

GC/MFR/JJE:bhs

SSIC 6010

95-0214

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FROM: Richard S. Schulman, Associate General Counsel

SUBJ: Standard Bylaw Amendments - Bylaw Definition of "Immediate Family Member"

(Your Memorandum dated February 2, 1995)

DATE: August 1, 1995

You have asked us to reconcile the definition of "members of their immediate families" as used in Article XVIII, Section 2(a) of the FCU Standard Bylaw Amendments with a previous OGC opinion letter on this issue. You have also asked how "once a member, always a member" relates to this standard amendment.

The standard bylaw amendment reads as follows:

Members of their immediate families Includes any relative by blood or marriage, or foster and adopted children, living under the same roof and in the same household with a credit union member who is or was an employee of the employer(s) specified in the field of membership of this credit union.

Article XVIII, Section 2(a) (emphasis added). The FCU Standard Bylaw Amendments

specially state that:

(t)his standard bylaw amendment for family membership ties eligibility to only the first generation living under the same roof in the same household with a member who is or was part of the basic common bond group... Adoption of this standard amendment automatically cancels the grandchildren, sons-in-laws, daughters-in-laws amendment. Also, the bylaw amendment to include second generation family members is no longer available as an amendment.

FCU Standard Bylaw Amendments, page 19.

As background, you have been asked if an FCU could adopt an Article XVIII, Section 2(a) bylaw amendment that does not contain the limiting language "living under the same roof and in the same household." You point out that in an OGC opinion letter to [] dated July 23, 1993, this Office did not object to a similar bylaw provision, although you also note that the opinion focused on allowing domestic partners to be considered family members. Your memo then continues by stating the "or was" phrase in the bylaw was intended to narrow the family member definition and that there appears to be a conflict between the interplay of that phrase and "once a member, always a member."

There seems to be several points of confusion. First, the "or was" provision will only come into play if the credit union has adopted the "once a member" resolution. The current credit union member must be either a present or former employee, association member or resident of a community identified in the credit union's FOM. If so, then his or her relative can join (subject, of course, to the "same roof/household" limitation). An individual cannot continue to be a credit union member as a "former" employee, etc., without the "once a member" policy, and any relative would also not continue to be a member. Neither would be in the FCU's FOM. This was explained in Hattie Ulan's letter of January 17, 1992.

Second, with respect to the July 23, 1993, opinion letter, there is no need to attempt to reconcile it with the standard amendment. The opinion letter only dealt with the authority of a board of directors to define "members of the immediate family." The specific question raised was whether NCUA would approve [] definition of persons in a

"permanent relationship" with a member as being an immediate family member. We pointed out that there must be an ongoing "familial" relationship to qualify and that [] proposal met that requirement. The opinion did not address [] existing Article XVIII, Section 2(a), which did not include the "same roof/household" limitation, nor did it approve or disapprove of their existing definition. If section 5 of an FCU's charter contains the phrase "members of their immediate families," an FCU can adopt, without NCUA approval, the standard amendment on page 20 of the Standard Bylaw Amendments and Guidelines manual and define the phrase in any manner consistent with the FCU Act. It is due to this broad authority that the opinion letter states "an FCU's rights in this area are not unlimited. The definition must be sufficiently limited as to give the term immediate family member a rational, discernible meaning."

Third, there is no tie in between the "same roof/household" limitation and "or was" as your memo seems to imply. In effect, the former modifies the relative, while the latter, as part of a phrase, modifies the credit union member. When included in the definition, the "same roof/household" limitation identifies the relative by residence; the relative of whom is identified by "a credit union member who is or was" part of the occupational, associational or community common bond. We should not confuse the two.

Finally, you are correct that the standard amendment allowed the use of "or was" in a very narrow sense. This amendment is one of two narrow exceptions' to OGC opinions interpreting the FCU Act as requiring the "primary member to be within the FOM, for the "secondary member to be eligible to join. For purposes of clarification, rather than refer to these individuals as "primary or secondary member', a more accurate description is that of a "*Potential* primary or secondary member', since often they are not credit union members.

' The other exception is found at Section II, E of the Chartering Manual, RIPS 94-1 which provides that the charter may include '(s)pouses of persons who died while within the field of membership of this credit union."

Having clarified these points, the question remains whether an FCU may adopt the standard bylaw amendment at the bottom of page 20 with the "or was" provision, but without limiting the family members to first generation "living under the same roof." The answer is no. On its face, the standard amendment appears to give an FCU unlimited discretion to define "immediate family members." This is not the case. An FCU is limited by the FCU Act. A definition of "members of their immediate families" that allow a "potential secondary member" to join through a former primary member who is no longer within the FOM would be contrary to our prior statutory interpretation. We have previously opined that the potential primary member must be within the FOM in order for the potential secondary member to be eligible for membership.

The following are our answers to your specific questions. Since the "or was" provision only applies if the FCU has adopted the "once a member, always a member' policy, we will assume that the policy is in place.

1. "Can the immediate family of a member of the credit union who is 'or was' part

the common bond (primary member) join the credit union regardless of the degree of relationship or location?"

No. As stated on page 19 of the FCU Standard Bylaw Amendments, degree of relationship and location are limited under this bylaw to "first generation living under the same roof in the same household." If, on the other hand, the credit union has adopted the standard bylaw amendment at the bottom of page 20, its definition would be limited by our statutory interpretation that requires the potential primary member be within the FOM in order for the potential secondary member to be eligible for membership. This statutory interpretation would preclude the use of "or was" except as used in the standard bylaw amendment on page 19.

2. "Can the immediate family of an individual (but not a credit union member) who is 'or was' part of the common bond join the credit union regardless of the degree of relationship or location?"

No. The individual must be a credit union member. The amendment specifically states "credit union member who is or was an employee of the employer specified in the field of membership of this credit union." The degree of relationship or location questions are moot under these circumstances

3. "Can only those immediate family members living under the same roof of a credit union member who is 'or was' part of the of the common bond group join the credit union, as allowed under the standard bylaw amendments?"

Yes. See answer to question 1.

4. "Can the immediate family member of any credit union member join the credit union? (A practice which we believe to be widespread among credit unions.)"

No. Currently, it is our position that only immediate family members of potential primary members are eligible to join under the "immediate family member" provision of the FCU's charter. Any other interpretation would vitiate the common bond requirements mandated by Congress that are the essence of an FCU. Section 109 of the Act states:

Membership--... Federal credit union membership shall be limited to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community or rural district.

12 U.S.C. §1759. We would note that the practical problems associated with this position were recently brought to the attention of Region II, GC and E&I at a meeting with several credit unions and CUNA. As a result of that meeting, we are revisiting the issue. We will keep the Regions apprised of any proposals to change the policy in this area.