



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

GC/10/1/1986
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2/11/86

Office of General Counsel

Horace H. Reynolds, IV, Esq.
4315 Frances Street
Omaha, NB 68105

Dear Mr. Reynolds:

This is in response to your letter of January 31, 1986, to Hattie Ulan of this Office, concerning Federal credit union (FCU) loans to nonmembers.

You provided the following facts. An FCU has entered into a loan agreement (line of credit) with a member and his nonmember spouse. Loan drafts are used to access the line of credit. Both the member and his/her nonmember spouse have signatory authority for loan drafts pursuant to their contract with the FCU. Both the member and his/her spouse are liable for repayment of the line of credit.

You inquire whether the line of credit described above is legal in light of an FCU's limited authority to make loans to members. (See Section 107(5) of the FCU Act, 12 U.S.C. §1757(5).)

Whether a loan is an illegal loan to a nonmember depends upon the specific facts of each situation. We have enclosed an opinion from this Office which explains the analysis to be made (this is the letter you requested). It discusses this issue and some of the elements one must look to in determining the legality of the loan under Section 107(5) of the FCU Act. As seen from the discussion in the enclosed letter, your inquiry does not provide us with sufficient facts to render an opinion at this time. If you still require an opinion, please write to me again addressing the issues raised in the enclosed opinion letter.

Lastly, you suggest that one solution to the problem is to have the member's spouse establish membership in his/her own right. If this is practical, it may be the easiest solution to the problem you present. I would encourage you and your client to pursue this option.

FOIA file: Vol. I, C, 11 - Loans to nonmembers



NATIONAL CREDIT UNION ADMINISTRATION

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WASHINGTON, D.C. 20456

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October 2, 1984

Brian R. Witt, Esquire
Waggoner, Chapman, Farleigh,
Wada & Bogrand
1515 S.W. 5th Avenue, Suite 770
Portland, OR 97201

Dear Mr. Witt:

This is in response to your letter of September 11, 1984, to Hattie Ulan of this Office concerning Federal credit union (FCU) loans to nonmembers.

With exceptions not relevant here, Section 107(5) of the FCU Act, 12 U.S.C. §1757(5), only authorizes an FCU to make loans to its members. Some nonmember participation in member loans is permissible. The issue is at what point does nonmember involvement in the loan process so substantially distort the direct lending relationship between the FCU and the member as to render a transaction an impermissible loan to a nonmember in violation of Section 107(5) of the FCU Act. The easy case is where the nonmember receives total use and benefit of the loan proceeds and is primarily liable for the loan repayment. In this case, the nonmember becomes indistinguishable from the member loan recipient. The nonmember comaker is an impermissible participant and the loan would be in violation of Section 107(5) of the FCU Act. At the other end of the spectrum, when the nonmember comaker's participation is limited to guaranteeing payment as a secondary party, the nonmember comaker is a permissible participant, and the transaction would not violate Section 107(5) of the FCU Act. The difficult situations arise in the midrange between these two extremes. Potential loans involving nonmembers should be analyzed on a case-by-case basis to determine their permissibility. Some of the elements to be included in such an analysis might be the loan size vis-a-vis the ability of the member to repay, the nonmember status of the comaker, whether the nonmember pledged collateral, which party has primary liability for repayment, and who has use and benefit of the proceeds. It does not matter whether the FCU characterizes the nonmember comaking the loan as cosigner, comaker or guarantor. One must analyze the elements of each loan transaction and determine whether or not it is permissible under Section 107(5) of the FCU Act.

We hope that we have been of assistance.

Sincerely,

ROBERT M. FENNER

Director, Department of Legal Services