



The Commonwealth of Massachusetts

Office of the Commissioner of Banks

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May 12, 2003

Stanley V. Ragalevsky
Kirkpatrick & Lockhart LLP
75 State Street
Boston, Massachusetts 02109-1808

Dear Mr. Ragalevsky:

This letter is in response to your correspondence dated November 7, 2002, and December 16, 2002, to the Division, in connection with an insurance plan for credit union directors developed by Karam Financial Group ("Karam") and a Massachusetts-chartered credit union. This proposal prompted a comprehensive and extended review of the involved statutes and the Division's position regarding insurance benefits for credit union directors. I regret the delay in responding to this proposal.

In your initial letter, you requested the Division's determination whether the insurance arrangement in question would qualify as group life insurance under General Laws chapter 171, section 25 and, as a consequence, be exempted from the prohibition on director compensation contained in section 20 of chapter 171. The Division responded to your letter by requesting additional information; specifically, an explanation of how the plan differed from an insurance plan discussed in Division Opinion 97-150. You responded to that request with your December 16, 2002 letter.

The letters and other submitted materials describe the arrangement as involving the establishment of a Credit Union Life Insurance Trust (the "Trust") to receive payments from the credit union and pay premiums to the insurance carrier. The Trust would own the policy for the benefit of policy beneficiaries, you advise, and all policy earnings, cost recovery, and cash values would be assets of the credit union. You describe the plan as a "split dollar arrangement," which would provide a \$100,000 death benefit to credit union directors, with the death benefit reducing to \$50,000 at age 70 and 0 at age 80. The credit union, you advise, would pay the premiums for directors for seven years or until they reach age 62, whichever is longer. You further explain that premiums for all Directors under age 66 would cease at normal retirement, but the death benefit arrangement would continue; for directors over age 65, premiums would continue until death, but the premiums and costs would be recovered by the Trust at that time. Finally, you assert that the costs of the proposed plan are less than the credit union would pay to provide term life coverage for its directors.

In support of your position that the plan should be approved, you assert that the benefit allowed by section 25, group life insurance, is an exception to the general prohibition against compensation. You argue that section 25 should be read as broadly as possible, and not be limited to term life insurance in order to effectuate the legislative intent of providing credit unions with a means of attracting and retaining quality directors. This plan, and the death benefit payment, is consistent with section 20, you maintain, because the benefit is actually paid by the Trust and, in order to receive the benefit, the director has to die. With respect to this latter point, you assert that a benefit should not be regarded as compensation or deferred compensation if a retired director is required to die in order to get it. Furthermore, you argue that section 25 was never intended by the Legislature as an incentive against retirement, which results when directors continue to serve on credit union boards just to maintain a life insurance benefit.

General Laws chapter 171, § 20 provides that a credit union may not compensate its directors for their services as directors or as members of a committee. A credit union may, however, pursuant to the provisions of section 25 of chapter 171, provide group life insurance, group accident and health insurance or group medical, surgical or hospital insurance or benefits or all or any combination thereof for its employees, officers, and directors. In reviewing the applicability of these provisions in Opinion 97-150, the Division stated that it was within the discretion of the credit union to determine whether and what type of group insurance plans to offer to its employees, officers, and directors. However, the Division pointed out that any such insurance or benefits offered by the credit union must be in the form of a group plan and must not serve as a means of providing compensation to directors, during or after the term of a directorship.

By its terms, section 25 permits a credit union to provide group life insurance to its employees, officers, and directors. Accordingly, a credit union may provide group life insurance to its directors so long as they remain active directors. Any plan that would require or allow a credit union to provide such insurance coverage beyond the directorship term, such as by enrolling former directors in the group life insurance plan or by paying the insurance premiums of a former director, would be in excess of the authority granted under section 25.¹ Based on its review of the proposed arrangement, it is the position of the Division that the plan, as currently drafted, is prohibited under the provisions of chapter 171 because it would require the credit union to pay the insurance premiums for certain directors beyond the term of their directorship. This conclusion, the Division notes, is consistent with the much more stringent conditions imposed by the National Credit Union Administration ("NCUA") regulation relative to permissible insurance coverages for directors at 12 C.F.R. § 701.33. The federal regulation, while prohibiting a federal credit union from providing directors with any form of life insurance, provides that certain coverages may be supplied at credit union expense but such insurance protection must "cease immediately upon the insured person's leaving office." 12 C.F.R. § 701.33(b)(2)ii (2002).

It continues to be the position of the Division that credit unions may decide whether and what type of group insurance plans to offer to its employees, officers, and directors. However, any such plan must conform to the guidelines set forth in the preceding paragraph, qualify as group life insurance within the meaning of General Laws chapter 175, and comply with any applicable

¹ This prohibition would not bar an individual insured from continuing such coverage at his or her own expense, under a plan's conversion or portability feature, upon completion of the directorship.

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provisions of that chapter. To the extent the Karam proposal can be conformed to meet these threshold requirements, the Division would regard it as permissible under chapter 171.

The conclusions reached in this letter are based solely on the facts presented. Fact patterns which vary from that presented may result in a different position statement by the Division.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joseph A. Leonard, Jr.", written in dark ink.

Joseph A. Leonard, Jr.
Deputy Commissioner of Banks
and General Counsel

JAL/slk
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