



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

November 18, 1985

OFFICE OF GENERAL COUNSEL

Edward B. Cohen, Esquire
Davis, Wright, Todd, Riese & Jones
1752 N Street, N.W.
Suite 800
Washington, DC 20036

Dear Mr. Cohen:

This is in response to your letter of August 23, 1985, concerning the ~~treatment of items forwarded for collection against a member's insured shares~~ in a federally insured credit union. Specifically, you inquire about the National Credit Union Share Insurance Fund ("NCUSIF") coverage in those instances where the credit union is placed into liquidation before the items are presented. You set up two scenarios in your letter, one involving a point-of-sale network and the other involving a shared automatic teller machine (ATM) network. Your questions relate to situations where a member has authorized the transfer of funds through the use of his debit card and has sufficient funds in his share (or share draft) account (which would be entitled to NCUSIF insurance) to cover the debit instruction at the time the federally insured institution is placed into liquidation.

Section 745.12 of the NCUA Rules and Regulations (12 C.F.R. §745.12) (enclosed) addresses your questions. Section 745.12 protects financial institutions in certain situations. Although the rule refers to a "credit union" acting as agent, that term has been interpreted by NCUA to include all parties acting in a similar capacity. If, after a financial institution gives credit on a transaction, the federally insured credit union against which the item is drawn is closed, the financial institution would be entitled to payment (from the NCUSIF) provided there are sufficient funds in the member's account which are entitled to NCUSIF insurance and the item is otherwise properly payable.

Your specific questions and our answers follow:

(1) In the point of sale context, if instead of utilizing the electronic funds network the customer pays by check, (share draft in the case of a credit union) would the NCUA honor the merchant's debit instruction (i.e., the check) against the customer's account?

FOIA file: Vol IV, C - Insurance Coverage
Vol II, E, 3 - Point-of-Sale ATM

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Yes, pursuant to Section 745.12, the collecting bank would be entitled to receive that portion of the share insurance due on the account represented by the paid share draft. The collecting bank would be required, immediately upon its learning of the liquidation, to submit a claim for the total amount of the drafts paid, with an itemization of amount due per each account along with the honored drafts themselves. Any delay in notifying the liquidating agent could result in an insurance payout to the individual accountholder of an amount that would include the amount represented by the draft.

(2) In the shared ATM context, if instead of utilizing the electronic funds network the customer cashes a check (draft) in a financial institution other than his own, would the NCUA honor the check drawn on the customer's account?

The answer to (1) above applies here as well. The collecting bank would be entitled to receive that portion of the share insurance due on the account represented by the paid draft.

(3) Are your responses to these questions any different if the customer utilizes the point of sale or shared ATM networks, as described above, rather than utilizing a check (draft)? If so, in what ways and why?

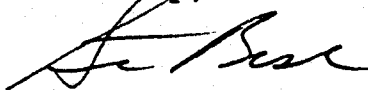
No. Section 745.12 of the regulation is not limited to payment on drafts. The rule is written in broad terms and refers to "items." It is our opinion that the "item" includes electronic debit transactions as well as share drafts. The answers to (1) and (2) apply to point of sale and ATM networks.

(4) Is your response to question number (3) affected by whether the customer's account is debited, provisionally debited, or not debited at all at the time the transaction (i.e., prior to the daily clearing process) (assume that for those institutions which simply provisionally debit or do not debit the customer's account at the time of the transaction, a final debit is entered at the time of the daily clearing)?

No. We have stated previously that a daily clearing process is sufficient.

We hope that we have been of assistance. If further questions arise please contact Hattie Ulan of this Office.

Sincerely,



STEVEN R. BISKER
Assistant General Counsel

insured credit union outside their respective jurisdictions shall be separately insured up to \$100,000; and

(6) For purposes of this section, if the same person is an official custodian of more than one public unit, he shall be separately insured with respect to the public funds held by him for each such unit, but he shall not be separately insured with respect to all public funds of the same public unit by virtue of holding different offices in such unit or by holding such funds for different purposes.

§745.11 Deposits evidenced by negotiable instruments.

If any insured deposit obligation of a credit union be evidenced by a negotiable certificate of deposit, negotiable draft, negotiable cashier's or officer's check, negotiable certified check, or negotiable traveler's check or letter of credit, the owner of such deposit obligation will be recognized for all purposes of claim for insured deposits to the same extent as if his name and interest were disclosed on the records of the credit union provided the instrument was in fact negotiated to such owner prior to the date of the closing of the credit union. Affirmative proof of such negotiation must be offered in all cases to substantiate the claim.

§745.12 Deposit obligations for payment of items forwarded for collection by credit union acting as agent.

Where a closed credit union has become obligated for the payment of items forwarded for collection by a credit union acting solely as agent, the owner of such items will be recognized for all purposes of claim for insured accounts to the same extent as if his name and interest were disclosed on the records of the credit union

when such claim for insured accounts, if otherwise payable, has been established by the execution and delivery of prescribed forms. Such credit union forwarding such items for the owners thereof will be recognized as agent for such owners for the purpose of making an assignment of the rights of such owners against the closed insured credit union to the Administrator and for the purpose of receiving payment on behalf of such owners.

§745.13 Notification of depositors/shareholders.

Each insured credit union is required to provide notice of these rules and regulations for Clarification and Definition of Insurance Coverage of Member Accounts, Part 745, not later than 180 days after the effective date of these regulations or 90 days after being insured, whichever is later, to the owners of each account which had a balance in excess of \$5,000 on any date selected by the credit union between October 1, 1970, and June 30, 1971. Credit unions insured after the effective date of this regulation may select the end of any month of the preceding 6 months before being insured to determine balances in excess of \$5,000. Such notice shall consist of mailing to such owners at their last known address as shown on the records of the insured credit union, a question and answer brochure on insurance of deposits. A small initial supply of such brochures will be prepared and furnished without cost by the National Credit Union Administration. Additional copies may be purchased from the U.S. Government Printing Office, Superintendent of Documents, Washington, D.C. 20402, or your usual source of credit union supplies. Such information shall also be made available to the public at each teller's station or window where deposits or shares are normally received and at new account or share stations of an insured credit union. Additional explanatory materials may also be sent to depositors at the option of the insured credit union.

For purposes of this section the terms "teller station" and "window" do not include automated teller machines or point of sale terminals.