



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

November 1, 1990

GC/MEC:sg
SSIC 4062
90-1009

James P.C. Silvestri, Esq.
Beckley, Singleton, De Lanoy,
Jemison & List, Chtd.
411 East Bonneville Avenue
Las Vegas, NV 89101

RE: Jessinger, et al, v.
Nevada Federal Credit Union, et al
(Your Letter of September 21, 1990)

Dear Mr. Silvestri:

You requested opinion letters issued by the NCUA regarding the compensation of directors. The opinion letters issued by the Office of General Counsel are enclosed. We are also enclosing one letter issued by the Region VI Director entitled "Removal of Directors," dated March 14, 1990.

You also requested either the official or unofficial position of the NCUA regarding the suspension and removal of certain directors of the Nevada Federal Credit Union. It is the policy of the NCUA not to comment informally on ongoing litigation involving regulated institutions. We would refer you to Region VI for any further information on this matter.

Sincerely,

Hattie M. Ulan

Hattie M. Ulan
Associate General Counsel

Enclosures

EOIA

Vol. III, p. 4

NATIONAL CREDIT UNION ADMINISTRATION
REGION VI

March 14, 1990

Mr. Bradley W. Seal
President
Nevada Federal Credit Union
P.O. Box 15400
Las Vegas, Nevada

Re: Removal of Directors

Dear Mr. Seal:

You have raised several questions relating to the removal of four of Nevada Federal Credit Union's (the "FCU") directors and the FCU's upcoming annual election. We have consulted with NCUA's Office of General Counsel in answering your questions. The Office of General Counsel has also been in contact with Robert Kolesar, the credit union's attorney. Your questions and our responses are set forth below.

BACKGROUND

During a special membership meeting, four of the FCU's seven directors were removed from the board. One additional director resigned the following day. Two directors remain. The terms of the two remaining directors expire in March 1990.

The FCU's regular annual election is in process. Mail ballots were distributed to all members in early January and must be returned by March 23, 1990, to be included in the tally. Based on previous years' experience, you believe that the FCU has already received the vast majority of ballots containing votes to be cast in the regular election.

Three board seats were up for election prior to the removals and resignation. Of the three seats, two are held by the two remaining directors. Five candidates have been nominated. One of the candidates is one of the directors removed by the membership at the special meeting.

ANALYSIS

Your questions and our responses are as follows:



NATIONAL CREDIT UNION ADMINISTRATION
REGION VI

Mr. Bradley W. Seal
March 14, 1990
Page 2

1. Are the two remaining directors empowered to conduct the affairs of the FCU?

No. Article VII, Section 6 of the Standard FCU Bylaws provides that:

A majority of the number of directors (inclusive of any vacancies) shall constitute a quorum for the transaction of business at any meeting thereof....
(Emphasis added.)

Therefore, in order for your credit union to conduct business, there must be four directors.

This does not mean, however, that the two remaining directors can't appoint temporary board members to fill vacancies. We do not view such action as constituting the transaction of credit union business. Section 131 of the FCU Act (12 U.S.C. 1761) provides in part:

... Any vacancy occurring on the board shall be filled until the next annual election by appointment by the remainder of the directors.
(Emphasis added.)

This provision is incorporated into Article VII, Section 3 of the Standard FCU Bylaws, which provides:

Any vacancy on the board, credit committee, or supervisory committee shall be filled by vote of a majority of the directors then holding office. Directors and credit committee members so appointed shall hold office only until the next annual meeting, at which time any unexpired terms shall be filled by vote of the members, and until the qualification of their successors. . . . (Emphasis added.)

It is our opinion that the board must fill the vacancies as directed by the FCU Act and Article VII, Section 3 of the bylaws in order to permit the FCU to continue operations.

2. Should the FCU pay the legal fees of the four removed directors, (and the director who resigned), incurred beyond the date of the special membership meeting? We anticipate that these directors may file a lawsuit or take other legal measures due to their removal. This issue is somewhat affected by an indemnity provision previously approved by the NCUA and included in our bylaws.



NATIONAL CREDIT UNION ADMINISTRATION

REGION VI

Mr. Bradley H. Beal
March 14, 1990
Page 3

Your FCU's bylaws provide for indemnification of directors, including former directors, in accordance with the laws of Nevada. While we cannot provide you with advice regarding Nevada law, that is a matter that should be reviewed by the FCU's attorney, we can offer the following comments. In our view, indemnity is provided in those cases where an official is found liable to third parties for actions taken when properly performing the duties of his or her official position. Indemnification would not be proper, for example, to cover the expenses of an ousted official who files suit against the FCU's board or supervisory committee. Rather, indemnification would be available to the board or committee members for expenses incurred in defending their actions if those actions meet the test of state law. It would be up to the appropriate tribunal to determine whether the challenging official is entitled to recover expenses.

3. The bylaws state that any appointed directors serve until the next membership meeting. If the present two board members appoint directors to fill the current vacancies, when would the terms of those appointees expire? At the March 28, 1990, annual meeting, or at the 1991 annual meeting? If the terms expire on March 28, 1990, what is the procedure to fill those seats at that time?

Both the FCU Act and the Standard FCU Bylaws provide that directors appointed to fill a vacancy hold office only until the next annual membership meeting. In your case, there is not sufficient time before the upcoming annual meeting for nominations to be made for the vacancies created by the removals and resignation.

We believe that the FCU Act can be interpreted to permit the appointed directors to hold office until the 1991 annual meeting since the FCU has already begun its 1990 election process. This would result in three elected directors and four appointed directors.

We also understand that the FCU is considering reducing its board size from seven to five. One alternative being considered by the FCU is to have the current two directors appoint three directors, and then, by board resolution, reduce the board size to five. At the March 28 meeting, the five nominees running for office could be declared elected pursuant to Article VI, Section 2 of the FCU Standard Bylaw Amendments. We would pose no objection to such action.



NATIONAL CREDIT UNION ADMINISTRATION
REGION VI

Mr. Bradley W. Seal
 March 14, 1990
 Page 4

4. If Mr. Dube (one of the removed directors) is successful in the regular 1990 election currently in process, would he be returned to the board, or would this week's removal action take priority resulting in his disqualification in the election currently in process? This question is somewhat complicated because, based on previous years experience, our anticipation is that we have already received the vast majority of votes expected to be cast in the regular election.

The fact that a director has been removed from office does not disqualify him from later running for office. The problem in your case is that the members who have already cast their mail ballots may have voted to reelect Mr. Dube before he was removed from office, and may have voted differently if they had known of the removal at the time they voted for his reelection. Neither the FCU Act nor NCUA's Regulations would make this a basis for negating Mr. Dube's election. Your attorney has determined that this is also not a sufficient basis for disqualification under state law.

Another alternative that may be considered is for the board, including the appointed board members, to declare the election now in process as void due to intervening circumstances, reschedule the annual meeting and call for a new election. The appointed board members would continue to hold office until that time in accordance with Article VII, Section 3 of the bylaws.

Sincerely,

Fm 3/19

Foster C. Bryan
 Regional Director

BC/JJE/JTisg/tjm

File Name: 06573M19
 Copies: FCU 06573
 BBIC 3700
 EX McCalla
 SE Ducker
Reading

90-0301



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

July 24, 1990

GC/LH:sg
SSIC 4062
90-0523

Henrietta Rogers, Manager
Wheat Street Church Federal Credit Union
375 Auburn Ave. N.E.
Atlanta, GA 30312

Re: Opinion Letter #89-0905
(Your April, 23, 1990, Letter)

Dear Ms. Rogers:

You have asked about Opinion Letter #89-0905 from this Office, which addresses the issue of whether paid employees of a credit union may serve on the board of directors of the credit union. Enclosed please find a copy of that letter, another letter on the same issue, and the relevant federal credit union bylaws and standard bylaw amendments. A review must be made of your particular credit union's bylaws in order to determine whether or not the manager can serve on the board.

Sincerely,

Hattie M. Ulan
Associate General Counsel

Enclosures

11A
Vol. III, A, 4



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

Office of General Counsel

GC\RRD:sg
SSIC 4062
89-0905

October 6, 1989

Lawrence C. Williams, Administrator
State of Alabama Credit Union Administration
771 South Lawrence St.
Suite 103
Montgomery, AL 36130-0901

Re: Federal Credit Union Employees Elected to
Board of Directors (Your September 1, 1989,
Letter)

Dear Mr. Williams:

You have asked for a copy of an opinion concerning whether paid employees of a credit union may be elected and serve on the board of directors of a Federal credit union (FCU). Enclosed please find an NCUA opinion letter dated September 29, 1988 which addresses the issue you present.

The letter applies only to federally-chartered credit unions. It does not apply to state-chartered credit unions. In summary, FCU members who are also FCU employees may serve on the FCU's board of directors and be compensated as employees of the FCU. Pursuant to Section 112 of the FCU Act (12 U.S.C. 1761a), one FCU board officer may be compensated for his/her duties as such. In most FCU's, this person is the FCU's financial officer, although Section 112 of the FCU Act does not require that the compensated officer be the financial officer. The compensated board officer may also be compensated as an FCU employee. The Standard FCU Bylaws prohibit the FCU manager from serving on the FCU's board of directors (see Article VIII, Section 6 of the FCU Bylaws). The FCU board may adopt a standard FCU bylaw amendment which permits the manager to serve on the board. In addition, standard amendments permit the FCU board to limit the number of FCU

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Vol III Part A ~~FA~~ Compensation of FCU
Board m.

Lawrence C. Williams, Administrator
October 6, 1989
Page 2

employees who may be elected to the board. Copies of the Standard FCU Bylaws and the FCU Standard Bylaw Amendments and Guidelines are enclosed.

Sincerely,

Hattie M. Ulan

HATTIE M. ULAN
Assistant General Counsel

Enclosures



GC/RRD:sg
4060

NATIONAL CREDIT UNION ADMINISTRATION
Washington, DC 20456

September 29, 1988

Office of General Counsel

Mr. John Branch
Mrs. Tucker's Employees FCU
P.O. Box 759
Sherman, Texas 75090

Re: Compensation of Board Members (Your August 9,
1988, Letter)

Dear Mr. Branch:

You have requested us to review the compensation your Federal credit union ("FCU") gives certain of its board members. Since only one board member, the financial officer, is being compensated for board service as such, we believe your FCU's board compensation structure comports with the Federal Credit Union Act, the NCUA Rules and Regulations, and your bylaws.

Two members serving on the FCU board are compensated by the FCU. One is serving as the board's financial officer and as manager of the FCU and is compensated for service on the board. The other is also a member of the FCU board, but serves as the assistant general manager of the FCU, and is compensated for service as the assistant general manager of the FCU. Your bylaws state that "[o]ne board officer, the financial officer, may be compensated for his services to such extent as may be determined by the board."

Section 111(c) of the FCU Act [12 U.S.C. §1761(c)] provides: "No member of the board or of any other committee shall, as such, be compensated" (Emphasis added.) Section 112 [12 U.S.C. §1761a] states: "Only, one board officer may be compensated as an

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Vol III Part A(4) Compensation of FCU Board members

Mr. John Branch
September 29, 1988
Page 2

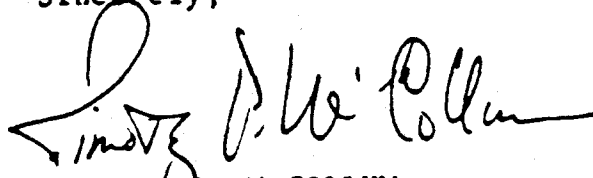
officer of the board and the bylaws shall specify such position. . . ." (Emphasis added)

Section 701.33(b) of the NCUA Rules and Regulations [12 C.F.R. 701.33(b)] provides:

Only one board officer, if any, may be compensated as an officer of the board. The bylaws must specify the officer to be compensated, if any, as well as the specific duties of each of the board officers. No other official may receive compensation for performing the duties or responsibilities of the board or committee position to which the person has been elected or appointed.

From the facts you presented, the board member serving also as financial officer and manager and being compensated for service in either or both positions may permissibly be compensated for that service. The other board member serving also as assistant manager may also permissibly be compensated for service as such.

Sincerely,



TIMOTHY P. MCCOLLUM
Assistant General Counsel

RRD:sg

suspended by a majority vote of the board of directors. The members of this credit union shall decide, at a special meeting held not fewer than 7 nor more than 14 days after any such suspension, whether the suspended committee member shall be removed from or restored to the supervisory committee.

