



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, DC 20456

July 30, 1990

Ronald D. Gracie
President
Coastline Federal Credit Union
P.O. Box 47410
Jacksonville, Florida 32247-7410

Re: Right of Offset (Your May 31, 1990, Letter)

Dear Mr. Gracie:

This is in response to your request for an opinion as to whether Coastline Federal Credit Union ("Coastline") has the right to offset a member's VISA card balance against the member's shares in the credit union. You note that the Federal Reserve Board's Regulation Z (12 C.F.R. §226) appears to prohibit such an offset, but that it seems to be allowed by a Florida statute. We do not believe that Coastline has the right to offset.

As a rule, we do not render opinions on state statutes, unless there is a question of conflict with or preemption by the Federal Credit Union Act; it is our policy to suggest that credit unions consult their local counsel on such matters. Moreover, we defer to the Federal Reserve Board with regard to interpretations of its regulations. However, we have made a brief review of both Regulation Z and the Florida statute and offer the following for your guidance.

The Florida statute you cite, Fla. Stat. §657.033, is a subsection of the Florida Credit Union Act, Fla. Stat. Ann. §§657.001 et seq. (West 1984). Section 657.002(6) defines "credit union" as "any cooperative society organized pursuant to this part." Coastline is a federal credit union, organized pursuant to the Federal Credit Union Act rather than the Florida Credit Union Act. Therefore, the Florida statute, including the section you refer to in your letter, does not apply to Coastline. Coastline has no right of offset under the Florida Credit Union Act.

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Regulation Z states, in pertinent part:

A card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer transaction under the relevant credit card plan against the funds of the cardholder held on deposit with the card issuer. 12 C.F.R. §226.12(d)(1).

As you state in your letter, this subsection prohibits a card issuer from offsetting credit card debt against shares. It has long been our position that where a credit union member's outstanding indebtedness is the result of extensions of credit under a credit card program, Section 169 of the Truth-in-Lending Act (15 U.S.C. §1666h) and Regulation Z control and prohibit the offsetting of the debt against funds held by a credit union. Enclosed is a copy of Interpretive Ruling and Policy Statement Number 82-5, which discusses statutory liens and states our position with regard to offset of credit card debts.

Based on the foregoing it is our opinion that Coastline may not offset member credit card debts against shares owned by the delinquent member.

Sincerely,



Hattie M. Ulan
Associate General Counsel

GC/MRS:sg
SSIC 3211, 3310
90-0629
Enclosure

NATIONAL CREDIT UNION ADMINISTRATION INTERPRETIVE RULING AND POLICY STATEMENT



IRPS 82-5

DATE: December 22, 1982

NATIONAL CREDIT UNION ADMINISTRATION

12 C.F.R. Part 701

Statutory Lien;

Final Interpretive Ruling and Policy Statement

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final Interpretive Ruling and Policy Statement.

SUMMARY: Even if a member's loan is not secured by shares, under the Federal Credit Union Act a Federal credit union has the power to impress and enforce a lien upon that member's shares and dividends. NCUA is interpreting the Federal Credit Union Act to authorize a Federal credit union: (a) to impress a lien at the time the loan is granted, for instance, by noting the existence of the lien in its records at the same time the loan is granted, by reciting in the loan documents that shares and dividends are subject to the lien or are pledged to secure the loan, or by adopting a bylaw or board policy to the same effect; and (b) to enforce the lien by applying the shares and dividends directly to the amount due on the loan without obtaining a court judgment, even if the credit union has allowed the member to make withdrawals and even if a court judgment would be required under state law before a statutory lien could be enforced.

EFFECTIVE DATE: December 16, 1982.

FOR FURTHER INFORMATION CONTACT: Robert M. Fenner, Deputy General Counsel, or John L. Cuihane, Jr., Senior Attorney, Department of Legal Services, National Credit Union Administration, 1776 G Street, N.W., Washington, D.C. 20456 or telephone: (202) 357-1000.

SUPPLEMENTARY INFORMATION: Section 107(11) of the Federal Credit Union Act states that a Federal credit union "shall have the power . . . to impress and enforce a lien upon the shares and dividends of any member to the extent of any loan made to him and any dues or charges payable by him." 12 U.S.C. 1757(11). Since 1979, NCUA had taken the position that before a Federal credit union could enforce this lien it had to obtain a court judgment on the debt, unless state law would allow the credit union to enforce the lien without going to court; once the credit union were to obtain a court judgment, it could then apply the member's shares to the outstanding loan balance. Credit Manual for Federal Credit Unions 29 (Dec. 1979 ed.).

