



NATIONAL CREDIT UNION ADMINISTRATION  
Washington, D.C. 20456

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Office of General Counsel

GC/AMU:sg  
3700

Ms. Nancy B. Usera  
President  
Alaska Credit Union League  
Suite 450  
4000 Credit Union Drive  
Anchorage, Alaska 99503-6647

Dear Ms. Usera:

This is in response to your letter of May 28, 1986, concerning the involvement by Federal credit unions (FCU's) doing business in Alaska in a consumer reporting service offered by ChexSystems, Inc.

You presented three questions in your letter. As discussed in your telephone conversation with Hattie Ulan of this Office, you no longer need an answer to your third question. Your first two questions and our responses follow.

1. "Is this [ChexSystem] a permissible activity under the alternate Federal Credit Union Bylaw concerning membership in consumer reporting agencies (Article XIX, Section 2(b)) of the Standard Bylaw Amendment authorized August 8, 1980?"

The bylaw to which you refer states as follows:

"The officers, directors, members of committees and employees of this credit union shall hold in confidence all transactions of this credit union with its members and all information respecting their personal affairs, except to the extent deemed necessary by the board in connection with:

- a. The making of loans and extending lines of credit.
- b. The collection of loans.
- c. The guarantee of member share drafts by third parties. "(Emphasis Added.)"

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The program offered by ChexSystems does not fit within the specific exceptions to confidentiality noted above. ChexSystems collects and disseminates information on customers' abuse of account privileges (e.g., creating overdrafts and frequent return check procedures). The information to be disseminated does not involve loans, lines of credit, collection of loans, or guarantee of member share drafts as provided in the bylaw provision. Hence, the above bylaw provision would not authorize participation in the ChexSystems program.

As discussed in your telephone conversation with Ms. Ulan, you may wish to submit a proposed nonstandard bylaw amendment to the Regional Office for approval in order to allow for participation in the ChexSystems program.

2. "In large measure the benefit of this program lies in the breadth of its data base. Does the federal preemption of state laws relating to share, share draft and share certificate accounts, specified in Section 701.35(c) of the NCUA Rules and Regulations, pertain to providing ChexSystems with the names of current or past members who have abused their account relationships with the credit union? While new members may sign a disclosure authorization at the time of application for membership, it would be a difficult task to secure such permission from existing members."

Section 701.35(c) of the NCUA Rules and Regulations (12 C.F.R. §701.35(c)) states as follows:

"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."

It is our opinion that Section 701.35(c) would preempt state law that would otherwise properly apply. Section 701.35(c) provides the regulatory authority for an FCU to provide ChexSystems with names of current and past members that have abused their relationship with the credit union ("disclosures . . . and all

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other matters . . . pertaining to the opening, maintaining or closing of a share . . . account."). However, as noted in the regulation, an FCU cannot "amend or modify its contract with a member unilaterally unless it has previously reserved the right to do so."

As noted above under question 1, the standard bylaws do not provide the necessary exception to confidentiality that FCU participation in the ChexSystems would require. Inasmuch as the bylaws are in the nature of a contract between the FCU and its members, an FCU would need to amend its bylaws (seek approval of a nonstandard amendment as noted above) before it may proceed with the ChexSystems.

The above discussion assumes that, pursuant to its account agreement with its members, the FCU has reserved the right to amend its bylaws even though such an amendment would have the effect of a unilateral change to the account agreement. FCU's should review the terms of their membership' (and/or account) agreements to ensure that authority to change the bylaws, and thereby affect the terms of the agreement, is contained in the agreement. We should point out that most account (membership) agreements contain such a provision.

I hope that we have been of assistance. Please let me know if further questions arise.

Sincerely,



STEVEN R. BISKER  
Assistant General Counsel

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cc: RD, Region VI