

March 22, 2005

Mary Cunningham, President/CEO
USA Federal Credit Union
9999 Willow Creek Road
San Diego, CA 92131-1117

Re: Regional Dividend Rates.

Dear Ms. Cunningham:

You have asked if a federal credit union (FCU) may pay varying dividend rates on shares based on the location of the branch where the shares are maintained. Yes, an FCU may do so if it has a rational basis to support the action.

You state USA Federal Credit Union operates branches in Japan, Korea, Guam, and the United States, and economic conditions vary from country to country. As a result, you wish to pay varying dividend rates for the same type of share accounts depending on the economic conditions and degree of competition in a particular location.

Our view is the Federal Credit Union Act (Act) permits, and NCUA's regulations do not prohibit, regional dividend rates. The Act authorizes FCUs:

To receive from its members, from other credit unions, from an officer, employee, or agent of those nonmember units of Federal, Indian Tribal, State, or local governments and political subdivisions thereof enumerated in section 207 of this Act and in the manner so prescribed, from the Central Liquidity Facility, and from nonmembers in the case of credit unions serving predominantly low-income members (as defined by the Board) payments, representing equity, on— (A) shares which may be issued at varying dividend rates; (B) share certificates which may be issued at varying dividend rates and maturities; and (C) share draft accounts authorized under Section 205(f); subject to such terms, rates, and conditions as may be established by the [FCU's] board of directors, within limitations prescribed by the [NCUA] Board.

12 U.S.C. §1757(6) (emphasis added). NCUA's regulation implementing this section of the Act reiterates the types of shares that are permissible and states that a board of directors may declare dividends as provided in Section 117 of the Act. 12 C.F.R. §701.35. Section 117 of the Act states:

At such intervals as the board of directors [of an FCU] may authorize, and after provision for required reserves, the board of directors may declare a dividend to be paid at

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different rates on different types of shares, at different rates and maturity dates in the case of share certificates, and at different rates on different types of share draft accounts.

Dividends credited may be accrued on various types of shares, share certificates, and share draft accounts as authorized by the board of directors. If the par value of a share exceeds \$5, dividends shall be paid on all funds in the regular share account once a full share has been purchased.

12 U.S.C. §1763 (emphasis added). On an initial reading, these provisions of the Act do not appear to address payment of dividends consistently. Section 1757(6) provides for issuing shares “at varying rates” and grants an FCU’s board of directors broad authority to establish rates and conditions. Section 1763, however, appears to contemplate that a dividend rate will apply to “different types of shares.” Our review of the scant legislative history of these provisions failed to provide any particular insight or guidance on interpreting the sections together. Nevertheless, the legislative history as a whole of the authority to offer different types of share accounts evidences a congressional intent to expand authority in this context. We believe the best interpretation, reading the two provisions together, is that an FCU’s board of directors has the flexibility to pay varying dividend rates on shares based on the location where shares are maintained.

We base our interpretation on a board of directors having a rational basis for distinguishing between the same types of account in determining dividend rates. The circumstances of your credit union, with branches in foreign countries, present a rational basis. As you represent, the branch locations experience different economic and competitive conditions supporting different dividend rates on the same type of account.

We caution you that paying varying dividend rates on a regional basis will likely affect your required disclosures under NCUA’s truth in savings rule. 12 C.F.R. Part 707. We encourage you to contact local counsel to make certain you comply with Part 707 and any other applicable consumer protection laws.

Sincerely,

/s/

Sheila A. Albin
Associate General Counsel

GC/FSK/SAA:bhs

04-1144