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National Association of Federally-Insured Credit Unions

March 21, 2022

The Honorable Todd M. Harper, Chairman
The Honorable Kyle S. Hauptman, Vice Chairman
The Honorable Rodney E. Hood, Board Member
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

RE: Field of Membership Reform and Surviving “Immediate Family”

Dear Chairman Harper, Vice Chairman Hauptman, and Board Member Hood:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing regarding the National Credit Union Administration’s (NCUA) field of membership (FOM) rules as they pertain to the surviving family members of a decedent member. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 127 million consumers with personal and small business financial service products. In the interest of assisting credit union members during a difficult time by providing a streamlined means of maintaining long-held member relationships, the NCUA Board should prioritize regulatory reform and initiate a rulemaking to expand membership eligibility to all “immediate family” surviving a decedent member. The NCUA should also redefine the term “immediate family” to encompass a broader range of blood and legal relatives. The *Federal Credit Union Act* (FCU Act) grants the Board the statutory authority to effectuate these changes, so NAFCU urges the NCUA to promptly propose a rule to update membership eligibility.

General Comments

As the Baby Boomer generation continue to age,¹ credit unions have seen an accelerated transfer of shares out of member accounts. This trend is due, in part, to outdated membership eligibility limitations that only extend the option of becoming a member to a deceased member’s surviving spouse. Other immediate family members such as children, often named as beneficiaries on the member’s accounts, would be within a credit union’s FOM up until the moment of the member’s death. Perversely, those family members cease to be eligible to join the credit union at precisely the moment they acquire title to the funds held there. Such family members (or in the case of a minor child, their legal custodian) must, out of necessity, withdraw funds from the credit union and deposit them at another institution—often not a credit union. In fact, one of NAFCU’s member credit unions noted that of its deceased member accounts, 64 percent of the funds in

¹ By 2030, all Baby Boomers will be age 65 or older. *See* 2020 Census Will Help Policymakers Prepare for the Incoming Wave of Aging Boomers, United States Census Bureau (Dec. 10, 2019), <https://www.census.gov/library/stories/2019/12/by-2030-all-baby-boomers-will-be-age-65-or-older.html>.

those accounts were removed from the credit union altogether. This credit union also highlighted that the average age of its membership is around 50-52 years old. Absent meaningful reform, this trend of funds exiting the credit union and the credit union system will likely continue.

Credit unions face numerous challenges related to changing marketplace dynamics, and an aging member base is certainly one of them. From 2016 to 2021, the rate at which NAFCU members anticipated an aging member base as a challenge over the course of the next three years rose from 16 percent to 27 percent.² In 2020, 33 percent of NAFCU members anticipated this to be a challenge.³ In addition to an aging member base, many credit unions have experienced stagnant growth or population loss within their FOM. Credit unions located outside of major metropolitan areas have identified this trend as particularly problematic and are concerned that this trend may continue as metropolitan areas see more population growth, depending on the location.

These challenges may be alleviated with simple, yet meaningful, regulatory changes to the FOM rules. The current FOM limitations frustrate federal credit unions' efforts to serve their members and their members' families at a time of extreme stress, grief, and trauma. Family members who are named beneficiaries on the accounts of decedent members but who did not have the foresight to become members of the credit union before the death of the primary member are understandably confused and often angry. Why, when they would have been eligible just days earlier to join the credit union and keep their family's money where it has been, have they now suddenly lost their eligibility?

This situation also commonly arises in non-blood related relationships. For instance, a friend or caregiver of the primary member is entitled to the funds because of the controlling estate planning document or payable-on-death (POD) designation; however, they are unable to become a member because they are not a spouse and did not become a member during the lifetime of the primary member based on either their own eligibility or because they were part of the primary's household. Credit unions do everything in their power to maintain relationships after a member passes away, but the current regulations unnecessarily limit their ability to extend membership and superior service to their communities.

This issue is particularly pertinent given the NCUA Board's recent proposed rule on succession planning,⁴ another issue that is compounded by the aging Baby Boomer population. Credit unions find themselves at a moment in time when they are trying to attract younger members, but the current regulations preclude them from extending membership to otherwise formerly eligible members of a decedent primary member. Cultivating relationships with younger members and attracting new members is imperative to the long-term viability, strength, and safety and soundness of the credit union industry, especially smaller credit unions.

Moreover, such a change is an example of the type of regulatory reform and modernization that the NCUA Board seeks to achieve. As Board Member Hood often explains, his regulatory

² NAFCU's 2021 Annual Report on Credit Unions.

