



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

GC/HU:sg
3600

May 23, 1988

Office of General Counsel

Mr. David C. Logue
Vice President & Cashier
American National Bank of Brainerd
P.O. Box 706
Brainerd, Minn. 56401

Re: NCUA Regulations (Your March 29, 1988, Letter)

Dear Mr. Logue:

In response to your request for copies of relevant regulations, enclosed are:

1. Two letters on a federally-insured credit union's power to provide share draft accounts to corporations. NCUA has not issued a regulation on this subject.
2. A copy of Section 701.23 of NCUA's Rules and Regulations.

You have also asked whether a Federal credit union with a community-based charter may purchase loans of nonmembers. Generally, it may not. But if a person is within the credit union's field of membership, he may become a member and the FCU may then purchase, under Section 701.23, a loan the person may have outstanding.

Sincerely,

TIMOTHY P. MCCOLLUM
Assistant General Counsel

HMU:sg

Attachments

FOIA

Vol. I (C)(16) Eligible Obligations



Tim

GC/TPM:jt
3500

NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

March 31, 1988

Office of General Counsel

Mr. David A. Kwant
Supervisor of Credit Unions
Department of Financial Institutions
State of Utah
P.O. Box 89
Salt Lake City, Utah 84110-0089

Re: Payment of Dividends on Share Draft Accounts (Your
February 5, 1988, Letter)

Dear Dave:

You have asked for an explanation of when, under Federal law, a federally-insured credit union ("FICU") may pay dividends on share draft accounts. Under Section 205(f) of the Federal Credit Union ("FCU") Act [12 U.S.C. §1785(f)], an FICU 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; and (4) agents for public funds. Section 205(f) allows FICU'S to pay dividends on all these share draft accounts.

Persons and Entities Able to Establish an Account at an FICU

Section 107(6) of the FCU Act [12 U.S.C. §1757(6)], authorizes an FCU to:

receive [payments, representing equity,] from
its members, from other credit unions, from
an officer, employee, or agent of . . .
[certain] nonmember units of Federal, Indian
Tribal, State, or local governments and
political subdivisions, . . . from the

Mr. David A. Kwant
March 31, 1988
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Central Liquidity Facility, and from
nonmembers in the case of credit unions
serving predominantly low-income
members

Depending on the field of membership defined in an FCU's charter, its member may include natural persons and nonnatural persons -- corporations, partnerships, associations, and other organizations, whether or not organized for profit. 12 U.S.C. §1759.

State chartered FICU's may be empowered to accept deposits from an even broader array of persons.

Persons and Entities Able under Federal Law to Establish a Share Draft Account

Section 205(f) of the Federal Credit Union Act [12 U.S.C. § 1785(f)] states:

(1) Every insured credit union is authorized to maintain, and make loans with respect to, share draft accounts in accordance with rules and regulations prescribed by the Board. Except as provided in paragraph (2), an insured credit union may pay dividends on share draft accounts. . . .

(2) Paragraph (1) shall apply only with respect to share draft accounts in which the entire beneficial interest is held by one or more individuals or members or by an organization which is operated primarily for religious, philanthropic, charitable, educational, or other similar purposes and which is not operated for profit, and with respect to deposits of public funds by an officer, employee, or agent of the United States, any State, county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, any territory or possession of the United States, or any political subdivision thereof.

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March 31, 1988
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The net effect of this provision is to allow FICU's to offer share draft accounts to four classes of persons:

1. "Members": Depending on the field of membership defined in an FCU's charter, its members may include natural persons and nonnatural persons -- corporations, partnerships, associations, and other organizations, whether or not organized for profit. 12 U.S.C. Section 1759. State-chartered FICU's may be empowered to accept deposits from an even broader array of persons.

2. Nonmember "individuals": This class adds nonmember natural persons -- e.g., nonmembers establishing share draft accounts at a credit union designated as serving predominantly low-income members; nonmembers legally establishing share draft accounts at state-chartered FICU's.

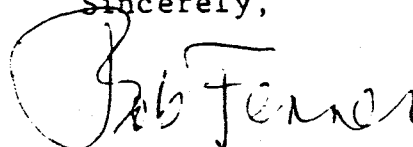
3. Certain "organizations . . . not operated for profit": This class adds certain nonmember organizations -- e.g., a religious group establishing a nonmember share draft account at a credit union designated as serving predominantly low-income members.

4. Agents for certain public unit funds.

Persons and Entities Able Under Federal Law to Receive Dividends on FICU Share Draft Accounts

Under section 205(f) of the FCU Act [12 U.S.C. §1785(f)] an FICU can pay dividends on all share draft accounts it is thereby authorized to offer. It can therefore pay dividends on share draft accounts of "members," nonmember "individuals," certain described "organizations . . . not operated for profit," and agents for certain public unit funds.