Article VIII. Board Officers, Management Officials and Executive Committee

Section 1. The board officers of this credit union shall be comprised of an executive officer, one or more assistant executive officers, a financial officer, and a recording officer, all of whom shall be elected by the board and from their number. The board shall determine the title and rank of each board officer and shall record them in the addendum to this article. One board officer, the _____, may be compensated for his services to such extent as may be determined by the board. If more than one assistant executive officer is elected, the board shall determine their rank as first assistant executive officer, second assistant executive officer, et cetera. The offices of the financial officer and recording officer may be held by the same person. Unless sooner removed as herein provided, the board officers elected at the first meeting of the board shall hold office until the first meeting of the board following the first annual meeting of the members and until the election and qualification of their respective successors.

Section 2. Board officers elected at the meeting of the board next following the annual meeting of the members, which shall be held not later than 7 days after the annual meeting, shall hold office for a term of 1 year

and until the election and qualification of their respective successors: Provided, however, That any person elected to fill a vacancy caused by the death, resignation, or removal of an officer shall be elected by the board to serve for the unexpired term of such officer and until his successor is duly elected and qualified.

Section 3. The executive officer shall preside at all meetings of the members and at all meetings of the board, unless disqualified through suspension by the supervisory committee. He shall countersign all notes of this credit union, and all checks, drafts, and other orders for disbursement of its funds as prescribed in article XV, section 2 of these bylaws. The executive officer shall also perform such other duties as customarily appertain to the office of the executive officer or as he may be directed to perform by resolution of the board not inconsistent with the Act and regulations and these bylaws.

Section 4. The ranking assistant executive officer available shall have and exercise all the powers, authority, and duties of the executive officer during the absence of the latter or his inability to act.

Section 5. The financial officer shall manage this credit union under the control and direction of the board unless the board has appointed a management official to act as general manager. Subject to such limitations, controls and delegations as may be imposed by the board, the financial officer shall:

(a) Have custody of all funds, securities, valuable papers and other assets of this credit union.

(b) Sign all notes of this credit union, and all checks, drafts, and other orders for disbursement of its funds.

(c) Provide and maintain full and complete records of all the assets and liabilities of this credit union in accordance with forms and procedures prescribed in the Accounting Manual for Federal Credit Unions or otherwise approved by the Administration.

(d) Within 7 days after the close of each month, prepare and submit to the board a financial statement showing the condition of this credit union as of the end of the month, including a summary of delinquent loans. He shall promptly post a copy of such statement in a conspicuous place in the office of the credit union where it will remain until replaced by the financial statement for the next succeeding month.

(e) Prepare and forward to the Administration such financial and other reports as the Administration may require.

(f) If so authorized by the board and within standards and limitations prescribed by the board, employ tellers, clerks, bookkeepers, and other office employees, and have the power to remove such employees.

(g) Perform such other duties as customarily appertain to the office of the financial officer or as he may be directed to perform by resolution of the board not inconsistent with the Act and regulations and these bylaws.

The board may employ one or more assistant financial officers, none of whom may also hold office as executive officer or assistant executive officer, and may authorize them, under the direction of the

financial officer, to perform any of the duties devolving on the financial officer, including the signing of checks. When designated by the board, any assistant financial officer may also act as financial officer during the temporary absence of the financial officer or in the event of his temporary inability to act.

Section 6. The board may appoint a management official who shall not be a member of the board and who shall be under the direction and control of the board or of the financial officer as determined by the board. The management official may be assigned any or all of the responsibilities of the financial officer described in section 5 of this article. The board shall determine the title and rank of each management official and shall record them in the addendum to this article.

The board may employ one or more assistant management officials, none of whom shall be a member of the board. The board may authorize assistant management officials under the direction of the management official, to perform any of the duties devolving on the management official, including the signing of checks. When designated by the board, any assistant management official may also act as management official during the temporary absence of the management official or in the event of his temporary inability to act.

Section 7. 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 financial officer or management official; except that neither the board, the financial officer, nor the management official shall have the power or duty to employ, prescribe

(e) Prepare and forward to the Administration such financial and other reports as the Administration may require.

(f) If so authorized by the board and within standards and limitations prescribed by the board, employ tellers, clerks, bookkeepers, and other office employees, and have the power to remove such employees.

(g) Perform such other duties as customarily appertain to the office of treasurer or as he/she may be directed to perform by resolution of the board not inconsistent with the Act and regulations and these bylaws.

"The board may employ one or more assistant treasurers, none of whom may also hold office as president or vice president, and may authorize them, under the direction of the treasurer, to perform any of the duties devolving on the treasurer, including the signing of checks. When designated by the board, any assistant treasurer may also act as treasurer during the temporary absence of the treasurer or in the event of his/her temporary inability to act."

With this amendment there must also be a companion amendment of Article VIII, Section 6, to permit the manager to serve on the board.

Article VIII, section 5, of the Bylaws

To permit the manager to serve on the board of directors.

This amendment removes the prohibition of a manager serving on the board of directors. Article XIX, section 4 of the bylaws precludes any possibility of conflict of interest that might result from permitting the manager to serve on the board. The amendment is worded so that the manager is under the direction and control of the board rather than the treasurer. In effect, the credit union would have two financial officers under the control of the board.

Standard wording:

"The board may employ a manager who shall be under the direction and control of the board or of the treasurer as determined by the board, except that a manager who is a member of the board shall be under the direction and control of the board. The manager, who is a member of the board, may not be the president or vice president. The manager may be assigned any or all of the responsibilities of the treasurer described in Section 5 of this article.

"The board may employ one or more assistant managers, none of whom may also hold office as president or vice president. The board may authorize assistant managers under the direction of the manager, to perform any of the duties devolving on the manager, including the signing of checks. When designated by the board, any assistant

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manager may also act as manager during the temporary absence of the manager or in the event of his/her temporary inability to act."

Article VIII, section 7, of the Bylaws

To provide 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.

This amendment is permitted under principles of sound internal control.

Standard wording:

"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 this credit union."

To limit the number of paid employees that may serve on the board of directors.

This amendment is a variation of the above situation. The number limit is within the discretion of the board of directors.

Standard wording:

"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 more than _____ directors may be paid employees of this credit union."



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

GC/MM:sg
SSIC 4062
89-1131

Office of General Counsel

January 3, 1989

Mr. Daniel P. Bradley
DM Federal Credit Union
P.O. Box 15115
Tuscon, Arizona 85708

Re: Reimbursement of employee's spouse's expenses
(Your November 27, 1989, Letter)

Dear Mr. Bradley:

You have asked us whether a Federal credit union (FCU) can pay for the expenses of an employee's spouse when the spouse accompanies the employee on a credit union business trip. The answer is yes, but see explanation below.

ANALYSIS

You have asked whether a Federal credit union can pay for a spouse's expenses when the spouse of an employee accompanies the employee on a credit union business trip. We have previously stated that such reimbursement is not permitted for noncompensated officials (directors and committee members) of an FCU. (See enclosed letter.) However, the analysis for employees is not the same since the prohibition on compensation is not an issue. As long as the reimbursement is part of the employee's compensation package, there is no legal objection to engaging in this type of practice. Any safety and soundness considerations will be addressed by your NCUA examiner. Before you engage in this practice, it is important for you to note that there are issues involving the Internal Revenue Service that you should consider, e.g., the reimbursement is taxable income.

Sincerely,

Hattie M. Ulan

HATTIE M. ULAN
Associate General Counsel

Enclosure

101. III Part A. 4 Directors

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NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

Office of General Counsel

GC/JJE:bhs
SSIC 4062
89-1015

October 20, 1989

Mr. J. Alvin George
Chairman
Financial Federal Credit Union
of San Diego
440 Beech Street
San Diego, CA 92101-3281

Dear Mr. George:

Your letter to Chairman Jepsen regarding credit union payment of the expenses of an official's spouse has been referred to this Office for response. In your letter you set forth your Board of Directors' opinion on this issue.

The specific question you would like addressed is: Can a Federal credit union pay (or reimburse) for a spouse's expenses when the spouse of an official accompanies the official on a credit union business trip? It is our position that payment or reimbursement is not permitted for the two reasons set forth below.

First, we do not believe that a spouse's expenses can qualify as legitimate business expenses of an FCU. There is no direct, indirect, or incidental benefit to an FCU's business in having an official's spouse accompany the official on business trips or while attending credit union conferences.

We are not unmindful of other determinations where it has been found that the expenses of a corporate officer's spouse may be reasonable business expenses. However, those situations involve substantial participation in furthering the corporation's business with its existing or prospective clients. That is not the case with FCU's.

Our second reason is that payment or reimbursement would

constitute compensation to the official. As you know, Section 112 of the Federal Credit Union Act and Section 701.33 of NCUA's Rules and Regulations (amended August 8, 1988) address the area of compensation of officials. Only one board officer may be compensated as an officer of the board and no other official may receive compensation for performing board or committee duties. While an official may be reimbursed for reasonable and proper costs in carrying out official duties, a spouse's expenses are not reasonable and proper costs incurred by an official in performance of official duties. Payment of such expenses benefits the FCU official, not the FCU, and would be deemed prohibited compensation. We would note that your board has recognized that payment or reimbursement would be compensation, albeit the expense may be small, and would constitute taxable income.

As you may recall, in February, 1988, the NCUA Board requested comments on whether to amend Section 701.33 to permit reimbursement to officials for pay or leave actually lost while attending FCU board or committee meetings. Despite the rationale for such reimbursement, the majority of FCU's commenting on the proposal were opposed and it was not included in the final rule. The justification for a spousal expense exemption from the compensation prohibition is far less supportable than that proposed in 1988.

We appreciate your comments and hope the above provides a clear understanding of our position on this issue.

Sincerely,


JAMES J. ENGEL
Deputy General Counsel



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

October 31, 1989

Office of General Counsel

GC\RRD:sg
SSIC 4062
89-1001

Mr. Robert S. Bascom
Information Specialist
Compliance & Governmental Affairs Division
New York State Credit Union League
P.O. Box 15021
Albany NY 12212-5021

Re: Compensation of FCU Officials (Your September 28, 1989,
Letter).

Dear Mr. Bascom:

You asked if a Federal credit union ("FCU") may offer members of its board of directors preferential services -- for example, a higher dividend rate on directors' share accounts than that paid to other members. You question whether Section 701.21(d)(5) of the NCUA Regulations (12 C.F.R. §701.21(d)(5)), which bars preferential loan treatment for FCU officials, governs other credit union services, such as dividend rates paid on share accounts. Such preferential treatment would be considered impermissible compensation to board members. Only one board officer may be compensated for his or her duties on the board.

ANALYSIS

The proscriptions to preferential loans found in Section 701.21(d)(5) of the NCUA Regulations applies to FCU directors and other designated persons. It covers only preferential treatment on loans. Section 701.33(b)(1) of the NCUA Regulations (12 C.F.R. §701.33(b)(1)) prohibits compensation of directors except as provided. Section 701.33(b)(1) provides:

*Vol. III, Part A (4) Preferential dividend rates T
and memb.*

Mr. Robert S. Bascom

October 31, 1989

Page 2

Only one board officer, if any, may be compensated as an officer of the board. The bylaws must specify the officer to be compensated, if any, as well as the specific duties of each of the board officers. No other official may receive compensation for performing the duties or responsibilities of the board or committee position to which the person has been elected or appointed.

This Section goes on to exclude officials' expenses and certain types of insurance from the definition of compensation. Except for those exclusions, Section 701.33 prohibits all forms of compensation, whether taking the form of preferential loan rates or preferential dividends rates.

Sincerely,

Hattie M. Ulan

HATTIE M. ULAN
Assistant General Counsel



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

Office of General Counsel

GC\RRD:sg
SSIC 4062
89-0905

October 6, 1989

Lawrence C. Williams, Administrator
State of Alabama Credit Union Administration
771 South Lawrence St.
Suite 103
Montgomery, AL 36130-0901

Re: Federal Credit Union Employees Elected to
Board of Directors (Your September 1, 1989,
Letter)

Dear Mr. Williams:

You have asked for a copy of an opinion concerning whether paid employees of a credit union may be elected and serve on the board of directors of a Federal credit union (FCU). Enclosed please find an NCUA opinion letter dated September 29, 1988 which addresses the issue you present.

