



NATIONAL CREDIT UNION ADMINISTRATION  
Washington, D.C. 20456

Office of General Counsel

GC\RRD:sg  
SSIC 3211  
89-0805

October 6, 1989

Maureen E. McKenna, Esq.  
Campbell, Sherrard & Burke, P.C.  
3550 One Oliver Plaza  
Pittsburgh, PA 15222-2602

Re: Interest Rate Charges and Annual Fees (Your August 2,  
1989, Letter)

Dear Ms. McKenna:

You have asked the following: "Can a credit union, pursuant to the NCUA Regulations, charge interest and other finance charges at the maximum rate of 18%, and in addition, charge an annual fee for access to the account." Yes. "Alternatively, must the annual fee be included in the 18% maximum finance charge?" No, an annual fee is not part of the finance charge. "If an annual fee may be charged, is there a limitation on the amount of the fee?" No, NCUA does not limit the amount of an annual fee.

ANALYSIS

You represent a credit union which would like to charge an annual fee on lines of credit it extends to its members. An annual fee is not a finance charge for purposes of the Truth-in-Lending Act and Regulation Z. (See 12 C.F.R. 226.4(c)(4).) Your concern is over an interpretation of Section 701.21(b)(1) of the NCUA Rules and Regulations (12 C.F.R. 701.21(b)(1)) concerning preemption of state laws limiting or affecting certain Federal credit union (FCU) charges. We point out that Section 701.21(b) applies to Federal credit unions and not to state-chartered credit unions. You stated in your letter "[i]f the charges set forth in 701.21(b)(1)(i)(C) are not considered finance charges for NCUA

FOIA  
Vol.

III Part B(7) Annual Fees

Maureen E. McKenna, Esq.  
October 6, 1989  
Page 2

purposes, a blanket statement that what is a finance charge for purposes of Truth-in-Lending is a finance charge under the NCUA Regulations is not possible." The premise that the charges listed in Section 701.21(b)(1)(i)(C) are not considered finance charges for NCUA purposes is incorrect. Section 701.21(b)(1) is intended to preempt state law which attempts to regulate certain charges an FCU may impose upon its members. It is not meant to delineate what is or is not a finance charge. Regulation Z is a disclosure regulation. Generally, it does not control the interest rate and other charges in a loan agreement, only the disclosure of those charges. Regulation Z sets forth what charges are and are not finance charges for disclosure purposes. NCUA determines what is and is not interest for purposes of the usury ceiling set forth in the FCU Act and NCUA Regulation. Although NCUA is not bound by the definition of finance charge in Regulation Z, it does look to the definition for guidance. NCUA generally follows Regulation Z's definition of finance charge in determining what is included in interest. It has been our longstanding policy that an annual fee is not included within the interest rate.

Your specific questions are: (1) Can a credit union, pursuant to the NCUA Regulations, charge interest and other finance charges at the maximum rate of 18%, and, in addition, charge an annual fee for access to the account? Yes, because Regulation Z exempts an annual fee from the definition of a finance charge (see 12 C.F.R. 226.4(c)(4)) and NCUA has adopted the exemption for purposes of determining what constitutes interest. (2) Must the annual fee be included in the 18% maximum finance charge? No, as noted above in the answer to question 1, the annual fee is not part of the finance charge or interest rate. (3) If an annual fee may be charged, is there a limitation on the amount of the fee? No, NCUA does not impose any restrictions on the amount of annual fee that can be charged. This is a decision to be made by each FCU's board of directors.

Sincerely,



HATTIE M. ULAN  
Assistant General Counsel