October 1, 1997

Ron Peters, President
Metz/McKennan Federal Credit Union
P.O. Box 88538
Sioux Falls, South Dakota 57109-1003

Re: Payment of Dividends, Your letter dated July 2, 1997.

Dear Mr. Peters:

You have asked whether the Federal Credit Union Act (the Act), 12 U.S.C. §1763, would allow your credit union, Metz/McKennan Federal Credit Union, to pay dividends on its share certificates "up front" and pay back the principal at maturity. No.

Dividends paid by a federal credit union (FCU) represent a distribution of earnings to members, a return for investing in or saving with the credit union. 12 C.F.R. Appendix C §707.2(i)(1). In general, dividends are not properly payable until declared by an FCU's board of directors at the close of a dividend period. 12 U.S.C. §1763; 12 C.F.R. Appendix C §707.2(i)(3). Further, dividends are not payable unless there are sufficient, current and undivided earnings available after provision for required reserves. Id.

An FCU may specify in advance or contract to pay a specific dividend rate on its share certificates. However, an advance agreement to pay a certain dividend rate does not eliminate the need for a formal declaration of dividends by the board of directors. Moreover, an FCU cannot honor a dividend rate promised in advanced if current income and available earnings are insufficient.

If Metz/McKennan FCU were to pay dividends on its share certificates when a member establishes a share certificate, it would be circumventing the proper procedures for paying dividends in violation of the Act and NCUA regulations. 12 U.S.C. §1763; 12 C.F.R. Appendix C, §707.2(I)(2).

Sincerely,

Sheila A. Albin
Associate General Counsel

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