

GC/EAW:bhs  
05-1228R

TO: Mark Treichel, Region I Director  
FROM: Sheila A. Albin, Associate General Counsel  
SUBJ: Proposed Bylaw Amendments -- [ ] Federal Credit Union  
DATE: January 9, 2006

You have asked us to review three proposed bylaw amendments from [ ] Federal Credit Union (FCU). Our comments on each of the proposed changes are below.

Article V, Section 1 – Option A2

We recommend denying the FCU's proposal to increase the percentage of membership signatures required on nominating petitions from a minimum of 1% to a minimum of 3%.

In the proposed revisions to the FCU bylaws issued for comment last summer, the Board declined to adopt a similar request to increase the maximum number of signatures required on nominating petitions. 70 Fed. Reg. 40924, 40927 (July 15, 2005). The Board retained the current cap of 500 member signatures because it feared that any increase would make nomination by petition too difficult. The FCU's request to increase the percentage of signatures required on nominating petitions, would, by its own description, make it more difficult for individuals to seek nomination by petition. This rationale runs counter to the Board's opposition to increasing the burden on members seeking nomination by petition. Bylaw amendments that would make the nomination process more difficult for members are not permissible, regardless of an FCU's size.

Article VI, Section 8

We have no objection to the FCU's proposal to change the word "may" to "will" in the sentence allowing removal of a director for non-attendance at board meetings. The FCU's proposal also adds a clause allowing flexibility in this provision, so that a director will be removed for non-attendance "unless the board decides otherwise." We agree with your view that this change is minor and in practice is likely to work just as the form bylaw it replaces, which says board members "may" be removed for non-attendance.

Article VII, Section 2

We agree with your inclination to deny the FCU's proposal to increase the number of days between the annual meeting and the election of board officers from seven to thirty days. As you noted, OGC recently denied a similar request. OGC Legal Opinion Letter 05-0713, dated August 9, 2005. In the proposed revisions to the FCU bylaws issued for comment last summer, the NCUA Board declined to adopt this change and asked for comments on the seven-day requirement. 70 Fed. Reg. 40928. Two of four commenters on this provision expressed agreement with the seven-day deadline, while two commenters asked for additional time. If the NCUA Board changes this requirement in the final version of the bylaw revisions, the FCU can adopt the revised bylaw. At this time, however, the FCU may not change the seven-day limit.