A credit union trade association and an attorney who represented several credit unions asked NCUA to reconsider this interpretation, noting that it placed a credit union at a disadvantage with respect to any other financial institution, which can usually offset a borrower's loan without going to court. After examining the legislative history of and prior administrative interpretations of the statute, NCUA proposed to interpret section 107(11) of the Federal Credit Union Act to preempt state law and to authorize a credit union to enforce the lien on the shares and dividends of a member by applying those shares and dividends to the outstanding loan balance, as that interpretation appeared to be more consistent with Congressional intent and with the contemporaneous administrative interpretations of the statutory language. 47 Fed. Reg. 44340 (1982).

Comments on the proposed interpretation were submitted by 31 credit unions, 4 state credit union leagues, 2 national credit union trade associations, and 3 attorneys (two of the attorneys represent state credit union leagues, the other attorney represents a number of credit unions). The commentors unanimously supported NCUA's proposed interpretation, although one of the attorneys and one of the trade associations requested that rather than limiting the interpretation to enforcement of the lien in the event of default, NCUA expand the interpretation to discuss when the lien may be impressed and to discuss the consequences of permitting withdrawals. The NCUA Board concurs with these commentors that it would be best to address these related issues in one interpretive ruling and policy statement.

Based on an examination of the legislative history and the contemporaneous administrative interpretations of the statutory language, NCUA believes that Congress intended for the statutory lien to be a "floating" lien. That is, a Federal credit union that has impressed a lien on a member's accounts possesses a lien on those accounts at any time to the extent of the unpaid loan balance together with interest, fees, and other charges. The lien "floats" as outstanding obligations, as well as account balances, vary from time to time. The lien enables a credit union to take priority over other creditors when claims are asserted against a member's accounts. See D. Bridewell, Bridewell on Credit Unions 710 (1942 ed.) (quoting from the May-June, 1940 edition of Cooperative Savings, an official publication of the Farm Credit Administration, the agency then charged with administering the Federal Credit Union Act).

If the credit union evidences its intent to do so, it may impress the lien when the loan is granted. This may be done, for instance, by noting the existence of the lien in the credit union's records at the same time the loan is granted, by reciting in the loan documents that shares and dividends are subject to the lien or are pledged to secure the loan, or by adopting a bylaw or board policy to the same effect. See Credit Manual for Federal Credit Unions 16, 17 (May 1972 ed.); Handbook for Federal Credit Unions 18 (July 1947 ed.). Further, even though the lien has been impressed, the credit union may permit routine withdrawals from a member's account without waiving the statutory lien, even if the withdrawals would reduce the account balance to a level below the outstanding indebtedness.

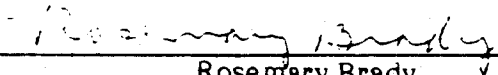
Generally, a credit union may enforce the lien on the shares and dividends of the member by applying those shares to the outstanding indebtedness. Section 107(11) of the Federal Credit Union Act preempts state law; the credit union does not have to obtain a court judgment to enforce the lien, even if a court judgment is usually required under state law before a statutory lien can be enforced. However, if the outstanding indebtedness is the result of extensions of credit under a credit card program, Section 169 of the Truth in Lending Act, 15 U.S.C. 1666h, and Section 226.12(d) of Regulation Z, 12 C.F.R. 226.12(d), will apply; these provisions generally prohibit a Federal credit union from offsetting a borrower's indebtedness arising from a consumer credit transaction under a credit card plan against funds held by the credit union.

Accordingly, the NCUA Board is adopting a final interpretive ruling and policy statement to read as follows.

Interpretive Ruling and Policy Statement (IKPS) 82-5

Section 107(11) of the Federal Credit Union Act states that a Federal credit union "shall have the power . . . to impress and enforce a lien upon the shares and dividends of any member, to the extent of any loan made to him and any dues or charges payable by him." If a credit union evidences its intent to do so, it may impress the lien when the loan is granted. This may be done, for instance, by noting the existence of the lien in the credit union's records at the same time the loan is granted, by reciting in the loan documents that shares and dividends are subject to the lien or are pledged to secure the loan, or by adopting a bylaw or board policy to the same effect. The lien dates from the time it is impressed and applies to all of the member's shares outstanding at the time the loan is made. If during the loan term the member's shares are reduced by withdrawal or increased by deposit or dividend payments, the lien will apply to the balance of the same from time to time and may be enforced with respect to any shares in existence at the time of enforcement. The credit union may enforce the lien on the shares and dividends of the member by applying those funds directly to the outstanding indebtedness, which may include the unpaid loan balance together with interest, fees, and other charges. The credit union does not need to obtain a court judgment to enforce the lien, even if a court judgment is usually required under state law before a lien can be enforced.

By the National Credit Union Administration Board, December 10, 1982.



Rosemary Brady
Secretary
National Credit Union Administration Board