

## INDEX OF NCUA PRIVATE OPINION LETTERS

- | <u>Date</u> | <u>Topic</u>  |
|-------------|---|
| 12-29-88    | <b>Louisiana's Restrictions on Out-of-State CU Branching</b><br><br>A Louisiana state statute providing that "no credit union domiciled outside of the state of Louisiana may operate a branch office w/in the state" is NOT effective against Federally chartered CUs. It attempts to limit longstanding Congressional policy and is, therefore, invalid under the Supremacy Clause of the U.S. Constitution; it also discriminates against out-of-state CUs and thereby violates the Commerce Clause of the U.S. Constitution as well.  |
| 12-29-88    | <b>Federal Agricultural Mortgage Corporation</b><br><br>FCUs may NOT invest in the common stock of the Federal Agricultural Mortgage Corp. ("Farmer Mac"); neither § 107(7)(E) nor the Agricultural Credit Act of 1987, which established Farmer Mac, specifically authorized FCUs to purchase stock in Farmer Mac. FCUs may, however, invest in securities guaranteed by Farmer Mac.   |
| 12-29-88    | <b>NCUA Letter to Credit Unions on Mortgage-Related Securities</b><br><br>This letter discusses NCUA Letter to Credit Unions No. 96 regarding FCU investment in privately-issued, mortgage-related securities; specifically, the letter addresses the requirement that an FCU obtain an independent legal opinion stating that a security is a mortgage-related security under § 3(a)(41) of the Securities Exchange Act.   |
| 12-29-88    | <b>Permissibility of Issuing VISA/Mastercard Cash Advances to Nonmember Cardholders</b><br><br>Under certain types of correspondent ATM or credit card service arrangements between financial institutions, it is necessary for FCUs to make cash advances as part of their participation agreements. In such situations, the FIs act as agents for one another in making cash advances and settle accounts w/ each other on a preagreed regular basis. A cash advance to a nonmember is not viewed as a loan by an FCU since the FCU is acting on behalf of another FI who is obligated to immediately repay and settle the account w/ the FCU for the advance.<br><br>Along the same rationale, an FCU participating in the VISA U.S.A., Inc. credit card program can accept and cash VISA Travelers Cheques for non-FCU members as required by VISA's Operating Regulations; this is viewed as an incidental power necessary to offer FCU members credit cards. [see § 107(16) of the FCU Act] |
| 12-29-88    | <b>Section 226.9(c)(1) of Regulation Z - Change in Terms</b>  |

An FCU which offers its members an open-ended credit program in which the FCU reserves the right to change the interest rate may or may not be subject to the 15-day notice requirement contained in § 226.9(c)(1) of Regulation Z. If the specific change in interest is disclosed initially under a variable-rate plan, § 226.9(c)(1) does NOT apply. If, however, the creditor merely reserves the right to increase the interest rate, the 15-day notice DOES apply.

**12-29-88 Modified Balloon Loan Program**

It is legally permissible for an FCU to participate in a "modified balloon loan program w/ a third party guarantor on the loan, even if the guarantor is a non-FCU member." The program, however, raises significant safety and soundness concerns beyond those normally present in conventional new auto loan financing arrangements; NCUA would expect the FCU to resolve these concerns before participating. [see Section 107(5) of the FCU Act-12 U.S.C. § 1757(5) and Section 701.21 of NCUA's Rules & Regs-12 C.F.R. § 701.21]

**12-29-88 Termination of Membership**

Whether or not an FCU may terminate the membership of members who are no longer w/in the FCU's field of membership depends on the bylaws adopted by the particular FCU. [see Art. III, Section 5 of the Standard FCU Bylaws]

**12-29-88 NCUA Letter No. 96 [Mortgage-Related Securities]**

See previous letter dated 12-29-88.

**12-29-88 NCUA's Request for Comments on Section 701.22**

**12-27-88 Citizenship Requirements of FCU Members**

As long as a person is in the field of membership of an FCU, the person may be considered for election into FCU membership by the FCU board of directors or appointed membership officers; there are NO citizenship requirements. [see Section 109 of the FCU Act-12 U.S.C. § 1759]

**12-27-88 Number of Board Members Required to Adopt Bylaw Amendments**

In order to adopt bylaw amendments, the affirmative vote of a two-thirds majority of the total authorized board members is necessary, NOT just a two-thirds majority of a board meeting quorum.

**12-23-88 Filing of IRS Form 1099**

Credit unions should contact the Internal Revenue Service, NOT the National Credit Union Administration, for opinions regarding CU obligations to file IRS Form 1099.

**12-22-88 Dividend Rates Varying Based on Location of Members**

According to NCUA, residence, in and of itself, does NOT provide a basis for establishing a type of share account that can be paid a different dividend rate, neither would race, national origin or religion.

**12-22-88 NCUA Regulation 701.33**

The term "expenses" as used in Section 701.33(c)(1) of NCUA's Regulations [12 C.F.R. § 701.33(c)(1)] regarding indemnification of officials is intended in its broadest sense and DOES include damage awards.

**12-9-88 Permissibility of Investment**

For the reasons stated in NCUA Letter to Credit Unions No. 92, NCUA is no longer issuing opinions regarding the permissibility of particular FCU investments.

**12-8-88 FCU Payment of Expenses for Spouses Attending Annual or Semiannual Conferences with Board Members**

The issue of whether an FCU may pay the reasonable expenses of spouses attending annual or semiannual conferences w/ elected FCU board members is currently under review by the Office of General Counsel.

**11-30-88 Share Insurance Coverage**

This letter concerns membership and NCUSIF insurance coverage of corporate and partnership accounts in an FCU, escrow accounts, joint accounts with non-members, membership admission procedures, insurance of "public unit" accounts, and the FCU's duty of investigation and recordkeeping.

