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Subject: Shared Branch Facilities and Article XIX, Section 2, of the Bylaws (Your November 17, 1993, letter)

Dear Mr. Snell:

You have asked for clarification of our July 26, 1993, letter regarding the application of Article XIX, Section 2, of the Federal Credit Union Bylaws to employees of shared branch facilities (facility). Specifically, you have asked us to cite our authority to require facility member credit unions to obtain hold harmless agreements and require the facility to terminate employees that violate member confidentiality.

There are no specific requirements in the Federal Credit Union Act (Act), the NCUA Rules and Regulations (Regulations) or Bylaws for the type of hold harmless protections addressed in our letter. However, it is our opinion that a hold harmless agreement is the most cost effective means of reducing risk.

The Act and Regulations reference several examples where credit unions must adequately insure against employee fraud and dishonesty. See 12 U.S.C. 1761b(2) and 12 C.F.R. Section 701.20(c). The Regulations also require "general insurance coverage for losses caused by persons outside of the credit union...." 12 C.F.R. Section 701.20(a) (emphasis added).

In many instances, employees of shared branches perform functions indistinguishable from credit union employees. It is conceivable that a breach of member confidentiality as well as acts of fraud or dishonesty could precipitate a lawsuit against both the facility as well as its branch members. Any such lawsuit including expenses will cause the member credit union to suffer a loss unless these costs and losses are shifted to insurance or the facility. Since forecasting the outcome of legal disputes is not an exact science, we must fall on the side of caution and minimize risk to both credit unions and the National Credit Union Share Insurance Fund. Safety and soundness requires the credit union to obtain, at a minimum, indemnification or a hold harmless agreement from the facility. The credit union branch member must also be satisfied that the facility carries sufficient insurance to cover losses. In this manner, credit union risk is adequately protected without additional cost.

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We also stated in our July 26, 1993, letter a recommendation that shared branch employment contracts require termination if the employee breaches member confidentiality. This is clearly a recommendation and not a requirement. The facilities have the discretion on how to train their employees, and establish and enforce their own disciplinary policies. There was also no intention on our part to require employment contracts. However, member credit unions should be satisfied that adequate steps are taken to protect their members' confidentiality.

Sincerely,

Richard S. Schulman  
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