

December 29, 1994

Daniel P. Stake  
General Counsel  
Tinker FCU  
P.O. Box 45750  
Tinker Air Force Base, Oklahoma 73145

Re: Request for Interpretation of the Bylaws (Your December 1, 1994, Letter)

Dear Mr. Stake:

You have asked for a legal opinion on the permissibility of a federal credit union (FCU) adopting Article VI, Section 2, Option 1 of the Standard Bylaw Amendments and retaining Article VI, Section 1 of the FCU Bylaws. The effect of this combination is to allow for no nominations except by the nominating committee, provided it nominates at least one person for each vacancy. For the reasons stated below, the combination of bylaws you have suggested is impermissible.

It has consistently been NCUA's position that the only qualifications for an FCU director are those imposed by the FCU Act and the FCU's bylaws. In explaining the practical effect of this, we have stated that a FCU's nominating committee may have eligibility requirements that go beyond the Act and the bylaws, but individuals, other than those nominated by the nominating committee, may run for the board by submitting the appropriate petition and/or by being nominated from the floor at the election meeting, whichever the FCU's bylaws allows. See, as enclosed, June 30, 1991, Letter from James J. Engel, DGC to Mr. Karl Rapp and April 23, 1986, Letter from Steven Bisker, AGC to Ms. Diane Johnson. As your bylaws are currently structured, there is no provision for an individual to run unless nominated by the nominating committee.

The comments, preceding Article VI, Section 1 of the Standard Bylaw Amendments, states that "there must also be the companion election amendments to Article VI, Section 2." It is our position that the reverse is also true. If a FCU adopts Article VI, Section 2 of the Standard Bylaw Amendments, then there must also be the companion election amendments to Article VI, Section 1. By adopting the Standard Bylaw Amendment to Article VI, Section 1, your FCU would allow for nominations by petition. We would advise you to adopt this bylaw amendment immediately.

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You have also asked for assistance in determining what criteria would be permissible for a nominating committee, as opposed to eligibility restrictions on running for election. We have enclosed several letters, which should give you guidance in this area.\*

I hope that we have been of assistance.

Sincerely,

Richard S. Schulman  
Associate General Counsel

GC/MFR:bhs

SSIC 3500  
94-1209  
Enclosures

cc: Patrick Casey, Region V

\* Letters of November 20, 1991, from Ms. Ulan to Louis Ravetti, Ent FCU, August 19, 1992, from Ms. Ulan to Clarence A. Fry, Aberdeen Proving Grounds FCU, and March 9, 1993, from Ms. Ulan to A.C. Zielske, Norfolk Naval Supply Center FCU.