## NATIONAL CREDIT UNION ADMINISTRATION -

WASHINGTON, D.C. 20456

June 4, 1990

Kevin D. Hammar, Esq. 1717 Louisiana Boulevard, N.E. Suite 103 Albuquerque, New Mexico 87110

Re: Publication of Members' Discharges in Bankruptcy (Your April 9, 1990, Letter)

Dear Mr. Hammar:

You requested our opinion as to whether Article XIX, Section 2 of the Standard FCU Bylaws prohibits the Sandia Laboratory Federal Credit Union (FCU) from publishing in its newsletter the names of members who have discharged their debts to the FCU through bankruptcy. We believe that such publication would violate Article XIX, Section 2.

As you noted in your letter, Article XIX, Section 2 requires officers, directors, members of committees, and employees of a credit union to hold in confidence all credit union transactions with the members and all information respecting members' personal affairs, except to the extent deemed necessary by the board in connection with the making of loans and extending of lines of credit, collection of loans, or guarantee of member sharedrafts by third parties. None of the stated exceptions encompasses the action you propose. Therefore, general confidentiality provisions of Article XIX, Section 2 govern.

While we have opined in the past that an FCU could disclose the bankruptcy of members who were running for the board of directors, that exception is very narrow and based upon a different factual situation than the one presented by your

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Kevin D. Hammar, Esq. June 4, 1990 Page 2

letter. When an FCU member places or permits the placement of his name in nomination for a board of directors position, he represents to the members a certain level of expertise in financial matters. That representation must be open to impeachment in order to enable the members to cast informed votes. In the case of other members who declare bankruptcy and thereby discharge their debts to the FCU, there is no corresponding benefit to the membership from knowledge of a member's financial failure. We believe that the wiser course is to honor the confidentiality requirements of Article XIX, Section 2.

Please note that publication, while violative of Article XIX, Section 2, is not prohibited by the Federal Credit Union Act or the NCUA Rules and Regulations. We view an FCU's bylaws as a contract between the FCU and its members as to how the FCU is to be governed. In a case such as this, where violation of a bylaw does not violate the FCU Act, the NCUA Rules and Regulations, or NCUA safety and soundness requirements, any dispute over its meaning or application would most likely be resolved in a state court. We recommend that you look at New Mexico common law to determine how the bylaw in question would be interpreted and enforced. We also wish to point out that we offer no opinion as to the applicability and/or effect of the federal Bankruptcy Act, state libel law, or other relevant state or federal laws.

Sincerely,

Hattie M. Ulan

Associate General Counsel Office of General Counsel

GC/MRS:sg SSIC 3700 90-0424