

January 23, 2007

Louis R. Sanchez, Vice President, Lending
Bayou Federal Credit Union
5880 Florida Boulevard
Baton Rouge, LA 70806

Re: Permissibility of FCU Making Member Business Loan to Law Firm Where CEO's Spouse is Partner.

Dear Mr. Sanchez:

You have asked if a federal credit union (FCU) may issue a line of credit to a law firm in which your CEO's husband is a partner. In the circumstances you describe, where the law firm is a separate corporate entity, your FCU may issue a line of credit to this law firm.

NCUA's member business loan regulation prohibits FCUs from making member business loans to their chief executive officers, assistant chief executive officers, chief financial officers, and any "immediate family members" of these officials. 12 C.F.R. §723.2. The law firm where your CEO's husband is a partner is organized as a professional law corporation (PLC) under Louisiana law, which establishes it as a separate entity from its partners. La. Rev. Stat. §12:807. Under these circumstances, we believe it is permissible to issue the line of credit.

The prohibition on making member business loans to immediate family members of senior credit union officials is designed to avoid conflicts of interest in lending decisions. 51 Fed. Reg. 46869 (Dec. 29, 1986). Accordingly, we considered whether issuing a line of credit to the law firm where the CEO's husband is a partner is likely to create a conflict between the CEO's personal financial interest and her responsibility to the credit union. As presumably a portion of the CEO's family income is tied to her husband's earnings from the law firm, the potential for a conflict of interest exists.

Although the law firm's structure creates a legal entity separate from the individual partners who are the owners, the credit union must insure the CEO does not use her position to influence the credit union's decision to grant the line of credit because of the potential for conflict. The credit union must apply its member business loan policy, procedures and underwriting guidelines as usual. Further, the FCU bylaws provide that "[n]o director, committee member, officer, agent, or employee . . . shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting his pecuniary interest of any corporation, partnership, or association . . . in which he is directly or indirectly interested." FCU Bylaws, Article XIX, Section 4. The CEO must not be

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involved in the decision to issue the line of credit or its terms and amount and should not have any communications with credit union staff and officials regarding the law firm's application. Also, loan officers and the credit committee, if applicable, should be informed the CEO may not influence the decision to grant the line of credit.

Finally, we note the member business regulation requires principals of a business to give their personal guarantee to be liable for the debt, unless the Regional Director grants a waiver or the credit union is a RegFlex credit union. 12 C.F.R. §723.7(b). If your credit union is not a RegFlex credit union, the regulation requires the personal guarantee of all 22 partners in the firm or a waiver from your Regional Director to grant the loan.

If you have further questions, please feel free to contact Staff Attorney Elizabeth Wirick or me.

Sincerely,

/S/

Sheila A. Albin
Associate General Counsel

GC/EAW:bhs
06-1224