Sincerely,



ROBERT M. FENNER
General Counsel



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

LS/YG:cch
4630
May 24, 1985

Mr. Allen Hannaford
President.
Stewart's Federal Credit Union
P.O. Box 435
Saratoga Springs, NY 12866

Dear Mr. Hannaford:

This is in reply to your letter dated April 5, 1985, to this Office concerning the eligibility of corporations to become members of a Federal credit union (FCU) and the legality of corporate share draft accounts pursuant to Section 205(f) of the Federal Credit Union Act (12 U.S.C. §1785(f)).

Specifically, you ask whether an individual entrepreneur, who has incorporated himself (to limit liability), may be a member of the FCU and establish a corporate share draft account under Section 205(f).

First, as to the question of membership of a corporation, we have previously stated that corporations that are either expressly included in an FCU's field of membership or whose owners are members or who are within the field of membership, are eligible for membership in an FCU. Normally, an FCU's charter provides that organizations of those who are expressly stated in the field of membership are eligible for membership. It is this charter provision that authorizes corporations that are not specifically mentioned to be eligible for membership. Therefore, assuming that your charter contains such a provision, corporations (as described above) would be eligible for membership.

Second, as to the issue of the legality of a corporate member of your FCU obtaining a share draft account, we concur with your position that such an account is permitted. Section 205(f) of the FCU Act (12 U.S.C. §1785(f)) authorizes share draft accounts in which the entire beneficial interest in the account is held by a member. Therefore, to the extent that the corporations described in your letter are members of the Credit Union, your Credit Union may offer a share draft account to such corporations. The restriction in Section 205(f)(2) that limits share draft accounts to only those nonprofit organizations which are operated primarily for religious, philanthropic, charitable, or educational purposes does not apply to organizations (corporations, etc.) that are members of the FCU. This restriction applies only to organizations (e.g., other credit

Vol. II, E2 share drafts

NATIONAL CREDIT UNION ADMINISTRATION

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unions, or organizations establishing accounts at low income FCU's) that are not members of an FCU but who can otherwise legally establish share accounts at the FCU. These organizations cannot open share draft accounts unless they satisfy the restriction.

In conclusion, provided the corporation is a member of your FCU, it would be legal for it to maintain a share draft account at the Credit Union.

I hope that we have been of assistance.

Sincerely,



STEVEN R. BISKER
Assistant General Counsel

cc: RD, Region I (Boston)

§701.22 Loan Participation.

(a) For purposes of this section:

(1) "participation loan" means a loan made in participation with one or more eligible organizations, where the written commitment to participate in the loan precedes final disbursement.

(2) "Eligible organizations" means a credit union, credit union organization, or financial organization.

(3) "Credit union" means any Federal or state chartered credit union.

(4) "Credit union organization" means any organization as determined by the Board, established primarily to serve the daily operational needs of its member credit unions. The term does not include trade associations, membership organizations principally composed of credit unions, or corporations or other businesses which principally provide services to credit union members as opposed to corporations or businesses whose business relates to the daily in-house operation of credit unions.

(5) "Financial organization" means any federally chartered or federally insured financial institution.

(6) "Originating lender" means the participant with which the member contracts.

(b) Subject to the provisions of this section any Federal credit union may participate in making loans with eligible organizations within the limitations of the board of directors' written participation loan policies, PROVIDED:

(1) no Federal credit union shall obtain an interest in a participation loan if the sum of that interest and any (other) indebtedness owing to the Federal credit union by the borrower exceeds 10 per centum of the Federal credit union's unimpaired capital and surplus;

(2) prior to final disbursement, a written participation agreement shall be properly executed, acted upon by the Federal credit union's board of directors or the investment committee and retained in the Federal credit union's office. The agreement shall include provisions which identify the participation loan or loans.

(3) A Federal credit union may sell to or purchase from any participant the servicing of any loan in which it owns a participation interest.

(c) An originating lender which is a Federal credit union shall:

(1) originate loans only to its members;

(2) retain an interest of at least 10 per centum of the face amount of each loan;

(3) retain the original or copies of the loan documents; and

(4) obtain approval of the loan from the credit committee or loan officer.

(d) A participant Federal credit union that is not an originating lender shall:

(1) participate only in loans it is empowered to grant;

(2) participate in participation loans only if made to its own members or members of another participating credit union;

(3) retain the original or a copy of the written participation loan agreement and a schedule of the loans covered by the agreement; and

(4) obtain the approval of the board of directors or investment committee of the disbursement of proceeds to the originating lender.

§701.23 Purchase, Sale, and Pledge of Eligible Obligations.

