

June 27, 1991

Ms. Jeannette Perez
Urb. Oasis Gardens
España D-2, Guaynabo, Puerto Rico 00657

Re: Paid Employees Serving as Directors (Your May 28, 1991 Letter)

Dear Ms. Perez:

You asked whether paid employees of a federal credit union ("FCU") may be elected to the board of directors. There is no general prohibition against a paid employee serving as an FCU director.

It is our longstanding position that the only eligibility requirements for FCU board membership are those contained in the Federal Credit Union Act (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 any 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 (the "Bylaws") also permits a board of directors to set a minimum age requirement.

Article VIII, Section 1 of the Bylaws, which you cite in your letter, is based in part on Section 112 of the Act (12 U.S.C. ~1761a), which provides, "Only one board officer may be compensated as an officer of the board." Neither those provisions nor Section 111(c) of the Act (12 U.S.C. ~1761(c)), which prohibits compensation for service as a director, precludes a paid employee of an FCU from being elected to and serving on the board of directors. As long as the employee is compensated for his work as an employee of the FCU, rather than for his service on the board, he may hold both positions.

We do note, however, that an FCU's bylaws may contain some valid restrictions on paid employees serving on the board of directors. Article VIII, Section 6 of the Bylaws prohibits an FCU manager from serving as a director; there is, however, a standard bylaw amendment which, if adopted, allows the manager to hold both positions. An FCU's board of directors may also adopt a standard bylaw amendment limiting the number of FCU employees who may serve on the board. That amendment does not prevent an employee from being elected to the board. If elected, the employee must choose between serving the FCU as a director or as an employee.

You also asked what bylaw amendments would be necessary in order to prohibit an employee who is an FCU member from being elected to the board of directors. As noted above, we recognize few eligibility requirements for election to the board of directors. NCUA has generally not granted nonstandard bylaw amendments that would limit the eligibility of FCU members to be elected to the board.

Sincerely,

James J. Engel
Deputy General Counsel

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