

September 29, 1997

Anita Gieser, President
Pepto Makers Federal Credit Union
P.O. Box 2468
Greenville, South Carolina 29602

Re: Disbursement of Retained Earnings
Your letter dated August 4, 1997.

Dear Ms. Gieser:

You have written asking whether it is legally permissible for Pepto Makers Federal Credit Union (Pepto) to distribute retained earnings to its members based on an equal distribution or on length of membership. As explained below, the answer is no.

Pepto is merging with Greenville Federal Credit Union (Greenville). The merger agreement provides that Pepto transfer all of its share accounts, accounts receivable, assets and reserves with the exception of \$37,500 in retained earnings to Greenville. The Pepto board of directors wants to distribute the \$37,500 to the members based on their length of membership. As an alternative, the board would like to make an equal distribution to the members, regardless of their amount of shares. The board has been advised by the NCUA examiner that the proposed distribution plans are impermissible.

The Federal Credit Union Act authorizes the board to declare dividends on share accounts. 12 U.S.C. §1763. Different types of shares may receive different dividend rates, for example, share certificates as opposed to regular share accounts, but there is no authority to pay dividends based on length of membership. Id. The NCUA rules specifically provide for a bonus dividend and the permissible methods of payment. 12 C.F.R. §§707.2(m) and 707.7. Payments are to be based on the member's principal balance. 12 C.F.R. §707.7(a)(1) and (2). There is no authority to pay dividends based on length of membership or per capita.

Sincerely,

Sheila A. Albin
Associate General Counsel

GC/MFR:bhs
SSIC 3000
97-0813

cc: Region III