

March 7, 2005

Peter J. Liska, Esq.
766 Shrewsbury Avenue
Tinton Falls, NJ 07724

Re: Electronic Remote Deposit Service for Members.

Dear Mr. Liska:

You have asked if a federal credit union (FCU) can offer a service permitting members to receive immediate, provisional credit for deposits it has not actually received, but which a member commits to make within a set time frame, by sending electronic information to the FCU. This service is permissible. FCUs should consider individual and aggregate limits and address any other safety and soundness concerns. FCUs should also ensure compliance with legal requirements relating to an extension of credit, including various regulations that may apply to this service.

The FCU proposes to permit members meeting certain criteria with electronic access to the credit union's website, enabling them to identify funds they intend to deposit within ten days. Upon receiving the electronic information, the FCU would provide provisional credit to the member's account up to a maximum of \$1,500; the funds would, from that point, earn dividends and be available for withdrawal. The member must physically present the deposit in person or through the mail within ten days. The member is responsible for immediately reimbursing the credit union if the member fails to make the deposit within ten days or if an item is returned unpaid. The FCU would not assess interest for the provisional credit and would not impose a fee for the service. We assume, however, the credit union would charge the member its usual overdraft fees if a member failed to make a deposit and an item were paid despite insufficient funds. Also, if the credit union does provide overdraft protection with this service, we assume the credit union would charge the member its usual fee for an item returned because of insufficient funds.

We think this service is legally permissible under the federal regulation governing the availability of deposited funds and the Uniform Commercial Code (UCC). The Federal Reserve Board is the federal agency that implements the Expedited Funds Availability Act in its regulation known as Regulation CC. Regulation CC establishes time frames when financial institutions must make deposited funds available to a depositor. 12 C.F.R. Part 229. While the rule establishes time frames when funds must be made available, it does not prohibit an institution from providing earlier availability. 12 C.F.R. 229.19(c)(1). In addition, we note Article 4 of the UCC, which generally governs deposits in and collections by financial institutions, permits parties to alter its applicability by agreement. U.C.C. §4-103(a) (2000). We also note the UCC permits parties to agree that

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presentment of an item may be by providing electronic information describing an item rather than by delivery of the item itself. U.C.C. §4-110(a) (2000).

We believe the service entails the extension of credit to a member but does not require compliance with federal disclosure requirements under the Truth in Lending Act. The FCU provides provisional credit when it makes funds immediately available to an individual based on a promise to repay. The Federal Reserve implements the Truth in Lending Act in Regulation Z. 12 C.F.R. Part 226. We do not believe this service, as you have described it, requires compliance with the Regulation Z requirements because of the provisional nature of the credit and the fact the member repays the advance in a single installment, without interest or other charges. 12 C.F.R. §226.2(a)(14); (17)(i).

Because this service is an extension of credit, the FCU should address safety and soundness concerns. These concerns include appropriate consideration of the criteria for qualifying members for the service and, in addition to individual limits, establishing aggregate limits on the total outstanding credit suitable for the FCU given its size and financial condition. The FCU should also establish controls to limit or terminate member participation in case of a member's failure to make committed deposits.

Since extension of credit is a feature of the service, the FCU should ensure its methods for determining member eligibility conform to the nondiscrimination requirements in the Federal Reserve Board's Regulation B. 12 C.F.R. Part 202. This includes ensuring that the service, although neutral on its face, does not result in a disparate negative impact on members of any protected class. *Id.*

Finally, we note two, other regulations that apply to this service. Since the service also involves electronic access to share accounts, the FCU must ensure compliance with the disclosure rules in the Federal Reserve Board's Regulation E. 12 C.F.R. Part 205. The FCU must also ensure its disclosures required by our Truth in Savings rule "reflect the legal obligation between the member and the credit union" regarding this service. 12 C.F.R. Part 707, §707.3(b).

Sincerely,

/s/

Sheila A. Albin
Associate General Counsel

GC/RPK/SAA:bhs
05-0115