NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

LS/SRB:cch
3210
AUG 0 7 1985

Mr. Oscar Lewis
Manager, On-Line Department
World Computer Corporation
30400 Telegraph Road
Birmingham, MI 48010

Dear Mr. Lewis:

This is in response to your letter dated July 17, 1985, to Mr. Robert Fenner concerning loan delinquency calculations. You enclosed a copy of a letter dated June 20, 1985, from our Office of Programs which addressed this issue. You now seek further clarification as to the applicability of the recently promulgated FTC Credit Practices Rule (16 C.F.R. Part 444) to the matter discussed.

You refer to the effect of <u>late charges</u> on computing delinquency and the limitations imposed by the FTC Rule. The discussion in the June 20, 1985, letter from the Office of Programs did <u>not</u> relate to <u>late charges</u>. Instead, that letter discussed <u>additional interest</u> owed to a Federal credit union when a loan payment is not made on its due date. The preamble to the FTC Credit Practices Rule draws a distinction between "late or delinquency charges" and "deferral or extension charges." The former are described as charges "the creditor assesses against the borrower when a payment is not made by the due date. . . ." The latter are described as charges "made by the creditor for extending the period of time within which the debtor may make one or more payments." This charge is "to compensate the creditor for additional costs resulting from a failure on the part of the debtor to make payments in accord with the terms of the loan agreement." 49 Fed. Reg. 7770 (March 1, 1984). It is the "late or delinquency charge" which is subject to the pyramiding limitation. The FTC makes clear that such charges "simply permit collection of sums over and above principal and <u>interest due</u>; pyramiding constitutes a windfall to the creditor. . . ." (Emphasis added.) 49 Fed. Reg. 7772. Therefore, it is clear that the additional interest that may accrue because of a late payment is <u>not</u> the type of charge that would be subject to the late charge provision of the FTC Rule. This is, in our opinion, true even if the creditor uses the actuarial accounting method which results in payment of interest on past due interest.

As you know, interest due on FCU loans is calculated based upon the unpaid balance of the loan. If a "grace period" is not provided for in the loan agreement, a late loan payment will

FOIA Vol III Part B. 14,

result in additional interest being accrued. It was this additional interest, not a late charge (e.g., x% of the payment due) that was discussed in the June 20 letter.

In conclusion, those limitations and restrictions described in the FTC Credit Practices Rule with respect to late charges are not, in our opinion, relevant to the matter which is the subject of your discussion with this Agency. However, since our opinion is based on our interpretation of the FTC Rule, it might be advisable for you to contact the FTC to get their confirmation on the implications of the Rule on the matter here presented.

I hope that we have been able to clarify this matter for you.

Sincerely,

/s/

STEVEN R. BISKER
Assistant General Counsel