

April 22, 2003

Mr. Francis X. Grady
Grady & Associates
20950 Center Ridge Road, Suite 100
Rocky River, Ohio 44116-4307

Re: Share Account Overdrafts – 12 C.F.R. §701.21(c)(3).

Dear Mr. Grady:

You have asked whether it is permissible for a federal credit union (FCU) to adopt an overdraft policy that provides different overdraft limits on a member-by-member basis. We have no legal objection to such a policy.

NCUA regulations permit FCUs to advance money to a member, without having a loan application on file, to cover an account deficit if the FCU has a written overdraft policy. 12 C.F.R. §701.21(c)(3). An overdraft policy must:

[S]et a cap on the total dollar amount of all overdrafts the credit union will honor consistent with the credit union's ability to absorb losses; establish a time limit not to exceed forty-five days for a member either to deposit funds or obtain an approved loan from the credit union to cover each overdraft; limit the dollar amount of overdrafts the credit union will honor per member; and establish the fee and interest rate, if any, the credit union will charge members for honoring overdrafts.

Id. The regulation does not prohibit an FCU from establishing different overdraft limits for individual members but we caution that such a policy could raise issues under the Equal Credit Opportunity Act and Regulation B. 18 U.S.C. §§1691-1691F; 12 C.F.R. Part 202. Please feel free to call me or Senior Staff Attorney Michael McKenna if you have any further questions.

Sincerely,

Sheila A. Albin
Associate General Counsel

GC/MJM:bhs
03-0232