

February 24, 2011

Carrie Hunt  
General Counsel  
National Association of Federal Credit Unions  
3138 10<sup>th</sup> Street North  
Arlington, VA 22201-2149

Re: Letter to Federal Credit Unions (LFCU) No. 11-FCU-02

Dear Ms. Hunt:

NCUA recently adopted final rule §701.4, *General authorities and duties of Federal credit union directors*, and then issued LFCU No. 11-FCU-02, *Duties of Federal Credit Union Boards of Directors*, discussing §701.4. You have some questions about the following language on page 4 of the LFCU:

Paragraph 701.4 (a) Management of a Federal Credit Union

Paragraph 701.4(a) provides, in part, that “while the board may delegate execution of operational functions to [management], the ultimate responsibility for [the credit union’s] direction and control is not delegable.”

The board may delegate management functions to senior management. **The board, however, must directly exercise its authority to hire, fire, determine duties, set compensation, and discipline senior management.** The board must also ensure that appropriate policies are in place to guide senior management in the execution of their duties.

(emphasis added). Your questions, and our responses, follow.

1. Does the bolded language above represent a change to existing NCUA policy?

Answer: No. The intent of the quoted language above is to highlight the important functions of a federal credit union’s (FCU’s) board and illustrate those functions that would not typically be delegated to management. The language above is not intended to change other existing NCUA legal or policy pronouncements in this area.

2. May the full board of directors at an FCU delegate to its Executive Committee the authority to hire, fire, determine duties, and set compensation, and discipline senior management?

Answer: Yes. Under the Federal Credit Union Act and the FCU Standard Bylaws, the Board may delegate to the Executive Committee certain functions, including those personnel functions described above. See 12 U.S.C. §1761b(12) and FCU Standard Bylaws Art.VII, §10. The Executive Committee is a committee of three or more appointed by the full board. Only directors can serve on the Executive Committee.

3. May an FCU's board of directors delegate to the FCU's Chief Executive Officer (CEO) the authority to hire, fire, and compensate subordinate employees, including other management personnel?

Answer: Yes, within limitations.

The Act and the FCU Standard Bylaws empower the FCU's board of directors to make personnel decisions, including personnel decisions relating to the CEO and any assistant CEOs.<sup>1</sup> Article VII, §6 of the bylaws provides some specific delegations of authority to the CEO, including these personnel delegations:

*Subject to limitations, controls, and delegations that board may impose, the [CEO] will: . . . (e) within standards and limitations prescribed by the board, employ tellers, clerks, bookkeepers, and other office employees, and have the power to remove these employees.*<sup>2</sup>

Subject to certain limitations, the board may also delegate to the CEO the authority to fix the compensation of employees and prescribe their duties.<sup>3</sup>

Clearly, no CEO may be delegated the authority to control personnel actions directed to the CEO, such as setting the CEO's own compensation or approving any disciplinary action against the CEO. Additionally, if a board determines to delegate to the CEO the authority to hire, fire, fix the compensation of, or discipline other senior managers the board should take care as referenced in bylaw Art. VII, §6 above to place appropriate standards and controls on such delegated authority. This is particularly true in larger, complex credit unions where senior managers wield much more power than the "tellers, clerks, and bookkeepers" specifically named in bylaw Article VII, §6(e).

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<sup>1</sup> 12 U.S.C. §1761b; FCU Standard Bylaws, Art. VII, §§6 and 7.

<sup>2</sup> FCU Standard Bylaws, Art. VII, §6e. This bylaw actually refers to the *financial officer* when acting as CEO. The bylaws permit an FCU's board of directors to appoint one director to serve as the *financial officer*. FCU Standard Bylaws, Art. VII, §1. The bylaws then provide that this financial officer will manage the FCU (i.e., serve as the CEO) under the direction and control of the board unless the board appoints a *management official* to act as CEO. FCU Standard Bylaws, Art. VII, §6. The board's authority to delegate to the management official is the same as the board's authority to delegate to the financial officer (when acting as CEO). See FCU Standard Bylaws, Art. VII, §7 (with cross reference to §6). Note also that the financial officer (if one is appointed) is a member of the board of directors, and that this is a distinct position from the Chief Financial Officer (CFO). The CFO is a nondirector who serves under the CEO.

<sup>3</sup> FCU Standard Bylaws, Art. VII, §8.

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Please feel free to contact Associate General Counsel Paul Peterson or me at (703) 518- 6540 with any questions you may have.

Sincerely,

/S/

Robert M. Fenner  
General Counsel

OGC/PMP:bhs  
11-0221