



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

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OFFICE OF GENERAL COUNSEL

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| Post-It® Fax Note | 7671 | Date | 2-5-83 | # of pages | 4 |
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Mark O. Farber, M. D.
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Indiana University School of Medicine
Richard L. Roudebush Medical Center
1481 West 10th Street
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Dear Dr. Farber:

This responds to your letter of September 24, 1985, to Mr. Robert Fenner of this Office concerning nonmembers cashing member share drafts at your Federal credit union (FCU). We regret the delay in answering your letter. Specifically, you ask three questions:

- 1) What is the legal obligation of [a Federal] credit union to cash [share] drafts drawn on member accounts and presented by nonmembers?
- 2) Can [FCU's] legally charge a fee for cashing such drafts?
- 3) Can [FCU's] limit the amount disbursed contingent upon verbal verification by the member?

In response to question one, pursuant to Articles 3 and 4 of the Uniform Commercial Code ("UCC") (adopted in whole or in part by your State), an FCU, as "payor bank," may be required to accept and pay (or dishonor) the member's share draft even though it is presented (cashed) by a nonmember. The laws of your State would need to be reviewed with respect to this matter.

In response to question two, pursuant to Section 701.35 of the NCUA Rules and Regulations (12 C.F.R. §701.35) and consistent with the share draft account agreement with the member, an FCU may establish a policy whereby a member is charged a fee for cashing his share draft at the FCU. However, such a fee policy applied to a nonmember who personally presents a member share draft to the FCU (as compared to the share draft coming back to

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the FCU through the Federal Reserve clearing house system) wherein the fee is a precondition before payment is made (before the share draft will be honored), may run afoul of the UCC and subject an FCU to liability for wrongful dishonor. We suggest that private counsel be contacted for an opinion regarding your State's UCC and the implications of a policy such as the one discussed here.

In answer to your third question, an FCU may limit any share draft disbursement or withdrawal pursuant to Section 701.35 of the NCUA Rules and Regulations. Section 701.35 allows each FCU Board to determine the fees, charges and other policies related to the opening, maintaining, or closing of a share, share draft, or share certificate account; provided, however, the FCU does not amend or modify its contract with a member unless it previously reserved the right to do so.

I hope we have been of assistance. If you desire further clarification, please contact this Office.

Sincerely,

STEVEN R. BISKER
Assistant General Counsel

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