NCUA LETTER TO CREDIT UNIONS

NATIONAL CREDIT UNION ADMINISTRATION

NATIONAL CREDIT UNION SHARE INSURANCE FUND

LETTER NO. 162

DATE: December 1994

DEAR BOARD OF DIRECTORS: As the compliance date for the Truth-in-Savings Act draws closer, we have been reviewing the regulation's impact on related areas of credit union operations. As a result, we would like to bring to your attention the effect that Truth-in-Savings will have on credit unions using an Undistributed Payroll Deduction account to accumulate payroll deductions prior to posting to the members' accounts.

The Undistributed Payroll Deduction account is an accounts payable that is used to hold the payroll deduction balances that have been received from the employer, but not yet posted to the members' accounts. In some cases, these balances are held for several weeks before they are posted. For example, weekly payroll deductions may be accumulated until the last day of the month and then posted to shares or loans and interest (if there is a loan). Truth-in-Savings will require that any undistributed payroll deduction balances be considered part of a member's account balance upon which dividends will be calculated.

The Truth-in-Savings Act, Section 707.7(a) of the National Credit Union Administration Rules and Regulations, requires credit unions to "calculate dividends on the full amount of principal in an account for each day." The term "principal" is defined in Appendix A to Section 707, as "the amount of funds assumed to have been deposited." These definitions indicate that the balance on which dividends are calculated is the amount that is in, applied to, or due to, a member's account. This would include any balances held in an Undistributed Payroll Deduction account. We find this to be consistent with the intent of Truth-in-Savings and ultimately serves to benefit credit union members.

In order for credit unions to "suspend" or "freeze" payroll deduction funds, so they would not be included in dividend calculations, a written contract must exist between the member and the credit union. The contract must indicate that members permit the credit union to hold, freeze, or suspend payroll deductions without adding them to their share account balances, and that by doing so, they may forfeit any dividends due to them under Truth-in-Savings. This written contract is best made a part of the payroll deduction agreement.

With regard to payroll deduction for loan payments, Truth-in-Lending regulations will also apply. Generally, if payroll deduction is voluntary and the member has access to the funds while they are held in the Undistributed Payroll Deduction account, the credit union may enter into a contract with the member as discussed above. If the payroll deduction is mandatory, or the payroll deduction is for an open-end loan and the member does not have access to the funds, the contract would either violate Truth-in-Lending regulations or result in difficult, if not impossible, disclosure. Members cannot waive their rights under Truth-in-Lending by contract. To avoid potential violations of Truth-in-Lending, credit unions should maintain voluntary payroll deductions and provide members access to funds in Undistributed Payroll Deduction accounts.

We are well aware of the difficulties that this aspect of Truth-in-Savings may cause, especially in small credit unions. We would like to remind you that NCUA remains committed to assisting credit unions with the implementation of Truth-in-Savings. Our staff stands ready to provide information and training in response to any difficulties that a credit union may be experiencing.

For the National Credit Union Administration Board,

Norman E. D'Amours
Chairman