

August 20, 1991

Harold F. Anderson
319 Barnard Street
Frostburg, Maryland 21532

Re: Notification of Change in Dividend Rates (Your July 3, 1991, Letter)

Dear Mr. Anderson:

You have asked whether a federal credit union ("FCU") must give prior notification to a member before changing the dividend rate on a class of accounts. An FCU need not notify each individual member before changing the dividend rate.

ANALYSIS

Federal credit unions may not guarantee that a specified dividend will be paid. Unlike the payment of interest by a bank, which is not contingent upon earnings, dividends are paid only from earnings. Dividends may only be paid if an FCU has available current earnings and/or retained earnings. Furthermore, the board of directors of an FCU is responsible for establishing a dividend period. Section 5160.1.1 of the Accounting Manual states in part that:

The dividend period consists of a span of time in which shares on deposit will earn dividend credit. The board of directors must establish dividend periods for each type of account being offered. The dividend period may be different for each type of account. The board may elect any dividend period. . . .

An FCU can have a number of different dividend periods and rates in the course of a year. Moreover, Section 701.35 of NCUA's Regulations (12 C.F.R. ~701.35) allows the credit union's board of directors considerable leeway in the operation of their share accounts. Section 701.35(a) states that:

Federal credit unions may offer share, share draft and share certificate accounts in accordance with Section 107(6) of the Act (12 U.S.C. ~1757(6)) and the board of directors may declare dividends on such accounts . . .

Section 701.35(c) states in part that:

A Federal credit union may, consistent with this Section, other Federal law, and its contractual obligations, determine the type of disclosure, fees or charges, time for crediting or deposited funds, and all other matters affecting the opening, maintaining or closing of a share, share draft or share certificate account. . . .

As you can see, an FCU has considerable discretion in how it operates its varied share accounts, especially in the realm of disclosures and dividends. Absent any contractual requirements, the board of directors does not need to notify each individual member of a change in the dividend rate. A posting of a new dividend rate at the FCU is sufficient notification under NCUA Regulations and the FCU Act.

Sincerely,

James J. Engel
Deputy General Counsel

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91-0719