**11-30-88 Share Insurance for Various FCU Accounts**

Each member on a joint account is not separately insured; joint accounts, like individual accounts, are only insured to \$100,000 maximum. [see 12 C.F.R. § 745.8];

As a general rule, merely establishing separate irrevocable trust accounts, identical except for the trustee, will not increase insurance coverage. [see 12 C.F.R. § 745.9-1(b)];

Generally, where the funds deposited are the property of a single organization, even when there are multiple accounts, the accounts are aggregated and insured to the \$100,000 limit; the fundamental issue in such cases is who is the owner of the funds. [see examples, 12 C.F.R. § 745, App. Section D];

In the standard custodial account, each principal's fractional interest in the account would be added to any other individual accounts that person may have in the FCU and insured to \$100,000 in the aggregate. [see 12 C.F.R. § 745, App. Section G, last

paragraph and Ex. 3(a)] This is the same principle that is applied in the case of employee retirement accounts.

**11-30-88 Investment Task Force**

NCUA believes that, rather than the Agency, it would be more appropriate for credit unions, through their national and state trade associations, to establish a special task force on CU investments; NCUA welcomes further input.

**11-29-88 Reimbursement for Wages Lost While Attending Conferences**

Due to the credit union community's overwhelming opposition to allowing FCUs to reimburse officials for lost pay or leave, the Board has established an absolute rule against it; no waiver is possible. [see 12 U.S.C. § 1761, 12 C.F.R. § 701.33(b)]

**11-29-88 Credit Union Leasing Agreement**

NCUA requirements regarding credit union leasing agreements may be found in Interpretive Ruling and Policy Statement 83-3 and in other letters issued by the Agency

**11-23-88 Bankruptcy Policy**

An FCU can limit services to those that have caused a loss to the FCU due to bankruptcy. An FCU may not, however, withhold the minimum statutory rights of membership -- maintaining a share account and voting at annual or special meetings -- without a formal expulsion. An FCU may also be limited by contractual agreements and Federal/state law, including the Bankruptcy Act.

**11-23-88 NCUA Support for the U.S. Customs Zero Tolerance Program**

**11-23-88 Financial Institutions' Obligations Under the Dept. of Transportation's Public Charter Regulations**

Federally insured credit unions are not subject to the DOT's public charter regulations; since federally insured CUs are insured by NCUSIF rather than by FDIC or FSLIC, they do not qualify as financial institutions where depository (ie. escrow) accounts can be maintained pursuant to DOT's regulations. [see 14 C.F.R. § 380.34(b)(2)(vi)]

**11-15-88 Permissibility of FCU Investment in Israeli Debt Refinancing Backed by U.S. Obligations**

Say what?

**11-15-88 IRS Form 990**

NCUA has received notification from the Internal Revenue Service that FCUs do not have to file an annual information return (IRS Form 990) or make such a return available for inspection. Accordingly, NCUA will no longer file the consolidated Form 990. [see attached NCUA Letter to Credit Unions No. 100]

11-15-88 IRS Form 990

See above

11-15-88 Information Notice on the Government Securities Act

This letter reports NCUA's comments on a proposed notice from the Comptroller of the Currency to be made available to all financial institutions regarding their responsibilities under the regulations implementing the Government Securities Act.

The proposed notice discusses the provisions of the GSA regulations that apply to: (1) financial institutions that engage in repurchase transactions with customers while retaining custody or control of the subject gov't securities, and (2) depository institutions that hold gov't securities for customers. The notice does not discuss additional provisions of the GSA regs that apply to FIs that are required to give notice of acting as gov't securities broker/dealers.

11-15-88 Withholding Services to Members

The question asked is whether an FCU may withhold service from a member who: (1) has defaulted on a loan and been sued, (2) paid the amount of the judgment, including the amount for attorney's fees set by state statute, but (3) still caused the FCU a loss because the contract between the FCU and its attorney required additional payments for attorney's fees over the statutorily set amount.

Under NCUA's Rules and Regulations, an FCU may withhold services from a member who has caused a loss to the FCU. The determinative issue is whether the FCU would violate the state statute by accepting the payment of attorney's fees over the state law limit or by withholding services to such members. The resolution turns on a definitive interpretation of the state statute limiting attorney fee payments.

11-15-88 IRS Form 990

See above

11-15-88 Request for Legal Opinion on Propriety of Reimbursement

A teacher, who is also an FCU director, may not be reimbursed for payments he made in hiring a substitute to teach his classes while attending a Board of Directors meeting. The NCUA Board has determined that an FCU may not reimburse an FCU official for pay or leave lost while attending meetings of the Board of Directors or committees. The reimbursement in this case is, in effect, compensation for lost pay. [see 12 C.F.R. § 701.33]

11-14-88 Permissibility of Investment

NCUA will no longer respond to requests from brokers/dealers,

mutual funds, Federal credit unions (FCUs) and others for a determination as to the legality of particular mutual funds (Funds) as FCU investments. [see NCUA Letter to Credit Unions No. 92]

**11-10-88 IRS Form 990**

See letter dated November 15, 1988

**11-10-88 Release of Member Real Estate Records**

An FCU may release records relating to members' real estate loans with the FCU to other credit unions or to appraisers for the purpose of creating a computerized data base to be used in performing real estate appraisals; the data base would keep members' names and specific addresses strictly confidential.

Since the release of such information would be in connection with the making of loans or extending lines of credit, there would be no violation of Article XIX, Section 2 of the FCU Bylaws. This opinion is limited to a review of the FCU Act, NCUA's Rules and Regulations, and the FCU Bylaws; state law should also be consulted.

**11-7-88 Permissibility of an FCU Referring to Share Draft Accounts as "Checking Accounts"**

An FCU may not refer to share drafts as "checks" if prohibited by state law. FCUs should be aware that a share draft may not be the full equivalent of a "check" under applicable state law, and this legal distinction will be given effect where state law has not been preempted. [see 12 C.F.R. § 740.2 and 12 C.F.R. § 701.35(c)]

**11-7-88 Auto Leasing Program**

A CUSO, which services an FCU offering an auto leasing program, may: (1) mark up the cost of an automobile, thereby making a profit on the automobile as its income, and then sell the lease to the credit union, and (2) take trade-ins on leased automobiles. [see 12 C.F.R. § 701.27(d)(5) and IRPS 83-3]

**11-7-88 Outside Counsel Serving on FCU Board of Directors**

In general, any member of an FCU may be elected to the FCU's board of directors. There are limitations, however, concerning any FCU business dealings between the FCU and the board member, immediate family of the board member, or any corporate entity associated with the FCU board member. The letter then cites a number of "conflict of interest" provisions found in NCUA's Rules and Regulations. [see Art. XIX, Section 4 of the Standard FCU Bylaws; 12 C.F.R. § 701.21]

**11-7-88 Pledging FCU Assets**

A member FCU, through § 107(9) of the FCU Act [12 U.S.C. § 1757(9)], may pledge all assets to a corporate FCU if

appropriate.