The letter applies only to federally-chartered credit unions. It does not apply to state-chartered credit unions. In summary, FCU members who are also FCU employees may serve on the FCU's board of directors and be compensated as employees of the FCU. Pursuant to Section 112 of the FCU Act (12 U.S.C. 1761a), one FCU board officer may be compensated for his/her duties as such. In most FCU's, this person is the FCU's financial officer, although Section 112 of the FCU Act does not require that the compensated officer be the financial officer. The compensated board officer may also be compensated as an FCU employee. The Standard FCU Bylaws prohibit the FCU manager from serving on the FCU's board of directors (see Article VIII, Section 6 of the FCU Bylaws). The FCU board may adopt a standard FCU bylaw amendment which permits the manager to serve on the board. In addition, standard amendments permit the FCU board to limit the number of FCU

Vol III Part A ~~4A~~³ Compensation of FCU Board Members

Lawrence C. Williams, Administrator
October 6, 1989
Page 2

employees who may be elected to the board. Copies of the Standard FCU Bylaws and the FCU Standard Bylaw Amendments and Guidelines are enclosed.

Sincerely,

Hattie M. Ulan

HATTIE M. ULAN
Assistant General Counsel

Enclosures



GC/RRD:sg
4060

NATIONAL CREDIT UNION ADMINISTRATION
Washington, DC 20456

September 29, 1988

Office of General Counsel

Mr. John Branch
Mrs. Tucker's Employees FCU
P.O. Box 759
Sherman, Texas 75090

Re: Compensation of Board Members (Your August 9,
1988, Letter)

Dear Mr. Branch:

You have requested us to review the compensation your Federal credit union ("FCU") gives certain of its board members. Since only one board member, the financial officer, is being compensated for board service as such, we believe your FCU's board compensation structure comports with the Federal Credit Union Act, the NCUA Rules and Regulations, and your bylaws.

Two members serving on the FCU board are compensated by the FCU. One is serving as the board's financial officer and as manager of the FCU and is compensated for service on the board. The other is also a member of the FCU board, but serves as the assistant general manager of the FCU, and is compensated for service as the assistant general manager of the FCU. Your bylaws state that "[o]ne board officer, the financial officer, may be compensated for his services to such extent as may be determined by the board."

Section 111(c) of the FCU Act [12 U.S.C. §1761(c)] provides: "No member of the board or of any other committee shall, as such, be compensated" (Emphasis added.) Section 112 [12 U.S.C. §1761a] states: "Only one board officer may be compensated as an

FOIA

Vol III Part A(4) C

Mr. John Branch
September 29, 1988
Page 2

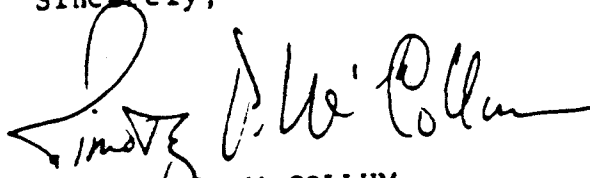
officer of the board and the bylaws shall specify such position. . . ." (Emphasis added)

Section 701.33(b) of the NCUA Rules and Regulations [12 C.F.R. 701.33(b)] provides:

Only one board officer, if any, may be compensated as an officer of the board. The bylaws must specify the officer to be compensated, if any, as well as the specific duties of each of the board officers. No other official may receive compensation for performing the duties or responsibilities of the board or committee position to which the person has been elected or appointed.

From the facts you presented, the board member serving also as financial officer and manager and being compensated for service in either or both positions may permissibly be compensated for that service. The other board member serving also as assistant manager may also permissibly be compensated for service as such.

Sincerely,



TIMOTHY P. MCCOLLUM
Assistant General Counsel

RRD:sg



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

May 16, 1989

Office of General Counsel

Mr. Robert R. McKenzie
First Atlantic Federal Credit union
100 Monmouth Park Highway
West Long Branch, N.J. 07764

Re: Compensating Directors for Services
Rendered (Your March 15, 1989, Letter)

Dear Mr. McKenzie:

You have requested our opinion on two issues involving the compensation of Federal credit union ("FCU") directors. The first issue is whether an FCU may compensate a board member for analyzing certified financial statements submitted by business loan applicants or for participating in an income tax preparation service offered by the FCU. The second issue is whether a board member of the FCU may be compensated for services rendered to a credit union service organization ("CUSO"). The answer to both issues is no.

APPLICABLE LAW

Section 111(c) of the FCU Act (12 U.S.C. 1761(c)) states:

No member of the board or of any other committee shall, as such, be compensated, except that reasonable health, accident, similar insurance protection, and the reimbursement of reasonable expenses incurred in the execution of the duties of the position shall not be considered compensation.

Section 701.21(c)(8) of the NCUA Rules and Regulations (12 C.F.R. 701.21(c)(8)) addresses the issue of prohibited fees on loans made by FCU's and provides:

III, A, 4, Director Compensation

Mr. Robert R. McKenzie
May 16, 1989
Page 2

(8) Prohibited Fees. A Federal credit union shall not make any loan or extend any line of credit if, either directly or indirectly, any commission, fee or other compensation is to be received by the credit union's directors, committee members, senior management employees, loan officers, or any immediate family members of such individuals, in connection with underwriting, insuring, servicing, or collecting the loan or line of credit. . . .

Section 721.1 of the NCUA Rules and Regulations (12 C.F.R. 721.1) allows group purchasing plans (which would include income tax preparation services) to be made available to members but Section 721.2(c) specifically states:

(c) No director, committee member, or senior management employee of a Federal credit union or any immediate family member of any such individual may receive any compensation or benefit, directly or indirectly, in conjunction with any [group purchasing plan].

Section 701.27(d)(6) of the NCUA Rules and Regulations (12 C.F.R. 701.27(d)(6)) addresses the issue of compensation for an FCU board member employed by the CUSO by providing:

(6) Conflict of Interest. (i) Individuals who serve as officials of, or senior management employees of an affiliated Federal credit union (as defined in (c)(1)), and immediate family members of such individuals, may not receive any salary, commission, investment income, or other income or compensation from a credit union service organization either directly or indirectly, or from any person being served through the credit union service organization. This provision does not prohibit an official or senior management employee of a Federal credit union from assisting in the operation of a credit union service organization, provided the individual is not compensated by the credit union service organization. Further, the credit union service organization may reimburse the Federal credit union for the services provided by the individual.

Mr. Robert R. McKenzie
May 16, 1989
Page 3

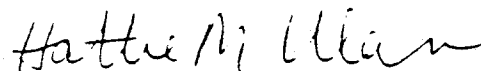
ANALYSIS

The purpose of Section 721.21(c)(8) is to ensure that the decisions a Federal credit union goes through at the various stages of making a loan, i.e., underwriting, insuring, servicing, or collecting, will not be influenced by the receipt of things of value by those at the credit union involved in such decisions. Clearly, a director receiving compensation for analyzing business loan applications runs afoul of this rule. Section 701.21(c)(8) prohibits a Federal credit union from making any loan or extending a line of credit if compensation is to be received by a director, either directly or indirectly. Thus, the NCUA Rules and Regulations prohibit an FCU from compensating a director for analyzing business loan applications.

A similar problem arises in the situation where a director is compensated for his involvement in an income tax preparation service provided by the FCU. This type of service is a group purchasing plan and Section 721.2(c) clearly prohibits an FCU from compensating a director, either directly or indirectly, in conjunction with a group purchasing plan. The same analysis used for prohibiting compensation to a director for analyzing business loan applications applies here in prohibiting compensation to a director for his participation in an income tax preparation service offered by the FCU.

You have also asked whether it is permissible for a board member of an FCU to be remunerated for services rendered to the CUSO. Section 701.27(d)(6) prohibits a director of a Federal credit union from receiving compensation from a CUSO, either directly or indirectly. Thus, the clear language of the regulation prohibits a CUSO from compensating a director of an FCU for services rendered to the CUSO.

Sincerely,



HATTIE M. ULAN
Assistant General Counsel

MM:sg



GC/ST-49
3500

NATIONAL CREDIT UNION ADMINISTRATION

Washington, D.C. 20456

November 15, 1988

Office of General Counsel

Mr. Alfred V. Evans, Jr.
Max Federal Credit Union
P.O. Box 17930
Montgomery, Alabama 36193-2501

Re: Request for Legal Opinion on Propriety of
Reimbursement (Your August 26, 1988, Letter)

Dear Mr. Evans:

You have asked whether the Max Federal Credit Union ("FCU") may reimburse you for the expense you incurred in hiring a substitute teacher to cover your classes while you attended a board of directors meeting of the FCU. It may not. The NCUA Board has determined that an FCU may not reimburse an FCU official for pay or leave lost while attending meetings of the board of directors or committee meetings. The reimbursement you describe is, in effect, reimbursement for lost pay.

BACKGROUND

You are employed as an adjunct professor at Alabama State University (the "University"). You are also a director at the FCU. Your contract with the University requires you to pay a substitute to teach your classes when you are unable to. Your salary from the University is not reduced when you miss a class. The amount you pay the substitute teacher is less than the amount of your salary on a per-class basis. In order to attend a meeting of the board of directors, you had to miss a class. You have asked whether the FCU may reimburse you for the cost you incurred in hiring a substitute teacher.

ANALYSIS

Section 701.33(b) of NCUA's Rules and Regulations [12 C.F.R. 701.33(b)] states:

101-TTL A4 [unclear]

Mr. Alfred V. Evans, Jr.
November 15, 1988
Page 2

(1) Only one board officer, if any, may be compensated as an officer of the board. The bylaws must specify the officer to be compensated, if any, as well as the specific duties of each of the board officers. No other official may receive compensation for performing the duties or responsibilities of the board or committee position to which the person has been elected or appointed.

(2) For purposes of this section, the term "compensation" specifically excludes:

(i) Payment (by reimbursement to an official or direct credit union payment to a third party) for reasonable and proper costs incurred by an official in carrying out the responsibilities of the position to which that person has been elected or appointed

Earlier this year, the NCUA Board issued a proposal to amend Section 701.33 that would allow an FCU to reimburse its officials for pay or leave lost while attending board of directors or committee meetings (see 53 Fed. Reg. 4992, February 19, 1988). However, the comments received on that proposal indicated that the majority of FCU's felt that such reimbursement was unnecessary and could be harmful to the credit union movement. The Board decided not to go forward with the proposal, and clarified its position in the preamble to the final amendments to Section 701.33 (53 Fed. Reg. 29640, August 8, 1988):

The NCUA Board also hereby clarifies that under NCUA's current Rules and Regulations reimbursement of officials for lost pay or leave is not permitted. (Emphasis added.)

You have stated that the cost you incurred in hiring a substitute is an expense that should be reimbursed under Section 701.33 as a "reasonable and proper cost." You state that such reimbursement should not be viewed as reimbursement for lost pay since the cost of hiring a substitute is less than the amount you receive in salary on a per-class basis. We do not agree.

It is clear that if the University did not pay you when you were unable to teach one of your classes, the FCU could not reimburse

Mr. Alfred V. Evans, Jr.
November 15, 1988
Page 3

you for the lost pay. It is also clear that if the University reduced your salary by an amount necessary to pay for all or part of the cost of hiring a substitute, and then hired a substitute on your behalf, the FCU could not reimburse you for this reduction in pay. To reach a different result in your case because the University does not reduce your salary, but instead requires you to hire a substitute, would be to promote form over substance. In each case, there is a loss of pay. An FCU may not reimburse its officials for such a loss. The fact that in your case there is not a complete loss since the cost of the substitute is less than what you are paid does not change this result.

Sincerely,

Hattie M. Ulan
HATTIE M. ULAN
Acting Assistant General Counsel

JT:sg



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

GC/RD:jrm
4061

March 31, 1988

Office of General Counsel

Bettye P. Machen
Chairman of the Board
Naval Air Federal Credit Union
160 Newtown Road
Virginia Beach, VA. 23462

Re: Compensation of Federal Credit Union
Officials (Your March 3, 1988, Letter)

Dear Mrs. Machen:

You have asked whether it is permissible for a Federal credit union ("FCU") to reimburse board members for salary lost while attending credit union conferences or schools. An FCU may not. NCUA has issued a request for comments on a possible change in its regulations to permit reimbursement for wages or salary actually forfeited to attend FCU board and committee meetings; the request does not include a proposed change to reimburse officials for lost work time attending conferences or schools.

