

April 2, 1991

Patricia K. Jones
Comptroller
White Sands Federal Credit Union

P.O. Box 99
Las Cruces, NM 88004

Re: Credit Cards Issued By Federal Credit Unions To Nonmembers (Your Letter of February 21, 1991)

Dear Ms. Jones:

Your letter to John S. Ruffin, Region V Director, has been forwarded to the Office of General Counsel for response. You request an opinion regarding "whether a joint signer on a credit union VISA account can have the card itself issued with the joint [nonmember's] name only embossed." A federal credit union ("FCU") only has the direct authority to extend credit, including credit card credit, to members. In light of the fact that many Master Credit Card Agreements between the credit card company and the FCU (the "Master Credit Card Agreement(s)") allow for nonmember agent use of the member's credit card the NCUA has held that credit can be extended to nonmember agents of the member as an incidental power. The critical factor is that the credit card agreement between the FCU and its member for the extension of the revolving credit (the "Member Credit Card Agreement") must ensure that the member is primarily liable for the extension of credit. Credit is not being extended to a nonmember in this situation. The nonmember is acting as the member's agent. The names embossed on the credit card itself, which are only evidence of the agreement, but not the agreement itself, are irrelevant. Therefore, assuming the member is obligated to pay the full balance on the credit card by agreement, the credit card can be embossed with any nonmember agents' names of the member credit card account holder, as long as such does not violate either the Member Credit Card Agreement, the Master Credit Card Agreement, or any applicable state law (such as laws regarding the credit of minors, incompetents, guardians or wards).

ANALYSIS

FCUs are authorized "to make loans, the maturities of which shall not exceed twelve years except as otherwise provided herein, and extend lines of credit to members..." 12 U.S.C. ~1757(5). That FCUs may make credit card loans is explicitly stated in the regulations; "[FCUs are authorized] to make loans to members and issue lines of credit (including credit cards) to members." 12 C.F.R. ~701.21(a).

Although no express authority exists for an FCU to provide credit cards to nonmembers, the NCUA has previously permitted an FCU to extend a member's credit card credit to nonmember agents of the members, such as relatives and sole proprietorship, partnership or corporate employees. The authority for this arises from the authority of FCU's "to exercise such incidental powers as shall be necessary or requisite to enable it to carry on effectively the business for which it is incorporated." 12 U.S.C. ~1757(17). In *Arnold Tours, Inc. v. Camp*, 472 F.2d 427 (1st Cir. 1972), a court defined incidental powers for national banks as:

[an activity] that is convenient or use-ful in connection with the performance of one of the bank's established activities pursuant to its express powers under the National Bank Act. If this connection between an incidental activity, and an express power does not exist, the activ-ity is not authorized as an incidental power.

In *American Bankers Association v. Connell*, 447 F.Supp. 296 (D.D.C. 1978), the court applied the

"convenient or useful" test of incidental powers to FCUs. In order for many FCUs to offer credit cards, they must execute a Master Credit Union Agreement, which requires the FCUs to offer the member's credit card revolving credit to nonmember agents of the member's choosing. The member credit card account holder may also have rights to distribute his or her credit card to nonmember agents under the Member Credit Card Agreement between the FCU and the member. Thus, such extensions of a member's credit card credit to certain nonmembers is both convenient and useful, and a legitimate exercise of an FCU's incidental powers.

Regardless of the holder or the name on the card, the member remains liable for the full amount of the credit advanced under the credit card by the FCU. The critical factor is not the name on the card, which merely evidences the credit card agreement, but the actual credit card agreement between the FCU and the member. Therefore, neither the FCU Act nor the NCUA Rules and Regulations prevent an FCU from issuing a credit card on a member's credit card account to a nonmember agent. Such action must, however, be done in accordance with the terms and conditions of the Master Credit Card Agreement, the Member Credit Card Agreement, and relevant state law. For example, some state laws may prevent minors, incompetents, wards and guardians from holding a credit card in their own name. We suggest you contact a locally licensed attorney to determine if any state law restrictions would apply.

Sincerely,

Hattie M. Ulan
Associate General Counsel

cc: John S. Ruffin,
Region V Director

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