Section 701.23 of NCUA's Rules and Regulations [12 C.F.R. § 701.23], which limits an FCU's pledging of various loans or groups of loans, does not implicitly prohibit an FCU from pledging other assets.

**11-7-88 Automobile Leasing Program**

IRPS 83-3 sets forth the requirements for FCUs to engage in leasing personal property to their members. In general, an FCU "may not assume burdens or subject itself to risks greater than those ordinarily incident to a secured loan." [48 Fed. Reg. 52568] IRPS 83-3 provides that an FCU may engage in leasing personal property to its members if the lease is: direct or indirect, open-end or closed-end, a net lease, full pay-out, no usury ceiling applies, and the FCU carries contingent liability insurance with an endorsement for leasing.

**11-7-88 Attendance Fees for Title Closer**

**11-7-88 Insurance of U.S. Army NAFI Accounts Deposited in Federally Insured Credit Unions**

In order to ensure that the nonappropriated fund instrumentality ("NAFI") funds invested in federally-insured credit unions are insured to the maximum extent possible, NCUA suggests that the investor make certain that the CU records clearly show the investor deposited the funds as custodian for various NAFIs.

The custodian should identify the interest of each owner on whose behalf the funds are deposited either on the signature card or other appropriate credit union records. If this is not feasible, it is crucial that the custodial relationship be clearly established.

**11-4-88 North Carolina Escheat Statute**

The letter expresses NCUA's position on the following issues related to escheatment of FCU member's funds to state authorities: (1) State's right to examine FCUs for compliance with State escheat laws, (2) the extent State law controls the contract between an FCU and the member, (3) the point at which FCU service charges must yield to State laws governing escheatable funds, (4) FCU waiver of service charges for members, (5) State enforcement of escheat law violations by FCUs, and (6) termination of membership.

**11-4-88 Pledging Credit Union Assets to Secure a Line of Credit**

FCU law does not prohibit a corporate FCU from requiring a member FCU to pledge all its assets in order to secure a relatively small line of credit; it is a matter each FCU must negotiate with the corporate FCU or any other creditor. [see letter dated 11-7-88, § 107 FCU Act ( 12 U.S.C. § 1757), and 12 C.F.R. § 701.23(d)]

**11-4-88 Preemption of Massachusetts Statute**

With respect to Mass. General Laws affecting credit card issuers and holders, the Agency believes: (1) the portion of the statute regulating annual fees is preempted by NCUA's Rules and Regulations, (2) the portion requiring notice of annual fees is not preempted by FCU law, but may be by other Federal law, and (3) the portion imposing reporting requirements on the credit card issuer is not preempted. [see Mass. Gen. Laws Ann., Chapter 140, § 114C (West 1988); § 701.21(b) of NCUA's Rules and Regulations (12 C.F.R. § 701.21(b))]

**10-25-88 Disclosure of Bankruptcy or Loan Loss Information on FCU Board Nominees**

Any director, officer, or employee of an FCU may oppose the nomination of an individual who has caused a loss to the FCU through bankruptcy or failure to repay a loan w/o violating Art. XIX, Section 2 of the FCU Bylaws. By permitting his or her name to be placed into nomination, that person represents to the FCU members a proficiency in handling financial matters, and implicitly waives the right to confidentiality of impeaching information held by the FCU officials; disclosure of such information, however, may be subject to other limitations outside FCU law (ie: bankruptcy court order, state libel and slander laws, etc.)

**10-25-88 Permissibility of Employing FCU Directors to Negotiate Labor Contracts of FCU Employees**

An FCU may compensate individuals, who are also directors of the FCU, for their services in negotiating the FCU's employment contract with its employees' labor union. In this instance, the Agency is persuaded that the directors are being compensated for additional services outside the scope of those typically performed by FCU directors; the compensation, therefore, is permissible.

**10-21-88 Permissibility of FCU Providing Third Party Vendor with Office Space in FCU**

An FCU offering its members a group purchasing plan pursuant to Part 721 of NCUA's Rules and Regulations (12 C.F.R. § 721) may permit the vendor offering the service to operate from the FCU. To prevent the FCU from becoming liable for acts performed by the third party, however, NCUA urges FCUs to maintain a clear legal separation from the vendor. FCUs should take particular care to assure that the advertising for the activity preserves this distinction.

**10-21-88 Permissibility of Eliminating FCU Services to Members in Bankruptcy**

See letter dated 11-23-88

**10-21-88 Credit Union Involvement in the Travel Industry**



FCUs can make travel services available to their members in two ways -- through a credit union service organization (CUSO) pursuant to Section 701.27 of the NCUA Rules and Regulations [12 C.F.R. § 701.27] or through the use of a third party vendor pursuant to Part 721 of NCUA's Rules and Regs [12 C.F.R. § 721]. This is only with respect to federally chartered CUs; state CU regulatory agencies should be contacted regarding state chartered CU participation in the travel industry.

**10-17-88 Power to Provide Check-Cashing and Other Services for Nonmembers**

Taken in isolation, the limited empowerment of FCU Act § 107(12) excludes providing financial services to nonmembers. Under certain circumstances, however, it seems that such services may be provided in accordance with the "incidental" powers clause found in § 107(16) of the Act; this clause is designed to afford FCUs flexibility within the bounds of safety and soundness.

The opinion then lists the factors NCUA considers significant in such cases; they are: (1) the nature of the service proposed to be performed, (2) the relationship of the proposed service to an expressed power, (3) the benefit the service would give to the members, (4) the need for the FCU to provide the proposed service in order to exercise one of the express powers, (5) the percentage of FCU resources likely to be expended in carrying out the activity, (6) the potential legal liability the FCU may reasonably be exposed to from a wrongful act or omission arising from performing the proposed service, and (7) the availability of safer alternatives for providing the services.