FACTS

Your FCU held a board meeting on January 26, 1988, at which time a motion was made and passed to reimburse board members for salary lost while attending credit union conferences and schools up to eight days per year per board member. It was also decided that such reimbursement extended to persons taking leave without pay even though they have leave or vacation time available.

ANALYSIS

Section 111 of the FCU Act [12 U.S.C. 1761] provides:

* * *

(c) No member of the board or of any other committee shall, as such, be compensated,

Bettye P. Machen
March 31, 1988
Page Two

except that reasonable health, accident, similar insurance protection, and the reimbursement of reasonable expenses incurred in the execution of the duties of the position shall not be considered compensation.

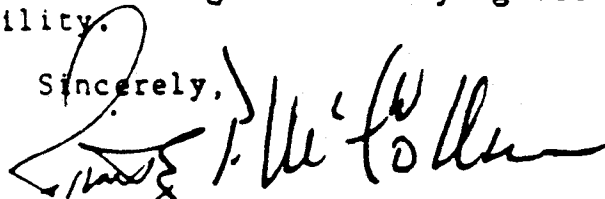
Sections 701.33(a) and (b) of the NCUA Rules and Regulations [12 C.F.R. 701.33(a), (b)] provide:

(a) With the exception of the treasurer, no director or member of a credit committee or supervisory committee may receive compensation for performing the duties or responsibilities of the board of committee position to which the person was elected or appointed.

(b) For purposes of this section, the term 'compensation' specifically excludes (1) reasonable and proper costs incurred by or on behalf of an official (whether on a reimbursement basis or directly by the credit union) in carrying out the responsibilities of the position to which the person was elected or appointed

We have consistently stated that the Section 701.33(b)(1) allowance of reimbursement, though including costs associated with a director's or officer's attendance at schools and conferences on behalf of the credit union, is limited to out-of-pocket monetary costs. More specifically, direct costs for travel, meals and lodging are reimbursable expenses under Section 701.33, but indirect costs such as wages actually lost while attending such activities are not. On February 10, 1988, NCUA proposed eliminating this distinction for FCU officials' attendance at board and committee meetings. But this is only a proposal and would not, in any event, permit reimbursement for lost wages for carrying out any other official responsibility.

Sincerely,



TIMOTHY P. MCCOLLUM
Assistant General Counsel

RRD:jrm



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

June 8, 1988

GC/JS:sg
3600

Office of General Counsel

Mr. Bobby E. Coomer
Director
L & N Federal Credit Union
8628 Glaser Road
Fern Creek, Kentucky 40291

Re: Compensation of Federal Credit Union Officials for
Attendance at Conferences (Your May 19, 1988, Letter)

Dear Mr. Coomer:

A Federal credit union ("FCU") may not reimburse board members for salary lost while attending credit union conferences or similar events. NCUA has issued a request for comments on a possible change in its regulations to permit reimbursement for wages or salary actually forfeited to attend FCU board and committee meetings. The request, however, does not include a proposed change to reimburse officials for lost work time while attending conferences.

Section 111 of the FCU Act [12 U.S.C. 1761] provides:

(c) No member of the board or of any other committee shall, as such, be compensated, except that reasonable health, accident, similar insurance protection, and the reimbursement of reasonable expenses incurred in the execution of the duties of the position shall not be considered compensation.

Sections 701.33(a) and (b) of the NCUA Rules and Regulations [12 C.F.R. 701.33(a), (b)] provide:

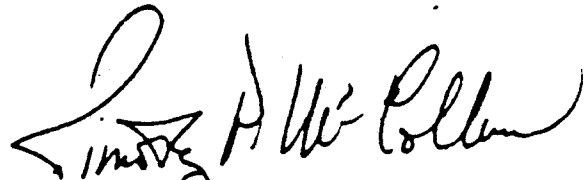
(a) With the exception of the treasurer, no director or member of a credit committee or supervisory committee may receive compensation for performing the duties or responsibilities of the board of [sic] committee position to which the person was elected or appointed.

Mr. Bobby E. Coomer
June 8, 1988
Page Two

(b) For purposes of this section, the term 'compensation' specifically excludes (1) reasonable and proper costs incurred by or on behalf of an official (whether on a reimbursement basis or directly by the credit union) in carrying out the responsibilities of the position to which the person was elected or appointed

We have consistently stated that the Section 701.33(b)(1) allowance of reimbursement, though including costs associated with a director's or officer's attendance at schools and conferences on behalf of the credit union, is limited to out-of-pocket monetary costs. More specifically, direct costs for travel, meals and lodging are reimbursable expenses under Section 701.33; but indirect costs, such as wages actually lost while attending such activities, are not. On February 10, 1988, NCUA proposed eliminating this distinction for FCU officials' attendance at board and committee meetings. But, this is only a proposal and would not, in any event, permit reimbursement for lost wages for carrying out any other official responsibility.

Sincerely,



TIMOTHY P. MCCOLLUM
Assistant General Counsel

DJS:sg



GC/RD 30
4061

NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20536

November 29, 1988

Office of General Counsel

Mr. Richard T. Rivas
Unit No. 1 Federal Credit Union
P.O. Box 830
Lockport, NY 14094-0830

Re: Reimbursement for Wages Lost While Attending
Conferences (Your August 26, 1988, Letter)

Dear Mr. Rivas:

You have requested a waiver of NCUA's prohibition against reimbursement of Federal credit union ("FCU") board or committee members for salary lost while attending a conference or training course. The prohibition is absolute; we cannot grant a waiver.

Background

Your FCU has had difficulty finding quality training programs for your supervisory committee members because of your location in western New York state. Your FCU has made arrangements for the New York State Credit Union League to provide on-site training classes. These classes were arranged on the assumption that the FCU could reimburse the committee members for their lost wages while attending these classes.

Relevant Statute and Regulation

Section 111 of the FCU Act [12 U.S.C. 1761] provides:

(c) No member of the board or of any other committee shall, as such, be compensated, except that reasonable health, accident, similar insurance protection, and the reimbursement of reasonable expenses incurred in the execution of the duties of the position shall not be considered compensation.

OTA

Mr. Richard T. Rivas
November 29, 1988
Page 2

Section 701.33(b) of the NCUA Rules and Regulations [12 C.F.R. 701.33(b)], which has just been amended [53 Fed. Reg. 29640 (August 8, 1988)], provides, in part:

(1) Only one board officer, if any, may be compensated as an officer of the board. The bylaws must specify the officer to be compensated, if any, as well as the specific duties of each of the board officers. No other official may receive compensation for performing the duties or responsibilities of the board or committee position to which the person has been elected or appointed.

(2) For purposes of this section, the term "compensation" specifically excludes:

(i) Payment (by reimbursement to an official or direct credit union payment to a third party) for reasonable and proper costs incurred by an official in carrying out the responsibilities of the position to which that person has been elected or appointed;

Recent Section 701.33 Amendment

When the NCUA Board presented a proposal to amend Section 701.33 to the public for comment, it suggested narrowly expanding the rule to permit reimbursing FCU officials for pay or leave actually lost while attending FCU board or committee meetings. (See 53 Fed. Reg. 4992 (Feb. 19, 1988).) Sixty-two of 86 commenters opposed even this narrow expansion. After reviewing the comments, the Board stated:

The primary reasons given for opposing the proposal concerned the credit union volunteer spirit -- that reimbursement was contrary to that philosophy; that voluntarism is what makes credit unions different from other financial institutions; and that easing the reimbursement restriction further could endanger the tax-exempt status of credit unions. Commenters were also concerned about the possible effects of implementing such an authorization. Dissension among

Mr. Richard T. Rivas
November 29, 1988
Page 3

board members where some might receive more reimbursement than others; reluctance by some officials to publicly disclose their salaries; additional IRS reporting requirements for FCU's; difficulty with verifying officials' claims of lost pay or leave; and creation of an incentive to officials to hold meetings during working hours.

* * *

NCUA staff had recommended this proposal to the NCUA Board in response to FCU's expressing a need for reimbursement for lost pay and leave to attract and retain qualified volunteers. The comments received on the proposal, however, indicate the vast majority of FCU's feel such reimbursement is unnecessary and may be harmful to the credit union spirit. The NCUA Board has decided not to go forward with this proposal. The Board also hereby clarifies that under NCUA's current Rules and Regulations reimbursement of officials for lost pay or leave is not permitted.

Conclusion

In large part because of the credit union community's overwhelming opposition to allowing FCU's to reimburse officials for lost pay or leave, the Board has established an absolute rule against it in Section 701.33. No waiver is possible.

Sincerely,

Hattie M. Ulan

HATTIE M. ULAN
Acting Assistant General Counsel

RRD:sg



GC/RMF:bhs
4361

NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

January 13, 1989

Office of General Counsel

Richard Rivas
General Manager
Unit 1 Federal Credit Union
P.O. Box 830
Lockport, NY 14094-0830

Dear Mr. Rivas,

This is in response to your letter of December 12, 1988, to Chairman Jepsen requesting clarification of NCUA's position on reimbursement of lost wages.

As you know, in February of 1988, the NCUA Board proposed an amendment to NCUA's regulations to allow reasonable reimbursement for Federal credit union directors and committee members who lose leave or pay from their regular jobs when attending credit union board or committee meetings. The public comments in response were overwhelmingly opposed to such reimbursement. Commenters cited the tradition of voluntarism as one of the cornerstones of credit union philosophy, and expressed concern that the proposal would eliminate an important characteristic of credit unions that sets them apart from profit-oriented financial institutions.

In response to the public comments, the NCUA Board continued the prohibition against reimbursement for lost pay or leave. Reimbursement of all reasonable expenses continues to be permissible.

In your letter of December 12, 1988, you cite an apparent inconsistency in NCUA's implementation of the rule. Specifically, Ms. Ulan of our Office of General Counsel stated in her letter to you of November 29, 1988, that it is not possible to grant exceptions to the rule. Several of your directors have indicated, however, that in a presentation by another member of NCUA staff at a recent meeting of the General Motors Council of Credit Unions in New Orleans, they were told that exceptions might be given in certain cases.

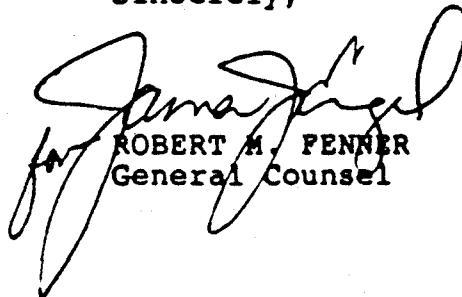
Richard Rivas
Page Two
January 13, 1989

Having discussed this matter with Regional Director Allen Carver, who prepared the New Orleans presentation, it is my understanding that he indicated that special consideration might be given to situations where, at the time that NCUA's final rule was adopted, firm plans and commitments had already been made for attendance at meetings such as educational seminars and credit union conferences. I have discussed this matter with Chairman Jepsen, as well as Regional Director Bryan in Albany, and we all believe that this is a fair and reasonable approach. To the extent that our letter of November 29 seemed to preclude this type of case-by-case consideration, we apologize for the confusion created. If these circumstances apply to your credit union, you should follow up with your examiner and Mr. Bryan.

We do not have immediate plans to revisit the broader issue of reimbursement of lost leave or pay. As you may know, however, we review all of our regulations on a three-year cycle. Proposed rule changes are generally distributed to credit unions by both NCUA and the credit union trade associations. We encourage your participation in the comment process.

Again, thank you for writing, and I trust this clears up the confusion that existed.

Sincerely,



ROBERT M. PENNER
General Counsel

RMP:bhs

cc: Chairman Jepsen
Allen Carver
Foster Bryan



GC/HMU:bhs
3600

NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

April 14, 1989

Office of General Counsel

Marko Arezina, Treasurer
VDN Federal Credit Union
218 Crescent Drive
Lower Burrell, PA 15068

Re: Compensation of Directors
(Your Letter of March 13, 1989)

Dear Mr. Arezina:

You asked whether or not it is permissible for a Federal credit union ("FCU") to pay each member of the board of directors \$30.00 for attendance at each board meeting. Unless the \$30.00 represents a reasonable payment of expenses board members incur in attending the meetings, the payments would not be permitted under the FCU Act and the National Credit Union Administration ("NCUA") Rules and Regulations.

