

March 9, 1993

Howard L. Stern, Esq.  
Stern and Connelly  
5711 Allentown Road  
Camp Springs, MD 20746

Re: Loan Transfer to Share Account (Your Letter of February 16, 1993)

Dear Mr. Stern:

You request an opinion regarding whether a credit union can charge a member's signature loan account, or credit card account, the amount necessary for the member to maintain a share account, with attendant membership privileges, in the credit union. This opinion applies only to federal credit unions ("FCUs"). The appropriate state authority should be contacted for guidance regarding state-chartered credit unions. Under the circumstances you present, an FCU would not be authorized to institute such a program. Possibly such a program could be established if permissible under the loan documentation and relevant state law. Certain federal disclosure laws might also apply in that instance.

#### BACKGROUND

You represent that the credit union in question has a number of members with open-end loans (signature loans or credit card loans) whose share account balance is zero. In order for these members to retain their membership, the credit union would like to arrange for a method to automatically maintain the par value of one share in these members' share accounts. You also state that the credit union's current loan documentation does not contain any specific language permitting the credit union to transfer funds to the member's share account without express member permission.

ANALYSIS Section 109 of the FCU Act states that FCU membership is open to those "elected to membership" who "subscribe to at least one share of [FCU] stock and pay the initial installment thereon and a uniform entrance fee if required by the board of directors" who are within the chartered field of membership. 12 U.S.C. ~1759. According to the Standard FCU Bylaws, members have at least six months to increase their share account balances to par. Standard FCU Bylaws, Art. III, ~3. Members who do not bring their share accounts up to par within the amount of time set by the board of directors (which must be at least six months) cease to be a member. Standard FCU Bylaws, Art. II, ~4, NCUA Accounting Manual for FCUs, ~5150.12. Since FCUs may only make loans to members (FCU Act, 12 U.S.C. ~1757(5), NCUA Rules and Regulations, 12 C.F.R. ~701.21(a), Standard FCU Bylaws, Art. XII, ~1), any loans to terminated members must be collected upon in accordance with the loan documents and the credit union's loan collection program. See Standard FCU Bylaws, Art. VII, ~5(c), NCUA Accounting Manual for FCUs, ~4040.4, Account #717, and Part 5220. See also Letter from me to Mitchell Klein, Esq., Police and Fire FCU, Re: Bylaws, dated January 5, 1993 (enclosed). In fashioning a loan collection program, it should be noted that a credit union cannot offset losses for a credit card account from a share account. 12 C.F.R. ~226.12(d).

Without any specific language in the credit union's currently used loan documentation, it seems that the credit union would not have legal authority to deduct a sum from the member's loan account and transfer it to the member's share account. This is a matter of contract law as interpreted by the appropriate state. However, you might review the loan documentation and state law to see if the documentation could be revised or modified to permit such loan to share account transfers at the initiation of the credit union in the

future. In the case of Loanliner loans, we suggest that you contact Beth Ringgenberg, Associate Counsel, CUMIS (ph. 608-231-7915) and in the case of credit card loans, we suggest that you contact the credit card company's attorney. Furthermore, depending upon how such a plan was contractually structured, disclosures might be required under Regulation Z (12 C.F.R. Part 226), if, for example, a fee were charged to the loan account for this service, or under NCUA's Truth in Savings regulation, once finalized (57 Fed.Reg. 56686, November 30, 1992), if, for example, a fee were charged to the share account for this service.

Sincerely,

Hattie M. Ulan  
Associate General Counsel

Enclosure

GC/MEC:sg  
SSIC 3700

cc: Beth Ringgenberg,  
Associate Counsel, CUMIS  
5910 Mineral Point Road  
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