NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

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4650

Office of General Counsel

Edward N. Lange, Esq.
Davis, Wright Todd, Riese & Jones
4200 Seattle-First National Bank Building
Seattle, Washington 98154

Dear Mr. Lange:

This is in response to your inquiry concerning our opinion on calculating the interest rate, inclusive of finance charges, for Federal credit union (FCU) usury puposes, on variable rate lines of credit with no stated maturities. Cash advances and cash advance fees are a feature in the line of credit program described in your letter.

As you know, the FCU Act sets the maximum interest rate that FCU's can charge their members on loans and lines of credit at 15 percent per annum inclusive of all finance charges. The NCUA Board has statutory authority to increase the ceiling rate for 18 month periods after satisfying certain conditions. (See Section 107(5)(A)(vi) of the FCU Act, 12 U.S.C. §1757(5)(A)(vi)). Pursuant to this authority, the NCUA Board has increased the maximum rate to 21 percent per year. (See Section 701.21(c)(7)(ii) of the NCUA Rule and Regulations (12 C.F.R.§701.21(c)(7)(ii)). Variable interest rates are permitted on the condition that the effective rate over the term of the loan (or line of credit) does not exceed the maximum permissible rate.

As noted, the usury limitation is inclusive of all finance charges. NCUA's interpretation of the term "finance charge", for the most part, follows the interpretation of that term under Regulation Z and the Truth-In-Lending Act.

The issue you have presented involves the determination of the interest rate on a variable rate line of credit having no stated maturity and where cash advance fees are charged. Under Regulation Z a cash advance fee is considered to be a transaction charge. Pursuant to Section 226.4(b)(2) of Regulation Z (12 C.F.R. §226.4(b)(2)) transaction charges are calculated into the finance charge. NCUA would similarly treat the cash advance fee as part of the finance charge for purposes of the interest rate ceiling. To determine whether the usury ceiling is exceeded, the

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interest rate (inclusive of all finance charges) must be computed over the life of the loan (or line of credit). Therefore, the problem is one of ascertaining the term of the line of credit over which the effective rate of interest is to be computed.

In your letter you suggest dividing the outstanding balance of the loan or line of credit by the minimum payment due in order to determine a projected maturity. This approach may not be workable in all cases due to the fact that some lines of credit may not have a minimum payment and the term of the line may continue to vary from month to month depending on the activity in the account. Another possible alternative is to determine an average maturity for the line of credit based on experience at the credit union.

Although we would not object to the use of either method, it must be understood that regardless of the method employed, a recomputation of the effective rate of interest is necessary once the member's line of credit has been terminated. It is only at that point in time that the actual loan term is known so that the effective rate of interest can be accurately determined. If the recomputation of the effective interest rate reveals that the FCU charged more than the legally permissible rate (the FCU would have to calculate in any changes in the usury ceiling that occurred over the course of the line of credit (e.g., if the NCUA Board does not extend the 21 percent ceiling, the rate will fall to 15 percent on May 15, 1987)), the FCU would be required to refund the excess interest collected to ensure compliance with Section 701.21(c)(7) of the NCUA Rules and Regulations.

We apologize for our delayed final response. If further questions arise, please feel free to contact Hattie Ulan of this Office.

Sincerely

/S/

STEVEN R. BISKER
Assistant General Counsel

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