

September 14, 1998

Robert S. Aljoe, Consultant
South Dakota Credit Union League
Post Office Box 0
500 Western Avenue North
Sioux Falls, South Dakota 57101

Re: Truth in Savings Disclosure Requirements.

Dear Mr. Aljoe:

You have asked whether the South Dakota state law concerning fees on returned checks is inconsistent with the federal Truth in Savings Act disclosure requirements for credit unions. The requirements of the South Dakota law you have referenced do not apply to credit unions.

South Dakota law imposes disclosure requirements on merchants and places of business who assess fees on customers for passing returned checks. S.D. Codified Laws §57A-3-421. We consulted the South Dakota Attorney General's Office about whether the terms "merchants" or "places of business" include credit unions and whether the disclosure requirements under section 57A-3-421 apply to credit unions. We were informed that the Attorney General's Office does not consider credit unions to be merchants or places of business subject to the disclosure requirements under section 57A-3-421.

Federally insured state-chartered credit unions and federal credit unions are subject to the federal Truth in Savings Act of 1991, 12 U.S.C. §4301 *et seq.*, and the NCUA regulations implementing the Act, 12 C.F.R. Part 707. We have answered your three specific questions below in light of the NCUA Truth in Savings regulations.

1. Do credit unions in South Dakota have to disclose return item fees on their share and share draft statements to members?

No, they do not unless they have imposed the fees during the statement period.

The NCUA regulations state that credit unions must disclose fees associated with checks returned unpaid. 12 C.F.R. §707.4(b)(4). These disclosures must be made before an account is opened or a service is provided, whichever is earlier. 12 C.F.R. §707.4(a)(1). The NCUA regulations also state that if a credit union mails or delivers a statement, the statement must include certain disclosures, including disclosure of the fees associated with checks returned unpaid and imposed on the account during the statement period. The fees must be itemized by type and dollar amount. 12 C.F.R. §707.6(b)(3).

2. Do credit unions in South Dakota have to post a notice in their lobbies to alert members up front that they will be assessed a fee for bad checks?

No, NCUA regulations do not require credit unions to post such a notice in their lobbies.

3. If the credit union wishes to turn over the bad check to the State's Attorney for prosecution in the South Dakota court system, would the credit union have to follow South Dakota law even if the NCUA

determined that credit unions were preempted from the South Dakota disclosure requirements?

No. As noted above, the South Dakota disclosure law concerning fees on returned checks does not apply to credit unions. However, in the event of a prosecution, there may be other state laws that would be involved. We suggest you consult with local counsel.

Sincerely,

Sheila A. Albin
Associate General Counsel

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