

October 29, 2010

Mark T. Harrington, Esq.  
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Re: Provision of Long-Term Care Insurance to Credit Union Officials.

Dear Mr. Harrington:

You asked if a federal credit union (FCU) can offer long-term care insurance to FCU officials, without limiting coverage and claims to areas of risk to which an official is exposed as part of the duties or responsibilities of the official's credit union position. Yes, an FCU may provide long-term care insurance to a volunteer official, even if such insurance would provide protection for other areas of risk to which an official is exposed outside his or her credit union activities. Non-voting members of volunteer committees, however, are not eligible to receive long-term care benefits since their FCU positions are merely honorary or advisory.

NCUA's rule regarding compensation and reimbursement of officials states:

Provision of reasonable health, accident and related types of personal insurance protection, supplied for officials at the expense of the credit union is permissible: *Provided*, that **such insurance** protection must exclude life insurance; **must be limited to areas of risk**, including accidental death and dismemberment, **to which the official is exposed by reason of carrying out the duties or responsibilities of the official's credit union position.**

12 C.F.R. §701.33(b)(2)(ii) (emphasis added). You asked if the above-highlighted language would limit long-term care insurance coverage to areas of risk to which an official is exposed as part of the official's volunteer activities.

As you noted in your letter, several prior legal opinion letters have touched on this issue. In a 2003 legal opinion, we stated long-term care benefits are generally permissible for FCU officials. OGC Op. 03-0382 (July 10, 2003). This opinion did not specifically address whether coverage must be limited to areas of risk to which an official is exposed as part of the official's credit

union position but this limitation applies to any insurance provided under the rule. In 1982, we indicated that, from a practical point of view, it “would likely be impossible” to limit health insurance (e.g., limit the cause of illness, etc.) only to credit union activity. See attached Letter from E.F. Callahan, NCUA Chairman to James C. Barr, Executive Vice President and Director, Credit Union National Association, Inc. (July 29, 1982). Similarly, it would be difficult, from a practical standpoint, to provide long-term care insurance to FCU officials, but to limit coverage only to the risks associated with an official’s credit union activities. Accordingly, the mere fact that long-term care insurance would provide protection for other areas of risk to which an official is exposed outside his or her credit union activities does not prohibit an FCU from providing such insurance to its officials. Long-term care insurance must be reasonable in coverage and amount. Generally, long term care insurance covers an individual’s needs when he or she is unable to independently perform tasks of daily living, such as bathing, dressing or feeding oneself. If a current official would be eligible to receive the coverage while still serving as an FCU official, we believe the benefit would be permissible. Coverage must cease immediately once an official is no longer capable of serving as an official or otherwise leaves office, without providing residual benefits except for any claims pending. OGC Op. 03-0382.

You also asked if members of non-voting volunteer committees established by the FCU’s board of directors, such as emeritus or associate directors, are eligible to receive long-term care benefits from the credit union. The answer is no. Although members of regular, voting volunteer committees (e.g., supervisory, credit, investment committees) are entitled to insurance benefits, members of non-voting, advisory committees are not.

The FCU Act provides that, if the bylaws so provide, an FCU board of directors may appoint “any other committees to which it can delegate specific functions.” 12 U.S.C. §1761b(13). In previous legal opinions, we determined a board of directors may appoint volunteer associate directors or director emeriti to function as a non-voting, advisory committee. See OGC Op. 90-0321 (April 17, 1990); OGC Op. 93-0527 (June 29, 1993); OGC 95-0116 (February 2, 1995); OGC Op. 03-1029R (October 23, 2003). An FCU, however, cannot provide expense reimbursement or insurance benefits to these officials. 12 C.F.R. §701.33; OGC Op. 03-1029R (attached). Our rule allows these limited benefits only as a result of an official carrying out the responsibilities of his or her credit union position. Associate or emeritus directors, unlike regular, voting committee members, are not given any responsibilities or standards for which they are held accountable. Given that associate directors or director emeriti simply act in an honorary or advisory capacity, these officials are not entitled to the same benefits as those provided to regular, voting committee members that are

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seated in accordance with the bylaws and charged with the full responsibility of their positions. *Id.*

If you have any questions, please contact Staff Attorney Pamela Yu or me.

Sincerely,

/S/

Hattie M. Ulan  
Associate General Counsel

GC/PWY:bhs  
10-0913  
Enclosures