**10-17-88 Conflict of Interest**

There is no violation of the conflict of interest provisions of either the FCU Act or NCUA's Rules and Regs if a trustee of, and participant in, a pension fund plan which has funds in the FCU is also an FCU board member and votes on setting dividend rates on the pension plan's shares. Article XIX, Section 4 of the FCU Bylaws, however, require such a director to withdraw from any deliberation or determination in which the person has a direct or indirect interest. Outside counsel should advise whether such an arrangement is permissible under state law and Federal regulations governing pension plans.

**10-13-88 Credit Union Leasing**

Compilation of letters concerning credit union leasing and balloon loans; copy of IRPS 83-3 (FCU Leasing of Personal Property to Members) attached.

**10-11-88 Proposed Rule; 53 Fed. Reg. § 29990**

NCUA response to proposed changes in policy and procedures followed by the Federal Register in the publication of agency regulations [see 53 Fed. Reg. 29990]

**10-4-88    Revocable or Irrevocable Trust Accounts and Establishing Membership**

Whether a person establishing a trust account in a state-chartered credit union obtains full membership rights is controlled by state laws governing the credit union.

In determining Federal insurance coverage of trust accounts: if the account is a revocable trust, NCUA looks to the owner, or principal, of the funds; if the trust is an irrevocable trust, NCUA looks to the membership of either the settlor or beneficiary, whichever provides greater insurance coverage. [see 12 C.F.R. § 745.4(a), 12 C.F.R. § 745.3(a)(2), and 12 C.F.R. § 745.9-1]

**9-30-88    Permissibility of FCU Investment in Bank Deposit Notes**

An FCU may invest in bank deposit notes issued: (1) by national banks; (2) by state banks, trust companies, and mutual savings banks operating in accordance with the laws of the state in which the FCU does business; and (3) by banks or institutions the accounts of which are insured by the Federal Deposit Insurance Corporation. [see Section 107(8) of the FCU Act (12 U.S.C. § 1757(8))]

**9-29-88    Compensation of Board Members**

The following compensation scheme comports with the FCU Act and NCUA Rules and Regs: Two members on the FCU board are compensated by the FCU. One is serving as financial officer and as manager of the FCU; he is compensated for service on the board. The other is also a member of the board and serves as the assistant general manager; he is compensated for the latter position. [see Section 111 of the FCU Act-12 U.S.C. § 1761(c); Section 112 of the FCU Act-12 U.S.C. § 1761(a); and Section 701.33(b) of NCUA Rules & Regs-12 C.F.R. § 701.33(b)]

**9-26-88    Credit Union Leasing Agreement**

IRPS 83-3 sets forth the requirements that enable FCUs to engage in leasing personal property to their members. IRPS 83-3 does not require that an FCU acquire legal title to the leased property; an FCU would obtain sufficient equitable interest in a leased vehicle to satisfy the "ownership" requirement of IRPS 83-3 if the leasing company: (1) retained legal ownership of the leased vehicles, (2) assigned all of its rights in the leases to the FCU, (3) named the FCU as the sole lienholder on the vehicles, and (d) gave the FCU an unconditional and irrevocable power of attorney to, at will, assign title to itself or to any other person it may choose.

48-01

**9-23-88    Oregon Noninsured Share**

It may be possible under the FCU Act to structure share accounts in such a way that members are allowed to maintain one uninsured share in the credit union. Since the Act, NCUA Rules and Regs,

and NCUA forms were not set up with this possibility in mind, however, the task is likely to be extremely complex.

**9-16-88      Loans to Housing Cooperatives**

An FCU may generally extend a loan to a member secured by apartments w/ over 4 units so long as the term does not exceed 12 years. Such a loan may exceed a 12 year term if at least partly insured or guaranteed by "the Federal gov't, a state gov't, or any agency of either." Unless such a loan is fully insured or guaranteed as to principal and interest, it will be considered a member business loan, and the uninsured portion must be considered in computing the 20% limitation.

REMEMBER: All loans made to nonnatural person members, such as housing cooperatives, are limited to the shares that person has in the FCU, unless the FCU has adopted an appropriate bylaw amendment, and the loan is also made to a majority of the business' or association's interest holders. [see Section 107(5) of the FCU Act-12 U.S.C. § 1757(5); Section 701.21(c)(4) of NCUA Rules & Regs-12 C.F.R. § 701.21(c)(4); Section 107(5)(A)(iii) of the FCU Act-12 U.S.C. § 107(5)(A)(iii); Section 701.21(e) of NCUA Rules & Regs-12 C.F.R. § 701.21(e); Section 701.21(h) of NCUA Rules & Regs-12 C.F.R. § 701.21(h); Art. XII, Section 1 of the FCU Bylaws]

**9-16-88      Ct. Decision on Full Faith and Credit Backing for Federal Deposit Insurer**

Copy of the U.S. District Ct. opinion which, relying on the full faith and credit provision in CEBA, ruled that the National Credit Union Share Insurance Fund (NCUSIF) is backed by the full faith and credit of the United States.

**9-7-88      Secured Lines of Credit - File No. 88-121**

An FCU may extend secured as well as unsecured lines of credit to its members. An FCU should take care in extending lines of credit to assure compliance w/ the FCU Act, NCUA Rules & Regs, other Federal law, and state law where applicable. As a general rule, state law will control unless it would limit or affect: rates of interest and amounts of finance charges; terms of repayment; or conditions related to the amount or purpose of the line of credit, the type or amount of security or the relation of the amount of security to the amount of the line of credit; the eligible borrowers; or the imposition or enforcement of liens on the share of borrowers or accommodation parties. [see Section 701.21(c)(4) of NCUA's Rules & Regs-12 C.F.R. § 701.21(c)(4) and Section 107(5) of the FCU Act-12 U.S.C. § 1757(5)]

**8-30-88      Cashing of VISA Travelers Cheques**

See letter dated 12-29-88.

**8-22-88      Expulsion of Members**

An FCU board may not expel members from an institution for "nonparticipation" under Section 118(b) of the FCU Act [12 U.S.C. § 1764(b)] simply because they have caused the CU a loss. A member can be expelled for causing a loss ONLY by a member vote under Section 118(a); the FCU board may, however, refuse to extend credit and take other reasonable actions against such persons.

