

October 24, 1997

Robert S. Walls, Sr., President
Delaware Credit Union League, Inc.
4 Quigley Boulevard
New Castle, DE 19720-4150

Re: Management Interlocks
Your Letter dated August 4, 1997

Dear Mr. Walls:

You have asked whether a member of a federal credit union's (FCU's) supervisory committee is considered a management official under NCUA's management interlocks rules. No, a supervisory committee member is not a management official under NCUA's management interlocks rules.

You also ask whether an inherent conflict of interest exists for a bank director to be on the supervisory committee of an FCU when both the bank and FCU are located in and serve the same community. We do not believe this is an "inherent" conflict of interest. However, we think there is a problem when, as you have described, the bank director, who is serving as a supervisory committee member, actively participates at directors' meetings. This participation conflicts with the proper role of a supervisory committee member. If the bank director is, in fact, functioning as an advisory or honorary director, then that individual's attendance and participation at directors' meetings may violate the prohibition against interlocking management.

BACKGROUND

You provided the following facts. An FCU director, and former chairman of its board, accepted a position as a paid director with a local Delaware bank within the FCU's defined community. Upon being notified that this was a violation of the Management Interlocks Act, he accepted the paid bank director position and did not run for re-election to the FCU's board of directors. However, he was appointed to the FCU's supervisory committee and continues to participate actively in the FCU's monthly board meetings.

DISCUSSION

The purpose of the Depository Institution Management Interlocks Act (Interlocks Act), 12 U.S.C. §§3201-3208, as stated in NCUA's implementing regulations, is "to foster competition by generally prohibiting a management official from serving two nonaffiliated depository institutions in situations where the management interlock likely would have an anticompetitive effect." 12 C.F.R. §711.1(b). The definition of "a management official" includes a director, honorary director, senior executive officer, branch manager, trustee, or representative or nominee of the foregoing. 12 C.F.R. §711.2(m). An FCU supervisory committee member is not a management official for Interlocks Act purposes.

We do not think it is appropriate for a supervisory committee member to participate actively at directors' meetings. An FCU's supervisory committee is composed of volunteers whose duties involve auditing and reporting on the accuracy of FCU account records, suspending directors and board committee members when necessary, and calling special elections to consider violations of the FCU Act, NCUA regulations, or the FCU's charter or bylaws, or to consider any unsafe and unsound FCU practices. 12 U.S.C. §§1761(b) and 1761d; 12 C.F.R. §701.12; and NCUA Standard FCU Bylaws, Art. X. In a sense, the supervisory committee acts as a watchdog for the FCU membership. Thus, while NCUA encourages the supervisory

committee chair and members to attend board meetings to monitor FCU activities, it is generally inappropriate for the supervisory committee members to participate actively in the deliberations of the board.

With this background, it is our opinion that, while the bank director can serve as an FCU supervisory committee member, he should not participate in FCU board meetings. This active participation undermines the ability of a supervisory committee member to fulfill the role of watchdog of the FCU's board of directors. It is also our opinion that the bank director, because of his participation at directors' meetings, could be considered an advisory or honorary director. The obvious basis for including advisory and honorary directors within the definition of management official is because, even if an individual is not entitled to vote on matters coming before the board, that individual, by participating in meetings through expressing opinions or providing advice, has an ability to influence the deliberations and determinations of the board. If an individual functions as an advisory or honorary director, even without having the title, and the credit union has assets of a \$100 million or more, then that participation arguably violates the prohibition against management interlocks. 12 C.F.R. §§711.2(m)(ii), 711.3.

Sincerely,

Sheila A. Albin
Associate General Counsel

GC/MSA/SAA:bhs
SSIC 3241
97-0814

cc: Region II