



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

January 3, 1990

Brian R. Witt  
Farleigh, Wada & Witt, P.C.  
One Financial Center  
121 SW Morrison Avenue  
Portland, OR 97204-3192

Re: Loan Processing Services (Your October 25,  
1990, Letter)

Dear Mr. Witt:

You have asked whether a federal credit union (FCU) may perform loan processing services for nonmembers and whether such services constitute loans to nonmembers. While we agree that providing loan processing services does not constitute making loans, we are of the opinion that FCUs do not have the authority to perform such services for nonmembers.

Background

An FCU currently processes substantially all of its members' first mortgage loans for sale on the secondary market. The FCU proposes to offer loan processing services to nonmembers, performing such functions as providing and accepting Federal National Mortgage Association/Federal Home Loan Mortgage Corporation loan applications, reviewing such applications, obtaining employment and deposit verifications, and submitting completed loan application packages to a mortgage company. The mortgage company will be responsible for the underwriting, approval, and funding of all nonmember loans.

Analysis

As you know, FCUs can only engage in activities that are either expressly authorized by the FCU Act or incidental to

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one of those express powers. See 12 U.S.C. §1757. Section 107(17) of the FCU Act authorizes an FCU "to exercise such incidental powers as shall be necessary or requisite to enable it to carry on effectively the business for which it is incorporated," 12 U.S.C. §1757(17), and includes the power to do what "is convenient or useful in connection with the performance of one of the . . . established activities pursuant to its express powers . . ." Arnold Tours v. Camp, 472 F.2d 427 (1972). It does not provide FCUs with the general authority to provide services to nonmembers.

The National Credit Union Administration (NCUA) has stated that FCUs have the incidental authority to provide services to nonmembers only when it is a necessary prerequisite to providing an expressly-authorized service to a member. For example, NCUA has determined that an FCU may cash VISA travelers checks for nonmembers where VISA requires all financial institutions offering lines of credit through VISA cards to cash VISA travelers checks for all VISA cardholders. This activity is permitted under the incidental powers clause on the basis that it is a necessary prerequisite to providing members the expressly-authorized services of check cashing (12 U.S.C. §1757(12)) and extending lines of credit (12 U.S.C. §1757(5)).

As you note, NCUA has also authorized FCUs to provide limited ATM deposit services (such as opening envelopes deposited through the ATM, and sorting, balancing and crediting the various participating credit union accounts, see Thompson Letter, dated June 5, 1990, enclosed) to other credit unions participating in a shared ATM network and to sell data processing capacity in excess of their immediate needs. These activities involve performing functions for other credit unions, however, not providing services to nonmember natural persons. We have stated that FCUs may perform certain incidental functions for other credit unions under limited conditions as long they are not in the business of performing such functions. We have approved the direct and routine performance of services to nonmember natural persons, however, only when necessary to provide members with an expressly-authorized service. In our view, providing loan processing services to nonmembers is not a necessary prerequisite to providing an expressly-authorized service to members. We disagree with your suggestion that the activity

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is incidental to an FCU's express authority to purchase property (12 U.S.C. §1757(4)) and make contracts (12 U.S.C. §1757(1)).

Sincerely,

*Hattie M. Ulan*

Hattie M. Ulan  
Associate General Counsel

Enclosure

GC/LH:sg  
SSIC 3600  
90-1104