

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF THE ATTORNEY GENERAL**



**ATTORNEY GENERAL  
KARL A. RACINE**

**Legal Counsel Division**

September 9, 2022

Schannette Grant  
Interim Executive Director  
Office of Advisory Neighborhood Commissions

Amy Bellanca  
General Counsel  
Office of the District of Columbia Auditor

**Re: Question re ANC Financial Matters**

Director Grant and Ms. Bellanca:

This letter responds to five questions you asked us to resolve about how Advisory Neighborhood Commissions (“ANCs”) may deposit and spend their funds under section 16 of the Advisory Neighborhood Commissions Act of 1975 (“ANC Act”),<sup>1</sup> which governs ANC financial operations.

**(1) What requirements does section 16 impose for sponsorships or community activities?**

Sponsorships and community activities must follow the ordinary rules for public-purpose expenditures by an ANC.

The terms “sponsorship” and “community activity” are somewhat vague in this context. These terms are not used in the ANC Act, and they do not have a well-settled ordinary meaning. You have indicated to us, however, that a “sponsorship” is when an ANC pays an event organizer so that the ANC can be represented at the event, giving event attendees the chance to learn more about the ANC and its operations. This might, for example, mean paying to host a table at the event for attendees to visit. And you have indicated that a “community activity” essentially refers to any community-wide event that an ANC itself hosts or facilitates.

Although these terms are not entirely clear, the rules that apply to them are. Under the ANC Act, an ANC may expend its funds for only two purposes: “public purposes within the neighborhood

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<sup>1</sup> Effective March 26, 1976 (D.C. Law 1-58; D.C. Official Code § 1-309.13).

area” and the “functioning of the Commission office.”<sup>2</sup> As you have described them, neither sponsorships nor community activities are for the functioning of the Commission office. Accordingly, for these expenditures to be lawful, they must serve public purposes within the neighborhood area, and thus must “benefit[] the community as a whole.”<sup>3</sup> They cannot be for prohibited purposes, such as partisan political activity.<sup>4</sup> Moreover, since these appear to be direct ANC expenditures rather than grants, they cannot pay for items such as food or entertainment.<sup>5</sup>

## (2) May an ANC place funds in a money market account?

Generally yes, if it sets up that account at the same institution where the remainder of its funds are deposited. But it must make sure the account meets the criteria for a savings account.

We start by summarizing the relevant law. Section 16(b)(1) of the ANC Act (D.C. Official Code § 1-309.13(b)(1)) establishes where an ANC can place its funds:

Each ANC shall by resolution designate a commercial bank, savings and loan association, credit union, or any combination thereof, which is insured by the government of the United States pursuant to 12 U.S.C. § 1811 *et seq.* and which is located within the District of Columbia, as a depository of all funds received by the Commission.<sup>6</sup>

Section 16(b)(3) (D.C. Official Code § 1-309.13(b)(3)) then identifies three kinds of accounts an ANC can place funds into: a “checking account,” a “savings account,” and a “negotiable order of withdrawal account.”<sup>7</sup> It does not define what these accounts are, so we interpret them according to their ordinary meaning. *Schindler Elevator Corp. v. United States ex rel. Kirk*, 563 U.S. 401, 407 (2011). In ordinary usage:

- A “checking account” is a “bank account from which one can take money at any time and for which one is given checks to direct payment to others from the account.”<sup>8</sup>
- A “negotiable order of withdrawal” (“NOW”) account is an “interest-bearing savings account on which the holder may write checks,”<sup>9</sup> but under which “the depository

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<sup>2</sup> D.C. Official Code § 1-309.13(l)(1).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* § 1-309.13(l)(1).

<sup>5</sup> See Letter to Gottlieb Simon, July 7, 2017. This letter, and the others we cite, can be found at <https://oag.dc.gov/about-oag/laws-and-legal-opinions/legal-advice-ancs> (all websites last visited Aug. 31, 2022).

