

NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

September 17, 1991

James R. Brown, III, Esquire
Brown & Brown, Chartered
8501 LaSalle Road
Towson, Maryland 21204-5980

Re: Bylaw Definition of Immediate Family Member
(Your August 1, 1991 Letter)

Dear Mr. Brown:

You inquired as to NCUA's position regarding interpretation of the phrase "immediate family member" for purposes of credit union membership. Specifically, you asked whether the partners of gay and lesbian credit union members are entitled to membership as "husbands" or "wives" of members.

We note at the outset that the credit union you represent, State Employees Credit Union of Maryland, while federally-insured, is state-chartered. Therefore, field of membership issues such as this should more properly be addressed to the Maryland state regulator. Moreover, credit union bylaws function as a contract between the credit union and its members, and we have consistently opined that they are to be construed according to the corporate common law of the state where the credit union is located.

NCUA does not have a formal policy regarding federal credit union ("FCU") membership for partners of gay and lesbian members. The Federal Credit Union Act, NCUA's Rules and Regulations and the NCUA Chartering and Field of Membership Manual do not address this issue. Article XVIII, Section 2(a) of the standard Federal Credit Union Bylaws allows an FCU that includes immediate family members in its field of membership to create its own definition of the term "members of their

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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.

We believe there must 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 heterosexual members in the definition of immediate 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. Our response would be the same if the FCU proposed to include homosexual couples. 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.

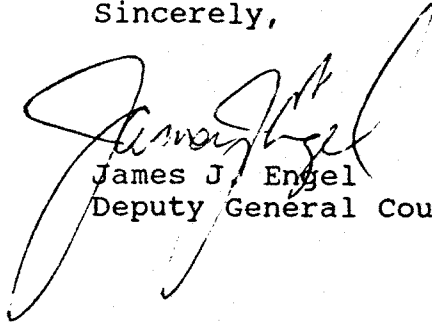
In our opinion, absent an express definition in the bylaw itself, the terms "immediate family member," "husband" and "wife" should, like other aspects of a credit union's bylaws, be interpreted according to state law. For instance, if a gay or lesbian couple had been married with a valid marriage license, or if Maryland 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 a husband or wife. State human rights statutes may also be relevant, if their provisions extend to homosexuals. We suggest that you analyze Maryland law to determine its effect on the issues you have raised.

Again, since State Employees Credit Union of Maryland is a

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state-chartered credit union, you should consult with the
Maryland credit union regulator on this issue.

Sincerely,

A handwritten signature in cursive script, appearing to read "James J. Engel". The signature is written in dark ink and is positioned above the typed name and title.

James J. Engel
Deputy General Counsel

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