

May 15, 2001

Bruce O. Jolly, Jr., Esq.  
Shook, Hardy & Bacon, LLP  
600 14<sup>th</sup> Street, NW, Suite 800  
Washington, DC 20005-2004

Re: Delegation of Authority to Set and Declare Dividend Rates.

Dear Mr. Jolly:

You have asked us to reconsider our conclusions on the subject topic reached in the attached letter from James Engel to Lynn Walker, dated August 3, 1993. As discussed more fully below, we are revising our conclusions so that a federal credit union's board of directors (FCU's board) may delegate its authority to set dividend rates, within limits.

We stated in the August 3, 1993, letter that an FCU's board may delegate to a committee comprised of senior management officials its authority to set loan interest rates on a limited basis. Specifically, we stated that an FCU's board could set a range of loan rates for each kind of loan and delegate to the committee the authority to adjust rates within those limits. We further stated that it was anticipated the range would be extremely narrow and encompass rates that are economically appropriate for the FCU. Additionally, to ensure oversight by the FCU's board, we stated that we would expect the committee to report its loan rate adjustments to the FCU's board on a monthly basis. The FCU's board would retain the authority to change the rate set by the committee or withdraw the delegation. This continues to be our position.

We also stated in that letter that it was not permissible for the FCU's board to delegate its authority to declare dividends or set dividend rates. The FCU's board derives its authority to declare dividends and set dividend rates from two separate provisions of the Federal Credit Union Act (Act). Specifically, §117 of the Act authorizes the FCU's board to declare dividends periodically after providing for required reserves. 12 U.S.C. §1763. Section 113 of the Act requires the FCU's board to set dividend rates pursuant to the terms of §117 of the Act. 12 U.S.C. §1761b(18).

With respect to setting dividend rates under §113 of the Act, we recognize that a quickly changing interest rate environment may require an FCU to adjust its dividend rates quickly to remain competitive and operate in a safe and sound manner. We also recognize that an FCU's board may not be able to react quickly enough in these circumstances. Accordingly, we believe that the FCU's board may delegate its authority to set dividend rates to a committee comprised of senior management officials in the same manner it may delegate its authority to set loan interest rates. Specifically, the FCU's board may set a range of dividend rates for each kind of share account and delegate to the committee the authority to adjust

rates within those limits. It is anticipated that the range would be extremely narrow and encompass only those rates that are economically appropriate for the FCU. Also, we would expect the committee to report its dividend rate adjustments to the FCU's board on a monthly basis, and the FCU's board must retain the authority to change the rate set by the committee or withdraw the delegation.

We continue to believe that declaring dividends, pursuant to §117 of the Act, is a responsibility so fundamental to the FCU's board that it should not be delegated. It is our understanding that declaring dividends can be accomplished when the FCU's board deems appropriate, including in conjunction with or after its periodic review and approval of financial statements, and will not interfere with the purpose of the delegation, to allow the management committee to adjust dividend rates to react to changing conditions.

Sincerely,

Sheila A. Albin  
Associate General Counsel

GC/FSK:bhs  
SSIC 3000  
01-0344

Attachment