



NATIONAL CREDIT UNION ADMINISTRATION  
Washington, D.C. 20456

Office of General Counsel

Fred M. Haden, Esquire  
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GC/HMU:ceh  
4630  
4/23/86

Dear Mr. Haden:

This is in response to your letter of January 6, 1986, to Mr. Harvey Baine concerning the permissibility of a "pseudo-self-directed IRA account" at a Federal credit union (FCU). Mr. Baine has referred your letter to this Office for a response.

As we understand it, your program would work as follows. The member and the FCU agree to a "portfolio" of investments upon which the dividend rate on the member's IRA account will be based. The IRA funds will not actually be invested in the "portfolio" but will remain with the general funds of the FCU and invested and lent out in the FCU's normal course of business. The investment portfolio is merely used as an index upon which to base dividends. The stocks, bonds, etc., comprising the investment portfolio would be monitored by either the FCU or an outside brokerage company in order to determine their earnings and the corresponding IRA dividend rate. The FCU would guarantee a minimum dividend and also provide a cap dividend rate on the account. The IRA account would be set up on the FCU's computer system with the dividend rate set at zero with no provision for regular postings of earnings. The FCU would internally accrue dividends to be paid at some rate between the minimum and cap rate guaranteed by the FCU.

Although, in general, your concept of a "pseudo-self-directed IRA account" may be legal under the FCU Act and NCUA Rules and Regulations, we see several potential legal and safety and soundness problems which must be resolved before the program can be implemented.

First, an FCU can not guarantee the payment of dividends. As you know, payment of dividends is contingent upon the FCU having available earnings after making provisions for required reserves. (See Sections 116 and 117 of FCU Act, 12 U.S.C. §§1762 and 1763, and Part 702 of the NCUA Regulations, 12 C.F.R. Part 702.) Although the FCU can agree to pay specified dividends based on a certain index (within the agreed-upon minimum and

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cap), such dividends can not be guaranteed. (See, also, Section 701.35(b) of NCUA Regulations--concerning accurate representation of terms and conditions of accounts.)

Second, it is not clear how and when dividends will be posted to the IRA accounts. You state in your letter there would be no regular posting of dividends, but that they would internally accrue at a given rate. This raises questions as to whether these internal accruals will be reserved for before they are eventually paid and what the effect of these accruals will be on potential dividends to be paid to other accounts.

Lastly, although the concept of such an index may be legal under the FCU Act and the NCUA Regulations, we draw no conclusions as to compliance with ERISA and other applicable laws and regulations.

We hope that we have been of assistance. If further questions arise, please contact Hattie Ulan of this Office.

Sincerely,



STEVEN R. BISKER  
Assistant General Counsel

HMU:cch