Section 111(c) of the FCU Act (12 U.S.C. §1761(c)) provides as follows:

No member of the board or of any other committee shall, as such, be compensated, except that reasonable health, accident, similar insurance protection, and the reimbursement of reasonable expenses incurred in the execution of the duties of the position shall not be considered compensation.

Section 112 of the FCU Act (12 U.S.C. §1761a) does authorize an FCU to compensate one officer of the board of directors.

Section 701.33(b) of the NCUA Rules and Regulations (12 C.F.R. §701.33(b)) provides, in part:

(1) Only one board officer, if any, may be compensated as an officer of the board.... No other official may receive

Marko Arezina, Treasurer
Page Two
April 14, 1989

compensation for performing the duties or responsibilities of the board....

(2) For purposes of this section, the term "compensation" specifically excludes:

(1) payment (by reimbursement to an official or direct credit union payment to a third party) for reasonable and proper costs incurred by an official in carrying out the responsibilities of the position to which that person has been elected or appointed;

Unless the \$30.00 payments qualify as reasonable and proper costs as set forth in Section 701.33(b)(2)(i) of the NCUA Regulations, they would not be permitted under the FCU Act or the NCUA Regulations.

Sincerely,

Hattie M. Ulan

HATTIE M. ULAN
Assistant General Counsel

HMU/bhs



GC/HRU:bhs
3507

NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

January 17, 1989

Office of General Counsel

Gerald E. Toland
President/CEO
La Dotd Federal Credit Union
P.O. Box 44244
Baton Rouge, LA 70804-4244

Re: Mileage Expense for Directors to Attend
Monthly Directors' Meetings (Your
December 1, 1988, Letter)

Dear Mr. Toland:

A Federal credit union ("FCU") can make a reasonable reimbursement to members of the board of directors for mileage expenses to and from monthly board meetings pursuant to the FCU Act and the NCUA Regulations. A decision to make such reimbursement is a policy matter to be made by the board of directors of each individual FCU.

Section 112 of the FCU Act provides that only one board officer may be compensated. Section 111(c) of the FCU Act (12 U.S.C. §1761(c)) provides, in part:

No member of the board or of any other committee shall, as such, be compensated, except that ... the reimbursement of reasonable expenses incurred in the execution of the duties of the position shall not be considered compensation.

Section 701.33(b) of the NCUA Rules and Regulations (12 C.F.R. §701.33(b)) interprets Section 111 of the FCU Act. It repeats the prohibition on compensation and further provides, in part:

(2) For purposes of this section, the term "compensation" specifically excludes:

Gerald E. Toland
Page Two
January 17, 1989

(1) payment (by reimbursement to an official or direct credit union payment to a third party) for reasonable and proper costs incurred by an official in carrying out the responsibilities of the position to which that person has been elected or appointed;

It has been longstanding NCUA policy that reimbursement for "reasonable expenses incurred" includes mileage expenses to and from FCU board meetings. A decision on whether or not to make such reimbursement rests with the board of directors of each FCU.

Sincerely,

Hattie M. Ulan

HATTIE M. ULAN
Acting Assistant General
Counsel

HMU:bhs



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

Office of General Counsel

GC\RRD:sg
SSIC 4062
89-0713

July 31, 1989

Ms. Irma Lerma
President
U.I.W. Federal Credit Union
510 North Broad Ave.
Wilmington, CA 90744

Re: Compensation of Officials (Your July 10, 1989,
Letter)

Dear Ms. Lerma:

Your letter to Chairman Jepsen has been referred to this Office for a response. You ask whether a Federal credit union ("FCU") may reimburse members of your board of directors and credit committee for expenses, such as mileage, when these officials attend meetings to transact business of the credit union. The FCU Act and NCUA Regulations permit reimbursement for reasonable expenses incurred in the execution of such officials' credit union duties.

ANALYSIS

Section 111(c) of the FCU Act (12 U.S.C. §1761(c)) provides as follows:

... member of the board or of any other committee shall, as such, be compensated, except that reasonable health, accident, similar insurance protection, and the reimbursement of reasonable expenses incurred in the execution of the duties of the position shall not be considered compensation.

Ms. Irma Lerma
July 31, 1989
Page 2

Section 112 of the FCU Act (12 U.S.C. §1761a) authorizes an FCU to compensate only one officer of the board of directors for service on the board.

Section 701.33(b) of the NCUA Rules and Regulations (12 C.F.R. §701.33(b)) provides, in part:

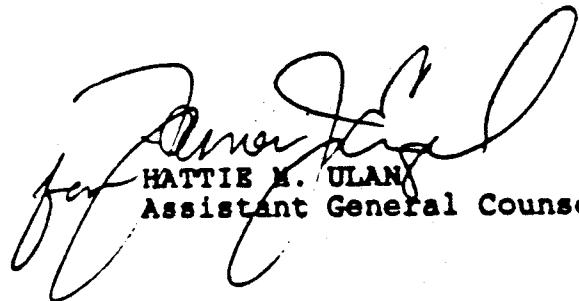
(1) Only one board officer, if any, may be compensated as an officer of the board.... No other official may receive compensation for performing the duties or responsibilities of the board....

(2) For purposes of this section, the term "compensation" specifically excludes:

(i) payment (by reimbursement to an official or direct credit union payment to a third party) for reasonable and proper costs incurred by an official in carrying out the responsibilities of the position to which that person has been elected or appointed;

Your letter did not describe in detail the circumstances surrounding your FCU's reimbursement of expenses. You did state that some related to mileage expenses incurred when the FCU officials "attended meetings to transact business of the credit union." In general, mileage and other reasonable and proper expenses incurred while attending credit union-related meetings and conferences are reimbursable expenses. Enclosed is an opinion letter concerning payment of mileage expenses incurred by board members while attending board meetings. We have contacted your Supervisory Examiner concerning this issue.

Sincerely,


HATTIE M. ULAN
Assistant General Counsel

Enclosure
cc: Rick Ducker (Region VI)

operations to be carried out concurrently.

(2) Sites subject to flooding or slippage are to be avoided as sites for stockpiling. The soil map and interpretations for the proposed stockpiling site are to be used to determine soils that may be subject to flooding or slippage.

(3) Remove all woody vegetation and other materials that may interfere with placement or removal of stockpiled soil.

(4) Stockpile the topsoil separately from other excavated soil and spoil materials.

(5) Stockpile the B and/or C horizons or other approved substitute soil materials in a location separate from all other excavated soil and spoil materials.

(6) If stockpiled soil material will not be used for reconstruction within 30 calendar days, protect the stockpiles from erosion in accordance with 30 CFR 816.22 or 817.22.

§ 652.4 Soil reconstruction.

(a) *Planning considerations.* (1) Use of a soil survey to determine chemical and physical properties of the soil that exist prior to removal.

(2) Consider the use of specialized earthmoving equipment and other techniques that minimize soil compaction and create a favorable physical soil condition.

(3) Consider the use of chiseling, ripping, or equivalent treatment in the upper part of the B horizon before topsoil replacement to reduce compaction and to increase porosity.

(4) Consider alternatives for reconstruction that will result in a better drained, less erodible, and more productive soil than existed prior to mining.

(5) Minimize compaction by implementing reconstruction within favorable soil moisture ranges.

(6) Consider monitoring and correcting the density of lower layers while they can still be reached with ripping or chiseling equipment.

(7) Consider adding lime to the replaced B and/or C horizons to establish or improve the natural pH balance of the soil. Mixing by ripping or chiseling could improve the quality of the reconstructed soil if the natural pH is less than 6.2.

(b) *Specifications.* (1) Soil reconstruction of the topsoil, B and C horizons must be completed to a minimum depth of 48 inches or to the depth of the original Cr (soft rock) or R (bedrock) horizons if either was less than 48 inches.

(2) In circumstances where the pre-mining depth to the Cr or R horizons

was more than 48 inches and the quantities of stockpiled topsoil, B and C horizons are insufficient to reconstruct the original elevation, graded spoil material may be used to achieve the pre-mining elevation. The B and C horizon material must be placed on such graded spoil at a uniform thickness.

(3) Topsoil or an approved substitute soil material must be returned to the mined area and placed on the B and C horizons at a thickness not less than that of the pre-mined topsoil or to a minimum of 6 inches, if the surface layer before mining was less than 6 inches thick.

(4) The texture and reaction (pH) of the major horizons of the reconstructed soil must be within the range of characteristics of the pre-mined soil.

(5) Final grading of the reconstructed soil must provide positive surface drainage and uniform slopes. The average slope gradient must be within the range of the pre-mined prime farmland map units.

(6) Use the specifications found in Section IV of the local SCS Field Office Technical Guide for seeding, mulching, and other erosion control measures after replacement of the topsoil.

(7) The porosity of the topsoil and B and C horizons after reconstruction must permit root penetration.

(8) Seeding, mulching, and other erosion control measures must be completed as soon as weather conditions permit after replacement of the topsoil.

(9) Before spreading topsoil, the regraded areas must be scarified or otherwise treated in order to eliminate slippage surfaces and promote root penetration.

(10) Earthmoving and grading equipment traffic, which increases compaction, reduced porosity, and makes root penetration more difficult, must be kept to a minimum.

(11) The reconstructed subsoil of fragipan soils should meet the high capability root-medium requirements of State law if any.

(12) The topsoil, B horizon material, and C horizon material that are not used for reconstruction concurrently with mining or placed in stockpiles must be spread within the permit boundaries in accordance with 30 CFR 816.22 or 817.22.

Galen S. Bridges,

Deputy Chief for Programs.

[FR Doc. 88-3536 Filed 2-18-88; 2:45 am]

BILLING CODE 5110-10-01

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Compensation of Officials

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed amendments.

SUMMARY: Pursuant to its regulatory review program, the NCUA Board proposes changes to § 701.33 of the NCUA Rules and Regulations. The proposed changes clarify statutory limits on compensation of officials and provide authority and guidelines for indemnification of officials and employees.

DATE: Comments must be received on or before May 19, 1988.

ADDRESS: National Credit Union Administration, 1775 G Street, NW, Washington, DC 20458.

FOR FURTHER INFORMATION CONTACT: Robert Fenner, General Counsel, Allen Meltzer, Assistant General Counsel, or Julie Tamulevitz, Staff Attorney, Office of General Counsel, at the above address, or telephone (202) 357-3000.

SUPPLEMENTARY INFORMATION: In accordance with its policy to review existing regulations every three years, the NCUA Board has reviewed § 701.33 of the NCUA Rules and Regulations, "Compensation of Officials," and is proposing several amendments. Comments are requested on the proposed amendments.

Prior to 1982, section 112 of the FCU Act, 12 U.S.C. 1761a, provided that, with the exception of the treasurer, no board officer of an FCU could be compensated as such. In 1982, Congress amended the Act to allow FCU's to determine, and specify in their bylaws, which board officer (director) would be compensated. Section 701.33(a) of the NCUA Rules and Regulations currently provides that the treasurer is the only FCU official who may be compensated. The NCUA Board is proposing that § 701.33(a) be amended to conform to section 112 of the FCU Act, and that this section be redesignated as § 701.33(b)(1).

Section 111(c) of the FCU Act, 12 U.S.C. 1761(c), and § 701.33 (a) and (b) of the NCUA Rules and Regulations currently state that no member of the board of directors or of any other committee can, as such, be compensated, except that reasonable health, accident, and similar insurance protection, and the reimbursement of reasonable expenses incurred in the execution of the duties of the position, would not be considered compensation.

The question has repeatedly arisen whether it is permissible under section 701.33(c) for an FCU to reimburse officials pay or leave (e.g., annual leave,

or leave without pay) lost while attending a meeting of the board of directors, or of the supervisory or credit committees. The NCUA Board requests comment on whether, under certain circumstances, the reimbursement of officials for lost pay or leave should be permitted.

Services performed by officials are prerequisite to the success of FCU's. An official's ability to serve, however, may be limited or discouraged by the attendant loss of pay or leave. To encourage voluntary service and fair treatment of officials, therefore, the Board proposes to amend § 701.33(b).

Proposed § 701.33(b)(2)(i) clarifies that where an official is required to use leave time to attend meetings of the board of directors, or of the supervisory or credit committees, or will not be paid by the officials's employer while attending such meetings, reimbursement for pay and leave actually lost is proper. Where the employer permits an official to attend such meetings without the loss of pay or leave, or where the official is self-employed or cannot establish actual loss, reimbursement is not proper. Further, the proposed amendment would not permit reimbursement for lost pay or leave incurred while attending credit conferences or similar events.

