

GC/RMM  
11-0562R

TO: [ ],  
Office of Consumer Protection (OCP)

FROM: Hattie Ulan, Associate General Counsel, Office of General Counsel (OGC)

SUBJ: Proposed Bylaw Amendment — \_\_\_\_ FCU

DATE: January 13, 2012

Under NCUA's Delegations of Authority, Supervision 12, OCP requires OGC's concurrence to approve a request for a proposed bylaw amendment from \_\_\_\_ Federal Credit Union (FCU) to treat those persons living in a household with directors or committee members the same as their immediate family members for purposes of restrictions on the FCU's paid employees and board composition. You are inclined to approve the FCU's request and we agree, with minor, grammatical edits to the wording. The proposed amendment is consistent with the intent of the current NCUA FCU bylaw provision permitting an FCU to impose restrictions on paid employees and board composition.

The FCU uses the revised 2007 NCUA FCU Bylaws. 72 Fed. Reg. 61495, 61500 (Oct. 31, 2007). Article VI, Section 2, provides:

Composition of board. \_\_\_\_\_(Fill in the number, which may be zero) directors or committee members may be a paid employee of the credit union. \_\_\_\_\_(Fill in the number, which may be zero) immediate family members of a director or committee member may be a paid employee of the credit union. In no case may employees, family members, or employees and family members constitute a majority of the board. ...

Id. at 61505. The FCU seeks NCUA approval to amend the phrases in its current FCU Bylaws, Article VI, Section 2, as specified below:

Section 2. Composition of Board. No directors or committee members may be a paid employee of the credit union. No immediate family members, [or] those [persons] living in the same household, of a director or committee member may be a paid employee of the credit union. In no case may employees, family or household members, or employees and family or household members constitute a majority of the board.

The FCU's intent is to recognize that a domestic partner, civil union partner, or some other form of close familial relationship is on par with immediate family members for

purposes of restrictions on paid employees and board composition. The FCU believes the amendment would also align closely with the membership eligibility definition of immediate family.

As background, in 1999, NCUA added the definitions of "household," meaning persons living in the same residence maintaining a single economic unit, and "immediate family member," meaning spouse, child, sibling, parent, grandparent, grandchild, stepparents, stepchildren, stepsiblings, and adoptive relationships, to the FCU Standard Bylaws and also to the Chartering and Field of Membership Manual, Interpretive Ruling and Policy Statement (IRPS) 99-1. See also OGC Op. 99-0426 (May 5, 1999) (attached).

The following preamble wording mentions the new definitions being added to the FCU Standard Bylaws in 1999:

Six commenters suggest that the definitions of "immediate family member" and "household" be included in the bylaws. The commenters note that this is particularly important for FCUs that choose to have more restrictive definitions than those in the regulation. The Board agrees and has added these terms to the definition section of the bylaws.

...  
(c) "Household" is defined as persons living in the same residence maintaining a single economic unit. A credit union may adopt a more restrictive definition of this term by deleting this definition from its bylaws and replacing it with its own more restrictive definition.

64 Fed. Reg. 55760, 55764, 55773 (Oct. 14, 1999).

Although the 1999 preamble section on board composition does not mention households, it mentions immediate family members, as follows:

Article VI, Board of Directors. Section 2. The proposal allows an FCU to limit the number of directors and their immediate family members that can be paid employees of the FCU to 0, 1 or 2. The current bylaws place no limits and the standard amendments allow an FCU to select any number. ... Although the Board would prefer to see an FCU limit the number of directors and immediate family members that can be paid employees of the FCU, the Board agrees with the commenters that the ultimate decision should be made by the board of directors. The final bylaws allow the FCU to select the number of paid employees that may serve on the board or are relatives of board members but retain the limitation in the proposal that it is not a majority of the board.

Id. at 55762.

In 2005, the NCUA Board proposed further revisions to the FCU Bylaws, including to the definitions and the board composition section, as follows:

Article VI. Board of Directors. The proposal amends Section 2 to clarify that FCU employees, immediate family members of directors or committee members, and a combination of both, cannot constitute a majority of directors on an FCU's board.

...

The proposal removes Section 2 from Article XVIII because NCUA's Chartering and Field of Membership Manual contains all the field of membership-related definitions under Section 2. NCUA Interpretive Ruling and Policy Statement 03-1. If an FCU chooses to adopt a more restrictive definition of "immediate family member" or "household" for purposes of determining eligibility in the FCU's field of membership, the FCU may insert its own more restrictive definition in Section 1.