³ *Id.*

⁴ 87 Fed. Reg. 6078 (Feb. 03, 2022).

philosophy is that “regulation should be effective and not excessive.”⁵ The current limitation on membership eligibility for only spouses of decedent primary members is excessive and not effective. Operationally, closing a member account and transferring the funds outside of the credit union is more cumbersome than being able to re-paper the existing account or closing and opening a new account at the credit union under the name of the new primary member (i.e., the surviving immediate family member).

The process becomes even more cumbersome when closing and transferring the money to a foreign institution. Some of NAFCU’s member credit unions have described immense challenges in explaining to a family member (of the decedent primary member) why they are no longer eligible to join the credit union and then closing out the account and transferring funds to a foreign financial institution where the family member may have limited branch access and fewer products and services. Additionally, credit unions with members who are staff at government or international organizations may be particularly impacted. Although the members may be U.S. persons, they may have work assignments outside the U.S., some of which are very high risk, and their ability to open a new dollar account may be limited. For these reasons, and the rationale outlined below, NAFCU requests the NCUA initiate a rulemaking to modernize its FOM rules regarding survivorship on accounts and family member eligibility.

Expanding Membership Opportunities and the Definition of “Immediate Family”

NAFCU encourages the Board to expand membership eligibility to the “immediate family” members of a deceased member and adopt a broader definition of that term than currently defined. Credit unions report that the experience with immediate family members of a deceased member can be confusing and cause friction when the immediate family member wants to join the credit union and maintain existing accounts but is unable to do so because of the current regulatory restrictions. These conversations include legal and banking jargon that may be new and not easy to understand for the family member. Those who are new to credit unions may be wholly unfamiliar even with the *concept* of a field of membership. Moreover, these conversations occur at a particularly emotional time for the family member. Credit unions are finding that relationships that existed for decades are leaving the institution. This results in a loss of goodwill created with the primary member during their lifetime, as well as brand-equity to both the individual credit union and the broader credit union movement.

The NCUA possesses the statutory authority needed to make this simple change to simplify the transfer of wealth at credit unions. Section 1759(e)(1) of the FCU Act provides the Board with the authority to expand membership eligibility and define the term “immediate family.” The language of section 1759(e)(1) provides:

“No individual shall be eligible for membership in a credit union on the basis of the relationship of the individual to another person who is eligible for membership

⁵ NCUA Board Member Rodney E. Hood Statement on Proposed Rule, Part 701, Succession Planning, (Jan. 27, 2022), <https://www.ncua.gov/newsroom/speech/2022/ncua-board-member-rodney-e-hood-statement-proposed-rule-part-701-succession-planning>.

in the credit union, *unless the individual is a member of the immediate family or household (as those terms are defined by the Board, by regulation) of the other person*” (emphasis added).

The NCUA’s Chartering and Field of Membership Manual (Manual) in Appendix B to Part 701 outlines the scope of individuals eligible for credit union membership by “virtue of their close relationship to a common bond group.” The language for extending FOM to others by “virtue of their close relationship” to the stated FOM are in found in: Chapter 2, section II.H; Chapter 2, section III.H; Chapter 2, section IV.J; and Chapter 2, section V.G. These sections explicitly state that “spouses of persons who died while within the field of membership” of the credit union are eligible for membership.

Immediate family members or household members are only eligible to become members during the primary member’s lifetime.⁶ However, the Manual also provides that an immediate family member may join a credit union even if the primary member already within the FOM never actually joins.⁷ The Manual defines “immediate family” as a spouse, child, sibling, parent, grandparent, or grandchild. This also includes stepparents, stepchildren, stepsibling, and adoptive relationships. A household is defined as “persons living in the same residence maintaining a single economic unit.”

This irrational distinction that prioritizes spousal relationships for membership eligibility does not comport with the general policy of “once a member always a member” that most credit unions have adopted. Additionally, there is no practical difference between an immediate family member joining the credit union during the lifetime of the primary member, without the primary member ever even joining the credit union, and an immediate family member joining the credit union after the death of the primary member. In both contexts, the primary member must be within the credit union’s FOM and eligible to join. The rules unreasonably penalize immediate family members in the situation where the primary member established membership and the immediate family members did not utilize their eligibility in a timely fashion. Clearly, wealth transfer and maintaining an existing relationship with the credit union come into play in the question of membership eligibility for the family of a decedent primary member. As the NCUA Board has demonstrated an interest in preserving the viability of smaller credit unions, particularly those under \$10 million in assets, and mitigating the consolidation trend that has impacted the industry for over a decade now, this minor change to FOM eligibility rules would appear to be a step in the right direction.