**8-15-88 CUSO Issuance of CMOs-Conflict of Interest for FCU Officials and Employees; FCU Investment in CMOs**

Section 701.27(d)(6) of NCUA's Rules & Regs [12 C.F.R. § 701.27(d)(6)] prohibits FCU officials, senior management employees, and their immediate family members from making any investment in a collateralized mortgage obligation ("CMO") issued by their FCU's credit union service organization ("CUSO"). This prohibition also extends to all other FCU employees directly involved in dealings w/ the CUSO unless the FCU board determines that the employees' position does not present a conflict-of-interest.

An FCU may invest in CMOs qualifying as mortgage-related securities under Section 3(a)(41) of the Securities Exchange Act of 1934 [15 U.S.C. § 78c(a)(41)].

**8-15-88 NCUA's Annual Report Regarding Unfair or Deceptive Practices**

The Competitive Equality Banking Act of 1987 ("CEBA") amended the Federal Trade Commission Act by transferring from the FTC to NCUA the authority to declare a particular FCU practice an unfair or deceptive practice. [see 15 U.S.C. §§ 45(a)(2), 57a(f)]

**8-12-88 Surety Bond Coverage for FCUs**

Proposed rule change which would provide some alternative to the requirement that an FCU maintain surety bond coverage w/ a "company approved by the NCUA."

**8-12-88 CUSO Participation in Security Brokerage Services**

Pursuant to Section 701.27 of the NCUA Rules & Regs [12 C.F.R. § 701.27], a CUSO may enter into an operating agreement with a third party to provide securities-related financial services to its members.

**8-12-88 Emergency Check Cashing Services**

An FCU may participate in a nationwide emergency check-cashing program which enables FCU members to cash checks at certain FIs around the country and requires that the FCU cash checks for persons affiliated w/ these other institutions, even if they're not FCU members, so long as such an arrangement is necessary in order to provide this service to its members.

**8-8-88 Deferred Compensation, IRA, and 403B Accounts**

Assorted materials on deferred compensation, pension, and/or retirement accounts - Part 724, IRPS 85-1, and previous related NCUA opinion letters attached.

**8-8-88      Securities Lending**

Letter reflects a cursory glance at NCUA regulation of short-term securities transactions such as: (1) repurchase and reverse repurchase transactions, and (2) bonds borrowed/securities lending transactions. Opinion is actually an NCUA review of the security lending arrangement between an individual FCU and Drexel Burnham Lambert.

**8-4-88      Proper Accounting Treatment for Auto Leases**

Compilation of IRPS 83-3 and various NCUA private opinion letters regarding both the legal and accounting treatment of CU auto leases.

**8-4-88      Automobile Leasing Programs**

Request for NCUA review of an individual FCU's auto leasing program to make sure it complies with IRPS 83-3.

**7-28-88      Insurance of Accounts**

"Joint accounts are insured separately from individual accounts up to a maximum of \$100,000 provided that each of the co-owners has personally signed an account signature card and has a right of withdrawal on the same basis as the other co-owners." [Section 745.8(b) of NCUA Rules & Regs-12 C.F.R. § 745.8(b)]

BUT " all joint accounts owned by the same combination of individuals shall be added together and insured up to \$100,000 in the aggregate." [Section 745.8(d) NCUA Rules & Regs-12 C.F.R. § 745.8(d)]

**7-28-88      Insurance Coverage of Testamentary Accounts**

Section 745.4 of NCUA Rules & Regs (12 C.F.R. § 745.4) concerns the insurance of testamentary accounts. This letter clarifies that section and gives examples of different scenarios (multiple grantors, multiple beneficiaries, etc.)

**7-26-88      MEMO on Filing of Consolidated Form 990 for FCU**

For the past several years, NCUA has filed a consolidated IRS Form 990 (Return of Organizations Exempt From Income Tax) for all federal credit unions; the FCUs have not been filing their own 990 forms. In 1987, Congress amended 26 U.S.C. §6104(e) so that all federal credit unions are now required to retain a copy of the most recently filed 990 Form and to make it available for inspection during normal business hours. NCUA has written to the IRS asking whether NCUA should continue filing a consolidated Form 990 or whether FCUs should begin filing individual 990s. The IRS has not yet responded. [For NCUA response see letter dated

11-15-88]

7-26-88 **IRS Form 990**

See above.

7-26-88 **Filing of Consolidated Form 990 for FCUs**

See above.

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See above.

7-26-88 **Consolidated Form 990**

See above.

7-22-88 **Protection of FCUs under 18 U.S.C. §2113**

In 1959, 18 U.S.C. § 2113(g) was amended to include FCUs in the definition of "savings and loan association," thereby making it a Federal offense to rob or otherwise commit an incidental crime against an FCU. Title 18, Section 2113 was further amended in 1970 to broaden the Act's coverage to encompass state-chartered, federally-insured CUs; this change may be found in 18 U.S.C. § 2113(h).

7-20-88 **Share Insurance for Irrevocable Trust Accounts**

Generally, in the case of irrevocable trusts, NCUA looks to the interest of the beneficiary to determine insurance coverage. Where the beneficiary is not a member, however, he is not entitled to insurance, and the settlor must be a member. The account is then insured to the settlor up to the maximum of \$100,000. This insurance will be separate from the insurance provided on the settlor's other types of accounts.

7-19-88 **Subventive Auto Financing**

The Federal Credit Union Act and NCUA's Rules and Regulations do not prohibit FCUs from participating in "subventive" auto financing (manufacturer or dealer subsidized), even up to 100% of the finance charge. An FCU should be careful, however, to review its particular plan in light of the finance charge ceilings in §701.21(7) of the NCUA Rules and Regulations, the Holder-in-Due-Course Rule [16 C.F.R. 433.2(b)], and the disclosure requirements of Regulation Z.

7-18-88 **Use of the Term "Check" When Referring to Share Drafts**

It is not mandatory for a Federal Credit Union to use the word "draft" when describing a share draft program. NCUA Rules and Regulations neither prohibit nor condone the use of the term "check" when referencing share drafts.

