

February 19, 2004

Timothy G. Sheedy, Esq.
Tarbell Professional Association
45 Centre Street
Concord, NH 03301

Re: Prepayment Penalties – Waiver of Settlement Fees.

Dear Mr. Sheedy:

You have asked if a federal credit union (FCU) that waives certain settlement fees in connection with a loan may recoup them from the borrower if the borrower pays off the loan during the first, second, or third year of the loan but before the loan matures. As discussed below, the answer is yes.

If an FCU waives settlement fees, it confers a benefit on the borrower. The FCU may require the borrower to reimburse the FCU for this benefit if the borrower prepays the loan before maturity, and the reimbursement is not a violation of the prohibition on early payment penalties. 12 U.S.C. §1757(5)(A)(viii); 12 C.F.R. §701.21(c)(6); Office of General Counsel opinion letters 93-0206 (March 9, 1993) and 96-0522 (June 13, 1996) (available on the agency website).

We note that any specific fees waived, which are subject to being recouped, and the dollar amount of each waived fee should be indicated clearly in the loan documentation. Our view is that recouping costs based on formulas such as a percentage of the outstanding loan balance suggest a prohibited early payment penalty rather than a permissible recouping of waived fees.

Sincerely,

Sheila A. Albin
Associate General Counsel

GC/PMP:bhs
03-1147