

April 30, 1991

Lee E. Sapira, Esq. Kozloff, Diener, Payne & Fegley P.O. Box 6286 Wyomissing, Pennsylvania 19610

Re: Late Charges (Your April 4, 1991 Letter)

Dear Mr. Sapira:

You have requested our opinion as to whether late payment charges imposed by a federal credit union ("FCU") are considered to be finance charges and therefore taken into account in determining the total interest rate under NCUA's interest rate ceiling/usury provisions, Section 107(5)(A)(vi) of the Federal Credit Union Act (the "Act"), 12 U.S.C. ~1757(5)(A)(vi) and Section 701.21(c)(7) of NCUA's Rules and Regulations (the "Regulations"), 12 C.F.R. ~701.21(c)(7). We do not regard late charges as finance charges for purposes of determining the total interest rate for usury purposes.

Neither the Act nor the Regulations defines the term "finance charge." Our longstanding practice has been to give "finance charge" the definition set forth in the Federal Reserve Board's Regulation Z, 12 C.F.R. Part 226. Section 226.4(c) of Regulation Z states, in part, "The following charges are not finance charges: . . . (2) charges for actual unanticipated late payment" As you know, Regulation Z is a disclosure regulation. Generally, it does not control the interest rate or other charges in a loan agreement; it merely imposes requirements for disclosure of those charges. While credit unions are bound by Regulation Z's definition of finance charge for disclosure purposes, NCUA alone has authority to determine which types of charges are included in the computation of interest for the usury ceiling set forth in the Act and Regulations. We do, however, generally look to Regulation Z for guidance on the issue of what constitutes interest, and we have consistently followed the definition of finance charge set forth in Regulation Z. It is therefore our position that late charges are not finance charges, and need not be taken into account in calculating the interest rate for purposes of the usury provisions of the Act and Regulations.

You express concern over the fact that 15 U.S.C. ~1605, although ambiguous, seems to you, "absent any contrary authority," to require that a late charge be considered a finance charge. 15 U.S.C. ~1605 is part of the Truth-in-Lending Act, the statute pursuant to which Regulation Z was promulgated. In light of the relationship between the statute and the regulation, it seems to us improbable that there is a conflict between the two; more likely, the regulation clarifies an ambiguous provision of the statute. However, you should note that NCUA has no authority to interpret either the Truth-in-Lending Act or Regulation Z. We suggest that you contact the Federal Reserve Board for an official opinion on this issue, should you desire one.

You also requested clarification of Staff Attorney Meg Suuberg's comment, made during your telephone conversation, to the effect that Regulation Z includes late charges in the category of finance charges under certain circumstances. We refer you to Supplement 1 to Regulation Z. Subpart A, Paragraph 4(c)(2) of Supplement 1 discusses certain criteria that must be met in order for a charge to qualify as a late charge. According to that paragraph, if those criteria are not met, the charge in question may be a finance charge. 12 C.F.R. Part 226, Supp. 1, Subpart A, Paragraph 4(c)(2). Again, we suggest that you contact the Federal Reserve Board if you need further guidance in this area.

Sincerely,

Hattie M. Ulan Associate General Counsel

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