

September 20, 2005

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[ ] Federal Credit Union  
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Re: Denial of Services to Joint Share Account Owners.

Dear Ms. [ ]:

You have asked if a federal credit union (FCU) can limit or prohibit services to a joint account owner who is not a member of the FCU. Yes, it can even though the effect would be to limit the ability of members to name persons as joint owners on their accounts. An FCU should have a reasonable basis for doing so, establish its policy in writing, and ensure that members are aware of the policy and that the policy and its application do not violate federal and state nondiscrimination laws.

A former employee of the FCU was charged with a felony after defrauding the FCU while working there. The former employee voluntarily closed her individual account but remains named as a joint owner on two accounts owned by members of her family. The former employee uses the accounts for financial services, including cashing checks and money orders. The FCU has a written policy stating it can withhold credit union services from any member causing a loss to the FCU and, under this policy, it would like to restrict the former employee's access to services permanently.

In the situation you present, one way to restrict the former employee from access to services as a joint owner is to restrict the ability of members to name as joint owners anyone who has caused a loss to the credit union. Under the FCU Bylaws, a person who withdraws all shareholdings ceases to be a member and, therefore, is not entitled to services. FCU Bylaws, Article II, §3. Once the former employee closed her own account, she was no longer a member and had no right to obtain any services from the FCU. The FCU's policy addresses withholding services from members who have caused a loss to the FCU. By contrast, the situation you present involves limiting a member who has not caused a loss from naming someone as a joint owner.

An FCU is not required to provide joint ownership accounts and may place reasonable restrictions on the persons that members may name as joint owners. Under the FCU Act, an FCU may issue shares "in joint tenancy with the right of survivorship with any persons designated by the credit union member." 12 U.S.C. §1759(a). While permissible, an FCU is not required to provide this type of account ownership to its members and, therefore, our opinion is that an FCU can place limitations on a member's ability to name joint owners as long as it has a reasonable basis.

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Page 2

Our long standing legal interpretation is that an FCU may limit services to a member who has caused a loss and, as an extension of that interpretation, we believe it is reasonable for an FCU to limit the ability of members to name as joint owners any person who has caused a loss. The FCU Act provides that a member may only be expelled from membership by a two-thirds vote of the members at a special meeting called for that purpose or under a nonparticipation policy. 12 U.S.C. §1764. While an FCU cannot otherwise expel a member, an FCU may limit services to a member who has caused a loss to the fundamental right to maintain a share account and to vote in annual and special meetings. OGC Legal Opinion 96-0530 (June 10, 1996). To prevent persons who caused a loss from circumventing an FCU's policy limiting services to them, we believe an FCU may limit the ability of members to name as joint owners any person who has caused a loss.

An FCU wanting to restrict persons who have caused a loss to the credit union from being able to receive services as a joint owner should establish a written policy and ensure that members are aware of it. Further, an FCU should ensure that the policy and its application do not violate federal and state nondiscrimination laws, such as the Equal Credit Opportunity Act. 15 U.S.C. §1691 et seq.

Finally, you requested our review of your FCU's current policy on denying services to members who had caused a loss. Given the number of FCUs and our office's responsibilities, we are unable to review individual credit union policies but provide the following guidance. As noted above, an FCU board of directors may adopt a policy that restricts the services available to a member who has caused a loss to the FCU but, unless expelled in accordance with the FCU Act, a member has a right to maintain a share account and vote in annual and special meetings. 12 U.S.C. §1759. Any policy limiting services an FCU provides to a member who causes a loss may also be restricted by contract, state, and other federal laws. FCUs should be careful not to violate bankruptcy laws by conditioning membership or services on reaffirmation of a lawfully discharged debt and should consult their own legal counsel to ensure their policies comply with applicable federal and state law.

Sincerely,

/s/

Sheila A. Albin  
Associate General Counsel