

January 10, 1995

Andrew P. Myers, Compliance Manager
New York State Credit Union League, Inc.
Box 15021
Albany, NY 12212-5021

Re: Article XII, Section 1 of the FCU Standard Bylaw Amendments (Your December 19, 1994, Letter)

Dear Mr. Myers:

You have requested an opinion from this office on the applicability of Article XII, Section 1 of the FCU Standard Bylaw Amendments (Bylaw Amendment) to the situation where a credit union makes a loan to an association with 7,000 members. The Bylaw Amendment requires that a loan to a nonnatural person association be made jointly to a majority of the members of the association and to the association in its own right. As you have suggested, this would require the signature of 3,501 members of the association.

Article XII, Section 1 of the Bylaw Amendments cannot be ignored in situations where it is burdensome. It was enacted in conjunction with 701.21(h)(2)(ii)(B) of NCUA's Member Business Loan Rule. Enclosed are copies of the portions of the Preambles to the Member Loan Rule which discuss loans to nonnatural persons. (51 Fed. Reg. 23238, June 26, 1986; 51 Fed. Reg. 46871, December 29, 1986; 52 Fed. Reg. 12368, April 18, 1987; 56 Fed. Reg. 2725, January 24, 1991; and 56 Fed. Reg. 48423, September 25, 1991). Section 701.21(h)(2)(ii)(B) evolved from a total prohibition on loans to nonnatural persons. The current rule permits loans to nonnatural persons which are guaranteed by the principals. Article XII, Section 1 of the Bylaws permits loans to nonnatural persons only when the loan is either co-signed by the principals or in the case of an association, a majority of the members co-sign. The rationale behind the requirement is that there must be personal accountability for loans of this nature.

There is an exemption in Section 701.21(h)(2)(ii)(b) for loans to not-for-profit organizations. This is the only situation where a waiver of the association's requirement for a majority of the signatures would be available.

Sincerely,

Richard S. Schulman
Associate General Counsel

GC/MFR:bhs
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