NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

Office of General Counsel

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W.P. Sandridge, Jr., Esq.
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Re: Imposition of Penalty Charges Against Member for Draft Against Home Equity Credit Line (1) For Less Than the Agreed Minimum Amount or (2) That Causes the Member's Credit Limit to be Exceeded

Dear Mr. Sandridge:

You have asked whether a Federal credit union ("FCU") may include in its home equity credit line agreement a provision which would provide for the imposition of a $15 charge when: (1) a member's draft drawn against the line of credit is for an amount less than the permitted minimum; and (2) a member's draft causes their line of credit limit to be exceeded. The proposed charges do not violate the FCU Act or NCUA's Rules and Regulations.

ANALYSIS

Neither the FCU Act nor NCUA's Rules and Regulations restricts an FCU's ability to charge fees related to a loan or line of credit that an FCU extends to a member. Section 701.21(b)(1)(i)(C) of NCUA's Rules and Regulations (12 C.F.R. 701.21(b)(1)(i)(C)) provides that any state law purporting to limit or affect "closing costs, application, origination, or

RC 1A
Vol. U. K. Preemption

other fees" relating to FCU loans or lines of credit is preempted. The charges you describe constitute "other fees" within the meaning of the regulation. The imposition and amount of such fees is therefore within the discretion of an FCU's board of directors. As you know, applicable Regulation Z disclosure requirements must be complied with.

Sincerely,

Hattie M. Ulan

HATTIE M. ULAN
Assistant General Counsel

efforts made to resolve the situation; financial effect on the overlapped credit union; the desires of the group(s); the opinion of the state credit union supervisor, if applicable, and other interested parties; and the best interests of the involved potential or current members. In general, NCUA will not protect associational and community charters from overlaps with occupational charters.

A number of situations may not justify approval of a requested overlap. For example, if the requesting credit union offers certain specialized services not offered by the original credit union (such as credit cards, ATMs, and IRAs), the extra services alone may not justify the overlap. Also, proximity, by itself, does not warrant approval of an overlap. A Federal credit union in Chicago, Illinois, may not have a convincing argument, based on geography alone, that a select employee group (SEG) also located in Chicago would be better served by it than by the SEG's headquarters credit union located in Dallas, Texas.

From an overlap prevention perspective, new charter applicants and every occupational or associational group which comes before the Regional Directors for affiliation with an existing Federal credit union must advise in writing whether the group is included within the field of membership on any other credit union. This requirement will alert the Regional Directors to possible overlap situations before they occur. Thus, most potential field of membership conflicts can be avoided. If cases do arise where the assurance given to a Regional Director concerning unavailability of credit union service turns out later to be inaccurate, the misinformation is grounds for removal of the group from the Federal credit union's charter.

3. *Exclusionary Clauses.* (This discussion pertains to new charters as well as existing charters.)

In certain instances, exclusionary wording prohibiting certain overlaps may be used to help define the field of membership of a Federal credit union. Use of exclusionary wording should be avoided if possible. Generally, a thorough investigation of a charter application or an application for a field of membership expansion will disclose the situations where other credit union service is available. The field of membership should be written so that only the specific locations where credit union service is not currently available are allotted to the new charter or to the Federal credit union seeking the field of membership addition.

However, certain cases exist where a specific recitation of work locations (for an occupational group) or member locations (for an associational group) is not feasible. Corporations or associations with widely-dispersed employees or members fall into this "exception" category. In these special cases, exclusionary wording could be used to provide some limits on an extensive field of membership. An example might be employees of XYZ Corporation where XYZ Corporation is a relatively new company which specializes in acquisitions and divestitures and its corporate makeup is constantly changing. In this case the field of membership could be described as "employees of XYZ Corporation who work in the United States, except employees eligible for membership in another occupational-type credit union serving an employee unit of XYZ Corporation."

Another situation which may require exclusionary wording is the chartering of a new community credit union or the field of membership conversion of an existing occupational or associational credit union to a community charter. Although investigation may show that the residents of the proposed area of service by and large do not have access to a credit union, other credit unions may be operating in the community which desire to remain autonomous entities. If the Regional Director determines that avoidance of overlap is warranted, an exclusionary clause may be inserted in the community credit union's field of membership. Examples of exclusionary wording are as follows:

1. Persons who reside or work in Portland, Maine, except persons eligible for primary membership in ABC Employees Federal Credit Union or Portland City Employees Credit Union as of the date of this charter;

2. Persons who reside or work in Hilo, Hawaii, except employees of Hilo Sugar Company and the United States Government.

The exclusionary language in a community charter's field of membership ordinarily applies only to "primary" members of existing occupational-type credit unions. "Primary" is defined as the basic occupational or associational affinity to the field of membership defined in section 5 of the charter. In example 1 above, assuming that the two excluded Federal credit unions have single sponsor fields of membership, only employees of ABC Company and of the City of Portland would be excluded. Family members (or other secondary or derivative members) are not excluded. Also, unless special circumstances warrant, only occupational field of membership will be protected by the exclusion. That is, associational, multiple group and other community credit unions will not normally be afforded protection from overlap. Finally, by dating the exclusion, only those employee units in the field(s) of membership of the protected credit union(s) as of the specified date are excluded from membership eligibility in the community credit union. Thus, groups added by an occupational credit union subsequent to the establishment of the community charter are not excluded from the community credit union. In the second example above, dating the exclusion clause, which is written very specifically, is inappropriate.

Although use of exclusionary clauses by NCUA will normally be on an exception basis only, Regional Directors may, at their discretion, apply exclusionary wording to a credit union's field of membership. However, the clauses shall not be used in lieu of a thorough investigation of the availability of existing credit union service by a charter applicant or an applicant for a field of membership addition. Furthermore, it is NCUA's intent to use exclusionary clauses only to increase the vitality and strength of the credit union system, not to prevent people from obtaining credit union service.

III. Appropriateness of Proposed Federal Credit Union Name

It is the responsibility of the Federal credit union organizers to ensure that the FCU applicant's name or FCU name change does not constitute an infringement on the name of any corporation in their trade area. Prior to granting a charter or approving a name change, NCUA will ensure that the credit union's name: (a) is not already being used by another Federal credit union; (b) will not be confused with NCUA or another Federal or State agency, or with another credit union; and (c) does not include inappropriate language. The last three words in the name of every credit union chartered by NCUA must be "Federal Credit Union."

IV. Widely-Dispersed Associational Charters

NCUA policy is to charter associational Federal credit unions at the lowest organization level which is economically feasible. This does not preclude the granting of associational charters with widely-dispersed memberships. NCUA may grant such charters after scrutinizing the adequacy of the applicant's common bond. NCUA may, at its discretion, require that the proposed field of membership be