to avoid potential uncertainty on this issue.

Finally, the draft amendment also does not clarify if partial terms that may result from unexpected events count toward the three-term limit. We added a fourth sentence to the draft amendment to avoid this potential uncertainty.

Our suggested wording for the amendment, added as a new paragraph at the end of Section 2 of Article VII, is:

The term of office for an individual to serve as the board president is limited to three consecutive one-year terms. Unless elected to fill a vacancy caused by the death, resignation or removal of the president, at least one year must pass before an individual may be re-elected to the office of president and can serve once again for a maximum period of three, one-year terms. Service resulting from election to a vacancy caused by the death, resignation or removal of the president, or service by a vice-president who assumes the duties of president under Section 5 of this Article [counts/does not count] toward the required one-year break in service. Part-year terms of service as president [counts/does not count] toward the three, consecutive one-year term limit.