March 19, 2007

Brian R. Caird, Vice President, Marketing and Business Development
Northern Federal Credit Union
120 Factory Street
Watertown, NY 13601

Re: Dividend Rewards Program for Use of Certain Services

Dear Mr. Caird:

You have asked if Northern Federal Credit Union may offer an account that provides members with financial rewards based on their use of other specific products or services the credit union offers. We have no legal objection to the proposal but, as discussed below, the credit union must ensure it makes appropriate disclosures under the Truth in Savings Act (TISA) as implemented in NCUA's TISA regulation. 12 C.F.R. Part 707.

Your proposal is to offer members a new share draft product with no minimum balance requirement, no monthly maintenance fee, and no per draft charges. Members who choose this new account would also qualify for a premium dividend rate and a refund of ATM charges if they meet certain additional transactional requirements. These are, on a monthly basis:

- Receive a direct deposit or conduct an ACH debit transaction involving the account;
- Sign on to the credit union's online banking program at least once;
- Choose to receive their statement electronically; and
- Conduct ten or more point of sale transactions on the account.

Account holders who fail to meet these requirements during a given month would not receive the premium dividend rate or the ATM charge refund but would be eligible to qualify again in succeeding months.

A federal credit union has the authority to establish promotional programs reasonably calculated to promote credit union membership and the products and services offered by the credit union to its members. 12 C.F.R. §721.3(h). We believe the program you have described meets these criteria.

The Federal Credit Union Act provides that a federal credit union may establish and pay different dividend rates on different types of accounts. 12 U.S.C. §1763. In this case, however, a potential effect of the program will be that some account holders will receive a different dividend rate than others who have the same type of account. The different rate structure is tied to behavioral factors exhibited by the members, not to intrinsic differences in the account.

Our office has previously concluded that a federal credit union could establish and pay different rates on similar types of accounts, based on cost differences associated with offering and maintaining the accounts in different branch office locations. OGC Op. 04-1144 (March 22, 2005) (available on NCUA's website). The opinion concluded that a variable rate structure for similar types of shares is supportable if founded on a rational basis. Applying that reasoning in this case, we believe the credit union's desire to promote its various automated services and thereby achieve related cost savings is a sufficient rational basis to support the variable rate structure you have proposed.

We address two additional considerations your proposal raises. First, a federal credit union cannot contract to pay a particular dividend rate. Unlike deposit accounts at banks, shares in a federal credit union earn dividends, not interest. Payment of dividends is contingent on earnings availability, and a federal credit union should ensure that its members, including those participating in this program, are aware of this. 12 C.F.R. §707.4(b)(8). Second, paying varying dividend rates on the basis you have proposed will likely affect other required disclosures under NCUA's truth in savings rule. 12 C.F.R. Part 707.

We note we have not reviewed proposed TISA disclosures associated with this proposal and it is not our practice to do so. You should consult with your own legal 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/RPK:bhs
07-0211

cc: NCUA Regional Director, Region I