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NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

August 12, 1988

Office of General Counsel

Mr. Tony G. Hayes
East Baton Rouge Teachers' Federal Credit Union
Post Office Box 73874
Baton Rouge, Louisiana 70807

Re: Your July 1, 1988, Letter to U.S.
Department of the Treasury

Dear Mr. Hayes:

The Department of the Treasury has sent your letter to us. Our position was clearly stated to your Credit Union in our June 14, 1988, letter; a copy is attached. Our view remains the same.

Sincerely,

A handwritten signature in black ink, appearing to read 'Timothy P. McCollum', written over a horizontal line.

TIMOTHY P. McCOLLUM
Assistant General Counsel

TPM:sg

FOIA Vol. III (B)(5) Security Bonds



GC/AHM:bhs
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NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

June 14, 1988

Office of General Counsel

Board of Directors
East Baton Rouge Teachers' Federal Credit Union
Post Office Box 73874
Baton Rouge, LA 70807

Re: Surety Bond Coverage for
Federal Credit Unions

To Whom It May Concern:

Your letter of May 23, 1988, to Chairman Jepsen has been referred to this Office for a response. Your letter suggests a proposed rule change which would provide some alternative to the requirement that a Federal credit union maintain surety bond coverage with a "company approved by the NCUA."

Initially, let me point out that you are apparently relying on an outdated regulation. On March 24, 1988, the NCUA promulgated an amendment to Section 701.20 of the NCUA Rules and Regulations which reads in pertinent part as follows:

(c) Minimum Coverage; Approved Forms. Every Federal credit union will maintain bond and insurance coverage with a company holding a certificate of authority from the Secretary of the Treasury. Credit Union Blanket Bond Standard Form No. 23 of the Surety Association of America (revised to May, 1950) is considered the minimum coverage required and is approved. Credit Union Blanket Bond Forms 581 and 582 are also approved. Any other basic bond forms, and all riders and endorsements which limit the coverage provided by approved bond forms, must receive the prior written approval of the NCUA Board. Fidelity bonds must provide coverage for the fraud or dishonesty of all employees, directors, officers, and supervisory and credit committee members.

Thus the portion of the regulation to which you object now requires that a Federal credit union maintain coverage with a company which holds a certificate of authority from the Secretary of the Treasury. As pointed out in the commentary to the final amendment, this requirement simply restates the statutory requirement found in the Federal Credit Union Act. In order for us to adequately respond to your suggested revision, it is necessary for us briefly to set forth the statutory provisions related to surety bond coverage found in the Federal Credit Union Act.

Section 112 of the Act states that "[t]he board [of directors] shall elect from their number a financial officer who shall give adequate fidelity coverage in accordance with section 113(2) of this Act."

Section 113(2) requires that a board of directors of a Federal credit union "...provide adequate fidelity coverage for officers and employees having custody of or handling funds according to regulations issued by the [NCUA] Board...."

Section 120^(h) of the Federal Credit Union Act provides as follows:

(h) The Board is authorized, empowered, and directed to require that every person appointed or elected by any Federal credit union to any position requiring the receipt, payment, or custody of money or other personal property owned by a Federal credit union, or in its custody or control as collateral or otherwise, give bond in a corporate surety company holding a certificate of authority from the Secretary of the Treasury under the Act approved July 30, 1947 (6 U.S.C., §§6-13), as an acceptable surety on Federal Bonds. Any such bond or bonds shall be in a form approved by the Board or with a view to providing surety coverage to the Federal credit union with reference to loss by reason of acts of fraud or dishonesty including forgery, theft, embezzlement, wrongful abstraction, or misapplication on the part of the person, directly or through connivance with others, and such other surety coverages as the Board may determine to be reasonably appropriate or as elsewhere required by this chapter. Any

such bond or bonds shall be in such an amount in relation to the money or other personal property involved or in relation to the assets of the Federal credit union as the Board may from time to time prescribe by regulation for the purpose of requiring reasonable coverage. In lieu of individual bonds the Board may approve the use of a form of schedule or blanket bond which covers all of the officers and employees of a Federal credit union whose duties include the receipt, payment, or custody of money or other personal property for or on behalf of the Federal credit union. The Board may also approve the use of a form of excess coverage bond whereby a Federal credit union may obtain an amount of coverage in excess of the basic surety coverage. [Emphasis supplied.]

Thus Congress has "directed" the NCUA to require a particular type of bond coverage and, given the mandatory language of the statute, the NCUA has no discretion to allow, for example, bond coverage by a company which does not hold a certificate of authority from the Secretary of the Treasury, or to allow credit unions to bond themselves, or to establish a risk pool for those credit unions unable to obtain surety bond coverage. These alternatives would only be available to you and other credit unions pursuant to a statutory change. The NCUA could not, as you suggest, change the requirements for surety bond coverage contained in the regulation, since the regulatory requirements are the minimum required by the statute.

While you may certainly work towards a legislative solution, please keep in mind that bond coverage for your credit union is mandatory and a credit union may not operate without such coverage. It is our understanding that surety bond coverage has terminated as to Mr. Hayes but continues as to the credit union as a whole. Nevertheless, continued operation of an insured credit union without surety bond coverage, even as to one official or employee, represents not only a clear violation of the Federal Credit Union Act and the regulations promulgated thereunder, but is also an unacceptable risk to the NCUA Share Insurance Fund. If a board of directors cannot secure such coverage, and losses which would otherwise be covered under a surety bond thereafter occur, the officials

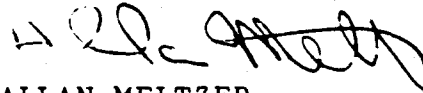
¹The March 24, 1988, amendments deleted the faithful performance requirement, in the hope that this would increase competition in the surety bond industry.

Board of Directors
June 14, 1988
Page 4

will be held liable for those losses to the maximum extent permitted by law.

We hope this letter has been responsive to your inquiry.

Very truly yours,



ALLAN MELTZER
Assistant General Counsel

AM:bhs