



NATIONAL CREDIT UNION ADMINISTRATION  
Washington, D.C. 20456

Office of General Counsel

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4630  
5/6/86

Walter E. Moxham, Jr., Esq.  
Miskell & Moxham  
P.O. Box 464  
Lockport, NY 14094

Dear Mr. Moxham:

This is in response to your letter of February 25, 1986, concerning the membership status of a Federal credit union (FCU) member when he/she has only a Vacation Club or Christmas Club account with the FCU and all funds in that account are paid in full to the member pursuant to the account agreement.

Section 109 of the FCU Act (12 U.S.C. §1759) sets forth FCU membership requirements. It states, in part, that persons and organizations "shall each subscribe to at least one share of its [the FCU's] stock." Article II, Section 4 of the standard FCU Bylaws states as follows: "A member who withdraws all of his shareholdings thereby ceases to be a member. The board may by resolution require persons readmitted to membership to pay another entrance fee."

It has been our longstanding position that when a member voluntarily withdraws all of his/her shareholdings, thereby reducing his/her account to zero, Article II, Section 4 applies and as the bylaw states, the member ceases to be a member. The member cannot increase his/her balance thereafter but must reapply for membership. Our position is the same when a member has only a Christmas Club or Vacation Club account. If all funds are voluntarily withdrawn, the member ceases to be a member. One way to avoid this result is to have the member maintain a regular share account containing at least one share in addition to their Christmas or Vacation Club account, or amend the Club Agreement to provide that one share remains in the account.

Lastly, you ask for an opinion letter regarding service charges on inactive accounts. FCU's may charge service fees pursuant to Section 701.35(c) of the NCUA Regulations (12 C.F.R. 701.35(c)). A copy of the regulation and the preamble thereto as published in the Federal Register is enclosed for your review. We should point out that if an account is involuntarily reduced to zero through the assessment of maintenance or inactivity fees,

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Article III, Section 3 of the Bylaws applies. Under Article III, Section 3, the member has two years to bring his share balance up to the \$5.00 par value (assuming the FCU has not increased par value). This is in contrast to Article II, Section 4 which applies only when shares are voluntarily withdrawn by the member (as is the case with Christmas and Vacation Club accounts described in your letter).

I hope that we have been of assistance.

Sincerely,



STEVEN R. BISKER  
Assistant General Counsel

HMU:cch

Enclosure

# RULES & REGULATIONS

January 30, 1985

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 C.F.R. PART 701

#### Share, Share Draft, and Share Certificate Accounts

**AGENCY:** National Credit Union Administration

**ACTION:** Final rule

**SUMMARY:** The NCUA Board adopts an amendment to the regulations concerning disclosures, fees, and time for crediting of deposited funds relating to share, share draft, and share certificate accounts. Recognizing the dual chartering system for credit unions, the Board, by way of this final rule, is formally stating its position on its jurisdiction to regulate Federal credit unions ("FCU's"). The rule interprets and implements the provisions in Section 107(6) of the Federal Credit Union Act ("Act") (12 U.S.C. §1757(6)) authorizing FCU's to receive payments on shares, share certificates, and share drafts, "subject to such terms, rates, and conditions as may be established by the board of directors [of an FCU], within the limitations prescribed by the Board."

**EFFECTIVE DATE:** February 1, 1985.

**ADDRESS:** National Credit Union Administration, 1776 G Street, N.W., Washington, D.C. 20456

**FOR FURTHER INFORMATION CONTACT:** Robert Fenner, Director, Department of Legal Services, or Steven Bisker, Assistant General Counsel, at the above address. Telephone (202) 357-1030.

**SUPPLEMENTARY INFORMATION:**

Background

On November 27, 1984, (49 Fed. Reg. 46552) the NCUA Board published a proposal to add two new paragraphs, (c) and (d), to Section 701.35 of the NCUA Rules and Regulations. The Board requested public comment on the proposed rule.

As discussed in the preamble to the proposed rule, the Board considered an amendment to the rule necessary in order to clarify its intent in previously deregulating Section 701.35, because of recent actions by several states attempting to regulate Federal credit unions. This final rule provides that policies with respect to disclosures, fees or charges, time for crediting of deposited funds, and other matters affecting the opening, maintaining or closing of a share, share draft or share certificate account, shall be determined by an FCU's member-elected board of directors, free from regulatory restrictions. This action will ensure the continued efficacy of the NCUA Board's previous deregulation of FCU share account activity and furthers the Board's longstanding support of a viable dual chartering system.

The Board received a total of 25 comments - 16 from FCU's, 1 from a state chartered credit union, 5 from credit union leagues and trade associations, 2 from state regulatory authorities, and 1 from a law firm. All of the commenters, except those from the state regulatory authorities and the state credit union, supported the proposed amendment.

### Analysis of Comments

#### Crediting of deposited funds

The majority of the commenters stated that, although they currently have policies whereby checks (drafts) deposited into their members' accounts are given credit immediately (treated as if they were cash deposits), they still support the Board's position that such policies should be decided by an FCU's board of directors and not dictated by statute or regulation. Further, the commenters stressed that, in any event, they should not be subject to state laws since that would be inconsistent with the dual chartering system and would result in regulatory conflicts.

