

April 7, 1998

Mark A. Drexler, Esq.
Drexler & Johnson, LLP
30 West Broad Street, Suite 301
Rochester, New York 14614

Re: Discounted Legal Fees
Your Letter of December 4, 1997

Dear Mr. Drexler:

You have asked whether a law firm may discount its fees for legal services provided to credit union personnel in two sets of circumstances. In the first set of circumstances, the law firm would like to discount the fee it charges the credit union to represent it in connection with a mortgage closing, in those cases where the borrower is a credit union employee. This is permissible as long as the employee is not a credit union official, as defined in 12 C.F.R. §701.21(d)(2). In the second set of circumstances, you indicate that the law firm desires to offer a discount on all fees charged to credit union employees represented by the firm. The discount would apply to legal matters not related to credit union business. This is also permissible, although those credit union officials responsible for selecting the firm to represent the credit union should be particularly aware of the provisions of the Bank Bribery Act, 18 U.S.C. §215.

In connection with the fee discount you describe in your first set of circumstances, we support our conclusion based on the following analysis. NCUA regulations provide that no employee of a credit union may receive, directly or indirectly, any commission, fee, or other compensation in connection with a loan made by the credit union. 12 C.F.R. §701.21(c)(8)(i). The purpose of §701.21(c)(8)(i), called the prohibited fees regulation, is to ensure that an individual who is in a position of authority at a credit union, does not put his or her self-interest ahead of the credit union's interest in making good loans. While a strict reading of the regulation might lead one to assume it prohibited the fee discount you describe, the circumstances under which your firm would offer the discount, namely in connection with credit union employee's mortgage closings, generally would not appear to create a risk of violation of the regulation. Therefore, we conclude that the prohibited fees regulation does not apply.

NCUA regulations also provide that no official, immediate family member of an official, nor any individual having a common ownership, investment or other pecuniary interest in a business enterprise with an official or immediate family member, may receive more favorable rates, terms or conditions on any loan or line of credit he or she receives, endorses or guarantees. 12 C.F.R. §701.21(d)(5). This regulation, which is intended to prevent insider dealing, does apply and will prohibit the law firm from offering discounted legal fees to officials and others as set forth in §701.21(d)(5)(i) through (iii).

With regard to your second set of circumstances, we find no NCUA regulation which directly addresses such an arrangement. However, we do direct your attention to the Bank Bribery Act, 18 U.S.C. §215, which prohibits the corrupt offer or acceptance of anything of value to influence or reward an officer, director, employee, agent or attorney for a financial institution in connection with any business or transaction of the institution, as well as provisions of state or federal law concerning conflicts of interest or other ethical considerations. The credit union may find NCUA's Interpretive Ruling and Policy Statement 87-1, which offers guidelines for compliance with the Bank Bribery Act, a helpful resource. All of NCUA's Interpretive Rulings and Policy Statements are available on our web site at www.ncua.gov.

Sincerely,

Sheila A. Albin
Associate General Counsel

OGC/DMS:bhs
SSIC 3248/3501
97-1228