

August 28, 2000

Steven R. Bisker, Attorney at Law
119 North Henry Street
Alexandria, Virginia 22314

Re: Permissibility of Nonmember Co-borrower.

Dear Mr. Bisker:

You have asked whether you may rely upon the enclosed [letter from me to Shelly Halvorsen, dated November 16, 1998](#), to advise a federal credit union (FCU) that it may loan money to a nonmember as a co-borrower provided a member is liable for the full amount of the loan. No, our response to Ms. Halvorsen was fact-specific to "LoanLiner Credit Agreement" language and was not meant to condone all lending agreements with nonmembers where the member is primarily liable.

The FCU Act and the FCU Bylaws provide that FCUs may only extend credit to members. 12 U.S.C. §1757(5); FCU Bylaws, Art. XI, §1. Nonmembers may participate in loans as long as their involvement does not distort the direct lending relationship between the FCU and the member. The issue is when does nonmember involvement in a loan or line of credit so distort the lending relationship between the FCU and the member to render the transaction an impermissible loan to a nonmember in violation of the FCU Act.

An FCU should consider factors such as: the amount of the credit line limit compared with the ability of the member to repay; whether the nonmember pledged collateral; which party has the primary liability for repayment; and, most importantly, who has the use and benefit of the proceeds. These factors were discussed in the enclosed [letter from Richard S. Schulman to Colleen Shishido, dated September 12, 1995](#).

Nonmembers may be co-signers or guarantors for a loan to a member, meaning they will be liable in the event that the member, who is the borrower, does not repay the loan. The FCU must determine whether the nonmember is a permissible guarantor or co-signer, rather than a recipient of loan proceeds which would violate the FCU Act. This subject is discussed in the enclosed letters from Hattie M. Ulan to Allen M. Upchurch, Jr., dated February 20, 1992 and March 17, 1992.

In addition, FCUs may issue credit cards to nonmembers under certain circumstances. Certain agreements between credit card companies and FCUs permit members who are cardholders to extend the use of their credit cards to nonmember agents. Then, the member is primarily liable for all amounts advanced under the credit card issued to a nonmember. This subject is discussed in the enclosed letter from Hattie M. Ulan to Patricia K. Jones, dated April 2, 1991.

Ms. Halvorsen had asked our office whether language in a proposed line of credit

agreement was permissible under the FCU Act and NCUA regulations. We responded that a nonmember joint account owner could obtain advances under an open-end credit agreement which was part of his or her joint account if the member is liable for the full amount of all credit advances. Our response attached the enclosed letter from Hattie M. Ulan to James R. Mayhew, dated September 2, 1992, permitting joint owner access to a line of credit.

Under the proposed agreement, the nonmember joint account owner would be able to access an open-end credit line attached to the joint account he or she co-owns with the member. The nonmember already has access to other features of the joint account, such as, if applicable, checks, ATM or debit cards, on-line account services, and overdraft protection. Similarly, it follows that the nonmember should be able to obtain advances under an agreement governing an open-end line of credit attached to the joint account, provided the member is liable for the advances.

As additional guidance, we advise that FCUs offering open-end lines of credit attached to joint accounts add language in the agreements that the FCU will follow the instructions of the member joint account owner relating to the line of credit if inconsistent with the nonmember's instructions.

Finally, we recommend that FCUs encourage nonmember loan applicants to establish their own membership where possible.

Sincerely,

Sheila A. Albin
Associate General Counsel

GC/RMM:bhs
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00-0605
Enclosures

cc: Shelly Halvorsen, Vice President of Lending, Houston Federal Credit Union