



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

January 10, 1991

Ronald D. Gracie
President
Coastline Federal Credit Union
P.O. Box 47410
Jacksonville, Florida 32247-7410

Re: **Reimbursement of Expenses of Spouse
of Volunteers and Staff of a Federal Credit
Union (Your Letter of July 31, 1990)**

Dear Mr. Gracie:

You have requested a clarification regarding the NCUA policy on reimbursement of expenses of spouses of federal credit union ("FCU") volunteers and staff. Though it is not clear from your letter, we assume that the term "volunteers" refers to FCU officials and the term "staff" refers to FCU employees. The NCUA Rules and Regulations define the term "official" to mean "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." 12 C.F.R. §701.33(a). Different legal analyses apply depending upon whether the expenses are incurred by the spouse of an FCU official or of an FCU employee. In brief, the expenses of the spouse of an FCU official are not reimbursable, as explained in the attached letter to the Credit Union National Association ("CUNA"), while the expenses of the spouse of an FCU employee are reimbursable as legitimate compensation to the FCU employee.

ANALYSIS

The FCU Act prohibits board and committee members from being compensated, except that the reimbursement of reasonable expenses incurred in the execution of duties of the position

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and the provision of certain insurance protection are not considered compensation. 12 U.S.C. §1761(c). This prohibition on the receipt of compensation does not apply to FCU employees. As long as the reimbursement is part of the employee's compensation package, there is no legal objection to the reimbursement of the expenses of the spouse of an FCU employee. It should be noted that abuse of this practice could lead to safety and soundness concerns on behalf of NCUA. We also suggest that you consult with your tax advisor regarding federal and local tax treatment of spousal reimbursements, e.g. the reimbursement is taxable income to the employee recipient.

One possible exception to the foregoing analyses might be if an FCU event, such as a Christmas/Hanuka/Ramadan celebration, was held as an FCU promotional event. Section 107(17) of the FCU Act (12 U.S.C. §1757(17)) empowers an FCU to "exercise such incidental powers as shall be necessary or requisite to enable it to carry on effectively the business for which it is incorporated." The "incidental powers" authority includes activity that:

is convenient or useful in connection with the performance of one of the ... established activities pursuant to its express powers.... If this connection between an incidental activity and an express power does not exist, the activity is not authorized as an incidental power

Arnold Tours v. Camp, 472 F.2d 427 (1st Cir. 1972) for national banks; applied to credit unions in American Bankers Ass'n v. Connell, 447 F.Supp. 296 (D.D.C. 1978).

The Arnold Tours case also suggests that national banks can provide some goodwill services for their customers without meeting the requirements of an incidental power. See Arnold Tours v. Camp, 472 F.2d 427, 433 (1st Cir. 1972). It has been a longheld NCUA policy that reasonably costed promotional plans aimed at encouraging members to save and nonmembers to join is a power properly within the incidental powers clause. A promotional plan is permissible if:

a. It is given to encourage and stimulate the members to undertake a regular and systematic savings program, or to entice nonmembers to join and establish such a savings program;

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- b. It is made in connection with an announced promotional plan;
- c. There are no specific conditions or requirements attached thereto, other than the requirement that to qualify the member must make a savings deposit (or obtain a loan);
- d. After considering the needs and the financial condition of the credit union, it is reasonable;
- e. All members are treated equally; and
- f. The cost of the program is charged to Operational Expenses. NCUA Legal Opinion No. 22-73.

If the above guidelines are followed, a Christmas/Hanuka/Ramadan celebration, would be considered a promotional plan that could be charged to Operational Expenses without regard to reimbursement of spousal expenses issues. The dinner for a limited number of members after the Annual Meeting would not meet the above guidelines and would have to be analyzed depending on whether the spouses were married to employees or officials of the FCU.

Sincerely,

Hattie M. Ulan

Hattie M. Ulan
Associate General Counsel

Enclosure
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