

January 25, 2001

Paul Steven Cutler, Esq.
Cutler & Schulman, P.C.
1600 South Cobb Drive, Suite 100
Marietta, Georgia 30060

Re: Interest Rate Limits and Transaction Fees on Credit Card Cash Advances.

Dear Mr. Cutler:

You asked whether a federal credit union (FCU) is prohibited from charging a transaction fee for making a credit card cash advance, if the transaction fee will result in an interest rate in excess of the limits set in NCUA regulations. 12 C.F.R. §701.21(c)(7). FCUs are prohibited from extending credit to members at rates of interest greater than those specified in §701.21(c)(7), inclusive of all finance charges. A transaction fee is a finance charge that must be included when calculating the rate of interest charged the member. Therefore, an FCU is prohibited from charging such transaction fees if they would cause it to exceed the regulatory interest rate limits.

Neither the Federal Credit Union Act (the Act) nor NCUA regulations specify how the rate of interest is to be calculated. The regulation merely states that it must be "inclusive of all finance charges." 12 C.F.R. §701.21(c)(7)(i). NCUA has generally looked to the Federal Reserve System's Regulation Z, implementing the Truth in Lending Act, for guidance on what constitutes a finance charge. 12 C.F.R. 226; 15 U.S.C. §1605. Transaction fees are specifically included among the examples of finance charges in Regulation Z. 12 C.F.R. §226.4(b)(2). We have concluded that a transaction fee charged a member at the time of a credit card cash advance must be included in the rate of interest calculation because it is a finance charge. FCUs may only charge such transaction fees if added together with the other fees and interest they would not result in an interest rate in excess of the regulatory limit.

Sincerely,

Sheila A. Albin
Associate General Counsel

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