Furthermore, the NCUA’s current definition of “immediate family” puts federally-chartered credit unions at a disadvantage compared to state-chartered credit unions. Several states provide a broader definition of immediate family member. For example, Arizona,⁸ Florida,⁹ and Hawaii¹⁰

⁶ NCUA, Letter to Credit Unions, 97-1020 (February 1998).

⁷ See Chapter 2, Section II.H.

⁸ AZ Rev Stat § 6-991 (2016); see also FI-LC-PO-CU-Field_of_Membership_policy (SEG).pdf.

⁹ FL Stat § 657.002 (2021).

¹⁰ HI Rev Stat § 412-10 (2012).

define immediate family member as all relatives by blood or marriage. New York defines immediate family member as any person related by blood or marriage, or their lineal ancestors and descendants.¹¹ This definition parallels the estate law concept of consanguinity, which is defined as “kinship; blood relationship; the connection or relation of persons descended from the same stock or common ancestor.”¹²

Other states offer membership to family members and other persons after a primary member has passed away. Georgia regulations afford membership to several classes of survivors, including persons related by blood, adoption, or marriage, to those living in the same household with a person having the common bond, and to persons and surviving spouses of persons who are no longer within the common bond but who were members of the credit union in good standing when they left.¹³ Some states even go so far as to afford the credit union latitude to decide what is most appropriate for its membership regarding membership eligibility. For instance, California allows the credit union’s board of directors to define an immediate family member.¹⁴

Given the flexibility afforded by some states as well as the broader market trends and risks facing the credit union industry, the NCUA should amend Appendix B to Part 701 to expand the current exemption for membership to include “immediate family” of the decedent member. Although expanding the current exemption to include “immediate family,” as currently defined in the Manual, would be a significant improvement, the defined term does not go far enough. As defined, “immediate family” does not account for a common situation where a member does not have children and the member’s siblings, parent, and grandparents have predeceased them. This highlights the need for a more expansive and inclusive definition to capture a wider pool of the decedent’s family and alternative family situations; namely, the NCUA should consider including language that mirrors state laws or “next of kin” in the definition of “immediate family.” NAFCU supports maintaining the policy that credit unions may adopt a more restrictive definition of “immediate family” depending on the needs of their members and communities.

Survivorship on Joint Accounts

Expanding membership eligibility to include “immediate family” members of the decedent primary member coupled with a broader definition of “immediate family” will also assist credit unions as they tackle complicated membership questions related to joint accounts. Similar to the scenarios described above, when a primary member passes away and the joint account holder never became a member during the life of the primary member, unless that individual is a spouse or is eligible for membership on their own, the funds will most likely leave the credit union. This situation is confusing for the surviving joint account holder who may have had a relationship with the credit union for many years and was under the impression that they were already a member by nature of the joint ownership. The same holds true even in situations where the surviving joint account holder is entitled to the funds because the account is held as a joint

¹¹ NY Banking L § 451-A (2020).

¹² Black’s Law Dictionary Online, 2nd Ed., <https://thelawdictionary.org/consanguinity>.

¹³ Ga. Comp. R. & Regs. 80-2-8-.01.

¹⁴ CA Fin. Code § 14450-14456 (2020).

account with a right of survivorship or is a POD account with the remaining joint holder as the named designee.

The FCU Act states that “shares may be issued in joint tenancy with right of survivorship with any persons designated by the credit union member, but no joint tenant shall be permitted to vote, obtain loans, or hold office, unless he is within the field of membership and is a qualified member.”¹⁵ NAFCU urges the NCUA to evaluate the extent to which it has authority to extend membership to surviving joint account holders upon the death of the primary member. Extending membership to all “immediate family” members and amending the definition of “immediate family” as explained above would resolve this concern. Should the NCUA determine that it does not have the requisite statutory authority to make this change, NAFCU requests that the agency support an amendment to the FCU Act to explicitly make “immediate family” joint account holders eligible for membership upon the death of the primary member. Expanding membership eligibility to all “immediate family” members of the decedent member would again allow credit unions to maintain shares and existing relationships.

Conclusion

NAFCU’s members appreciate the Board’s consideration of this important matter. Such a small, yet meaningful, change to the Manual, as permitted by the FCU Act, would facilitate the efficient transfer of wealth in family units, allow credit unions to maintain and build their member relationships, and ensure the continued strength and growth of the credit union industry. The NCUA should immediately amend the Manual as outlined above to expand membership eligibility to all “immediate family” and to redefine “immediate family” to include all blood and legal family relationships or “next of kin.” If you have any questions or require additional information, please do not hesitate to contact me at (703) 842-2212 or akossachev@nafcu.org.

Sincerely,



Ann C. Kossachev
Vice President of Regulatory Affairs

¹⁵ 12 U.S.C. 1759(a).