Payment or reimbursement of reasonable and proper costs of attending such events is, of course, permissible.)

The Board also proposes regulatory guidance on indemnification of officials and employees. As in the case of reimbursement for lost pay and leave, the NCUA Board believes that indemnification and the purchase of insurance to provide for indemnification can help encourage voluntary service.

An FCU has the authority pursuant to section 107(2) of the FCU Act, 12 U.S.C. 1757(2) (the authority to sue and be sued), and section 107(16) (the incidental powers clause) to indemnify its officials and employees. NCUA has in the past interpreted these provisions as authorizing an FCU to provide for indemnification of its officials and employees under limited circumstances. However, the neither section 107 nor any other provision of law or regulation provides specific guidance on the circumstances under which indemnification may be allowed. Proposed § 701.33(c) is designed to provide that guidance.

The Board believes that permitting indemnification in accordance with state corporate law would be proper under traditional federalism principles,

as set forth in Executive Order 12612 (52 FR 41635 (October 30, 1987)), which reflects a policy of minimum Federal regulatory preemption of state laws. The Board has further taken into account that state corporate law is readily accessible to FCU's and their counsel, and that the ability to follow state law guidelines should lessen the cost for FCU's choosing to implement indemnification provisions.

Although a diversity of law exists regarding indemnification among the states, NCUA's review has not uncovered anything which would be inconsistent with the powers and responsibilities of FCU's. State law and the Model Business Corporation Act would not allow indemnification for reckless, wanton, dishonest, or fraudulent conduct, or actions taken in bad faith. Only an FCU and its legal counsel can determine whether an FCU is included within the parameters of a state statute, but the Board wishes to caution that the courts, not the Board, would be the final arbiter as to the validity of an indemnification provision under state law.

The proposal would give FCU's the additional option of using the standards set forth in the Model Business Corporation Act, both because the Act provides an extremely clear and compelling set of standards and because many state statutes, at least on their face, do not apply directly to FCU's. An alternative would be for NCUA to establish its own regulatory standards. That action does not appear to be either necessary or advisable, in view of the flexibility afforded by the Model Act and the various state laws. For convenience of commenters, the relevant portions of the Model Business Corporation Act are set forth as an Appendix to this proposal. (The Appendix is not intended as a part of the proposal.)

FCU's would be able to elect to have no indemnification or to follow either the Model Act or the relevant state law. The election must be contained in an FCU charter or bylaw amendment, or in a contract or board resolution. Failure to make an election will be considered a determination by the FCU not to provide indemnification.

The proposal would specifically exclude indemnification of officials and employees for expenses, penalties or other payments incurred in an administrative proceeding brought by the National Credit Union Administration unless the official substantially prevails on the merits. To allow indemnification under such circumstances would lessen the

deterrent effect of administrative actions.

Section 701.33(c)(2) would make clear that, while an FCU may choose to follow the indemnification provisions of either state law or the Model Business Corporation Act, NCUA's procedural requirements regarding charter or bylaw amendments would still apply. Thus, a particular state statute providing for indemnification *only* through a charter amendment voted by the members would be inconsistent with NCUA procedures, which provides only for a vote of members to *recommend* a charter amendment to the NCUA Board for approval. This should not be an impediment to indemnification since the proposal would allow FCU's to follow the provisions of the Model Business Corporation Act, and FCU's choosing to follow state law in states which do not require specific procedures may choose to provide indemnification by means of an employment contract or board resolution, neither of which require NCUA approval.

Section 701.33(c)(3) clarifies that FCU's are free to purchase insurance, such as directors and officers liability insurance, that protects officials and employees against liability asserted against them and arising out of the performance of their official duties. Credit unions customarily have purchased this insurance as a method of providing indemnification.

Finally, the proposal would add a new § 701.33(a), defining the term "official" for purposes of § 701.33 as a current or former member of the board of directors, credit committee or supervisory committee. The definition would clarify which individuals an FCU may indemnify. The inclusion of former FCU officials would allow an FCU to continue indemnification of an individual who is no longer an official but is sued for activities relating to official FCU duties performed as an official. Similarly, the proposal would permit indemnification of former employees.

Consistent with its statutory and regulatory responsibilities, NCUA monitor indemnification provisions both for consistency with the indemnification standards chosen and for the safety and soundness implications for the institution. Also it is emphasized that the power of an FCU's board to provide for indemnification implies the responsibility to determine whether, under the particular circumstances, indemnification is appropriate.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and certifies that the proposed amendments will not have a significant economic impact on a substantial number of small credit unions because the changes are directed at clarification and reduction of regulatory confusion and interpretive burdens, rather than creation of new regulatory restrictions. Therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The proposed amendments do not contain any collection of information requirements.

List of Subjects in 12 CFR Part 701

Credit unions. Compensation of officials. Indemnification.

By the National Credit Union Administration Board on February 10, 1988.
Becky Baker,

Secretary, NCUA Board.

Accordingly, NCUA proposes to amend 12 CFR Part 701 as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for Part 701 is revised to read as follows:

Authority: 12 U.S.C. 1755, 12 U.S.C. 1756, 12 U.S.C. 1757, 12 U.S.C. 1759, 12 U.S.C. 1761, 12 U.S.C. 1761a, 12 U.S.C. 1761b, 12 U.S.C. 1766, 12 U.S.C. 1767, 12 U.S.C. 1762, 12 U.S.C. 1784, 12 U.S.C. 1787, 12 U.S.C. 1789, and 12 U.S.C. 1798.

2. It is proposed that § 701.33 be revised to read as follows:

§ 701.33 Compensation of officials; indemnification of officials and employees.

(a) *Official*. An "official" is a person who is or was a member of the board of directors, credit committee or supervisory committee.

(b) *Compensation*. (1) Only one board officer may be compensated as an officer of the board. The bylaws must specify the officer to be compensated, as well as the specific duties of each of the board officers. No other official may receive compensation for performing the duties or responsibilities of the board or committee position to which the person has been elected or appointed.

(2) For purposes of this section, the term "compensation" specifically excludes:

(i) Payment (by reimbursement to an official or direct credit union payment) for reasonable and proper costs, including pay or leave actually lost due to attendance at meetings of the board

of directors, or of the supervisory or credit committee, incurred by an official in carrying out the responsibilities of the position to which that person has been elected or appointed;

(ii) Provision of reasonable health, accident and related types of personal insurance protection, supplied for officials at the expense of the credit union: *Provided*, That such insurance protection must exclude life insurance; must be limited to areas of risk, including accidental death and dismemberment, to which the official is exposed by reason of carrying out the duties or responsibilities of the official's credit union position; must cease immediately upon the insured person's leaving office, without providing residual benefits other than from pending claims, if any; and

(iii) Indemnification and related insurance consistent with paragraph (c) of this Section.

(c) *Indemnification*. (1) A Federal credit union may indemnify its officials and current and former employees for expenses reasonably incurred in connection with judicial or administrative proceedings to which they are or may become parties by reason of the performance of their official duties.

(2) Indemnification shall be consistent either with the general standards of corporate law in the state in which the principal or home office of the credit union is located, or with the relevant provisions of the Model Business Corporation Act, but may in no event permit indemnification for expenses, penalties, or other payments incurred in an administrative proceeding brought by the National Credit Union Administration, unless the official or employee substantially prevails on the merits. A Federal credit union that elects to provide indemnification shall specify whether it will follow the Model Business Corporation Act or the relevant state law. Failure to elect to provide indemnification will be considered a decision not to provide it. Indemnification and the method of indemnification may be provided for by charter or bylaw amendment, contract or board resolution, consistent with procedural requirements of applicable state law or the Model Business Corporation Act. A charter or bylaw amendment must be approved by the National Credit Union Administration.

(3) A Federal credit union may purchase and maintain insurance on behalf of its officials and employees against any liability asserted against them and expenses incurred by them in their official capacities and arising out of the performance of their official

duties to the extent such insurance is permitted by applicable state law or the Model Business Corporation Act.

Note.—The following Appendix will not appear in the Code of Federal Regulations.

Appendix—Model Business Corporation Act, Subchapter E Indemnification

Section 8.50 Subchapter definitions.

In this subchapter:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(2) "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if his duties to the corporation also impose duties on or otherwise involve services by him to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representative of a director.

(3) "Expenses" include counsel fees.

(4) "Liability" means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding.

(5) "Official capacity" means: (i) When used with respect to a director, the office of director in a corporation; and (ii) when used with respect to an individual other than a director, as contemplated in section 8.56, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation. "Official capacity" does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

(6) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, and whether formal or informal.

Section 8.51 Authority to indemnify.

(a) Except as provided in subsection (d), a corporation may indemnify an individual, made a party to a proceeding because he is or was a director, against liability incurred in the proceeding if:

- (1) He conducted himself in good faith; and
- (2) He reasonably believed:
 - (i) In the case of conduct in his official capacity with the corporation, that his conduct was in its best interests; and
 - (ii) In all other cases, that his conduct was at least not opposed to its best interests; and

(3) In the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

(b) A director's conduct with respect to an employee benefit plan for a purpose he reasonably believed to be in the interests of the participants and beneficiaries of the plan is conduct that satisfies the requirement of subsection (a)(2)(ii).

(c) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

(d) A corporation may not indemnify a director under this section:

(1) In connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or

(2) In connection with any other proceeding charging improper personal benefit to him, whether or not involving action in his official capacity, in which he was adjudged liable on the basis that personal benefit was improperly received by him.

(e) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

Section 8.52 Mandatory indemnification.

Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he was a party because he is or was a director of the corporation against reasonable expenses incurred by him in connection with the proceeding.

Section 8.53 Advance for expenses.

(a) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to

a proceeding in advance of final disposition of the proceeding if:

(1) The director furnishes the corporation a written affirmation of his good faith belief that he has met the standard of conduct described in section 8.51;

(2) The director furnishes the corporation a written undertaking, executed personally or on his behalf, to repay the advance if it is ultimately determined that he did not meet the standard of conduct; and

(3) A determination is made that the facts then known to those making the determination would not preclude indemnification under this subchapter.

(b) The undertaking required by subsection (a)(2) must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(c) Determinations and authorizations of payments under this section shall be made in the manner specified in section 8.55.

Section 8.54 Court-ordered indemnification.

Unless a corporation's articles of incorporation provide otherwise, a director of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification if it determines:

(1) The director is entitled to mandatory indemnification under section 8.52, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; or

(2) The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he met the standard of conduct set forth in section 8.51 or was adjudged liable as described in section 8.51(d), but if he was adjudged so liable his indemnification is limited to reasonable expenses incurred.

Section 8.55 Determination and authorization of indemnification.

(a) A corporation may not indemnify a director under section 8.51 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because he has met the standard of conduct set forth in section 8.51.

(b) The determination shall be made:

(1) By the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(2) If a quorum cannot be obtained under subdivision (1), by majority vote of a committee duly designated by the board of directors (in which designation directors who are parties may participate), consisting solely of two or more directors not at the time parties to the proceeding;

(3) By special legal counsel:

(i) Selected by the board of directors or its committee in the manner prescribed in subdivision (1) or (2); or

(ii) If a quorum of the board of directors cannot be obtained under subdivision (1) and a committee cannot be designated under subdivision (2), selected by majority vote of the full board of directors (in which selection directors who are parties may participate); or

(4) By the shareholders, but shares owned by or voted under the control of directors who are at the time parties to the proceeding may not be voted on the determination.

(c) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (b)(3) to select counsel.

Section 8.56 Indemnification of officers, employees, and agents.

Unless a corporation's articles of incorporation provide otherwise:

(1) An officer of the corporation who is not a director is entitled to mandatory indemnification under section 8.52, and is entitled to apply for court-ordered indemnification under section 8.54, in each case to the same extent as a director;

(2) The corporation may indemnify and advance expenses under this subchapter to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director; and

(3) A corporation may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

Section 8.57 Insurance.

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by him in that capacity or arising from his status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify him against the same liability under section 8.51 or 8.52.

Section 8.58 Application of subchapter.

(a) A provision treating a corporation's indemnification of or advance for expenses to directors that is contained in its articles of incorporation, bylaws, a resolution of its shareholders or board of directors, or in a contract or otherwise, is valid only if and to the extent the provision is consistent with this subchapter. If articles of incorporation limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles.

