

June 1, 1992

Gary Greenwald, Esq.  
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P.O. Box 627  
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Re: ATM Overdraft Recovery (Your March 17, 1992, Letter)

Dear Mr. Greenwald:

You represent a federal credit union (FCU) which provides access devices to its members for use at automated teller machines (ATMs). The ATM agreement provides that a member may not receive more than \$400 from an ATM in any 24-hour period, may not reduce the balance of his or her share account below \$5 by any ATM withdrawal, and may not reduce the balance in his or her share draft account below \$0 by any ATM withdrawal. For approximately one-half hour each day, the mainline computer at the FCU is not operational and cannot check account balances. During that period, the computer is programmed to disburse up to \$100 per request, regardless of the balance in the member's account. Several members have withdrawn funds during that period in excess of the balance in their accounts, some achieving negative balances as high as \$2000.

Many of these members have executed authorization forms for automatic payroll deduction. The form includes the following language:

In the event of default under this or any other agreement, loan or account between myself and the credit union, the credit union may disregard my designation of distribution and apply any funds received under this agreement to any debt I owe to the credit union, the amount and manner of such allocation and distribution to be within the sole discretion of the credit union.

You have asked whether, to recover on losses created by ATM disbursements, the FCU may: 1) take funds from other accounts of the member; and/or 2) divert funds from authorized payroll deductions.

Analysis

You argue that the FCU has authority to take funds from other accounts to offset losses caused by ATM withdrawals under Section 107(11) of the FCU Act, 12 U.S.C. ~1757(11). Although that section authorizes an FCU "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," we do not necessarily agree that it provides the basis for the subject offset. The statutory lien has been applied only in the context of loans, and we are not willing to say that overdrawing an account constitutes a loan.

However, there is other authority for an FCU to offset losses caused by ATM withdrawals. An FCU may debit funds from one account to recover losses in another account pursuant to its authority to receive payments on shares, 12 U.S.C. ~1757(6), and the incidental powers clause, 12 U.S.C. ~1757(17). Any such policy should be formally adopted by the FCU board and made known to the membership. The policy may be adopted by a nonstandard bylaw amendment or board resolution and should not be applied retroactively. The FCU should amend the language in its account and service agreements to indicate such a policy. Certain account types (such as IRAs) are subject to other laws that may complicate such a policy.

You also argue that the above-quoted payroll deduction authorization form specifically empowers the FCU

to apply funds acquired by payroll deduction to accounts with negative balances. This matter is governed by state law, rather than the FCU Act or NCUA Rules and Regulations.

As you know, Article III, Section 3, of the Standard FCU Bylaws requires that a member whose share balance is reduced below par be given at least six months to bring his or her account up to par before membership may be terminated. Article III, Section 3, would apply when a member's account is involuntarily reduced below the equivalent of a single share through debiting funds from one account to recover losses in another account or through applying funds acquired by payroll deduction to accounts with negative balances. Therefore, if either practice resulted in a member's share balance being reduced below par value, the member would have to be given six months (or such greater time as provided by Article III, Section 3, of the FCU's bylaws) to raise his or her share balance to at least par value.

Letter to Credit Unions No. 70, dated November 29, 1982, indicated that since Article III, Section 3, may result in loss of membership if payment of one share is not completed within the specified time frame, FCUs should notify their members of the bylaw and what they must do in order to avoid adverse consequences. While we have not required that a member be notified every time his or her share account is reduced below par value, members should be made aware of any policy on the part of the FCU of closing an account that falls below par value and terminating the account holder's membership.

Sincerely,

Hattie M. Ulan  
Associate General Counsel

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