- 7-7-88 **Freedom of Information Act Appeal**
- 6-27-88 **Community Development Revolving Loan Program for CUs**  
Copy of the NCUA draft notice to eliminate the Community Development Revolving Loan Program for CUs from coverage under Executive Order 12372.
- 6-21-88 **Certification of Share Accounts**  
An FCU may, as an incidental power to its ability to offer share draft accounts, certify share drafts.
- 6-21-88 **NCUA Opinion Letter on Security Brokerage Services**
- 6-13-88 **FCU Payroll Processing for Members' Employers**  
Amendments to the FCU Act require an act of Congress w/ the President's approval.
- 6-9-88 **Securities Held in Nominee Name**  
The FCU Act does not prohibit or restrict a trust company from the common practice of holding investments in its name (as nominee) for an FCU. Such an arrangement, however, can present safety and soundness problems if proper steps are not taken to assure that the nominee is trustworthy; it is also crucial that the FCU acquire and maintain legal title to the investment. [see Sections 107(7), (8), and (15) of the FCU Act-12 U.S.C. § 1757(7), (8), and (15); Part 703 of NCUA Rules & Regs-12 C.F.R. § 703.1-.4]
- 6-9-88 **FCU Certification of Share Drafts**  
See letter dated 6-21-88.
- 6-8-88 **Compensation of FCU Officials for Conference Attendance**  
An FCU may not reimburse board members for salary lost while attending CU conferences or similar events. NCUA is currently requesting comments on changing its regs. [see Section 111 of the FCU Act-12 U.S.C. § 1761; Sections 701.33(a) and (b) of NCUA Rules & Regs-12 C.F.R. § 701.33(a) and (b)]
- 5-25-88 **FCU Fund Raising Programs**  
An FCU may hold a raffle to buy a computer and sell tickets to the general public; it has not, however, been empowered to hold a raffle for general fund-raising purposes since such a raffle is not incidental to any express power. [see Section 107(4) of the FCU Act-12 U.S.C. § 1757(4); Section 107(16) of the FCU Act-12 U.S.C. § 1757(16)] An FCU may also conduct a raffle as a marketing tool to increase membership under its Section 109 (12 U.S.C. § 1759) rights. Also, an FCU considering a raffle should realize that the field is heavily regulated at the Federal and state level (ie: 18 U.S.C. §§ 1302, 1304).

**5-25-88 FCU Issuance of Corporate Credit Cards**

An FCU may extend a line of credit to a corporation member of the FCU for credit card access by the corporation's employees to pay business expenses provided: (1) as required by Art. XII, Section 1 of the Standard Bylaws, the line of credit on the credit card does not exceed the corporations shares in the FCU, and (2) the terms of the line of credit comply w/ Section 701.21(h) of NCUA's Rules & Regs [12 C.F.R. 701.21(h)] pertaining to member business loans, particularly § 701.21(h)(2)(i) which limits the line of credit for any single borrower to 20% of the reserves. Since these restrictions may significantly limit an FCU's flexibility in offering this service, the FCU may request a nonstandard bylaw amendment and an exemption from the 20% limitation; it should contact the appropriate NCUA regional office.

**5-24-88 Payroll Processing**

An FCU does NOT have the authority to perform automated payroll processing for an employer of its members; an FCU may, however, be able to provide such services through a credit union service organization ("CUSO").

**5-23-88 NCUA Regulations; FCUs & Corporate Share Draft Accts.**

An FCU w/ a community-based charter may NOT purchase nonmember loans. If a person is w/in the FCU's field of membership, he may become a member, and the FCU may then, pursuant to Section 701.23 of NCUA's Rules & Regs, purchase any loans the person may have outstanding. Miscellaneous material regarding a federally-insured CU's power to provide share draft accounts to corporations is also attached.

**5-6-88 Insurance Coverage of Church-Related Groups**

NCUA reviews three particular Church accounts and discusses the extent of their insurance coverage.

**5-2-88 Proposed Amendment to Part 745**

NCUA considers a request to amend Part 745 of NCUA's Rules & Regs [12 C.F.R. Part 745], but finds the amendment unnecessary.

**5-2-88 FCU Purchase of a Participation Interest in a Pool of Mortgage Loans**

An FCU's authority to purchase a participation interest in a loan, and to originate a loan in which participation interests will be sold, is subject to Section 701.22 of NCUA's Rules & Regs (12 C.F.R. § 701.22). This section only applies to the purchase of a participation interest in a loan; it does not authorize the purchase of a security collateralized by loans. An FCU may, however, purchase a participation interest in a pool of loans if the interest qualifies as a mortgage-related security as defined in Section 3(a)(41) of the Securities Exchange Act of 1934 (15



U.S.C. § 78c(a)(41)). [see see Section 107(15)(b) of the FCU Act-12 U.S.C. § 1757(15)(B)]

**4-27-88 Merrill Lynch Blueprint SM Program**

An FCU may form a credit union service organization ("CUSO") for the purpose of making the "Blueprint SM Program," marketed by Merrill Lynch, available to its members. The Program, as described, is permissible under Section 701.27(d)(5) [12 C.F.R. § 701.27(d)(5)] This is NOT an endorsement.

**4-21-88 Executive Order 12612**

Miscellaneous materials regarding Executive Order 12612.

**4-21-88 Investments and Investment Practices of FCUs**

General rules governing FCU investment in mutual funds.

**4-21-88 Member Motions Presented to FCU Board**

If an FCU member makes a motion for the members to take an action which has been entrusted to them (ie: a motion to expel a member), that motion must be recognized and, if seconded, voted on by the membership. If the motion is approved by the members, it must be given the effect required. The existing board members bear no liability for carrying out that command.

If an FCU member makes a motion for the members to vote to require the board to take an action entrusted solely to the board (ie: to pay a specific dividend), the motion need not be recognized; if recognized, seconded, and approved by the members, the board may consider it as a request to take the action voted on.

If an FCU member makes a motion for the members to vote to request the board to take an action entrusted to the board (ie: to pay dividends other than quarterly), the motion must generally be recognized. Even if approved, however, the request does not diminish the board's statutory responsibility for managing the FCU. [see Section 111(a) of the FCU Act-12 U.S.C. § 1761]

**4-21-88 Permissibility of CUSO Investment**

A credit union service organization will lose its status as a CUSO if it invests a portion of its funds in a company that will hold, as an investment, stock in a life insurance underwriter. [see Section 107(7)(I) of the FCU Act-12 U.S.C. § 1757(7)(I)]

**4-15-88 Insurance Coverage of Testamentary Accounts**

Under Section 745.4 of NCUA's Rules & Regs (12 C.F.R. § 745.4), a separately insured testamentary account can only be established for the benefit of the fund owner's "spouse, child, or grandchild." A child cannot establish a separately insured testamentary account for the benefit of a parent; the child

could, however, accomplish much the same through an irrevocable trust account under Section 745.9-1.

