

December 6, 2002

Paul A. Allbritton, Vice President
Alexandria USDA Federal Credit Union
Post Office Box 4030
Pineville, Louisiana 71361-4030

Re: Statutory Lien.

Dear Mr. Allbritton:

You have asked if a federal credit union (FCU) may use its statutory lien authority to “freeze” a member’s account that was delinquent but is now current. By freezing an account, you mean to put a hold on a member’s account and create a share secured loan. The National Credit Union Administration’s (NCUA’s) statutory lien regulation does not provide the authority to do this. 12 C.F.R. §701.39. You have also asked for clarification of how a nonmonetary default or a member’s delinquency on loans with other financial institutions may qualify as default under the statutory lien regulation. While a member’s failure to meet a financial obligation may be other than a repayment obligation and result in a default within the meaning of the regulation, generally, overdue obligations with another lender will not.

You explain that an FCU member defaulted on her loan and the FCU, rather than deduct the full balance due on the loan from the member’s account, deducted one monthly payment from the account and froze the remainder of the account. The freezing of the account, in effect, created a share secured loan. The FCU chose this course of action because it was a joint account with the debtor’s mother and child and believed freezing the account would be less offensive to the debtor’s mother, who is a long time member. Although the loan is now current, the FCU would like to continue to freeze the account.

Section 701.39 of NCUA’s regulations provides for a statutory lien only if a member is in default on a financial obligation and permits an FCU to debit a member’s account “to the extent of any of the member’s outstanding financial obligations.” 12 C.F.R. §701.39(d). It does not authorize freezing an account or taking any action unless an account is in default.

Our opinion is that the FCU did not have to debit the member’s account for the full amount of the outstanding obligation but, as it did in this case, could debit the member’s account for an amount that would bring the loan current. But, once the loan was current, in other words, no longer in default, the FCU had no authority to freeze the remainder of the account or take any action under the authority of the statutory lien regulation.

You noted that freezing the member’s account for the duration of the loan may be less offensive to the debtor than enforcing the statutory lien by deducting the full outstanding balance of the loan. We suggest this may be an alternative on which the FCU and the member could agree by modifying the loan agreement.

Apart from the statutory lien regulation, we note the FCU Bylaws provide for freezing a member’s account in the event a member is delinquent on a loan.

No member may withdraw any shareholdings below the amount of the member’s primary or contingent liability to the credit union if the member is delinquent as a borrower, or if borrowers for whom the member is comaker, endorser, or guarantor are delinquent, without the written approval of the credit committee or loan officer.

FCU Bylaws, Art. III, Section 5(c). This provision, like the authority to enforce a statutory lien, only applies if and while the member is delinquent. It does not create a share secured loan.

Regarding default under the statutory lien regulation, you have asked us to consider the significance of information you have that a member has past due loans with other lenders and a provision in the member's loan contract stating "you will also be in default if something happens which the credit union believes may substantially reduce your ability to repay what you owe." The regulation requires the obligation that is the basis for the default to be "due and payable to the credit union," therefore, generally, we do not believe an FCU can use the remedies of §701.39 based solely on a member's delinquency with another financial institution. 12 C.F.R. §701.39(d)(2). The preamble appearing with the final regulation states that:

NCUA interprets the words "financial obligation" to encompass not only a repayment obligation, but related nonmonetary obligations such as a restriction on the sale of collateral securing a loan.

64 Fed.Reg. 56953, 56956 (October 22, 1999). While obligations other than repayment may be the basis for a default, we are very hesitant to express an opinion about the provision you mentioned in a particular loan agreement. The provision, itself, is so broadly written that determining whether a default has occurred under it would require weighing the facts and circumstances in a particular case. We suggest that the FCU consult with its own legal counsel, who would have access to all the facts, in making a determination in a particular member's case about the effect of this provision.

Sincerely,

Sheila A. Albin
Associate General Counsel

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