

May 29, 1996
Jay Gratwick
Sr. Internal Auditor
Delta Employees Credit Union
P.O. Box 20541
Atlanta, GA 30320-2541

Re: Advertising Share Accounts as Being "Free"
(Your Letter of May 3, 1996)

Dear Mr. Gratwick:

You requested a legal opinion regarding the proper advertising of a share draft account. Currently, your credit union charges an "excessive transfer from share" fee on the share draft account. The fee is charged to a member's share draft account if the member exceeds the maximum of six permissible transfers per month. The transfer fee was set up to assist the credit union in monitoring compliance with Regulation D requirements governing savings deposit accounts.

The issue is whether the "excessive transfer from share" fee is a maintenance or activity fee. NCUA's Truth in Savings regulation provides:

An advertisement shall not refer to or describe an account as "free" or "no cost" (or contain a similar term) if any maintenance or activity fee may be imposed on the account.

The Official Staff Commentary to the regulation gives examples of fees that are maintenance or activity fees. The relevant comment states:

3. *"Free" or "no cost" accounts.* For purposes of determining whether an account can be advertised as "free" or "no cost," maintenance and activity fees include:

i. Any fee imposed if a minimum balance is not met, or if the member exceeds a specified number of transactions.

Since the comment encompasses the credit union's "excessive transfer from share" fee, the credit union would be prohibited from advertising its share account as "free." If you have any further questions relating to account advertising, we would direct you to call NCUA's Region III, telephone (770) 396-4042.

Sincerely,

Richard S. Schulman
Associate General Counsel

cc: H. Allen Carver
Region III Director
GC/MS:sg SSIC 3253
96-0519