

August 19, 1992

Clarence A. Fry
Chairman of the Board
Aberdeen Proving Ground Federal Credit Union
P.O. Box 1176
Aberdeen, MD 21001-6176

Re: Term Limits for Directors (Your July 29, 1992, Letter)

Dear Mr. Fry:

You asked whether, pursuant to a policy adopted by the board of directors of Aberdeen Proving Ground Federal Credit Union (FCU), the term of office of board members can be limited to no more than three consecutive three year terms. We believe that an absolute term limit on the board of directors is invalid under the Federal Credit Union Act (the "Act"). However, this does not preclude an FCU's board of directors and nominating committee from adopting a term limit policy.

In 1988, the FCU adopted a policy limiting the terms of office of board members to no more than three consecutive three year terms. This policy was in response to a perception among the membership that there was little turnover among the board of directors. The FCU believes this policy allows for the development of new ideas and permits younger members to take a more active role in developing credit union policies.

ANALYSIS

It is our long-standing position that the only eligibility requirements for federal credit union board membership are those contained in the Act. That is, as long as an individual is a member of the FCU (Section 111 of the Act, 12 U.S.C. ~1761) and has not been convicted of a crime involving dishonesty or breach of trust (Section 205(d) of the Act, 12 U.S.C. ~1785(d)) (or if he has been convicted of such a crime, the NCUA Board has waived the Section 205(d) prohibition), he is eligible for election to the board of directors. Article VI, Section 7 of the Standard Federal Credit Union Bylaws permits an FCU's board of directors to set a minimum age requirement.

We have consistently rejected proposed nonstandard bylaw amendments or FCU policies that restrict completely any member's eligibility to run for the board of directors. In our view, such proposed bylaws and policies are impermissible because they serve as an absolute bar against an FCU member running for and serving on the board for a particular term, in conflict with the Act.

This does not, however, preclude an FCU's board and nominating committee from having a policy of nominating only individuals who have served less than three consecutive three year terms on the board of directors. Article VI of the Standard Federal Credit Union Bylaws gives the nominating committee discretion to set standards for determining which members it deems worthy of nomination. The FCU board can provide guidance on this policy. Thus, the nominating committee can have a term limit policy. However, all members 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, whichever the FCU's bylaws allow. Individuals who are nominated by petition or from the floor are not subject to the nominating committee's standards, and may not be precluded from running for the board of directors as long as they meet the criteria specified in the Act and the FCU's bylaws.

Sincerely,

Hattie M. Ulan
Associate General Counsel

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