

April 10, 1992

Patricia A. Torkildson
Vice President & Associate General Counsel
CUNA Service Group, Inc.
Box 431
Madison, WI 53701-0431

Re: Legality of Max Program (Your February 28, 1992, Letter)

Dear Ms. Torkildson:

You have asked whether the credit approval and collection aspects of the Max program comply with the requirements set forth in the Federal Credit Union Act and NCUA's Rules and Regulations. We have no legal objection to the Max program, as long as a participating credit union has adopted appropriate loan policies and makes the ultimate credit decision.

BACKGROUND

Under the MAX program, CUNA Service Group, Inc. ("CSG") will perform virtually all the back-office operations necessary to operate a credit card program. CSG will develop a credit policy that credit unions on the MAX program will adopt as their own. The credit union will provide its membership list to CSG who will send credit card solicitations to all members on the list that are at least 18 years of age. Completed applications will be sent to CSG. CSG will review the applicants' credit report and evaluate whether the applicants meet the requirements of the credit union's credit policy. CSG will prepare a list of all applicants who meet the requirements of the policy along with suggested credit limits (based on the credit policy) and another list of those who do not meet the credit standards. The credit union will review each list and determine which members to approve and reject and notify CSG of its decisions. CSG will open accounts for the applicants approved by the credit union and will send adverse action notices to the applicants rejected by the credit union. The loans will be on the books of the credit union.

CSG will also provide credit collection services to credit unions on the MAX program. A credit union will adopt a collection policy that will be used by CSG in collecting the accounts. After 180 days of delinquency, or when an account is discharged in bankruptcy, whichever occurs first, CSG will take an assignment of the account if the account is an "approved account." An "approved account" is an account that CSG lists as meeting the credit union's credit policy. If the credit union decides to approve any applicants who were not on that list, CSG will not act as guarantor for those accounts.

ANALYSIS

Section 107(5) of the FCU Act (12 U.S.C. 1757(5)) and Section 701.21 of NCUA's Rules and Regulations (12 C.F.R. 701.21) provide that an FCU's lending authority is in the hands of the FCU's board of directors. The FCU's board of directors cannot completely delegate this authority to any outside entity. Section 701.21(c)(2) requires the board of directors of a federal credit union to establish written lending policies. Section 701.21(c)(3) requires a credit application be kept on file for each borrower supporting the decision to make a loan or establish a line of credit. Section 701.21(a) explicitly authorizes an FCU to issue credit cards to its members.

As stated above, the board of directors must establish a lending policy and monitor the credit program for compliance with its own policies, needs and NCUA requirements. We have no legal objection to the Max

program, as long as a participating credit union has adopted appropriate loan policies, makes the ultimate credit decision, and otherwise complies with Section 701.21 of NCUA's Regulations. In addition to the above-addressed legal requirements, an FCU must determine whether or not a particular program suits its individual needs. Any safety and soundness concerns will be addressed by the NCUA examiner and regional office.

This letter should not be interpreted as an approval or endorsement of a particular lending program. It is our opinion that the Max program does not violate the FCU Act or NCUA's Regulations.

One additional note. This program was also reviewed by the Office of Examination and Insurance. They perceive a potential safety and soundness concern. They believe credit unions should not place undue reliance on the guarantee by CSG. Credit unions participating in the program should ensure that CSG is capable of meeting its liabilities under the guarantee. It is up to each credit union to ascertain the best method for making this determination.

Sincerely,

Hattie M. Ulan
Associate General Counsel

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