

March 1, 1991

James J. Kallinger,
President & CEO
Firefund Federal Credit Union
1600 Los Gamos Drive
San Rafael, California 94911-5500

Re: Bylaw Provisions for Removal (Your February 12, 1991 Letter)

Dear Mr. Kallinger:

You requested our opinion on several questions regarding removal under the Standard Federal Credit Union Bylaws (the "Bylaws"). You classify three of the questions as relating to Article VII, Section 7 of the Bylaws; and the other three as relating to Article XIX, Section 3. Your individual questions and our answers to each are set out below.

Article VII, Section 7

Article VII, Section 7 addresses removal of Directors and credit committee members by the Board of Directors.

1. Does Article VII, Section 7 govern removal of Directors and Executive Officers only, as opposed to federal credit union ("FCU") employees?

Yes. In addition, removal of credit committee members comes under Article VII, Section 7.

2. Does the removal from office of an Executive Officer require the affirmative vote of a majority of FCU members at a special meeting called for that purpose, after the Executive Officer has had an opportunity to be heard, under Article XIX, Section 3?

No. Article VII, Section 7 clearly states, "The Board may remove any Executive Officer from office for failure to perform the duties thereof, after giving the Officer reasonable notice and opportunity to be heard." Like a Director, an Executive Officer may be removed by the Board of Directors. Moreover, a Director, if removed from office by the Board, may no longer serve as an Executive Officer. There is no general membership involvement under Article VII, Section 7 removals. Article XIX, Section 3 merely presents the alternative of removal of an Officer by the membership.

3. What is the rationale for allowing an Executive Officer to be heard at a special meeting of the members prior to removal, rather than simply permitting the Board to remove him?

Again, Article VII, Section 7 does permit the Board of Directors to remove an Executive Officer. The phrase, "opportunity to be heard" in this bylaw provision refers to a hearing before the Board, not the membership. A hearing before the membership is required only when removal is by the membership, under Article XIX, Section 3.

Article XIX, Section 3

Article XIX, Section 3 addresses removal of various officials and employees by the membership.

1. Does Article XIX, Section 3 affect only Executive Officers and not FCU employees, since employees do not "hold office?"

No. Article XIX, Section 3 specifically includes employees among those who may be removed as described in the bylaw. There is no requirement that the person being removed "hold office" in the sense of having been elected or appointed; an employee is removed from office when he is removed from his position as an employee. The NCUA, in Change 2 to the Standard Bylaw Amendments and Guidelines, gave FCUs the option of deleting the word "employees" from Article XIX, Section 3 for the very reason that the bylaw as written does include employees.

2. Since only Executive Officers "hold office," why does this section include directors, committee members and employees, rather than reading ". . . any Executive Officer

may be removed . . . ?" As noted in our answer to question one of this section, Article XIX, Section 3 covers removal of FCU employees. Moreover, the bylaw expressly mentions Directors and committee members, neither of whom need necessarily be an Executive Officer. Changing the bylaw as you propose would narrow its scope considerably.

3. What is the rationale for allowing an Executive Officer to be heard at a special meeting of the members prior to removal, rather than simply permitting the Board to remove him?

See answer to question 3 in part one, above.

I hope that we have been of assistance.

Sincerely,

Hattie M. Ulan
Associate General Counsel

GC/MRS:sg
SSIC 3700
91-0224