(a) For purposes of this Section:

(1) "Eligible obligation" means a loan or group of loans;

(2) "Student loan" means a loan granted to finance the borrower's attendance at an institution of higher education or at a vocational school, which is secured by and on which payment of the outstanding principal and interest has been deferred in accordance with the insurance or guarantee of the Federal Government, of a State government, or any agency of either.

(b) Purchase.

(1) A Federal credit union may purchase, in whole or in part, within the limitations of the board of directors' written purchase policies:

(i) Eligible obligations of its members, from any source, if either (A) they are loans it is empowered to grant or (B) they are refinanced with the consent of the borrowers, within 60 days after they are purchased, so that they are loans it is empowered to grant;

(ii) Eligible obligations of a liquidating credit union's individual members, from the liquidating credit union;

(iii) Student loans, from any source, if the purchaser is granting student loans on an ongoing basis and if the purchase will facilitate the purchasing credit union's packaging of a pool of such loans to be sold or pledged on the secondary market; and

(iv) Real estate-secured loans, from any source, if the purchaser is granting real estate-secured loans pursuant to Section 701.21 on an on-

going basis and if the purchase will facilitate the purchasing credit union's packaging of a pool of such loans to be sold or pledged on the secondary mortgage market.

(2) A Federal credit union may make purchases in accordance with subsection (b), provided:

(i) The board of directors or investment committee approves the purchase; and

(ii) A written agreement and a schedule of the eligible obligations covered by the agreement are retained in the purchaser's office.

(3) The aggregate of the unpaid balances of eligible obligations purchased under subsection (b) shall not exceed 5 percent of the unimpaired capital and surplus of the purchaser. Student loans purchased in accordance with subsection (b)(1)(iii) and real estate loans purchased in accordance with subsection (b)(1)(iv) shall not be included in considering this 5 percent limitation.

(c) Sale.

(1) A Federal credit union may sell, in whole or in part, to any source, eligible obligations of its members, eligible obligations purchased in accordance with subsection (b)(1)(ii), student loans purchased in accordance with subsection (b)(1)(iii), and real estate loans purchased in accordance with subsection (b)(1)(iv), within the limitations of the board of directors' written sale policies, provided:

(i) The board of directors or investment committee approves the sale; and

(ii) A written agreement and a schedule of the eligible obligations covered by the agreement are retained in the seller's office.

(d) Pledge.

(1) A Federal credit union may pledge, in whole or in part, to any source, eligible obligations of its members, eligible obligations purchased in accordance with subsection (b)(1)(ii), student loans purchased in accordance with subsection (b)(1)(iii), and real estate loans purchased in accordance with subsection (b)(1)(iv), within the limitations of the board of directors' written pledge policies, provided:

(i) The board of directors or investment committee approves the pledge;

(ii) Copies of the original loan documents are retained; and

(iii) A written agreement covering the pledging arrangement is retained in the office of the credit union that pledges the eligible obligations.

(2) The pledge agreement shall identify the eligible obligations covered by the agreement.

(e) Servicing.

A Federal credit union may agree to service any eligible obligation it purchases or sells in whole or in part.

(f) 10 Percent Limitation.

The total indebtedness owing to any Federal credit union by any person, inclusive or retained and reacquired interests, shall not exceed 10 percent of its unimpaired capital and surplus.

§701.24 Refund of Interest.

(a) The board of directors of a Federal credit union may authorize an interest refund to members who paid interest to the credit union during any dividend period and who are members of record at the close of business on the last day of such dividend period.

(b) The amount of interest refund to each member shall be determined as a percentage of the interest paid by the member. Such percentage may vary according to classifications of loans established pursuant to 12 C.F.R. 701.21-1(d).*

(c) Based upon a determination that such loans have not made a significant contribution to the earnings that make the refund possible, the board of directors may exclude from an interest refund (i) any classification of loans determined in accordance with paragraph (b) of this section, and (ii) all loans delinquent at least two months, or all loans delinquent for such greater period as is determined by the board.

(d) The board of directors' minutes shall document the reasons for any decision to vary interest refund rates or exclude certain loans from a refund.

(e) The board of directors may authorize an interest refund for a dividend period only during such time as it may declare a dividend. However, if in a given calendar year a credit union has dividend periods more frequent than annual and an interest refund was not authorized for one or more dividend periods, the board, during the time permitted for the declaration of the current dividend, may authorize an interest refund for the current dividend period and for any one or more of the omitted dividend periods.

(f) The board of directors shall not authorize an interest refund for any dividend period unless dividends have been declared and paid on share accounts.

(g) An interest refund shall be recorded on the books of the credit union as a reduction of interest income.

§701.25 Deleted August 1977.