

January 20, 2012

Re: Separation and Release Agreement

Dear _____ :

You have asked whether a federal credit union (FCU) may contractually prohibit a member from running for the board of directors or serving on the supervisory committee. As discussed below, such an agreement is permissible under the Federal Credit Union Act.

Background and Analysis

We understand that you are a former employee of _____ Federal Credit Union. The FCU has prepared a Separation and Release Agreement that offers you a lump sum payment and the opportunity to have your personnel file reflect that you resigned rather than were terminated. In exchange, the Agreement requires you to consent to a number of conditions, including keeping certain matters confidential, releasing the FCU from any claims, and refraining from seeking election or accepting appointment to the FCU's board of directors or supervisory committee for five years from the separation date. You believe that the latter condition violates your rights as an FCU member.

We disagree. While an FCU may impose only a few limitations on eligibility for election to the board of directors,¹ a member may contractually agree not to run for or accept appointment to the board. For such a contract to be valid, the member must receive something from the FCU in return. We offer no opinion as to whether the particular contract in this case is valid; that is a matter to be decided under state law. Likewise, a member may agree not to accept appointment to the supervisory committee, and the validity of such agreement would be decided under state law.

¹ The FCU Act provides that as long as an individual is a member and has not been convicted of a crime involving dishonesty or breach of trust – or if convicted of such a crime the National Credit Union Administration Board has waived the prohibition – then the individual is eligible for board membership. 12 U.S.C. §§1761, 1785(d). Article V, Section 7, of the FCU Bylaws also permits the board of directors to set a minimum age requirement.

January 20, 2012
Page 2

If you have any questions, please contact Staff Attorney Lisa Henderson or me at 703-518-6540.

Sincerely,

/S/

Hattie M. Ulan
Associate General Counsel

GC/LH:bhs
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