



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

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Office of General Counsel

Mr. Bill Blubaugh
Vice President, Credit Services
DM Federal Credit Union
P.O. Box 15115
Tucson, Arizona 85708

Dear Mr. Blubaugh,

This is in response to your letter concerning nonmember participation in a revolving line of credit. Please accept my apology for the delayed response.

Specifically, you ask the following questions:

A spouse is a non-member but has signed as co-applicant on a line of credit. She is joint owner on a share-draft account that has the line of credit as an overdraft backup. It is possible for her to write an overdraft and advance the loan. As a non-member, may that spouse advance that same line of credit over the counter?

A spouse is joint owner on a share account, but not a member in her/his own right, and is co-applicant on a line of credit. May the spouse advance the line of credit over the phone to transfer funds from the loan account to the share account?

As you note in your letter, Section 107(5) of the FCU Act, 12 U.S.C. §1757(5) authorizes FCU's to make loans to their members. Some nonmember participation in member loans is permissible. As the Regional Office noted, the issue is at what point does nonmember involvement in the loan so substantially distort the direct lending relationship between the FCU and the member so as to render the transaction an impermissible loan to a nonmember in violation of Section 107(5) of the FCU Act. When the nonmember comaker becomes indistinguishable from the member loan recipient, the nonmember comaker is an impermissible participant and the transaction would violate Section 107(5) of the Act. Some of the elements that need to be analyzed to determine the legality of the loan or line of credit include: the loan size (or amount of the credit limit on the line) vis-a-vis

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the ability of the member to repay, whether the nonmember pledged collateral, which party has the primary liability for repayment, and who has the use and benefit of the proceeds. How the line of credit is accessed (e.g., over the counter, telephone, ATM, etc.) would not affect the analysis.

I recognize that I have not provided you with a yes or no answer to your questions. However, as you can see from the above, there are many factors that need to be evaluated. This is one area where rendering a legal opinion on a somewhat general hypothetical question is near impossible. With that disclaimer, I offer these additional comments.

In the hypotheticals presented, the nonmember spouse is accessing a line of credit that is opened in conjunction with a joint share draft account or a joint share account in which the nonmember spouse is a joint owner with the member spouse. In these two situations, it may be that the member will receive the direct benefit of the credit advance and the nonmember spouse an indirect benefit. Also, it may be the case that the nonmember spouse is acting as agent for the member spouse when he/she accesses the line. In any event, rather than running the risk of violating the FCU Act and the NCUA Rules and Regulations, I would advise that, if it is possible and practical, the nonmember spouse establish membership in his/her own right.

Lastly, you ask whether it is permissible for a nonmember to access a line of credit through an ATM or VISA credit card. There are two aspects to this question that need to be addressed.

First, in order for FCU's to provide credit card and ATM services to their members it is often necessary to enter into agreements with the program sponsors (VISA, Mastercard, etc.) whereby the FCU is required to provide cash advances to nonmember cardholders participating in the credit card programs of other financial institutions. Under these correspondent type arrangements the various participating financial institutions, in effect, act as agents for one another in making cash advances and settle accounts with each other on a preagreed regular basis. We do not view a cash advance to a nonmember as a loan by an FCU since the FCU is acting on behalf of another financial institution which is obligated to immediately repay (settle the account) the FCU for the advance. In light of this fact, we view the cash advances to nonmembers as incidental to an FCU's power to provide lines of credit (including credit cards) to their members.

Second, FCU's may be placed in the position of advancing funds against a member's line of credit to a nonmember when the nonmember uses an ATM or credit card. Where a member establishes

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a line of credit or share account and, in conjunction therewith, receives a credit card or debit card, access by an authorized nonmember would not be violative of the FCU Act or the NCUA Rules and Regulations. The nonmember, as an authorized user of a member's credit card or debit card, would be considered an agent of the member.

I hope this satisfactorily responds to your inquiry.

Sincerely



STEVEN R. BISKER

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