

June 18,2002

Marjorie Auer, Director and Chair of Nominating Committee  
Department of Veterans Affairs Federal Credit Union  
P.O. Box 50617  
Washington, D.C. 20091-0617

Re: Nomination Process for Board of Directors.

Dear Ms. Auer:

You have asked several questions related to the roles of the nominating committee and the board of directors in the nomination process. The central issue is whether the board of directors may have a policy requiring that incumbents who seek reelection be included in the slate of candidates presented to the members. We believe that such a policy is permissible as long as the nominating committee is not precluded from nominating additional candidates.

The board of directors has the responsibility and the authority to establish policies for the nominating committee to follow and may delegate to the nominating committee the authority to establish qualifications and requirements.

This is discussed in the attached letter from Hattie M. Ulan to A.C. Zielske, dated March 9, 1993. This letter notes that the FCU Bylaws provide for the executive officer, now referred to as the chair of the board, to appoint a nominating committee of not less than three members. This letter also notes that the FCU Act provides that the board of directors is responsible for the direction and control of the affairs of the credit union and, further, that the FCU Act requires the board of directors to "prescribe conditions and limitations for any committee which it appoints." 12 U.S.C. §1761b (14).

The board of directors must establish policies for the nominating committee to follow. Such policies may include qualifications and/or requirements for nominees. In our opinion, the board may, if it chooses, delegate to the nominating committee the authority to establish qualification and/or requirements for individuals to be nominated. However, that delegation may not be absolute. The board must first establish some parameters within which the nominating committee may act, and must periodically review the standards set by the nominating committee, to ensure they comport with the general policies established by the board.

The nominating committee's responsibility is to nominate at least one member for each vacancy in accordance with the board's policies on nominations. FCU Bylaws, Art. V, Section 1. The FCU Bylaws do not restrict the nominating committee from nominating more than one candidate for each vacancy.

We note that in a letter from Richard Schulman to Robert Byroad, dated April 2, 1994, we stated that the board of directors, itself, does not have the authority to nominate candidates. This is correct. Nevertheless, the board can significantly control whom the nominating committee may nominate by the policies it establishes.

While the board of directors must prescribe policies, a board's policy on nominations may not usurp the role of the nominating committee. Nominating policies may specify various qualifications or requirements such as age, years of membership, relevant financial or business experience, education, service to the credit union, and so forth. As noted above, the board may delegate to the nominating committee the authority to establish specific qualifications or requirements within the general policies of the board. Our view is that, while a board may adopt a policy providing for willing incumbents to be included in the slate of nominees, such a policy may not restrict the nominating committee from nominating other candidates if it chooses to do so. Otherwise, such a policy would eliminate the function of the nominating committee and, in our view, violate the FCU Bylaws.

Sincerely,

Sheila A. Albin  
Associate General Counsel

OGC/SAA/CJL:bhs  
SSIC 3700  
02-0567

Attachments