

THE COMMONWEALTH OF MASSACHUSETTS
DIVISION OF BANKS

1000 Washington Street, 10th Floor, Boston, Massachusetts 02118

CHARLIE BAKER
GOVERNOR

DAVID J. COTNEY
COMMISSIONER OF BANKS

January 15, 2015

To the Chief Executive Officer Addressed:

The Division of Banks (Division) is issuing this letter to address the topic of a Massachusetts-chartered credit union providing gifts to members of its board of directors. This letter will address the topics of nominal gifts as well as awards given for the recognition of service to the credit union.

The Division has had a longstanding position that state-chartered credit unions should not give anything of value to its directors. It has been the Division's position that such gifts could be construed as compensation, which is not permissible under Massachusetts General Laws chapter 171, §20. At the same time, however, the Division acknowledges the dedication of credit union directors, and that they are not paid for the time and effort they volunteer to ensure that Massachusetts-chartered credit unions are operating in a safe and sound manner. During recent roundtable meetings, the Division heard from credit unions regarding the difficulty of recognizing the hard work and dedication of volunteer board members under the Division's interpretation of gifts as compensation. It is the goal of the Division to support and promote the spirit of volunteerism at such credit unions.

The Division understands that the National Credit Union Administration (NCUA), while also prohibiting director compensation, permits nominal value gifts and length of service awards by a federal credit union to its directors under certain circumstances.¹ This letter reverses, in part, the Division's position regarding the acceptable distribution of gifts to directors to allow for a consistent interpretation between the Division and the NCUA. In making this determination, the Division considered two types of gifts: 1) nominal value gifts; and 2) awards to recognize years of service.

It is the Division's position that individual directors of state-chartered credit unions may receive nominal value gifts or tokens of appreciation. It is the Division's expectation that this would apply to expressions of appreciation such as holiday gifts or anniversary gifts from the credit union. Each credit union should use prudent discretion in applying this allowance. In addition, directors and operating management must be mindful to abide by Internal Revenue Service (IRS) and Massachusetts Department of Revenue (DOR) rules regarding reportable income when applicable.

It is also the Division's position that gifts for service may be permitted for credit union directors under certain circumstances. Typically a gift for service would be allowed to recognize *multiple* years of service by an individual director to the credit union. The Board of Directors should determine how many years of service deserve recognition and at what frequency such a service award should be given. The

¹ NCUA Legal Opinions 11-0805 and 93-0233. (NCUA Legal Opinion 00-0508 stipulates that free services that are not offered to members are a form of compensation.)

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Board should refer to both current and subsequent NCUA opinions and regulations for guidance on acceptable limits.² Again, directors and operating management must be mindful to abide by IRS and DOR rules regarding reportable income when applicable. Service awards for individual directors must not be excessive, amounts per year of service must be of nominal value, and the award must be in proportion with the period of service recognized. In addition, the award should be made as part of a meaningful presentation by the credit union so as not to give the perception of it being a circumvention of the prohibition on compensation.

Directors are reminded that they may not be compensated for service as a director, as stipulated by Massachusetts General Laws chapter 171, §20.³ As previously mentioned, the NCUA similarly prohibits compensation of federal credit union directors per 12 CFR §701.33. The intent of this guidance is to permit credit unions to give directors an item of nominal value as a token of appreciation for serving their members or for their years of service to the credit union.

Credit unions are advised to develop a written policy pertaining to nominal value gifts and service award gifts, and under what circumstances they will be permitted. Adequate records of the type and amount or value of all nominal and service gifts given, and to whom, should also be maintained for examiner review. In addition, gifts to directors of nominal value and for service should be included in the credit union's report to members at its annual meeting pursuant to Massachusetts General Laws chapter 171, §20 and Division Opinion 99-112. Lastly, a Board's decision to provide gifts to directors should be made with careful consideration given to the credit union's earnings performance, net worth levels, and overall financial strength.

Should you have any questions relative to this matter, please contact Chief Director Andrea Cipolla at (617) 956-1532 or andrea.cipolla@state.ma.us.

Sincerely,

A handwritten signature in black ink, appearing to read "David J. Cotney", is written over a horizontal line.

David J. Cotney
Commissioner of Banks

² See previously noted NCUA Legal Opinions.

³ Division Opinion 84-1 allows officers of a credit union as named in Massachusetts General Laws chapter 171, §15 and whose duties are identified in the credit union's by-laws to be paid a reasonable amount.