



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

February 20, 1992

Allen M. Upchurch, Jr.,
Vice President
SRP Credit Union
1920 Whiskey Road South
Aiken, South Carolina 29803

Re: ~~Legality of Requirement that Loan Co-Signers
Be Credit Union Members~~ (Your January 10, 1992,
Letter)

Dear Mr. Upchurch:

You asked whether federal credit unions ("FCUs") may legally require that loan co-signers be FCU members. You also inquired whether such a policy violates Regulation B. Please see our response, below.

Background

SRP Credit Union's ("SRP") current loan policy requires that both co-signers and co-makers of loans be members of SRP. You are concerned about whether this requirement is legal, and especially whether it violates Regulation B. Although your letter only asks about co-signers, you have highlighted the portions of SRP's loan policy manual discussing both co-signers and co-makers. Those two terms may sometimes be used interchangeably, but they can also have different meanings. Our analysis differentiates between the two.

We note that since SRP is a state-chartered credit union, the South Carolina credit union supervisory authority, rather than NCUA, would determine the legality of the loan policy under applicable state credit union law. However, for your information, we will discuss the legality of the policy for FCUs under the Federal Credit Union Act ("FCU Act").

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NCUA has no legal authority to enforce or interpret Regulation B for state-chartered credit unions, and we are therefore unable to offer an opinion as to whether Regulation B prohibits SRP's policy. We suggest that you contact either the Federal Trade Commission, which has Regulation B enforcement authority over state-chartered credit unions, or the Federal Reserve Board, which writes and interprets Regulation B, for guidance on that issue.

Analysis

As noted above, SRP's loan policy addresses both co-signers and co-makers. We assume that the word co-maker is intended to describe an individual who shares in the benefit of the loan proceeds, and is jointly liable for repayment. We also assume that by co-signer, SRP means to indicate an individual who does not benefit from the loan proceeds, and is liable only as a guarantor in the event that the maker does not repay the loan. Based on those assumptions, our analysis is as follows.

Under Section 107(5) of the Federal Credit Union Act, 12 U.S.C. 1757(5), an FCU may make loans only to its members. It has long been our position, however, that an FCU may permit a nonmember to add his signature to a loan, provided that he does so in the capacity of a guarantor (co-signer), rather than a loan recipient (co-maker). A determination must be made whether the nonmember is a permissible guarantor, or a loan recipient in violation of the FCU Act.

Nothing in the FCU Act requires that a loan guarantor be a member of the FCU making the loan, and therefore, while an FCU may not permit a nonmember to become a co-maker (loan recipient), it may have a policy allowing nonmembers to cosign (guarantee) loans. However, in answer to your question, the FCU Act does not preclude an FCU from instituting a policy requiring that all co-signers (guarantors) be members.

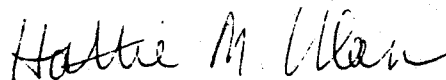
Again, we refer you to the Federal Trade Commission and/or the Federal Reserve Board for assistance with your Regulation B question. The Federal Reserve Board's Consumer Information Division can be reached at (202) 452-3667. The telephone number for the Federal Trade Commission's General Counsel is

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(202) 326-2424. You may also wish to consult local counsel for advice on whether South Carolina has any relevant anti-discrimination laws.

Sincerely,



Hattie M. Ulan
Associate General Counsel

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