

Opinion No. 66-103

August 22, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Roy G. Hill, Assistant Attorney General

TO: Mr. W.J. Upton, Commissioner of Banking, Santa Fe, New Mexico

QUESTION

FACTS

A credit union wishes to establish the following operating policy:

"A. Open end line of credit loans (Redi-Cash)

1. Definition

This policy is established to provide a means of granting to qualified members a continuous source of credit which would be available to them on call, up to the limit set.

2. Qualifications

Members whose past record indicates they have always used credit prudently and have met prior obligations according to the terms originally set up, may be granted this service with the approval of the credit committee.

3. Lending limits

The maximum amount shall not exceed twice the gross monthly income of the head of the household and shall be calculated on that salary only.

4. Term of Loan

The line of credit shall remain in effect as long as all requirements are met by the member.

5. Payment Schedule

A repayment schedule will be established so that the maximum amount available to the member would be paid off in thirty-six equal monthly installments.

6. Interest Rate

This type of loan shall be made at an interest rate of 1% per month on the unpaid outstanding balance.

7. Signature Requirements

If married, the note shall be made in the name of both the husband and wife and requires both their signatures.

8. Exclusion of other Signature Loans

When an open end line of credit is approved for any member, his signature borrowing capacity cannot be used on any other credit union loan. The face of his ledger shall indicate this.

9. Exclusion of Prior Delinquent Members

Any member who has appeared on the delinquent loan list during the past two years shall not qualify for this type of loan service.

10. Disbursement of Funds

All draws on a line of credit shall be in writing on a form furnished by the Credit Union and shall state the amount needed and the purposes for which the money is used. (Draws can only be approved for provident or productive purposes.)

11. Approval of Draws

A Loan Officer shall have the authority to approve draw requests from members under the following conditions:

- A) The line of credit has been-approved by Credit Committee.
- B) The draw is in a properly completed form and does not exceed the limit established for the member.
- C) The reason for the draw would be for provident and productive reasons.
- D) The member has met all requirements of the agreement and terms of the line of of credit.
- E) The draw is not for the purpose of making a payment on the line of credit of other Credit Union loans.

Draws can be authorized for either the husband or wife.

12. Suspension of Draws on Line of Credit

No further advances of monies shall be granted on a line of credit if the member fails to make a payment as stipulated in the note and agreement. The face of his ledger shall indicate the suspension.

13. Reinstatement of Suspension

The Credit Committee, upon appeal by the member, may reinstate a suspended line of credit.

QUESTION

In view of Section 48-19-10, N.M.S.A., 1953 Compilation (P.S.) can a credit union establish a line of credit and disburse its funds in the manner described in the above policy?

CONCLUSION

No.

OPINION

{*139} ANALYSIS

In our opinion the above operating policy would violate Section 48-19-10, N.M.S.A., 1953 Compilation (P.S.). This section provides as follows:

"The credit committee shall have the general supervision of all loans to members. Applications for loans shall be on a form, prepared by the credit committee and all applications shall set forth the purpose for which the loan is desired, the security, if any, offered, and such other data as may be required. Within the meaning of this section an assignment of shares or deposits or the endorsement of a note may be deemed security. At least a majority of the members of the credit committee shall pass on all loans and approval must be unanimous. The credit committee may appoint a loan officer, with the advice and consent of the board of directors. The compensation, if any, of such loan officer shall be established by the board. The loan officer, when so appointed, shall act under the supervision of the credit committee, and he may make loans without {*140} necessity for a meeting of or approval by any members of the credit committee, but only in any of the three circumstances:

A. Where an emergency exists which qualifies as such within standards of qualifications as an emergency previously established in writing by unanimous action of the credit committee; or

B. Where a loan is wholly secured by an assignment of shares; or

C. Where, to the extent that a loan is not wholly secured by other collateral which meets minimum standards of qualification as adequate collateral previously established in writing by unanimous action of the credit committee. The credit committee shall meet as often as may be necessary after due notice to each member.

This section requires that the purpose of a loan be set forth, and that the loan must be unanimously approved by a majority of the members of the credit union's credit committee. The only exceptions are those listed as A, B, and C. Paragraph eleven of the above operating policy seeks to give the loan officer greater power than he is given by the statute. This in particular makes the policy an invalid one.

We believe that Section 48-19-10, supra, clearly contemplates that a credit committee will have before it an application for a loan of a certain amount of money and that the purpose for which the money will be used must be exposed to the committee. The operating policy quoted above outlines a totally different procedure. Under this policy an applicant is cleared to maintain an outstanding balance of a certain sum of money. The purposes for which this money will be used are not exposed to the credit committee. Instead, the purpose or purposes are exposed to the loan officer and he decides whether or not the money should be disbursed.

It is our opinion that credit unions are bound to follow the lending procedure outlined in Section 48-19-10, supra, and we are of the opinion that the operating policy quoted above does not meet the requirements of that section. Therefore, we conclude the answer to your question is no.