

March 17, 2006

Steven Bisker, Esq.
2800 Eisenhower Avenue
Suite 100
Alexandria, VA 22314

Re: Change in Number of FCU Directors.

Dear Mr. Bisker:

You have asked if the directors of a federal credit union (FCU) may amend Article VI, Section 1 of the FCU Bylaws and reduce the number of directors by majority vote. You have also asked if the directors may amend Article VI, Section 2 to change the number of employees permitted to be directors by majority vote. Changes in the number of directors or the number of employees permitted to be directors are amendments to the FCU's bylaws and, therefore, require a two-thirds vote of an FCU's board.

The Federal Credit Union Act requires the FCU bylaws to address the number and election of an FCU's directors. 12 U.S.C. §1761(a). The FCU Bylaws require FCU boards to number between five and 15 members and allow FCU boards to change the number of directors by resolution. FCU Bylaws, Article VI, §1. FCUs may not reduce the number of directors unless a corresponding number of board seats are vacant. Id. Assuming the required number of seats are vacant, the issue is what proportion of the board is required to adopt a resolution changing the number of directors. Because this resolution is, in fact, amending the bylaws, the FCU Bylaws require a two-thirds vote of the FCU's board. Id. Article XVII.

Requiring the bylaw amendment process for changes to the number of directors prevents small minorities of a board from acting to manipulate or concentrate control. For example, in an FCU with nine directors, six directors would have to approve any increase or decrease in the number of directors. Id. With a simple majority requirement, however, a quorum could be as few as five members, and three members (a majority of five) could then determine the size of the board. See id. Article VI, §7. Further, NCUA has long used the term "resolution" in the context of bylaw amendments requiring a two-thirds vote. For example, in the 1991 standard bylaws, the paperwork for adopting a bylaw amendment was called a "Certificate of Resolution." FCU Bylaws, 1991 ed., p. iv (copy attached). Adopting this type of resolution required a two-thirds vote of the board. Id.

You note New York State's corporate law permits organizations to change the number of directors by majority vote if the organization's bylaws authorize the board to change the number of directors. While NCUA's longstanding view is that state corporate law applies where the FCU Bylaws are silent, in this case,

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the Bylaws are not silent. Accordingly, New York State corporate law is not pertinent to this issue.

If you have further questions, please feel free to contact Staff Attorney Elizabeth Wirick or me.

Sincerely,

/s/

Sheila A. Albin
Associate General Counsel

GC/EAW:bhs
06-0318
Enclosure