

March 29, 1995

Ms. Connie Steinbacher
Supervisory Committee
AVCO Federal Credit Union
RD 4, Box 5
Williamsport, PA 17701

Re: Requirements for Board Membership (Your January 25, 1995, Letter)

Dear Ms. Steinbacher:

You have asked several questions concerning AVCO Federal Credit Union's ("FCU") ability to impose service and educational requirements on its board of directors, and its authority to dismiss board members who fail to satisfy those requirements.

According to your letter, before being seated on the board, an individual must sign a document entitled the "Terms of Agreement for Board of Directors" (the "Agreement"). The Agreement specifies the duties and responsibilities of each director, including an obligation to fulfill certain educational requirements. The FCU may dismiss a director who violates any provision of the Agreement. A director that fails to complete the educational requirements during his term will be ineligible for nomination as an incumbent director at the next election. The board's current job description states that each board member and supervisory committee member must complete a volunteer program offered by the state credit union league within one year of taking office. Your questions and our responses are set forth below.

Analysis

1. Can the board of directors establish educational requirements for its members and remove directors that fail to satisfy the requirements?

An FCU may require all newly elected directors to attend educational programs within a specified period of time after being elected to the board of directors.¹ Assuming the requirement was reasonable and the director does not complete the requirement, it could constitute a failure to perform his duties pursuant to Article VII, Section 7 of the Standard FCU Bylaws.² The board may then remove that individual or take other action to deny renomination as discussed below.

2. If a board member does not fulfill the educational requirements, can the board refuse to nominate that board member for additional term?

Article VI of the Standard FCU Bylaws gives the nominating committee discretion to set standards for its nominees. It has been NCUA's long-standing position that the FCU Act and the Standard FCU Bylaws contain the only eligibility requirements for membership on an FCU's board.³ However, neither the FCU Act nor the FCU Bylaws prohibit a nominating committee from adopting a policy that excludes nominees who have failed to satisfy reasonable requirements. An incumbent board member who is not nominated by the nominating committee, however, is not barred from seeking an additional term.⁴ 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 meeting called to hold the election, and as prescribed in your bylaws. As long as an individual meets the criteria specified in the FCU Act and the bylaws, the FCU may not prevent that person from running for the board of directors.

If you have any questions concerning the foregoing, please contact Jeffrey Mooney, Staff Attorney at (703) 518-6563.

Sincerely,

Richard S. Schulman
Associate General Counsel

GC/JSM:bhs
SSIC 3500
95-0207
Enclosures

1 See Letter dated July 10, 1991, from James J. Engel, Dep. GC to Jerry E. Barnett, Pres., Lincoln Goodyear Employees FCU. Re: Board of Directors' Eligibility Requirements (enclosed).

2 The board may not remove or dismiss a board member pursuant to Article VII, Section 8 of the FCU's bylaws. That provision states the procedures for suspending a member of the supervisory committee.

3 As long as an individual is a member of the FCU (12 U.S.C. 1761(a)) and has not been convicted of a crime involving dishonesty or breach of trust (12 U.S.C. 1785(d)), he or she is eligible to be elected a director. Article VI, Section 7 of the standard FCU bylaws also permits the board to establish minimum age requirements.

4 See December 29, 1994, my letter to Daniel Stake, Esq., Re: Request for Interpretation of Bylaws; June 30, 1991, Letter from James J. Engel, DGC to Karl F. Rapp, Re: Board of Directors' Eligibility Requirements; and April 23, 1986, Letter from Steven Bisker, AGC to Ms. Diane Johnson. (all enclosed). Ms. Connie Steinbacher

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