



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

January 10, 1991

Mr. Durant S. Abernethy III
Senior Vice President
and General Counsel
Credit Union National Association, Inc.
P.O. Box 431
Madison, WI 53701-0431

Re: Spousal Expenses
(Your January 9, 1990, Letter)

Dear Mr. Abernethy:

This letter responds to your request for clarification of the NCUA position on federal credit union ("FCU") expense payments for spouses of officials accompanying the officials on FCU business trips. After much additional research and deliberation, we stand by the position stated in our October 20, 1989, letter from James J. Engel, Deputy General Counsel, to J. Alvin George, Chairman, Financial Federal Credit Union of San Diego (enclosed). As we have stated previously, payment of spousal expenses benefits the official and spouse, not the FCU, and is therefore deemed a form of compensation. As you know, with limited exceptions, compensation of board and committee members is prohibited by Section 111(c) of the FCU Act (12 U.S.C. §1761(c)).

ANALYSIS

Section 111(c) of the FCU Act prohibits any "member of the board or of any other committee" of an FCU from being compensated, as such, except for certain insurance protection, "and the reimbursement of reasonable expenses incurred in the execution of the duties of the position." Section 701.33(b)(2)(i) of NCUA's Rules and Regulations (12 C.F.R. §701.33(b)(2)(i)) specifically excludes from the definition of compensation "payment ... for reasonable and proper costs

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incurred by an official in carrying out the responsibilities of the position to which that person has been elected or appointed." Section 112 of the FCU Act provides that "one board officer may be compensated as an officer of the board" (12 U.S.C. §1761a, emphasis added).

Thus, the FCU Act and NCUA Rules and Regulations prohibit compensation of board and committee members, with three exceptions. First, one board officer may be compensated. (For such an individual, spousal reimbursement would be a permissible form of compensation.) Second, limited insurance protection is permissible. Insurance protection, however, is not relevant to the issue at hand. Third, reimbursement of costs is permitted if "incurred by an official in carrying out [his or her] responsibilities...." 12 C.F.R. §701.33(b)(2)(i). Expenses incurred either by or on behalf of the spouse, however, are distinct from expenses of the official and generally have nothing to do with official responsibilities to the credit union. Even if we were to determine that it is possible to allow reimbursement of spousal expenses under existing statutory and regulatory standards, we would find such a position difficult to support in light of the credit union community's rejection of the NCUA proposal to allow reimbursement of officials for lost pay in connection with attendance at board and committee meetings (See 53 Fed.Reg. 29640 (August 8, 1988)).

Though this is an issue of NCUA oversight, the federal tax laws do provide some useful guidance. Section 162 of the Internal Revenue Code (26 U.S.C. §162) allows as a deduction "all of the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including-- ... (2) traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business." The applicable Internal Revenue Service ("IRS") regulation reads: "[w]here a taxpayer's wife accompanies him on a business trip, expenses attributable to her travel are not deductible unless it can be adequately shown that the wife's presence on the trip has a bona fide business purpose. The wife's performance of some incidental service does not cause her expenses to qualify as deductible business expenses." 26 C.F.R. §1.162-2(c). Mere social activity, the attendance of a few seminar sessions, the typing of a few letters, and

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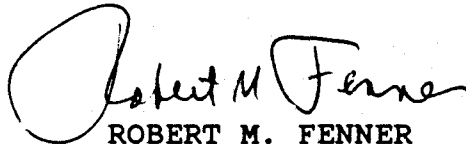
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minor or occasional nursing and secretarial services do not qualify as being sufficiently bona fide business purposes. See cases in 26 U.S.C.S. §162, fn. 249 and [1990] 2 Stand. Fed.Tax Rep. (CHH) Para. 1350.21.

We should clarify that in cases where an FCU directly pays or reimburses the spouse, the payment will be deemed attributable to the official unless clear evidence exists that the payment is for separate and independent services performed by the spouse. We would also recommend careful evaluation of conflict of interest considerations in any such situation and recommend advice of counsel supporting the payment before it is made.

We appreciate your comments and trust this clarification responds to your request.

Sincerely,



ROBERT M. FENNER
General Counsel

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