

March 15, 1995

Jerry Dooley
Chief Executive Officer
Westinghouse Defense Center
Federal Credit Union
P.O. Box 8735
Baltimore, MD 21240

Re: Interchange Deposit Service (Your Letter of February 10, 1995)

Dear Mr. Dooley:

You requested a legal opinion regarding the ability of a federal credit union ("FCU") to participate in an optional interchange deposit service offered by an automated teller machine ("ATM") network. The ATM network, Internet (advertised as MOST), allows participating financial institutions to perform interchange deposits with other participating financial institutions. For those MOST financial institution participants executing the Interchange Deposit Service Agreement ("Service Agreement"), their members will be able to make deposits through any ATM in the Internet MOST system operated by a financial institution participant that has also executed the Service Agreement. The Service Agreement requires compliance with an interchange deposit processing manual ("Manual"). Neither the Service Agreement nor the Manual were included for our review. If the FCU's board of directors satisfactorily address the issues set forth in this letter, the FCU may proceed with the proposed interchange deposit service.

ANALYSIS

Under certain conditions, it is permissible for FCUs to engage in an interchange deposit service. The FCU's board of directors should determine if such service is in the best interests of the credit union and its members. In reaching its decision, the board should consider, among other things, the attendant costs and safety and soundness risks associated in operating and participating in the service. We are most concerned with the internal control procedures to protect the interests of the members. It is recommended that the board carefully monitor the quality of the service to determine whether the activity should be improved or continued.

The following three issues must be addressed by the FCU prior to entering an interchange deposit service:

1. Security

The servicing financial institution will generally be required to comply with the security regulations of the agency under which it is supervised. FCUs must follow the security requirements promulgated by the NCUA. 12 C.F.R. 748.0; Accounting Manual for FCUs, 5193. In addition, FCUs participating in programs with financial institutions falling under the jurisdiction of the Federal Deposit Insurance Corporation, Office of Thrift Supervision, Office of Comptroller of the Currency, or Federal Reserve Board, should determine that at least minimum security requirements promulgated by those supervisory agencies are met. The credit union's failure to properly operate a program or consider establishing effective procedures and controls could result in a finding that certain actions constitute unsafe and unsound practices. If an FCU intends to conduct an ATM activity through the use of a credit union service organization, it must follow section 701.27 of the NCUA Rules and Regulations. 12 C.F.R. 701.27.

2. Surety.

Each FCU entering into such an arrangement should obtain written assurance from their surety that coverage extends to this activity. This assurance is necessary to comply with section 701.20(b) of the NCUA Rules and Regulations which requires the board of directors to obtain adequate bond coverage to meet new or changed circumstances pertaining to the FCU's operations. 12 C.F.R. 701.20(b).

3. Legal Opinions and Regulatory Requirements.

It is the responsibility of the board of directors of each FCU planning to share such services with another financial institution to assure that the arrangement and any related agreements are in compliance with applicable federal and state law. In this regard, the officials may deem it advisable to consult with an attorney to assure that agreements between the parties operating the system and between the member and the FCU are in compliance with applicable laws, such as the Electronic Fund Transfer Act, Truth in Savings Act, and Truth in Lending Act. In order to obtain the ability for members to make deposits at nonproprietary ATMs, FCUs will need to collect and process deposits from some nonmembers. However, since the Services Agreement requires such complimentary services among members/consumers of participating financial institutions, such services as described in your letter could be considered a legitimate incidental authority for FCUs to undertake. See Letter from Hattie Ulan, Assistant General Counsel, to Kathleen Thompson, Esq., Credit Union National Association, Re: FCU Authority to Provide Services to Nonmembers, dated May 16, 1989; Letter from Timothy McCollum, Assistant General Counsel, to J.L. Nordquist, Land O'Lakes FCU, Re: Power to Provide Check-Cashing and Other Services for Nonmembers, dated October 17, 1988; Letter from Steven Bisker, Assistant General Counsel, to Steven Goldberg (all enclosed).

If you have questions, please call either me or Martin Conrey, Staff Attorney at (703) 518-6558.

Sincerely,

Richard S. Schulman
Associate General Counsel

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Enclosures

1. Program Specifications and Agreement.

An Operations Manual and/or other type of Statement of Operating Specifications should be maintained in the FCU's files describing the specific services and transactions covered under the program and such other information as is necessary to provide management and operating staff with an overview of the activity as well as the day-to-day operational details. Such manual may be incorporated as part of an agreement between the FCU and other parties in a shared environment. An unsafe and unsound practice may exist if a FCU enters into a sharing arrangement without a written agreement (or operating specifications if incorporated as part of the agreement) being established which addresses the following:

- a. Maintaining the individual identity of the FCU and the confidentiality of the members in all transactions;
- b. The types of business to be transacted and limitations;
- c. Method and frequency of settlement;
- d. Communication methods between the parties for transactions, error resolution, etc.;
- e. A schedule of any charges to be assessed to the participating FCU including a statement that joint or shared costs will be

equitably charged in proportion to each participant's use; and f. A procedure for arbitrating disputes and for terminating the contract.

4. Member Agreements.

To assure proper understanding, it is recommended that each FCU execute an agreement with each member utilizing the service which outlines the specific duties and responsibilities of both the credit union and the member. As in the case of the agreement between the servicer and the credit union, an unsafe and unsound practice may exist if a FCU does not execute such an agreement with its member.

5. Security.

If the FCU's board of directors satisfies the guidelines set forth in this letter, the FCU may proceed with the proposed optional interchange deposit service. Jerry Dooley