



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

11-18-85

OFFICE OF GENERAL COUNSEL

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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. II, E, 3 - Point of Sale, ATM Insurance Coverage

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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