



NATIONAL CREDIT UNION ADMINISTRATION  
Washington, D.C. 20456

October 1, 1987

GC/JT:sg  
3600

Office of General Counsel

J.A. McDonald, Esq.  
Vice President and General Counsel  
California Credit Union League  
2350 South Garey Avenue  
Pomona, California 91766

Dear Mr. McDonald:

This is in response to your letter of August 10, 1987, which asked this Office to review your written response to a question you received from a credit union. The question pertained to the use of ATM cards by individuals that are not Federal credit union (FCU) members, but that are FCU joint accountholders.

As you are aware, it has been the long-standing position of this Office that an FCU member who has been approved for a credit card may request the FCU to issue additional credit cards for use by nonmembers. It is our view that the nonmember is acting as the member's agent in using the member's card and, therefore, the transaction is not an illegal extension of credit to a nonmember. As you noted in your response, the member's account number appears on the face of all cards issued.

In your response to the credit union, you analogized FCU issuance of credit cards to nonmembers to FCU issuance of ATM cards to nonmember joint accountholders. We believe that this analogy is appropriate, with one exception.

Section 109 of the FCU Act, 12 U.S.C. §1759, provides in part that:

Shares may be issued in joint tenancy with right of survivorship with any person designated by the credit union member, but no joint tenant shall be permitted to vote, obtain loans, or hold office, unless he is within the field of membership and is a qualified member.

Under the above-cited section, a joint accountholder need not be an FCU member. As an incidental power to this section, an FCU

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may issue an ATM card to a nonmember joint accountholder without authorization from the member joint accountholder provided that the ATM card only permits the user to make deposits into and withdrawals from the joint account. To the extent the ATM card provides other services, e.g., access to a line of credit granted to the member joint accountholder, the FCU must have the member's authorization prior to issuing the card. In that situation, the nonmember would be viewed as an agent of the member.

You stated in your response that the authorized nonmember user of an ATM card (or credit card) must agree to be liable for any and all transactions made on the account, including becoming liable as a cosigner on any underlying line of credit associated with the account or ATM cards. While this may be an advisable provision for FCU's to include in the credit card and ATM card agreements, it is not required by NCUA. This provision also raises the issue of nonmember participation in member loans.

Section 107(5) of the FCU Act, 12 U.S.C. §1757(5), authorizes FCU's to make loans to their members. Some nonmember participation in member loans is permissible. The issue is at what point does nonmember involvement in the loans so substantially distort the direct lending relationship between the FCU and the nonmember so as to render the transaction an impermissible loan in violation of Section 107(5) of the FCU Act. When the nonmember comaker becomes indistinguishable from the loan recipient, the nonmember comaker is an impermissible participant and the transaction would violate Section 107(5) of the Act. Some of the elements that need to be analyzed to determine the legality of the loan or line of credit include: the loan size (or amount of the credit limit on the line) vis-a-vis the ability of the member to repay, whether the nonmember pledged collateral, which party has the primary liability for repayment, and who has the use and benefit of the proceeds. Where possible, it is advisable to have the comaker become an FCU member.

We trust this has been of assistance.

Sincerely,



STEVEN R. BISKER  
Assistant General Counsel

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