January 20, 2000

Re: Late Charge Pyramiding.

Dear :

You have asked whether a hypothetical loan repayment scenario violates NCUA's regulation prohibiting the pyramiding of late charges. 12 C.F.R. §706.4(a). Assuming the lender in your scenario, which is described below, is a federal credit union (FCU), it violates the rule.

You describe a loan with a fixed payment due on the first of each month. The member misses two consecutive monthly payments, and the FCU assesses late charges. Shortly after the second missed payment, the member makes two separate payments totaling the exact amount of outstanding principal and interest due at that time. In all subsequent months, the member makes timely payments in the amount of principal and interest due. However, since the member's two late payments were not enough to satisfy the total of principal, interest, *and* late charges owing at that time, the FCU treats the following monthly payments of principal and interest as delinquent and assesses the member an additional late charge in each of the subsequent months.

An FCU may not assess late charges when a loan is current on principal and interest due but is in arrears on previous late charges. 12 CF.R. §706.4(a). NCUA's regulation requires that FCUs apply any payment first to principal and interest due and then to any outstanding late charges. If a particular payment is timely and sufficient to bring the account current on both principal and interest due, the FCU may not assess additional late charges in connection with that payment even if previous late charges remain unpaid. Only if a timely payment is insufficient to satisfy outstanding principal and interest obligations may the FCU assess an additional late charge.

Sincerely,

Sheila A. Albin
Associate General Counsel

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