

September 23, 1991

Arno J. Easterly
Barksdale Federal Credit Union
Barksdale Center
P.O. Box 9
Barksdale AFB, LA 71110-0009

Re: Pricing Deviation (Your August 23, 1991, Letter to Allen Carver)

Dear Mr. Easterly:

Allen Carver, the Region III Director, asked me to respond to your question of whether a federal credit union (FCU) can price its services, loan rates and dividend rates differently depending upon the location of the member or FCU office. Enclosed is a prior legal opinion issued by this office concerning the impermissibility of varying dividend rates based solely on the location of the member. In our opinion, the same analysis applies for varying service charges and loan rates depending on the residence of a member or FCU office.

There may also be an additional problem with such a variance in connection with an extension of credit. The Equal Credit Opportunity Act (ECOA) and regulation B (12 C.F.R. 202) prohibit discrimination in extensions of credit based on race, color, religion, national origin, sex, marital status, age, receipt of public assistance programs, and good faith exercise of rights under the Consumer Credit Protection Act. Varying loan rates and terms based on a member's residence may have a discriminatory effect, even though the terms appear neutral. The "effects test" is a judicial doctrine which, in essence, holds that policies may be described as discriminatory if the policy has a negative impact on persons intended to be protected by law, even if there is no intent to discriminate. The "effects test" may be applicable in this situation because your plan is directed at a low income community. However, even if there is no problem under ECOA, the variance would not be permissible for the previously stated reason.

Sincerely,

Hattie M. Ulan
Associate General Counsel

GC/MM:sg
SSIC 3501
91-0910

cc: Allen Carver
Region III Director

Enclosure