<sup>6</sup> See Letter to Comm’r Diskan, Sept. 30, 1997 (discussing this requirement).

<sup>7</sup> See *id.* (ANC must deposit its funds in an FDIC-insured checking account, savings account, or negotiable order of withdrawal account).

<sup>8</sup> *Checking account*, Black’s Law Dictionary (11th ed. 2019). A checking account is a type of “demand deposit” account. See, e.g., 2 Op. Corp. Counsel 124, 127 (1977); *S&N Equip. Co. v. Casa Grande Cotton Fin. Co.*, 97 F.3d 337, 344 (9th Cir. 1996).

<sup>9</sup> *NOW account*, Black’s Law Dictionary (11th ed. 2019).

institution reserves the right to require at least seven days' written notice prior to withdrawal or transfer of funds.”<sup>10</sup>

- A “savings account” is a “savings-bank depositor’s account usu[ally] bearing interest or containing conditions (such as advance notice) to the right of withdrawal.”<sup>11</sup>

The question, then, is which of these categories a money market account fits into. According to the federal Consumer Financial Protection Bureau (“CFPB”), a money market account – sometimes called a “money market deposit account” or “money market savings account” – is “a special type of account offered by banks and credit unions.”<sup>12</sup> “Like a regular savings account, a money market account at a bank is insured by the Federal Deposit Insurance Corporation (FDIC), while one at a credit union is insured by the National Credit Union Administration (NCUA).”<sup>13</sup> Money can be withdrawn from a money market account, including by check or debit card.<sup>14</sup> Withdrawals by “check, debit card, draft, or electronic transfer” can only be done 6 times per month.<sup>15</sup>

As the above discussion reveals, a money market account has some features that are common in checking accounts and NOW accounts (you can write checks from it) and some features that are common in savings accounts (there are restrictions on withdrawal). Accordingly, we turned to federal law, which governs the operation of bank accounts.<sup>16</sup> As the common label “money market savings account” suggests, federal law generally classifies money market accounts as savings accounts.<sup>17</sup> As a handbook issued by the Federal Reserve explains, money market accounts in the modern era “have the same characteristics as savings deposit accounts and are subject to the same transfer and withdrawal limits.”<sup>18</sup>

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<sup>10</sup> *Hirsch v. Bank of America*, 107 Cal. App. 4th 708, 720 (Cal. Ct. App. 2003) (citing 12 C.F.R. § 204.2(b)(3)(ii)). We note that the *Hirsch* decision departs from Black’s Law Dictionary, and arguably from the cited regulatory provisions, in referring to a NOW account as an “interest-bearing checking account.” *Hirsch*, 107 Cal. App. 4th at 720.

<sup>11</sup> *Savings account*, Black’s Law Dictionary (11<sup>th</sup> ed. 2019).

<sup>12</sup> Consumer Financial Protection Bureau, What is a money market account? (“CFPB Article”), <https://www.consumerfinance.gov/ask-cfpb/what-is-a-money-market-account-en-915/>

<sup>13</sup> *Id.* We note that, if the credit union operates under a charter from the District government, it may be insured “by NCUA” or by “comparable insurance approved by the Commissioner [of the Department of Insurance, Securities, and Banking].” Credit Union Act of 2020, § 612(a), effective May 6, 2020 (D.C. Law 23-86; D.C. Official Code § 26-506.12(a)).

<sup>14</sup> CFPB Article, *supra*.

<sup>15</sup> *Id.* The CFPB cautions that a money market account “is different from a money market mutual fund, or a money market fund.” *Id.* These types of funds are “offered by investment companies and others,” and because they are “not insured by the FDIC or the NCUA,” an investor can “possibly lose money.” *Id.*

<sup>16</sup> See Title 12, Part 204 of the Code of Federal Regulations.