Another point stressed by the commenters was the democratic form of ownership of FCU's. They believed that if the policies of an FCU were unacceptable to its members, the officials of the FCU would be replaced at the next annual election. Therefore, the system provides its own mechanism of enforcement and protection for the members. As one commenter stated: ". . . as member owned and controlled financial institutions, [FCU's] cannot afford to alienate their 'customers.' If we did, the elected officials and management would be job hunting."

One commenter opposed to the rule expressed the opinion that FCU's should be required to follow state laws mandating "check hold" policies and specified disclosures. It is this commenter's belief that only through compliance with state laws governing all financial institutions in the state will the consumer be treated equitably.

The Board is equally concerned with the fair treatment of FCU members. However, for the reasons stated above, the Board does not agree that regulations are necessary. Moreover, a review of NCUA's consumer complaint handling process indicates only a very limited number of complaints concerning share account disclosures, funds availability and other share account policies. In sum, share account deregulation is working well in FCU's. To allow the states to reregulate would infringe on NCUA's jurisdiction in this area and would be inconsistent with the dual chartering system.

### Fees

A number of commenters stated that they do not charge fees to their members. However, they agreed that the matter of determining what fees, if any, to charge members should be a matter to be decided by an FCU's board rather than dictated by regulation.

One commenter, a state regulatory agency, was particularly concerned about the impact of this regulation on the state's right to escheat abandoned accounts. The commenter was concerned with the possibility that service charges assessed against inactive (dormant) accounts might absorb accounts or portions thereof. The Board previously addressed this issue in its Interpretive Ruling and Policy Statement 82-4, Examination For Compliance with State Unclaimed Property Laws. 47 Fed. Reg. 53325 (November 26, 1982). The Board stated that: "To the extent that such charges are either authorized or not prohibited by the Federal Credit Union Act, NCUA Rules and Regulations or Board policy, and are provided for in the contract with the member, it is the Board's position that state law prohibiting such charges would be preempted."

The Board is confident that FCU's will continue to serve their members well, and does not believe that the issue of fees is one that requires regulatory control at this time.

### Broader Rule

A few commenters expressed their support for the rule but stated that it does not go far enough. One commenter suggested that the Board incorporate into the rule a restatement of the statutory authority granted FCU's in Section 107(6) of the Act to receive payments on shares, share certificates and share drafts subject to such terms, rates, and conditions as established by an FCU's board of directors. Inasmuch as the rule does not replace or alter the authority in the Act, the Board does not believe it is necessary to restate the authority provided by the Act.

Another commenter stated that the laws of its state impose sales taxes on charges pertaining to FCU member accounts and

services and require FCU's to collect such taxes from their members and remit them to the local government. The sales tax applies to such charges as: check/draft printing charges, account maintenance fees, NSF charges, etc. The commenter suggested that the Board address this issue in the rule. The issue of taxation is addressed in a separate section of the Act. Section 122 of the Act (12 U.S.C. §1768) specifies the liability of FCU's for paying taxes and the role of FCU's in collecting taxes. The issue raised by the commenter is more appropriately dealt with within the ambit of Section 122, rather than in this rule which relies upon Section 107(6) as its principal statutory basis.

#### Effective date of the Rule

This final rule will be effective upon publication. The rule provides greater authority to FCU's and relieves restrictions. Further, since several states now purport to regulate FCU's in this area, it is necessary to have the rule become effective immediately in order to eliminate uncertainty.

#### Regulatory Procedures Regulatory Flexibility

The NCUA Board hereby certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions because the rule will increase their management flexibility and reduce their paperwork burdens. A Regulatory Flexibility Analysis is, therefore, not required.

#### Financial Regulation Simplification Act

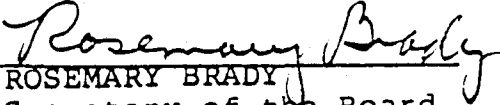
Since this final rule reduces burdens and delay would cause unnecessary harm, the NCUA Board finds that full and separate consideration of all the requirements of the Financial Regulation Simplification Act is impracticable. The NCUA Board has, however, considered most of these policies, as set forth in the preamble above.

#### List of Subjects in 12 C.F.R. Part 701

Credit unions, Share drafts, Share certificates, Funds availability, Fees, Disclosures.

Authority: 12 U.S.C. §§1757(6), 1766(a), and 1789(a)(11).

By the National Credit Union Administration Board on the  
24th day of January, 1985.

  
ROSEMARY BRADY  
Secretary of the Board

Part 701-[AMENDED]

Accordingly, the NCUA rules and regulations are amended as  
follows:

1. Section 701.35 is amended by adding two new  
paragraphs, (c) and (d), to read as follows:

(c) A Federal credit union is empowered to determine the  
types of disclosures, fees or charges, time for crediting of  
deposited funds, and all other matters, not inconsistent with  
this Section, affecting the opening, maintaining or closing of a  
share, share draft or share certificate account. To the extent  
that state law attempts to regulate such activity, it is not  
applicable. Nothing herein is intended, however, to allow a  
Federal credit union to amend or modify its contract with a  
member unilaterally unless it has previously reserved the right  
to do so.

(d) For purposes of this Section, "state law" means the  
constitution, statutes, regulations, and judicial decisions of  
any state, the District of Columbia, the several territories and  
possessions of the United States, and the Commonwealth of Puerto  
Rico.