**4-5-88 FCU Offering Mutual Funds to Members**

Short opinion about limited partnership CUSOs; Section 701.27(d)(2)(ii) NCUA's Rules & Regs [12 C.F.R. § 701.27(d)(2)(ii)] allows for this type of CUSO structure.

**3-31-88 Treatment of "Cashier's Check" Issued by FCU**

**3-31-88 Payment of Dividends on Share Draft Accounts**

Under Section 205(f) of the FCU Act [12 U.S.C. § 1785(f)], a federally-insured CU can offer share draft accounts to: (1) members, regardless of whether they are natural persons or for-profit or not-for-profit corporations, partnerships, or associations; (2) nonmember individuals who can legally establish an account at the FICU; (3) nonmember organizations "operated primarily for religious, philanthropic, charitable, educational, or other similar purposes and which are not operated for profit," who also can legally establish an account at the FICU; (4) agents for public funds. Section 205(f) allows FICUs to pay dividends on all these share draft accounts.

**3-31-88 Compensation of FCU Officials**

See letter dated 6-8-88.

**3-31-88 Effect of FCU Member Bankruptcy**

An FCU may not prohibit a member who has caused the FCU a loss by declaring bankruptcy from serving on its board; the credit union's nominating committee, however, may consider the member's bankruptcy loss in the selection of candidates for membership vote, and the loss can be made known to members prior to the vote.

**3-30-88 FCU Receiving Commission or Fees for Assisting  
Outside Brokerage Firm**

An FCU may establish a relationship w/ a securities brokerage firm in order to offer the firm's services to the FCU's members. An FCU may recover the costs of offering outside vendor products, including initiation fees, by any mechanism - flat fee or commission - so long as the amount is justified using standard accounting procedures. The parties may wish simplify this process by establishing a CUSO to provide brokerage services to the members.

**3-14-88 Insurance Coverage of Joint Accounts**

All funds of an individual deposited in his or her own name or through an agent are added together and insured up to a total of \$100,000, no matter how many different accounts he or she establishes. [12 C.F.R. § 745.3(a)]

Joint accounts are insured separately from individual, trust and other kinds of accounts. "All joint accounts owned by the same combination of individuals" -- regardless of the order in which the names appear -- "shall be added together and insured up to \$100,000 in the aggregate." [12 C.F.R. § 745.8(d)]

If a depositor establishes a testamentary account w/ spouse, child or grandchild as beneficiary, the beneficiaries are insured up to \$100,000 for all accounts established by the depositor for that person, separate and apart from any individual account the beneficiary may have in the CU. If the depositor establishes a testamentary account with some other beneficiary, the funds so deposited are added to the amount in his or her individual accounts and insured up to \$100,000. [12 C.F.R. § 745.4]

**3-14-88 Participation Loans**

FCUs can participate in loans made by other credit unions after the loans have been made as long as such a plan is in compliance w/ Section 701.22 of NCUA's Rules & Regs [12 C.F.R. § 701.22] (copy attached). For example, the participation agreement must be executed before disbursement of the loans. If loans have already been disbursed and no agreement has been entered into, the loan participation regulation will not be met.

**3-14-88 NCUA Compliance with Executive Order 12612**

**3-14-88 CUSO Issuance of CMOs**

An FCU may invest in and make loans to a credit union service organizations ("CUSO") that issue collateralized mortgage obligations ("CMOs") primarily for credit unions, limited of course to its two percent loan and investment limit.

**3-14-88 Bonds Borrowed/Securities Lending Program**

Pesents an overview of NCUA's regulation of short-term securities transactions including repurchase and reverse repurchase transactions. Although not directly dealt with in NCUA's Rules & Regs, bonds borrowed/securities lending transactions are also discussed as two-step reverse repo/repo arrangement.

**3-9-88 NCUA Proposal Regarding FOM**

NCUA staff is currently reviewing its entire FOM/chartering policy. FCUs may presently add select employee groups to their FOM if the group is w/in 25 miles of the FCU's home or branch office, certain other criteria are met and the expansion is approved by the appropriate NCUA Regional Office. The only change suggested by the Request for Comments was to eliminate the NCUA approval requirement.

**3-9-88 Certification of FCU Share Drafts**

See letter dated 6-21-88.

**3-8-88 Andrews FCU as VISA Intermediary for NARC FCU**

Andrews FCU may act as a VISA card issuing intermediary for NARC FCU through Section 701.22 of NCUA's Rules & Regs. [12 C.F.R. § 701.22]

**3-7-88 Fair Debt Collection Practices Act**

The Fair Debt Collection Practices Act prohibits the use of abusive, deceptive, and unfair debt collection practices by persons engaged in the business of collecting debts. In its original form, the Act exempted "any attorney collecting a debt as an attorney on behalf of and in the name of a client" from its provisions. [P.L. 95-109; 15 U.S.C. § 1692a(6)(F) (1977)]. Public Law 99-361 amended Section 803(6) of the Act to delete the provision which exempted attorneys from the definition of "debt collector." [15 U.S.C. § 1692a(6) (Supp. 1987)].

Administrative enforcement of the Act is governed by Section 1692j; the Federal Trade Commission enforces compliance with the Act. The FTC is, therefore, the proper Federal agency to resolve questions as to the applicability of the Act to private attorneys collecting debts on behalf of FCUs.

**3-2-88 Credit Cards to Nonmembers**

An FCU may NOT offer its VISA credit card program to members of smaller CUs that are unable to offer credit card services to their members; FCUs cannot make extensions of credit to nonmembers. One alternative might be for the FCU to enter into a loan participation agreement w/ the smaller CUs; this would enable members of those credit unions to have access to a credit card program.

**2-29-88 Home Equity Brochure**

NCUA reviews a draft brochure concerning home equity and gives its permission to state that it was prepared in consultation with the Agency.

