GC/RD:sg
3500

NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

July 18, 1988

Office of General Counsel

Grant Lovallo
AVP of Business Development
DM Federal Credit Union
P.O. Box 15115
Tucson, Arizona 85708

RE: Use of the Term "Check" when Referencing Share Draft Accounts (Your June 15, 1988, Letter)

Dear Mr. Lovallo:

You have asked whether it is mandatory for a Federal credit union (FCU) to use the word "draft" when describing a share draft program. Enclosed please find a letter which answers in detail the question you present. In short, the NCUA Rules and Regulations neither prohibit nor condone the use of the term "check" in describing share drafts.

Sincerely,

TIMOTHY P. McCOLLUM
Assistant General Counsel

RD:sg

FCU Not to Prefer Checks to Share Drafts

NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

LS/IAO:kes
4030

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.

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