



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

January 17, 1992

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Sacramento, California 95815

Re: Termination of Membership of Secondary Member
(Your October 14, 1991, Letter)

Dear Mr. Cox:

You represent San Diego Firefighters Federal Credit Union ("SDFFCU"). On behalf of SDFFCU, you asked whether the federal credit union ("FCU") membership of a secondary member is terminated when the primary member leaves the field of membership ("FOM"). In the case of an FCU that has adopted a "once a member, always a member" resolution pursuant to Article II, Section 5 of the Standard Federal Credit Union Bylaws (the "Standard Bylaws"), the secondary member's membership is not terminated.

We note at the outset that the provision you identify on page 6 of your letter as Article II, Section 5 of SDFFCU's bylaws appears instead to be Section 5 of its charter. Section 5 of an FCU's charter sets forth its FOM. Article II, Section 5 of the Standard Bylaws, reads as follows:

The membership of members who are no longer within the field of membership on the day this bylaw is effective or thereafter, is terminated immediately: Provided, however, That the board may resolve that such members may retain membership if they meet certain reasonable minimum standards established by the board.

As you are no doubt aware, FCUs may not amend their bylaws, other than through the adoption of NCUA's Standard Federal

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Credit Union Bylaw Amendments, without NCUA approval. Neither this Office nor NCUA's Region VI Office has any record of approving a nonstandard amendment to Article II for SDFFCU, and we will assume for purposes of discussion that SDFFCU's bylaws contain Article II, Section 5 as set forth above.

You state, on page 2 of your letter, that it has long been the accepted view that "if it is provided in the . . . Bylaws . . . that have been adopted by the FCU, a membership of a primary member is terminated upon the primary member leaving . . . the FOM of the FCU." The membership of a primary member is terminated upon his leaving the FOM, even if the FCU's bylaws do not so provide, unless the FCU has adopted a "once a member, always a member" resolution pursuant to Article II, Section 5 of the Standard Bylaws.

NCUA's Chartering and Field of Membership Manual (Interpretive Ruling and Policy Statement 89-1) defines both primary and secondary members. Primary members are defined as, "[m]embers sharing the basic occupational, associational or community affinity to the field of membership." Secondary, or derivative members are defined as:

Members included in the field of membership by virtue of their close relationship to a common bond group (e.g. immediate family members, employees of the credit union, etc.). See, 54 Fed. Reg. 31165, July 27, 1989.

A family member of a primary member comes within the FOM only by virtue of his relationship to another individual (the primary member) who is within the common bond group. (This discussion does not pertain to other secondary members, such as FCU employees, who are included in the FOM by virtue of their close relationship to the common bond group as a whole, rather than to an individual within the group.) It follows from that fact that once the primary member has left the FOM, the secondary (family) member's link to the common bond group, and thus his derivative membership in the FOM, is destroyed. Therefore, the secondary (family) member, like the primary member through whom he obtained his membership, is no longer within the FOM and can no longer maintain his membership in the FCU. While we agree with your statement that

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once a secondary member joins an FCU, there is no difference between his membership rights and those of a primary member, that is not a basis for continuing the membership of a secondary (family) member once the primary member through whom he joined leaves the FOM. There is no discrimination between primary and secondary members. Both must qualify for membership in the FCU by coming within, and remaining within its FOM, and both lose their membership upon leaving the FOM.

You interpret our letter of February 13, 1991 to the Delaware State Police FCU as implying that a secondary member need not leave the FCU once the primary member is no longer within the FOM. This is not a correct interpretation. A secondary (family) member does lose his membership when the primary member leaves the FOM, absent a "once a member, always a member" resolution. If the primary member leaves the FOM, the secondary (family) member is no longer within the FOM. In the case discussed in the February 13, 1991 letter, the primary member lost his membership for reasons unrelated to the FOM. The primary member later left the FOM, without reactivating his membership. The FCU had adopted the "once a member, always a member" resolution, so that the secondary member, who had joined the FCU before the primary member left the FOM, was protected and retained his membership. The "once a member, always a member" provision only applies to individuals who are at risk of losing their membership because they leave the FOM, and are members when the change in their FOM status occurs. At the time that the primary member left the FOM, he (the primary member) was not a member of the FCU; therefore, the "once a member, always a member" provision did not apply to him. Having terminated his membership and then leaving the FOM, he was not eligible to rejoin the FCU. The February 13, 1991 opinion does not provide a basis for inferring that a secondary (family) member always retains his membership when the primary member through whom he joined leaves the FCU. If the FCU has not adopted the "once a member, always a member" resolution, a secondary member whose primary member leaves the FOM is himself outside the FOM, and loses his membership.

Although you cite a number of California statutes and decisions in support of your interpretation of FCU membership rights and requirements, we do not find them dispositive. The requirement that a member be within the FOM derives from the FCU Act, not from the Standard Bylaws. State statutes

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can not be read to alter or supersede the terms of the FCU Act, and the California statutes and case law therefore have no bearing on this issue.

Moreover, even if the FOM requirement did not come from the FCU Act, the notice of that requirement set forth in the Standard Bylaws "contract" between an FCU and its members is adequate to bind the members. You argue that, under California law, an FCU's bylaws must expressly provide that the membership is conditional, and that the Standard Bylaws do not do so. However, the Standard Bylaws do, in fact, clearly indicate that inclusion in the FOM is a continuing condition of membership. We draw your attention to Article II, Section 5 of the Standard Bylaws which, as noted above, states that the membership of members no longer within the FOM is terminated, unless the FCU's board resolves otherwise. Contrary to your assertion, that condition of membership is expressly set out in the Standard Bylaws.

Finally, we wish to point out that there is a simple solution to the problem of secondary members losing their membership when the primary members through whom they joined leave the FOM. As discussed above, the "once a member, always a member" resolution protects FCU members, both primary and secondary, from losing their membership when they cease to be within the FOM. You state in your letter that SDFFCU does not have a "once a member, always a member" provision in place. That provision may be adopted simply by board resolution, and would eliminate the situation about which SDFFCU is concerned. We suggest that SDFFCU's board of directors consider adopting a "once a member, always a member" resolution.

Sincerely,

Hattie M. Ulan

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