

GC/HMU: sg

SSIC 3700

91-0508

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FROM: Hattie M. Ulan, Associate General Counsel

SUBJ: Standard Bylaw Amendment

DATE: June 4, 1991

The attached letter concerns the use of a standard bylaw amendment to Article VIII, Section 7 of the Standard FCU Bylaws. The standard amendment prohibits a "member of the immediate family" of directors or committee members from being a paid employee of the FCU. It is unclear what definition of "member of the immediate family" should be used and how the definition should be adopted for purposes of this bylaw amendment. We suggested to the requester that the definition in the conflicts provisions of the Rules and Regulations be used (spouse or other family member living in the same household - see, e.g. Section 701.21(c)(8) of the Regulations) rather than the definition in the Standard Bylaws (Article XVIII, Section 2(a)) that specifically refers to field of membership. We also suggested that the definition to be used be adopted by board resolution. We believe that the standard amendment to Article VIII, Section 7 be modified to include a statement that a definition of "member of the immediate family" should be adopted by board resolution.

Attachment

June 4, 1991

Joseph P. Covelli, Esq.

Covelli Law Offices

357 Regis Avenue

Pittsburgh, PA 15236

Re: Nepotism in Credit Unions

(Your Letter of April 30, 1991)

Dear Mr. Covelli:

You requested an interpretation of one of the National Credit Union Administration ("NCUA") NCUA Standard Bylaw Amendments to Article VIII, Section 7 of the NCUA Standard Bylaws ("Bylaws").

ANALYSIS

The NCUA provides standard language for FCUs to use to provide for a policy against nepotism in the FCU. The NCUA Standard Bylaw amendment reads:

The board shall employ, fix the compensation, and prescribe the duties of such employees as may in the discretion of the board be necessary, and have the power to remove such employees, unless it has delegated these powers to the treasurer or manager; except that neither the board, the treasurer, nor the manager shall have the power or the duty to employ, prescribe the duties of, or remove any loan officer appointed by the credit committee, or necessary clerical

and auditing assistance employed or utilized by the supervisory committee: Provided, however, That no director or committee member or member of the immediate family of a director or committee member may be a paid employee of the credit union NCUA FCU Standard Bylaw Amendments and Guidelines, Art. VIII, §7, p.10 (emphasis added).

You asked if the child of a director who was an FCU employee prior to adoption of the amendment is subject to the amendment. The critical wording in the nepotism prohibition is "immediate family." The definition of this term in the Bylaws is applicable to field of membership issues alone. NCUA Standard FCU Bylaws, Art. XVIII, S2(a). Therefore, NCUA recommends the usage of the definition of "immediate family member" in the conflict of interest regulations, for purpose of the nepotism bylaw amendment provision. This or some other definition should be adopted by board resolution. In the conflict of interest regulations "immediate family member" is defined as "a spouse or other family member living in the same household." See, e.g. 12 C.F.R.

Joseph P. Covelli, Esq.

June 4, 1991

Page 2

§§701.21(c)(s) (FCU directors, committee members, senior management, loan officers and immediate family members prohibited from receiving compensation in connection with the underwriting, insuring, servicing or collecting a line of credit or loan); 701.21(d)(5)(iii) (FCU officials and their immediate family members or related parties must not receive loans on terms or at rates more favorable than those made to other members); 701.21(h)(3) (FCU senior management employees and their immediate family members may not receive member business loans from their FCU) ; 701.27(c)(3) and (d)(6) (FCU officials, senior management employees and their respective immediate family members may not receive compensation from a credit union service organization) ; 701.36(a)(6) and (e) (FCU directors, certain committee members and their respective immediate family members may not sell or lease premises to the FCU without Regional Director approval) ; 703.2(i) and 703.4(e) (FCU directors, officials, committee members, senior management employees and their respective immediate family members may not receive pecuniary consideration in connection with an FCU investment or deposit); and 721.2(c) (FCU directors, committee members, senior management employees or their respective family members may not receive any compensation or benefit in connection with FCU insurance and group purchasing activities). You do not state if the director's child lives in the same household as the director.

As you are no doubt aware, an FCU's Bylaws function as a contract governing the relationship between the FCU and its members. Bylaws are interpreted according to the corporate common law of the state in which the credit union is located. It has long been NCUA policy not to become involved in bylaw disputes, unless the alleged bylaw violation poses a threat to the safety and soundness of the FCU in question or unless there are issues relating to the FCU Act or NCUA Rules or Regulations. The issue you raise does not cause safety and soundness concerns or conflict with the FCU Act or NCUA Rule and Regulations. We do not believe that it would be appropriate for NCUA to insert itself into what is essentially an internal problem within the credit union's power to resolve.

Sincerely,

Hattie M. Ulan

Associate General Counsel

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