<sup>17</sup> Bd. of Governors of the Federal Reserve Sys., Consumer Compliance Handbook: Regulation D, at 4, *available at* [https://www.federalreserve.gov/boarddocs/supmanual/cch/int\\_depos.pdf](https://www.federalreserve.gov/boarddocs/supmanual/cch/int_depos.pdf).

<sup>18</sup> *Id.*

We say “generally speaking” because money market accounts are not always treated as savings accounts. For a money market account to qualify as a “savings deposit” (an umbrella term that includes savings accounts),<sup>19</sup> three things must be true:

- (1) The depository institution must reserve the right to require that the depositor give at least 7 days’ notice of any planned withdrawal;<sup>20</sup>
- (2) The money deposited into the account must not be “payable on a specified date or at the expiration of a specified time after the date of deposit”,<sup>21</sup> and
- (3) The depositor must be able to “make transfers and withdrawals to another account (including a transaction account) of the depositor at the same institution or to a third party, regardless of the number of such transfers and withdrawals or the manner in which such transfers or withdrawals are made.”<sup>22</sup>

Depositing ANC funds into a money market account that does not qualify as a savings account may be significantly more problematic. It is not clear whether, under federal law, a money market account can ever be considered a type of checking or NOW account. We have not found any source indicating that they can. Moreover, the cases we have reviewed that refer to a money market account and a checking account consistently describe them as alternatives;<sup>23</sup> we have not found any in which a money market account is described as a type of checking account. Even if a money market account could qualify as a checking account (or a NOW account), an ANC that already has a checking or NOW account could not also deposit funds into a money market account, since section 16(b)(3) (D.C. Official Code § 1-309.13(b)(3)) allows an ANC to establish “no more than one checking or negotiable order of withdrawal account.”

We note that any money market account must abide by other requirements in section 16. For example, the ANC cannot acquire a debit card for that account, since the ANC is only allowed to have one debit card and that card must be connected to the ANC’s checking account.<sup>24</sup> Likewise, the ANC Act’s requirements for ANC check-writing,<sup>25</sup> including the ban on writing checks when an ANC has thrice failed to file required quarterly reports,<sup>26</sup> apply to any checks written from the money market account.

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<sup>19</sup> See 12 C.F.R. § 204.2(d)(1).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* § 204.2(d)(2).

<sup>23</sup> See, e.g., *Matter of Maggipinito*, 996 N.Y.S.2d 716, 718 (N.Y. App. Div. 2014); *Absolute Drug Detection Servs. v. Regions Bank*, 116 So. 3d 1162, 1164 (Ala. Civ. App. 2012); *Gibson v. Bank of Am., N.A.*, 680 S.E.2d 778, 780 (S.C. Ct. App. 2009); *Donovan v. Bank of Am.*, 574 F. Supp. 2d 192, 195 (D. Maine 2008); *In re Estate of Combee*, 601 So.2d 1165, 1168 (Fla. 1992). We have found no case that referenced both a money market account and a NOW account.

<sup>24</sup> D.C. Official Code § 1-309.13(b-1)(1).

<sup>25</sup> See *id.* § 1-309.13(f)(2).

<sup>26</sup> See *id.* § 1-309.13(j)(2).

**(3) May an ANC implement a grant to an organization by issuing the actual grant check to an individual?**

The scenario underlying your question is this. Suppose an ANC approves a grant to an organization, but the organization does not have its own bank account and thus cannot effectively deposit a check from the ANC. Your question is whether the ANC may issue the relevant grant check to an individual on the understanding that the individual will deposit the check and then transfer the amount of the check to the organization for purposes approved under the terms of the grant. It may not.

