

June 28, 2006

Richard Downing, Esq.
425 West Capital Avenue, Suite 3310
Little Rock, AR 72201

Re: Permissibility of Resolution to Rotate Board Officer Positions and
Bylaw Amendment Providing Five-Year Terms for Directors.

Dear Mr. Downing:

You have asked if a federal credit union (FCU) board of directors may adopt a resolution providing for annual rotation of directors in the officer positions on the board and, also, if it may amend its bylaws to provide five-year terms for its directors.

A board resolution requiring directors to rotate officer positions is impermissible because it conflicts with the Federal Credit Union Act (FCU Act). On your second question, while we have no legal objection to a bylaw amendment providing five-year terms for directors, a bylaw amendment requires an FCU to submit a proposed amendment to its regional director for review and consultation within the agency for assessment of policy and potential safety and soundness concerns in addition to a determination of its legality under the FCU Act.

Officer Rotation Resolution

You asked for a legal opinion on an FCU board's adoption of a resolution providing that its five directors will annually rotate serving as the different officers on the board. The rotation would work so that a director progresses from being a director for a year, then to the office of secretary, then to treasurer, then to vice-chair, and, finally, to serving as the chair. After serving as the chair, that director would return to and continue serving as a director but would not hold a board office for a year.

Your letter notes the FCU's board originally wanted to adopt this rotation plan as a bylaw amendment, but it was not likely to receive the approval of two-thirds of the board, which is required for a bylaw amendment. FCU Bylaws, Article XVII. Further, you consulted informally with the Office of General Counsel and were informed that it would not likely receive NCUA approval, which is also required for a bylaw amendment. *Id.* Therefore, you have requested our view on a board of directors adopting the plan as a board resolution as an alternative. Our view is the officer rotation plan is impermissible regardless of its form as a bylaw amendment or a resolution because it conflicts with the FCU Act.

The FCU Act requires directors to "elect from their number the board officers specified in the bylaws" at the first board meeting after the annual meeting. 12 U.S.C. §1761a. The FCU Bylaws repeat this requirement. FCU Bylaws, Article VII, §1. The resolution

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does not meet the requirement for directors to elect officers "from their number" each year, because it could have the effect of predetermining officer elections.

The resolution's wording is ambiguous and contradictory. Although it states rotation of board offices is "subject to the annual officer election" as provided in the Bylaws, it describes the rotation as mandatory. Further, although the resolution also states it will not change prior officer elections, and that rotation of offices will begin in 2007, it vaguely states the resolution "is the sense and policy of the current board of directors" and not an amendment of the bylaws. The meaning of this statement is unclear. A resolution adopted by a board of directors binds subsequent boards unless a new board votes to rescind or change the resolution. With a five-member board and three-year terms, only one or two director positions are up for election every year. Thus, the resolution is unlikely to be overturned for at least one election cycle and could, in practice, dictate officer selection to succeeding boards with different members.

Bylaw Amendment Providing Five-Year Terms for Directors

Regarding your question as to whether an FCU may adopt a bylaw amendment to increase directors' terms to five years, we note the FCU Act requires annual elections but does not mandate the length the terms of directors. The FCU Bylaws require terms of two or three years, with an equal number of terms expiring each year. 12 U.S.C. §1761; FCU Bylaws, Article VI, §3.

The FCU has a five-member board, so, if directors had five-year terms, at least one director would be elected each year. As long as a longer term does not eliminate an annual election, it would not violate the FCU Act. As with all proposed bylaw amendments, review and consultation with the agency is required. In addition to permissibility under the FCU Act, review and consultation within the agency of proposed bylaw amendments includes consideration of policy and safety and soundness concerns. For your information, I have enclosed the introduction to our recently revised bylaws, which explains the procedure for submitting proposed bylaw amendments. If you have further questions, please feel free to contact Staff Attorney Elizabeth Wirick or me.

Sincerely,

/S/

Sheila A. Albin
Associate General Counsel

GC/EAW:bhs
06-0528
Enclosure