



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

September 23, 1991

Arno J. Easterly
Barksdale Federal Credit Union
Barksdale Center
P.O. Box 9
Barksdale AFB, LA 71110-0009

Re: Pricing Deviation (Your August 23, 1991,
Letter to Allen Carver)

Dear Mr. Easterly:

Allen Carver, the Region III Director, asked me to respond to your question of whether a federal credit union (FCU) can price its services, loan rates and dividend rates differently depending upon the location of the member or FCU office. Enclosed is a prior legal opinion issued by this office concerning the impermissibility of varying dividend rates based solely on the location of the member. In our opinion, the same analysis applies for varying service charges and loan rates depending on the residence of a member or FCU office.

There may also be an additional problem with such a variance in connection with an extension of credit. The Equal Credit Opportunity Act (ECOA) and regulation B (12 C.F.R. 202) prohibit discrimination in extensions of credit based on race, color, religion, national origin, sex, marital status, age, receipt of public assistance programs, and good faith exercise of rights under the Consumer Credit Protection Act. Varying loan rates and terms based on a member's residence may have a discriminatory effect, even though the terms appear neutral. The "effects test" is a judicial doctrine which, in essence, holds that policies may be described as discriminatory if the policy has a negative impact on persons intended to be protected by law, even if there is no intent to discriminate. The "effects test" may be applicable in this situation because your plan is directed at a low income

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community. However, even if there is no problem under ECOA, the variance would not be permissible for the previously stated reason.

Sincerely,

Hattie M. Ulan
Associate General Counsel

GC/MM:sg
SSIC 3501
91-0910

cc: Allen Carver
Region III Director

Enclosure

NATIONAL CREDIT UNION ADMINISTRATION

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GC/JJE:bhs
SSIC 4630
December 22, 1988

Steven R. Bisker, Esq.
Haden & Bisker, P.C.
450 Maple Ave., East
Suites 202-203
Vienna, VA 22180

Re: Dividend rates varying based on
location of members (Your letter of
October 21, 1988)

Dear Mr. Bisker:

You have asked whether Federal credit unions ("FCU's") are authorized to classify shares, based upon the location of the member's residence, as a type of share that could be paid a different rate from shares held by members residing at other locations.

In our opinion, residence, in and of itself, does not provide a basis for establishing a type of share account that can be paid a different dividend rate. Neither would race, national origin or religion. While an FCU's board is given wide latitude under Sections 107(6) and 117 of the Act (12 U.S.C. §§1757(6) and 1763) and Section 701.35(a) of our regulations (12 C.F.R. §701.35(a)) to establish terms, conditions and dividend rates on share accounts, we expect there to be a rational basis for distinguishing between types of accounts. Differing minimum balances and maturities or access by share drafts are probably the most common characteristics used to establish types of accounts. If the criterion used to classify an account as a particular type has no relationship to the terms and conditions of the account itself, or is not supported by some other rational basis, then we do not believe it can be used to distinguish or classify an account.

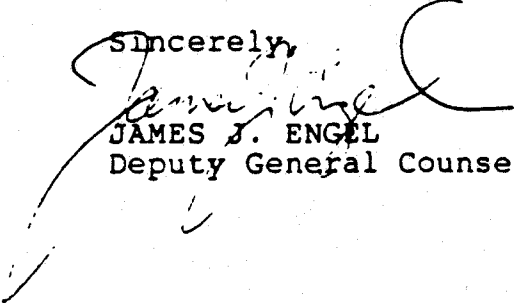
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We do not interpret the Act or the Rules and Regulations as granting boards of directors such carte blanche authority.

Sincerely,


JAMES J. ENGEL
Deputy General Counsel