Such a grant would violate section 16(m) of the ANC Act (D.C. Official Code § 1-309.13(m)), which establishes detailed requirements that an ANC must meet before it grants funds to a third party. When an ANC issues a grant, what it is giving is a “financial assistance award making payment in cash or in kind for a specified purpose.”<sup>27</sup> If an ANC issues a grant check to a particular individual, it is granting ANC funds to that individual. That violates section 16(m)(1), which says an ANC may “approve grants only to organizations.” This type of third-party grant would also undercut the accountability mechanisms the Council established for ANC grants by severing the direct connection between the ANC and the organization. Section 16(m)(3) requires a grantee organization to report periodically on how the ANC funds granted to it have been spent. Under the scenario you describe, what the organization would receive are not ANC funds but funds from the individual’s own account, which means the organization could not accurately submit the periodic reports that section 16(m)(3) requires.

**(4) What obligation does an ANC have to ensure continuity of officers and Security Fund membership?**

An ANC must ensure continuity in the office of treasurer, and continuity of its Security Fund membership (or other bonding), in order to continue spending money.

A treasurer and a cash or surety bond are critical components of ANC financial operations. Every year, an ANC must “elect from among its members” a “Chairperson, Vice-Chairperson, Secretary and Treasurer,” as well as “any other officers that the Commission deems necessary.”<sup>28</sup> The treasurer is responsible for ensuring that the fiscal responsibilities described in section 16 of the ANC are fulfilled.<sup>29</sup> One critical facet of this is that the treasurer and Chairperson must “file with the Auditor[,] and maintain in force during their occupancy of their respective offices, a cash or surety bond in an amount and on a form satisfactory to the Auditor.”<sup>30</sup> One way to satisfy this surety-bond requirement is to participate in the Advisory Neighborhood Commission

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<sup>27</sup> GAO, A Glossary of Terms Used in the Federal Budget Process, GAO-05-734 SP, at 60 (2005), *available at* <https://www.gao.gov/assets/gao-05-734sp.pdf>. Since this source focuses on federal appropriations, it uses the adjective “federal” before the phrase “financial assistance award.”

<sup>28</sup> D.C. Official Code § 1-309.11(e)(1).

<sup>29</sup> *Id.* § 1-309.11(e)(1A)(D).

<sup>30</sup> *Id.* § 1-309.13(c).

Security Fund,<sup>31</sup> a fund established by statute “for the purpose of insuring Advisory Neighborhood Commissions against unauthorized expenditures or loss of funds.”<sup>32</sup>

So significant are these two components – a treasurer and a cash or surety bond – that “[n]o expenditure shall be made by a Commission during a vacancy in the office of treasurer or at any time when a current and accurate statement and bond or its equivalent are not on file with the Auditor.”<sup>33</sup> Based on this, we have advised in the past that, “if an expenditure was made and the bond or security fund requirements (in addition to all other requirements) were not met, such expenditure would have been improper.”<sup>34</sup> An ANC must therefore ensure that the office of treasurer is consistently filled, and that the cash or surety bond required by statute does not lapse, if it wishes to continue expending funds. If it relies on its participation in the ANC Security Fund to meet the bonding requirement, it must ensure that this participation does not lapse.

**(5) How are fiscal requirements like those discussed in this letter enforced?**

It depends on the requirement. One of the most significant enforcement mechanisms in the ANC Act is the withholding of ANC allotments. For example, if an ANC spends its funds on impermissible purposes, or spends funds during a time when such expenditures were prohibited, the Office of the Chief Financial Officer (“OCFO”) may withhold funds from future ANC allotments.<sup>35</sup> Indeed, certain violations of section 16(m)’s requirements may result in the automatic forfeiture of pending allotments, or even the seizure of the ANC’s checkbook and debit card.<sup>36</sup>

Sincerely,

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(AL-22-456)

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.* § 1-309.14(a).

<sup>33</sup> *Id.* § 1-309.13(c).

<sup>34</sup> Letter to Comm’r Kemp, Jan. 28, 2004, at 2.

<sup>35</sup> See Letter to Gottlieb Simon, Sept. 26, 2017, at 2 (describing OCFO’s authority over ANC finances, including ANC allotments).

<sup>36</sup> See, e.g., D.C. Official Code § 1-309.13(j)(2).