

September 8, 1997

Peter Nalaskowski, General Manager  
Polish & Slavic Federal Credit Union  
140 Greenpoint Avenue  
Brooklyn, NY 11222

Re: Polish Flood Relief  
Your Letter dated August 13, 1997.

Dear Mr. Nalaskowski:

You have asked whether your federal credit union (FCU) can donate funds to your sponsor, the Polish and Slavic Center, an Internal Revenue Code (I.R.C.) §501(c)(3) tax exempt organization or a similar I.R.C. §501(c)(3) organization, for purposes of providing flood relief assistance in Poland. You state that the FCU is considering a donation of up to \$1 million dollars.

Our opinion is that the proposed donation is not permissible under the NCUA's Interpretive Ruling and Policy Statement No. 79-6, Donations/Contributions, 44 Fed.Reg. 56691 (October 2, 1979)(IRPS) because the donation would be earmarked for use outside of the FCU's community. A copy of the IRPS is attached. We also are concerned, given the amount of the proposed donation, about whether the proposed donation would meet other criteria in the IRPS. As an alternative, you may want to consider establishing a relief account to which your FCU's members can, themselves, make donations.

The IRPS is the NCUA's interpretation regarding the power of an FCU to make donations under its incidental authority, as provided in the Federal Credit Union Act (the Act). 12 U.S.C. §1757(17). The IRPS provides that FCUs can make donations only to organizations that are tax exempt under I.R.C. §501(c)(3) and are located in or conducting their activities within the community in which the FCU has a principal place of business. FCUs also can make donations to 501(c)(3) organizations whose purpose is to promote and develop credit unions.

The introductory discussion in the IRPS notes that the IRPS was intended "to result in an increase in community funds," to permit FCUs to contribute toward "community funds" and "to community organizations." The IRPS provides two bases on which a 501(c)(3) organization may qualify as a donee: being located in the same community as the FCU or conducting its activities there. Although stated disjunctively, the intent of the IRPS in permitting a donation to an organization that is located in the same community as the FCU is that the donation will result in an increase in that community's charitable funds. We assume that your sponsor is located reasonably near a principal place of business of your FCU. Nevertheless, you state

that the donation will not be used in that community and we, therefore, conclude the donation is not permissible. For further discussion of the requirement that a donation be to an organization engaged in charitable activities in the FCU's community, we are enclosing an earlier opinion from Richard Schulman to Joseph P. Clark, dated September 9, 1994.

The IRPS also requires that an FCU's board of directors must approve the donation, that the board must determine that the amount of the donation is in the best interests of the FCU and that it is sound given the financial condition of the FCU. The introductory discussion of the IRPS states that the NCUA interprets the

Act to permit an FCU to make "reasonable donations." What is a reasonable amount involves considering, not only the financial condition of the FCU, but the FCU's interest in meeting its primary obligation of providing financial services and a return on investment to its members. The substantial amount of the proposed donation raises a question as to whether the amount meets the criteria of the IRPS.

As an alternative, it would be permissible for the FCU to hold an account for the purpose of benefiting Polish flood victims so long as the account is administered by FCU members and not by the FCU itself. For more information regarding the establishment and operation of relief accounts, we are enclosing a copy of a letter from Richard S. Schulman to Stan Fraser, dated April 12, 1994, that you may find useful.

Sincerely,

Sheila A. Albin  
Associate General Counsel

GC/SAA/MS:bhs  
SSIC 3601  
97-0830

Enclosures

cc: Region I