NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

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3/31/88

Office of General Counsel

Lloyd A. Sanders, Esq.
Cohen & Kushner, P.C.
55 William Street
Wellesley, Massachusetts 02181

Re: Treatment of "Cashier's Check" Issued by Federal Credit Union (Your February 1, 1988, Letter)

Dear Mr. Sanders:

You have asked our opinion on the "proper treatment" of a Federal credit union ("FCU") instrument identified as a "treasurer's," "cashier's," or "bank" check. Federal credit union law does not directly regulate these instruments. That is done by other Federal laws, primarily those administered by the Federal Reserve Board. Depending on the structure an FCU "cashier's check " program may be required to take under these laws, certain provisions of the FCU Act and NCUA's Rules and Regulations may become relevant -- e.g., NCUA insurance of such instruments. If, after further analysis, you have questions on the implications of Federal credit union law on a particular proposed program, please let us know.

Sincerely,

TIMOTHY P. McCOLLUM
Assistant General Counsel

RD:sg

Enclosure

FOIA - Vol. I Part I
Treasurers/Certified "Checks"

NATIONAL CREDIT UNION ADMINISTRATION
WASHINGTON, D.C. 20456

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March 30, 1983

Bruce O. Jolly, Jr., Esq.
Credit Union National Association, Inc.
1730 Rhode Island Avenue, N.W.
Washington, D.C. 20036

Dear Bruce:

This responds to your letter of March 9, 1983, requesting that NCUA reconsider its position that Federal credit unions may advertise share drafts as "checks" only if the term "share draft" is advertised with equal prominence. You suggest that common usage has caused "check" and "share draft" to become virtually synonomous and that member confusion would be lessened if the requirement that the term "share draft" be included in advertising were dropped.

As you know, the NCUA position referenced above was based on an interpretation of NCUA's share draft regulations as they stood prior to the NCUA Board's deregulation of that area in April of 1982. The present regulations are more general in nature as they affect advertising and disclosures, requiring only that terms and conditions be accurately represented. Given the functional similarities, from the consumer's standpoint, between share drafts and checks, referring to a share draft as a "check" in advertising and other communications with members does not in my opinion constitute inaccurate representation within the meaning of the present regulations. Therefore, it is my view that the present regulations neither prohibit the use of the term "check" nor require the appearance of "share draft" with equal prominence.

I would note, however, that there clearly remain legal distinctions between drafts and checks that can have relevance for credit unions. As you know, by definition in Section 3-104 of the Uniform Commercial Code, adopted by most of the 50 states, a check is a draft that is "drawn on a bank" and "payable on demand". A share draft is neither. Although a share draft may be treated as a check for certain purposes such as Federal Reserve collection regulations, it is not technically a check within the meaning of most states' laws establishing such matters as rules of transfer and collection and rights and liabilities of parties.

file. Vol. I, I. - Checks + Money Orders

As an example of how the distinction might be relevant to credit unions, consider the case of Florida Bar v. Allstate Insurance Co., 391 So. 2nd 238 (Fla. Dist. Ct. App. 1980), rehearing denied (Jan. 7, 1981), 30 U.C.C. Rep. 1054. In that case, the insurance company, just like many credit unions, used "payable through" drafts. The draft was paid by the payable through bank but it was subsequently learned that the payee's endorsement had been forged. The insurance company was sued by the payee who won the case. The message of this case is that once the insurance company used payable through drafts instead of checks where no intervening entity can pay the demand, it opened itself up to liability in forgery cases. This is not to say that all credit unions use payable through drafts or that the case result would have been different depending upon the name given to the instrument. It is simply meant to illustrate that checks are not drafts, that the differences could have consequences for credit unions and that any member confusion that may exist (and, I might add, we have not received any complaints about this type of confusion) may be outweighed by adverse consequences for the credit union itself.

With all this said, it is nonetheless again my opinion that NCUA's rules no longer either prohibit the use of the term "check" or require the appearance of the term "share draft" with equal prominence in advertising or elsewhere in describing the account to the credit union's members. Our regulations neither prohibit nor condone the use of the term "check" in describing share drafts, and that is a decision to be made by individual Federal credit unions in light of all the relevant facts.

Sincerely,

/s/

WENDELL A. SEBASTIAN
General Counsel

cc: All Regional Directors
PIO