

December 9, 1997

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Re: Hawaii Reciprocal Beneficiaries Act
Your Letter of August 20, 1997

Dear Ms. Wong:

You have asked several questions about the effect of the 1997 Hawaii Reciprocal Beneficiaries Act (RBA) on federal credit unions (FCUs). Briefly summarized, you have asked whether reciprocal beneficiaries may or must be included in the definition of immediate family members and whether FCUs must, as a result of amendments to state law concerning the establishment of tenancies by the entirety, offer such accounts to their members.

As explained in more detail below, our answers are as follows. An FCU may, but is not required to, include reciprocal beneficiaries, as defined in the RBA, in the definition of immediate family member. Our view is that the state law concerning the establishment of tenancies by the entirety does not require that an FCU offer accounts as tenancies by the entirety and the RBA amendments did not change the provision.

The RBA allows two persons who are legally prohibited from marrying one another under state law to register their reciprocal beneficiary relationship by filing a notarized declaration with the state director of health. The RBA affords reciprocal beneficiaries certain rights that previously were reserved to spouses, for example, standing to sue for wrongful death and other tort claims, rights to an elective share upon death, authority to make health care decisions, rights to workers' compensation benefits, rights to receive payments of wages on the death of an employee, and rights to family leave under state law.

An FCU may include immediate family members of its common bond group in its field of membership and may create its own definition of "immediate family member," although the definition must be sufficiently limited to give the term a rational, discernible meaning. We have stated that there must be an ongoing "familial" relationship between a primary member and those who qualify for membership as an immediate family member. In the context of unmarried couples, we have stated that we would look to factors indicating the intended permanence of a familial relationship, such as: regular cohabitation; joint ownership of property with right of survivorship; joint credit obligations; and custodial rights over minors or other dependents. Merely sharing a household or a purely business relationship would not be sufficient.

You ask whether an FCU may include reciprocal beneficiaries, as defined in the RBA, in the definition of immediate family member even though a reciprocal beneficiary may not meet the factors cited above. You note that the RBA does not require reciprocal beneficiaries to have a common residence, joint ownership of property, or joint credit obligations. The RBA, in the findings section of the law, indicates that it is intended to reach "individuals who have significant personal, emotional, and economic relationships with another individual" and we note that the rights afforded reciprocal beneficiaries indicate a strong familial relationship. Therefore, we conclude that an FCU may include reciprocal beneficiaries in the definition of immediate family member.

You also ask whether an FCU may limit who may be included in the definition of immediate family

member, overriding, for example, any state law purporting to require that reciprocal beneficiaries be given the same rights as spouses. We assume the state law you have in mind is the RBA and we note that, while it extends particular rights and benefits to reciprocal beneficiaries, it does not require that reciprocal beneficiaries be given the same rights as spouses. If you are asking whether an FCU in Hawaii must include reciprocal beneficiaries in the definition of immediate family member, the answer is no.

Section 10 of the RBA modifies an existing provision of the Hawaii Revised Statutes, Section 509-2, by adding "reciprocal beneficiary" or "reciprocal beneficiaries" wherever "spouse" or "spouses" appear. Section 509-2 provides that joint tenancies, tenancies by the entirety, and tenancies in common, whether between or among spouses, reciprocal beneficiaries, or other persons, may be created without the necessity of conveying through a third party. You state that Section 10 "may be construed" to provide that any property may be held by spouses or reciprocal beneficiaries as tenants by the entirety. You ask whether an FCU could override such a law in deciding whether to offer accounts that may be held by tenants by the entirety. We conclude that Section 10 merely adds reciprocal beneficiaries to an existing state law that, itself, does not require a financial institution, or any entity, to offer any particular type of account. Therefore, there is no need to consider whether an FCU could override it.

Sincerely,

Sheila A. Albin
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