NATIONAL CREDIT UNION ADMINISTRATION
WASHINGTON, D.C. 20456

September 12, 1991

Honorable Barney Frank
U.S. House of Representatives
2404 Rayburn Building
Washington, D.C. 20515

Re: Federal Credit Union Membership for Unmarried Partner (Your August 13, 1991 Letter)

Dear Congressman Frank:

This is in response to your request for information on the legality of a federal credit union's ("FCU") recognizing a committed relationship between two unmarried individuals, one of whom is a member of the FCU, as the basis for extension of FCU privileges to the second individual. This breaks down into two separate questions. First, may the two individuals maintain a joint account in the FCU? Second, is the second individual eligible for his own membership based on the relationship? These two issues are discussed separately below.

Joint Account

Section 107(6) of the Federal Credit Union Act, 12 U.S.C. §1757(6), authorizes FCUs to establish accounts and provide services only for their members. Section 109 of the FCU Act specifically provides that shares may be "issued in joint tenancy with right of survivorship with any persons designated by the credit union member, but no joint tenant shall be permitted to vote, obtain loans or hold office, unless he is within the field of membership and is a qualified member." 12 U.S.C. §1759. This authority is also addressed in Section 745.8(f) of NCUA's Rules and Regulations, 12 C.F.R. §745.8(f). The second individual's membership, or eligibility for membership, is irrelevant for purposes of establishing a joint personal account.

However, it is unclear whether your statement that these individuals wish to open a joint account "in the name of the partnership" means that they seek a joint personal account as described above, or a joint account in the name of their business. If their objective is a business partnership account, then membership and eligibility become an issue.

Only those individuals or organizations listed in an FCU's field of membership, as defined in its charter, are eligible to join the FCU. Typically, an FCU's field of membership will include a provision for "organizations of such persons." Thus, a partnership will qualify for membership if it is within the FCU's field of membership or if all of the partners within the partnership are within the field of membership, thereby making the partnership an "organization of such persons." It appears from your letter that the business owned by the two individuals in question is not specifically included in Congressional FCU's field of membership. Therefore, in order for the business partnership to qualify for an account, both individuals would have to be within the field of membership.

Eligibility for Membership

NCUA does not have a formal policy regarding federal credit union membership for unmarried partners of members, either homosexual or heterosexual. The Federal Credit Union Act, NCUA's Rules and Regulations and the NCUA Chartering and Field of Membership Manual do not address this issue. Many FCUs include members of the immediate family of FCU members within their fields of membership.

Article XVIII, Section 2(a) of NCUA's Standard Federal Credit Union Bylaws allows an FCU whose field of membership includes immediate family members to draft its own definition of the term "members of their immediate families." However, an FCU's rights in this area are not unlimited. The definition must be sufficiently limited as to give the term immediate family member a rational, discernible meaning.

NCUA policy requires that there be an ongoing "familial" relationship between a primary member and those individuals who qualify for membership as immediate family members. In the case of a bylaw including unmarried partners of either heterosexual or homosexual members in the definition of immedi-

ate family members, we would require that the definition clearly limit the group to those partners with more than casual relationships to primary members. The definition might include references exemplifying the intended permanence of the relationship, e.g., joint ownership of property with rights of survivorship, joint liability on family obligations and custodial rights over minors and dependents; long-term commitment; common law marriage criteria; or the couples' holding themselves out to the community as husband and wife. In order for a member's unmarried partner to qualify as an immediate family member, the relationship between the two individuals must be similar to that between spouses. In our view, whether the couple be homosexual or heterosexual, neither a business partnership type relationship nor the mere sharing of a residence would be sufficient.

Absent an express definition in the bylaw itself, the term "immediate family member," would, like other aspects of a credit union's bylaws, be interpreted according to state law. For instance, if a homosexual couple had been married with a valid marriage license, or if the relevant state law recognized the relationship of such a couple as a common law marriage, that would suggest that a member's partner was entitled to individual membership as an immediate family member.

I hope that we have been of assistance.

Sincerely,

Robert E. Loftus

Robert E. Loftus, Director
Office of Public and
Congressional Affairs

GC/MRS:sg
SSIC 12320
91-0838

4th District, Massachusetts

Washington Office
2404 Rayburn Building
Washington, DC 20515
(202) 225-5931

Congress of the United States
House of Representatives
Washington, DC

District Offices
437 Cherry Street
West Newton, Massachusetts 02165
(617) 332-3920
10 Purchase Street
Fall River, Massachusetts 02722
(508) 674-3551
140 Park Street
Attleboro, Massachusetts 02703
(508) 226-4723

August 13, 1991

Mr. Bob Loftus
Director, Public Affairs
National Credit Union
Administration
1776 G Street, N.W.
Washington, DC 20456

Dear Mr. Loftus:

I was recently asked by an individual about a matter on which I need your guidance. This individual lives in a committed relationship with another individual and they also conduct a business together. The individual who's a member of the Credit Union asked for a checking account in the name of the partnership at the Congressional Credit Union and was turned down because the man he lives with is not also a member of the Credit Union. Of course if they were legally married they would be allowed the joint checking account, and my information is that if they were blood relatives they would also be allowed to have a joint checking account. Of course it is one thing for people to assert that they are in a close relationship and another to prove it. It seems to me entirely reasonable for Credit Unions as well as any other organization to have a fairly stringent standard of proof before the accept the reality of such a relationship.

My question to you is whether there is any federal statute or regulation which would prohibit a local Credit Union from establishing a policy recognizing such a committed relationship as a basis for extending Credit Union privileges. I hope this request is clear -- I would of course be glad to clarify it if it is not. Thank you for your cooperation.

BARNEY FRANK

BF/meg