**2-25-88 Credit Union Lease Financing**

Addresses the question whether an FCU can fund leases and collect lease payments for an independent leasing company via an assignment to the FCU of the member/lease company's leasing agreement. [see IRPS 83-3 and letter dated 9-26-88]

**2-16-88 Balloon Mortgage Loans**

An FCU may offer a variable rate mortgage loan due and payable in full in twelve years or less but with an amortization period of greater than twelve years (commonly called a "balloon loan"), regardless of the type of property securing the loan. This assumes the FCU does not grant such loans in a manner which

threatens its financial health and which might cause NCUA to take action under its safety and soundness powers. [see Section 107(5) of the FCU Act-12 U.S.C. § 1757(5); Section 701.21(c)(4) of NCUA's Rules & Regs-12 C.F.R. § 701.21(c)(4); and 12 U.S.C. § 1786]

**2-16-88 FCU Sale of Insurance**

An FCU may receive income in excess of costs from the sale of insurance if the sale is "directly related" to : (1) an extension of credit by the FCU, "credit-related;" or (2) the opening or maintenance of a share, share draft or share certificate account, "share-related". [see Section 721.1 of NCUA's Rules & Regs-12 C.F.R. § 721.1] The letter also discusses the types of "insurance" covered under Part 721.

**2-16-88 Securities Brokerage Networking with CUs**

An FCU may establish a relationship w/ a securities brokerage firm in order to offer the firm's services to the FCU members; the broker may even maintain a service center on the FCU premises. [see Sections 721.1 and 721.2 of NCUA's Rules & Regs-12 C.F.R. §§ 721.1, 721.2; letters dated 8-12-88 and 10-21-88]

**2-12-88 Cosigner Notice and the extent to which Wisconsin FCUs are exempt from compliance w/ NCUA's Credit Practices Rule under Section 706.5(b) [12 C.F.R. § 706.5(b)]**

Consumer credit transactions under \$25,000 that are subject to the Wisconsin Consumer Act and its implementing regulations are exempt from compliance w/ NCUA's Credit Practices Rule.

Though compliance w/ the relevant provisions of the Wisconsin Consumer Act for consumer credit transactions of \$25,000 and over would probably constitute compliance w/ NCUA's rule, the State of Wisconsin has not requested this additional exemption from the FTC or NCUA.

**2-9-88 CLF Agreement**

**2-9-88 Share Certificate as Collateral for a Short Term Loan**

NCUA is an independent agency of the U.S. Government (12 U.S.C. § 1751a). NCUA protects insured accounts in the event of failure due to insolvency or bankruptcy up to \$100,000 per account (12 U.S.C. § 1787). All FCUs are insured by NCUA (12 U.S.C. § 1781). In the event of failure, NCUA comes in, verifies deposits, et cetera, and "as soon as possible" - usually w/in three weeks - issues a check to the insured account holder (12 U.S.C. § 1787(c)(1)).

**2-9-88 NCUA Providing Legal Opinions to the Public**

See letter dated 12-9-88.

**2-5-88 Permissible Interest Rates on Variable Rate Loans Extended Before**

May 15, 1987

See letter dated 2-1-88.

**2-2-88 FCU Liability**

The issue is whether the National Association of Broadcast Employees and Technicians ("NABET"), a labor union, can be held jointly liable for the acts of the NABET Federal Credit Union?

An FCU is chartered by NCUA pursuant to the FCU Act (12 U.S.C. § 1751 et seq.). It becomes a "body corporate" subject to the limitations, vested w/ the powers, and charged w/ the liability conferred and imposed under that Act (12 U.S.C. § 1754). It is a legal entity, separate and distinct from its namesake or any organization whose members or employees constitute the membership of the FCU. Therefore, NABET is in no way legally responsible for the actions of the NABET Federal Credit Union, and vice versa.

**2-1-88 Maximum Interest Rate on Variable Rate Loans**

An FCU may charge a contractual rate of interest of up to 21 percent on a variable-rate, closed-end loan made on or before May 14, 1987, if the contractual rate of interest was 18 percent or less on that date. [see Section 701.21 (c)(7) of NCUA's Rules & Regs-12 C.F.R. § 701.21(c)(7)]

**2-1-88 Michigan's Interest on Lawyer Trust Account Program**

A revocable trust ("agent") account can be established at an FCU in connection w/ Michigan's IOLTA Program only if all the principals (presumably the clients) can establish member accounts there. A suitable irrevocable trust account can be established only if all the settlors (again, presumably the clients), or the beneficiary Michigan Bar Foundation, can establish a member account there. [see Disciplinary Rule 9-102 of the Michigan Canons of Professional Ethics, 12 U.S.C. § 1781(a), 12 U.S.C. § 1752(5), 12 C.F.R. § 745.3(2), 12 U.S.C. § 1785(f)]

**1-15-88 Trust Account Insurance Coverage Requirements**

The signature card for an irrevocable trust account need only be executed by the trustee indicating his or her fiduciary capacity. No other name, including the name of the settlor, is required to be on the card itself. The credit union's records, however, must unmistakably identify the settlor. [see Part 745, Appendix G of NCUA's Rules & Regs-12 C.F.R. § 745.9-1]

**1-11-88 IRS 1099-INT Information Returns**

NCUA review of a particular corporation's method of reporting.

**1-7-88 Effect on FOM of Conversion from State to Federally Chartered Credit Union**

The question is: when a state-chartered CU converts to a federally-chartered CU w/ a more narrowly defined FOM, do members who qualified for membership under the state charter but who no longer qualify after the switch continue to qualify for membership under the "once a member, always a member" bylaw? NCUA postponed responding until it completes its review of several FOM/chartering issues.

**1-7-88 Home Equity Lines of Credit**

FCU law does not generally impose collateral, maturity, or amortization requirements on lines of credit. Such restrictions, however, could be imposed on a case-by-case basis as safety and soundness considerations warrant. An FCU may also impose conditions on lines of credit granted to its members through the line of credit agreement.

**1-7-88 Bethpage FCU/Preemption of N.Y. State Banking Law §590**

**1-5-88 Requirement of CPA Audit Reports for CUSOs**

California CU League proposed an amendment to Section 701.27 which would permit FCUs to receive non-CPA audit reports from CUSOs; the proposal will be considered by the Board.