(b) This subchapter does not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with his appearance as a witness in a proceeding at a time when he has not been made a named defendant or respondent to the proceeding.

[FR Doc. 88-3403 Filed 2-18-88; 8:45 am]

BILLING CODE 7530-01-M

12 CFR Parts 790 and 791**Description of Office, Disclosure of Official Records, Availability of Information, Promulgation of Regulations; Rules of Board Procedure**

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed amendments.

SUMMARY: The NCUA Board proposes to amend Part 791 of its Rules to (1) streamline and clarify Board procedure, and (2) set forth updated provisions concerning the issuance of NCUA regulations. Concurrently, it is proposed that § 790.10 of NCUA's Rules and a related Appendix be repealed. Section 790.10 and the Appendix contain

outdated provisions related to issuing regulations.

DATE: Comments must be received on or before May 19, 1988.

ADDRESS: Send comments to Becky Baker, Secretary, National Credit Union Administration Board, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary, NCUA Board, regarding Rules of Board Procedure, or Julie Tamuleviz, Staff Attorney, regarding the issuing of NCUA Rules and Regulations, at the above address or telephone (202) 357-1100 (Ms. Baker) or (202) 357-1030 (Ms. Tamuleviz).

SUPPLEMENTARY INFORMATION: Section 790.10 of NCUA Rules and regulations sets forth NCUA's procedures for issuing regulations. The NCUA Board believes that the substance of this section would be more appropriately located in Part 791 covering "Rules of Board Procedure." In addition, § 790.10 is outdated and unclear. The Board is therefore proposing to delete § 790.10 and to add a new § 791.8 that will address this subject. The title of part 790 and its Scope section (§ 790.1) would be revised to reflect the proposed deletion of § 790.10, and the Scope section has been rewritten in plain words.

The Board also proposes to delete Appendix A to Part 790 entitled "Final Report in Response to Executive Order No. 12044: Improving Government Regulations." The Appendix has been superseded by NCUA Policy Statement 87-2, which contains current procedures for developing and reviewing regulations.

Under the proposed amendments, current Part 791 is divided into two subparts. Subpart A contains Rules of Board Procedure. Subpart B sets forth procedural requirements for issuing regulations.

Rules of Board Procedure

Section 102(d) of the Federal Credit Union Act, 12 U.S.C. 1752a(d), grants the NCUA Board the discretion to adopt such rules as it sees fit for the transaction of its business. Proposed Rules of Board Procedure were adopted at the first NCUA Board Meeting in September 1979. A final rule was adopted in March 1980. The purpose of these proposed amendments is to update and streamline the Rules of Board Procedure, based on the experience of the past seven years, current and changing needs, and the desire to provide flexibility for the Board in carrying out its responsibilities.

Section 791.2 ("Number of Votes Required for Board Action"), would be amended by inserting the word "any"

between the words "for" and "action". This amendment clarifies that both notation votes and votes at Board meetings are subject to the two-of-three majority rule.

Subsection (a) of § 791.4 ("Notation Voting"), is redesignated as § 791.4(b). Conversely, § 791.4(b) ("Board Meetings") is redesignated as Section (a). This change emphasizes that the primary method of acting is through action taken at Board meetings; the secondary method is action taken by notation voting. For purposes of clarification, reference to Subpart C of Part 790, Public Observation of Board Meetings, has been added to § 791.4(a)(1).

Proposed § 791.4(b) ("Notation Voting") would amend the definition of notation voting contained in current § 791.4(a) to provide that notation voting is the circulation of written memoranda and voting sheets to the office of each Board member. The present requirement that each Board member must personally receive the written memoranda and voting sheet is difficult to accomplish in the case of out-of-town or out-of-reach Board members.

For clarification purposes, proposed § 791.4(b)(2) would revise current § 791.4(a)(2) to provide for the use of a Notation Vote Sheet to record actions taken by notation vote. The first sentence of the current section, which provides for an "approval with suggested administrative changes" option on the notation vote sheet, has been deleted as unnecessary.

It is proposed that current § 791.4(a)(3)(ii) be deleted. The history of Board operations has shown that the failure of any Board member to respond to a notation vote within the prescribed time frame is not a good indication the member wants the matter considered at a Board meeting. Experience has been that the Board member has been on travel or otherwise unavailable. With the deletion of current § 791.4(a)(3)(ii), current § 791.4(a)(3)(i) would become § 791.4(b)(3). The title of proposed § 791.4(b)(3) would become "Veto of Notation Voting."

History has shown that the business to come before the Board can be accomplished, with few exceptions, at a monthly meeting. Past experience bears out that the scheduling of Board meetings on a day certain is not a feasible plan. The Board proposes that § 791.5 ("Scheduling of Board Meetings"), which requires that meetings be held each Thursday, be amended to provide that regular meetings be held monthly.

committee at a public meeting. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (U.S.C. 553).

List of Subjects in 7 CFR Part 948

Marketing agreements and orders.
Potatoes (Colorado).

For the reasons set forth in the preamble, 7 CFR Part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR Part 948 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 71, as amended; 7 U.S.C. 601-674.

2. Section 948.297 is added to read as follows:

Note.—This section prescribes the annual assessment rate and will not be published in the Code of Federal Regulations.

§ 948.297 Expenses and assessment rate.

Expenses of \$43,552 by the San Luis Valley Potato Administrative Committee Area II are authorized, and an assessment rate of \$0.0036 per hundredweight of assessable potatoes is established for the fiscal period ending August 31, 1989. Unexpended funds may be carried over as a reserve.

Dated: August 1, 1988.

Robert C. Keasey,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-17790 Filed 8-5-88; 2:45 am]

BILLING CODE 3410-02-8

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions; Compensation of Officials

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Final rule.

SUMMARY: This amendment to § 701.33 of NCUA's Rules and Regulations: (1) Provides guidance for FCU indemnification of officials and employees; and (2) conforms the regulation to a recent change in section 112 of the Federal Credit Union ("FCU") Act (12 U.S.C. 1761a), permitting an FCU board of directors to compensate one board officer of its choosing. The regulation has also been given a new title which more accurately reflects the

content of the regulation:

"Reimbursement, Insurance, and Indemnification of Officials and Employees."

EFFECTIVE DATE: September 7, 1988.

ADDRESS: National Credit Union Administration, 1775 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Allan Meltzer, Assistant General Counsel, or Julie Tamulevz, Staff Attorney, Office of General Counsel, at the above address or telephone: (202) 357-1030.

SUPPLEMENTARY INFORMATION

Background

On February 10, 1988, the NCUA Board issued a proposal to amend § 701.33 of NCUA's Rules and Regulations ("Compensation of Officials"). 53 FR 4992 (Feb. 19, 1988). The proposal had three parts:

1. To amend § 701.33(a) to provide that an FCU's board of directors may determine, and specify in their bylaws, which board officer may be compensated as such. This change was recommended to conform the regulation to section 112 of the FCU Act (12 U.S.C. 1761a), which was amended in 1982. Prior to that time, the treasurer was the only board officer who could be compensated as an FCU official.

2. To amend § 701.33 to permit an FCU to reimburse its officials for pay or leave (e.g., annual leave, leave without pay) actually lost while attending a meeting of the board of directors or of the supervisory or credit committees.

3. To amend § 701.33 to provide regulatory guidance to FCU's on indemnification and the purchase of insurance to provide for indemnification of its officials and employees. In the past, NCUA had interpreted section 107(2) (the authority to sue and be sued) and section 107(16) (the incidental powers clause) of the FCU Act (12 U.S.C. 1757(2), 1767(16)) as providing an FCU with the authority to indemnify its officials and employees under limited circumstances. However, no specific guidance had been given.

Public Comment

The NCUA Board received 86 comments: 73 from FCU's; 2 from state-chartered credit unions; 6 from credit union leagues; 3 from trade associations; and 2 from individuals.

A. Proposal To Amend Section 701.33 To Conform With Section 112 of the FCU Act (12 U.S.C. 1761a)

Few of the commenters addressed the first proposal. Those that did favored the change. The Board is amending

§ 701.33(a) to conform it to section 112 of the FCU Act.

Article VIII, Section 1 of the current FCU Bylaws permits an FCU's board of directors to designate the board officer, if any, that will be compensated. Some FCU's may be operating under older versions of the FCU Bylaws which either do not permit compensation of any board officer, or limit compensation to the financial officer (treasurer). These FCU's will have to adopt Article VIII, Section 1 of the FCU Bylaws if they want to compensate a board officer, or if they want to compensate an officer other than the treasurer.

B. Proposal To Reimburse Officials for Pay or Leave Lost While Attending Board of Directors or Committee Meetings

All 86 commenters addressed the suggestion to authorize reimbursing officials for pay or leave actually lost while attending board or committee meetings: 62 were opposed; 22 were in favor; and 2 opposed the proposal, but favored reimbursing officials for pay or leave lost while attending credit union conferences and seminars. (Sixteen of the 22 commenters favoring the proposal also favored permitting officials to be reimbursed for pay or leave lost while attending credit union conferences and seminars.)

The primary reasons given for opposing the proposal concerned the credit union volunteer spirit—that reimbursement was contrary to that philosophy; that voluntarism is what makes credit unions different from other financial institutions; and that easing the reimbursement restriction further could endanger the tax-exempt status of credit unions. Commenters were also concerned about the possible effects of implementing such an authorization: Dissension among board members where some might receive more reimbursement than others; reluctance by some officials to publicly disclose their salaries; additional IRS reporting requirements for FCU's; difficulty with verifying officials' claims of lost pay or leave; and creation of an incentive to officials to hold meetings during working hours.

Commenters favoring the proposal to reimburse officials for lost pay or leave generally noted that the proposal would assist FCU's in obtaining and keeping qualified officials. Most of these commenters also asked that the proposed reimbursement be extended to credit union conferences and seminars. Many of those favoring the proposal stated their assumption that it is currently permissible to reimburse

officials for pay or leave actually lost while attending credit union conferences and seminars.

NCUA staff had recommended this proposal to the NCUA Board in response to FCU's expressing a need for reimbursement for lost pay and leave to attract and retain qualified volunteers. The comments received on the proposal, however, indicate the vast majority of FCU's feel such reimbursement is unnecessary and may be harmful to the credit union spirit. The NCUA Board has decided not to go forward with this proposal. The Board also hereby clarifies that under NCUA's current Rules and Regulations reimbursement of officials for lost pay or leave is not permitted.

C. Proposal To Permit Indemnification of FCU Officials and Employees

The NCUA Board's third proposed change to § 701.33 was also designed to encourage voluntary service. Establishment of guidelines for indemnification and the purchase of insurance to provide for indemnification. Thirty-five of the commenters addressed this proposal: 34 supported it and one opposed. In general, the commenters agreed that indemnification protection would enhance the ability of an FCU to attract volunteers, and many expressed the belief that such protection was a necessity in today's litigious society.

As to the proposed scope of the amendment, two commenters suggested that the definition of "official" be expanded to include all volunteers serving on FCU committees—the proposal had included only members of the credit and supervisory committees. Because the primary purpose of the indemnification provision is to encourage voluntarism, the NCUA Board concurs and is expanding the definition of "official" in the final amendment to read as follows: "An 'official' is a person who is or was a member of the board of directors, credit committee, supervisory committee, or other volunteer committee established by the board of directors."

Two commenters believed that NCUA should set the standards for indemnification rather than allow FCU's to elect to apply the standards of state law or the Model Business Corporation Act. The NCUA Board considered a range of possibilities—from imposing the clear Federal standard suggested to allowing state law to control entirely. A middle position has been found appropriate.

Under the final amendment, an FCU will be free to choose one of three options: No indemnification;

indemnification under the state enabling law applicable to its neighboring state; chartered credit unions, or indemnification under the Model Business Corporation Act. The only caveat is that any FCU bylaw or charter amendment relating to indemnification, like all other such amendments, must be approved by NCUA.

This approach maximizes FCU flexibility (particularly in states which have not enacted an indemnification-enabling statute applicable to credit unions), limits the instances where an FCU or NCUA must determine which state indemnification law is applicable, and accommodates state and local interests.

