



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

Office of General Counsel

GC/MM:sg
SSIC 3000
89-0924

December 11, 1989

Mr. Kevin Devlin
Devlin & Hale Associates, Inc.
39 New London Turnpike
Glastonbury, Connecticut 06033

Re: Credit Unions Eligibility to Sponsor Eligible
Deferred Compensation Plans (Your September 22,
1989, Letter)

Dear Mr. Devlin:

You have asked us the following questions: (1) "Is a Federal or state chartered credit union eligible to sponsor an Eligible Deferred Compensation Plan under Internal Revenue Code Section 457?" Yes. (2) "Would the plan be considered an eligible state deferred compensation plan defined under regulation 1.457-2 or an eligible deferred compensation plan under Section 457 sponsored by a tax-exempt employer?" The real issue here is one for determination by the Internal Revenue Service ("IRS"); we can only provide you with an informal opinion. We strongly suggest that you obtain an opinion from the IRS on this matter. After informal discussions with employees of the IRS, it is our opinion that a Federal credit union plan would be considered an eligible deferred compensation plan under Section 457. (3) "Would the plan be exempt from Title I of ERISA as ERISA Section 4(b)(1) exempts from the coverage of Title I any governmental plan (as defined in ERISA Section 3(32))?" We defer to the IRS and/or the Department of Labor for an appropriate response.

ANALYSIS

Pursuant to the Tax Reform Act of 1986 (TRA), tax-exempt employers, including Federal and state-chartered credit unions which

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choose to offer deferred compensation plans, must do so pursuant to Internal Revenue Code Section 457. Internal Revenue Service Notice 87-13 provides guidance with respect to certain provisions of the TRA, including the extension of Section 457 to deferred compensation plans of tax-exempt organizations. Deferred compensation plans defined under Section 1.457-2 of the IRS Regulations are exempt from some sections of ERISA. Plans under Section 1.457-2 are those offered by Federal instrumentalities as defined in IRS regulations. Deferred compensation plans under Section 457 sponsored by tax-exempt employers must comply with ERISA. After discussing this issue with employees of the IRS, it is our opinion that, for the purpose of deferred compensation plans, an FCU is not a Federal instrumentality and any plan offered by the FCU is not a government plan. Therefore, we believe an FCU plan would be an eligible deferred compensation plan under Section 457 sponsored by a tax-exempt employer.

We suggest that you consult with the IRS and a private attorney for a final resolution of this matter. You may wish to request a revenue ruling from the IRS. Please contact us if we can be of further assistance.

Sincerely,



HATTIE M. ULAN
Associate General Counsel