70 FR 40924, 40927, 40929 (July 15, 2005).

In 2006, the NCUA Board adopted the final rule on the FCU Bylaws revising the sections on definitions and board composition as follows:

Article VI, Section 2—Composition of Board. One commenter asked that this provision clarify that an FCU may fill in "none" for the number of paid employees or family members who can serve on the board. NCUA agrees this clarification would be useful and has changed the parenthetical instruction after the blank space from "Fill in the number" to "Fill in the number, which may be zero" in the final version of the Bylaws.

...

The Proposal deleted the definitions of "household" and "organizations of such persons" and moved the definition of "immediate family member" to Section 1 of this Article. One commenter noted the Bylaws should include definitions of "organizations of such persons" and "immediate family member" because the Bylaws are more accessible than the Field of Membership Manual. NCUA clarifies that the definition of immediate family member remains in the bylaws, and that the term is only used in Article VI, Section 2, which allows an FCU to restrict the number of immediate family members of paid employees on the board. Upon consideration ...the bylaws do not need to address field of membership information.

71 Fed. Reg. 24551, 24556, 24557 (Apr. 26, 2006).

Therefore, in order to restrict the number of household members of board and committee members that can be paid employees, and on the board themselves, the FCU is requesting the proposed amendment. According to the NCUA's bylaws X drive, the NCUA Region V Director approved a similar amendment on January 26, 2006, for Fibre FCU that included amending the wording to add "nor those living in the same household," as follows:

Section 2. No member of the board or supervisory committee may be a paid employee of the credit union. No member of the supervisory committee may have been a paid employee of the credit union for the immediate past three years. In addition, no immediate family member, nor those living in the same household, will be allowed to serve on the board simultaneously.

NCUA's staff commentary on the election process, in its October 2007 Bylaws, provide the following concerning eligibility requirements:

i. Eligibility Requirements: The Act and the FCU Bylaws contain the only eligibility requirements for membership on an FCU's board of directors, which are as follows:

(a) The individual must be a member of the FCU before distribution of ballots;

(b) the individual cannot have been convicted of a crime involving dishonesty or breach of trust unless the NCUA Board has waived the prohibition for the conviction; and

(c) the individual meets the minimum age requirement established under Article V, Section 7 of the FCU Bylaws.

Anyone meeting the three eligibility requirements may run for a seat on the board of directors if properly nominated. It is the nominating committee's duty to ascertain that all nominated candidates, including those nominated by petition, meet the eligibility requirements.

72 Fed. Reg. 61505.

The proposed amendment is not prohibited by the FCU Act, NCUA's regulations, or the FCU Bylaws, and is not inconsistent with any OGC legal opinions. The proposal does not restrict who serves on the FCU board. Instead, the proposal extends the current rule that no immediate family member of a director or committee member may be a paid employee of the FCU to persons living in the same household as the director or committee member.

In addition, it seems consistent with NCUA's intent in the FCU Bylaws section on board composition to allow the FCU to limit to zero the number of paid employees who are either immediate family members or in the same household as directors and committee members. It also seems consistent with NCUA's intent in the FCU Bylaws board composition section to limit the number of board members with very close relationships to each other to include, along with immediate family members, those persons in the same household.

Therefore, we concur with your inclination to approve the FCU's proposed amendment provided, for grammatical reasons, you use the words "or" and "persons" (bracketed on

page one of this memorandum). In addition, the proposed third sentence does not make sense, since the FCU has decided that no FCU board members can be paid FCU employees. The alternate, revised third sentence we propose is: "In addition, a group of persons including those who are immediate family members of, and/or live in the same household as, a director or committee member cannot constitute a majority of the board."

Feel free to contact Staff Attorney Regina Metz or me with any questions.

Attachment

May 5, 1999

[     ]  
[     ] Federal Credit Union  
[     ]  
[     ]

Re: Definition of Household Members for Field of Membership,  
Your letter dated April 9, 1999.

Dear [     ]:

You have asked whether live-in nannies or domestic workers and foster children qualify as household members under the National Credit Union Administration's Chartering and Field of Membership Manual, Interpretive Ruling and Policy Statement 99-1 (IRPS 99-1). We believe they do.

IRPS 99-1 defines a household as persons living in the same residence maintaining a single economic unit. Chapter 2, Part II.H The preamble published in the Federal Register with the final IRPS 99-1 states that the definition of household includes "any person who is a permanent member of and participates in the maintenance of the household" and "contemplates or intends some permanency and not simply someone who is visiting for a short period." 63 FR 71998, 72005 (December 30, 1998). Our view is that live-in nannies and domestics meet these criteria. The preamble also specifically noted that "[l]egal guardian relationships are considered part of the household definition." Id. We believe that foster children are also part of the household definition due to the legal guardian relationship.

Sincerely,

/s/

Sheila A. Albin  
Associate General Counsel

GC/MJMCK:bhs  
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