One commenter suggested that an FCU be authorized to combine provisions of state law and the Model Business Corporation Act in formulating its indemnification standards. An FCU should be able to elect to follow either state law or the Model Act, but not both, since each represents a unified whole. This option should provide adequate flexibility. Permitting an FCU to select portions of state law and the Model Act would likely lead to uncertainty and confusion.

The proposal provided that an FCU which elects to provide indemnification shall specify whether it will follow state law or the Model Act, and further provided that failure to make an election would be deemed a decision not to provide indemnification. Several commenters objected to this portion of the proposal, stating that an FCU should have the flexibility to provide indemnification on a case-by-case basis if appropriate, and that only an affirmative decision not to provide indemnification should be binding on an FCU. The NCUA Board agrees, and the language treating a failure to make an election as an affirmative decision not to provide indemnification has been deleted.

Several commenters objected to the language prohibiting indemnification "for expenses, penalties, or other payments incurred in an administrative proceeding brought by the National Credit Union Administration unless the official or employee substantially prevails on the merits." These commenters were concerned that NCUA could prevail in an administrative proceeding even though an official or employee acted in good faith. One commenter was concerned that this provision might have an inhibiting effect on officials or employees.

Under most state provisions and under the Model Business Corporation Act, indemnification is not available for an employee or official who acts

recklessly, wastefully, fraudulently, or in bad faith, receives an improper personal benefit, or does not have reason to believe that his actions are in the best interests of the FCU. This would generally be the case when NCUA prevails in an administrative action; the limitation on indemnification contained in the proposed regulation would therefore affect few, if any, cases. NCUA's interests are therefore adequately protected, and this provision has been deleted from the final rule.

As noted in the proposed amendment, the power to provide for indemnification does not relieve an FCU of its responsibility to determine whether indemnification is appropriate under the circumstances. NCUA will monitor indemnification provisions for consistency with the indemnification standards chosen, for the safety and soundness implications for the institution, and for their application in a given case.

Lastly, the final rule clarifies, as did the proposal, that the purchase of liability insurance is an acceptable method of providing indemnification protection to officials and employees.

D. Change in Title of the Regulation

Section 701.33 was previously entitled "Compensation of Officials." Based on certain of the comments received on the proposal, it appears that this title may have contributed to a misimpression that the regulation authorizes FCU's to compensate board and committee members. The regulation has been retitled "Reimbursement, Insurance, and Indemnification of Officials and Employees." This title more accurately reflects the intent of the regulation.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and certifies that these amendments will not have a significant economic impact on a substantial number of small credit unions. The changes are directed at clarification and reduction of regulatory confusion and interpretive burdens, rather than creation of new regulatory restrictions. Therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The amendments do not impose any paperwork requirements.

Executive Order 12812

The NCUA Board has determined that this amendment does not have significant federalism implications. The amendment has no effect on federally-insured, state-chartered credit unions.

The amendment attempts to put FCU's in virtually the same position as their state-chartered credit union neighbors. The sole differences are that an FCU

1. I have the option of following the Model Business Corporation Act, and that any FCU bylaw or charter amendment relating to indemnification must be approved by NCUA. Thus the effect on state interests is likely to be minimal. The first difference is needed to accommodate FCU's in states without indemnification-enabling statutes and to ease the need on the part of FCU's and NCUA to determine what state law is appropriate. The second merely maintains NCUA's general oversight of FCU charters and bylaws.

List of Subjects in 12 CFR Part 701

Credit unions, Indemnification.
By the National Credit Union Administration Board on July 27, 1988.
Becky Baker,
Secretary, NCUA Board.

Accordingly, NCUA amends 12 CFR Part 701 as follows:

PART 701—[AMENDED]

1. The authority citation for Part 701 continues to read as follows:

Authority: 12 U.S.C. 1755, 12 U.S.C. 1756, 12 U.S.C. 1757, 12 U.S.C. 1759, 12 U.S.C. 1761a, 12 U.S.C. 1761b, 12 U.S.C. 1766, 12 U.S.C. 1767, 12 U.S.C. 1768, 12 U.S.C. 1784, 12 U.S.C. 1787, 12 U.S.C. 1789, and 12 U.S.C. 1798.

Section 701.31 is also authorized by 15 U.S.C. 1601 et seq., 42 U.S.C. 1981 and 42 U.S.C. 3601-3610.

2. Section 701.33 is revised to read as follows:

§ 701.33 Reimbursement, insurance, and indemnification of officials and employees.

(a) *Official*. An "official" is a person who is or was a member of the board of directors, credit committee or supervisory committee, or other volunteer committee established by the board of directors.

(b) *Compensation*. (1) Only one board officer, if any, may be compensated as an officer of the board. The bylaws must specify the officer to be compensated, if any, as well as the specific duties of each of the board officers. No other official may receive compensation for performing the duties or responsibilities of the board or committee position to which the person has been elected or appointed.

(2) For purposes of this section, the term "compensation" specifically excludes:

(i) Payment (by reimbursement to an official or direct credit union payment to a third party) for reasonable and proper costs incurred by an official in carrying

out the responsibilities of the position to which that person has been elected or appointed:

(ii) Provision of reasonable health, accident and related types of personal insurance protection, supplied for officials at the expense of the credit union. *Provided*, that such insurance protection must exclude life insurance; must be limited to areas of risk, including accidental death and dismemberment, to which the official is exposed by reason of carrying out the duties or responsibilities of the official's credit union position; must cease immediately upon the insured person's leaving office, without providing residual benefits other than from pending claims, if any; and

(iii) Indemnification and related insurance consistent with paragraph (c) of this section.

(c) *Indemnification*. (1) A Federal credit union may indemnify its officials and current and former employees for expenses reasonably incurred in connection with judicial or administrative proceedings to which they are or may become parties by reason of the performance of their official duties.

(2) Indemnification shall be consistent either with the standards applicable to credit unions generally in the state in which the principal or home office of the credit union is located, or with the relevant provisions of the Model Business Corporation Act. A Federal credit union that elects to provide indemnification shall specify whether it will follow the relevant state law or the Model Business Corporation Act. Indemnification and the method of indemnification may be provided for by charter or bylaw amendment, contract or board resolution, consistent with the procedural requirements of the applicable state law or the Model Business Corporation Act, as specified. A charter or bylaw amendment must be approved by the National Credit Union Administration.

(3) A Federal credit union may purchase and maintain insurance on behalf of its officials and employees against any liability asserted against them and expenses incurred by them in their official capacities and arising out of the performance of their official duties to the extent such insurance is permitted by the applicable state law or the Model Business Corporation Act.

(FR Doc. 88-17882 Filed 8-3-88 2:45 am)
GPO: 1988 O-788-75-8

12 CFR Part 701

Loan Interest Rates

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The current 18 percent per year Federal credit union loan rate ceiling was scheduled to revert to 15 percent on September 10, 1988, unless otherwise provided by the NCUA Board. A 15 percent ceiling would restrict certain categories of credit and adversely affect the financial condition of a number of Federal credit unions. At the same time prevailing market rates and economic conditions do not justify a rate higher than the current 18 percent ceiling. Accordingly, the NCUA Board has established an 18 percent Federal credit union loan rate ceiling for the period from September 10, 1988 through March 9, 1990. Loans and line of credit balances existing prior to May 15, 1987 may continue to bear their contractual rate of interest, not to exceed 21 percent. Further, the NCUA Board is prepared to reconsider the 18 percent ceiling at any time should changes in economic conditions warrant.

EFFECTIVE DATE: September 10, 1988.

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Charles H. Bradford, Chief Economist or Timothy P. McCollum, Assistant General Counsel, at the above address. Telephone numbers: (202) 357-1100 (Mr. Bradford); (202) 357-1030 (Mr. McCollum).

SUPPLEMENTARY INFORMATION

Background

Public Law 96-221, enacted in 1979, raised the loan interest rate ceiling for Federal credit unions from 1 percent per month (12 percent per year) to 15 percent per year. It also authorized the NCUA Board to set a higher limit, after consultation with Congress, the Department of the Treasury, and other Federal financial agencies, for a period not to exceed 18 months, if the Board should determine that: (i) Money market interest rates have risen over the preceding six months; and (ii) prevailing interest rate levels threaten the safety and soundness of individual credit unions as evidenced by adverse trends in liquidity, capital, earnings, and growth.

On December 3, 1980, the NCUA Board met and determined that the foregoing conditions had been met.



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

GC/EOR:sg
SSIC 4062
89-0903

Office of General Counsel

September 28, 1989

Mr. Lawrence C. Williams
Administrator
Alabama Credit Union Administration
State of Alabama
771 So. Lawrence St., Suite 103
Montgomery, AL 36130-0901

Dear Mr. Williams:

This is in response to your letter dated August 30, 1989, to Becky Baker, Secretary of the NCUA Board. Your letter requested information and prior opinions pertaining to compensation of credit union officials for lost pay.

Federal credit union directors cannot be reimbursed for lost pay. I have enclosed a copy of both the proposed and final NCUA regulations promulgated on this subject, as well as several legal opinions dealing with compensation of officials. I hope you will find this material to be helpful.

Please contact me if you have any further questions.

Sincerely

Hattie M. Ulan

HATTIE M. ULAN
Assistant General Counsel

Enclosures



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456
April 14, 1989

GC/RRD:sg
3600

Office of General Counsel

Fred M. Haden, Esq.
Haden & Bisker, P.C.
450 Maple Ave., East
Vienna, VA 22180

Re: Board of Directors - Service Awards and
Permissible Expenses (Your February 24, 1989,
Letter)

Dear Mr. Haden:

You have requested our opinion on two issues involving compensation of Federal credit union ("FCU") directors. The first issue is whether members of the board of directors can be awarded based on their years of service to the FCU. An FCU is permitted to give board members awards of nominal value for their service to the FCU. Such awards may be based on time of service to the FCU but should not exceed a nominal value in any case. The second issue is whether an FCU can pay baby-sitting and kennel fees incurred by board members while attending credit union meetings. Baby-sitting costs and kennel fees are not reasonable expenses for board members, and, therefore, are prohibited.

APPLICABLE LAW

Section 111(c) of the FCU Act (12 U.S.C. 1761(c)) provides:

(c) No member of the board or of any other committee shall, as such, be compensated, except that reasonable health, accident, similar insurance protection, and the reimbursement of reasonable expenses incurred

Fred M. Haden, Esq.
April 14, 1989
Page 2

in the execution of the duties of the position shall not be considered compensation.

Section 112 of the FCU Act (12 U.S.C. 1761a) provides, in part:

Only one board officer may be compensated as an officer of the board. . . .

Section 701.33(b)(1) of the NCUA Rules and Regulations (12 C.F.R. 701.33(b)(1)) addresses compensation of FCU officials and provides:

(1) Only one board officer, if any, may be compensated as an officer of the board. The bylaws must specify the officer to be compensated, if any, as well as the specific duties or responsibilities of the board officers. No other official may receive compensation for performing the duties or responsibilities of the board or committee position to which the person was elected or appointed.

Section 701.33(b)(2) excludes certain payments from the term "compensation" by providing:

(2) For purposes of this section, the term "compensation" specifically excludes: (i) payment (by reimbursement to an official or direct credit union payment to a third party) for reasonable and proper costs incurred by an official in carrying out the responsibilities of the position to which the person was elected or appointed

ANALYSIS

You have asked:

Where a credit union has an awards program that authorizes their employees to be given certain awards based on years of service is it permissible for members of the Board of

Fred M. Haden, Esq.
April 14, 1989
Page 3

Directors to receive comparable awards for
their period of service?

Your letter does not indicate if the credit union is an FCU or state-chartered credit union. Our opinion applies only to FCU's. In our opinion, an FCU may give its board members an award of nominal value and not be in violation of Section 111 of the FCU Act or Section 701.33 of the NCUA's Rules and Regulations. The award program you present does not provide us with enough information to make a determination as to its permissibility.

The one board officer who is compensated pursuant to Section 112 of the FCU Act and Section 701.33(b) of the NCUA Regulations may be granted awards as part of his/her compensation. Such awards are not limited to a nominal amount.

You also ask:

Would it be permissible for Boards of Directors who are authorized to attend meetings to charge as an expense to the credit union baby-sitting and kennel fees?

In our opinion, these are not reasonable and proper costs and are prohibited by Section 701.33 of the NCUA's Rules and Regulations.

Sincerely,



HATTIE M. ULAN
Assistant General Counsel

RRD:sg