



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

Office of General Counsel

GC/MM:sg
SSIC #3501
89-0912

January 26, 1990

Mr. James Glenn Newton
Marriott Employees' Federal Credit Union
One Marriott Drive
Washington, D.C. 20058

Re: Tiered Dividends (Your August 30, 1989, Letter)

Dear Mr. Newton:

We apologize for the delay in providing you with a written response to your questions on tiered dividends. This issue has been under review. First, you have asked whether a Federal credit union ("FCU") must pay the same dividend rate on a regular share account regardless of balance (assuming the member had paid in full the par value of a share)? Yes. However all FCU members need not maintain a regular share account. Second, if the answer to question one is yes, may an FCU offer a zero percent dividend rate on the regular share account and structure another savings account for the member to select which could have a tiered rate structure based upon savings balances? No, an FCU may not offer a non-dividend bearing regular share account. Third, is it possible to limit a member's share purchase to one share and require future deposits to be made to the tiered savings account? Yes. Fourth, is the Board required to declare a dividend on the regular share account if the credit union is financially stable and capable of paying a dividend? No.

ANALYSIS

A regular share account is defined in Section 5150.1 of the Accounting Manual for Federal Credit Unions as one:

- . . . that does not require a holder to maintain a balance greater than the par value.
- . . . and that qualifies for a dividend.

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Federal credit unions need not require that members open a regular share account to establish FCU membership. Section 5150.2 of the Accounting Manual for FCU's states in part:

A regular share account does not have to be established in order for a person to become a member of a credit union. The board of directors of each FCU decides what is best for the characteristics of its membership. For example, the board of directors may decide that membership qualification can be accomplished by the establishment of a regular, notice, split rate, minimum balance, share draft, or share certificate account.

Section 107(6) of the FCU Act (12 U.S.C. 1757(6)) states in part that an FCU may receive from its members "shares which may be issued at varying dividend rates." Section 117 of the FCU Act (12 U.S.C. §1763) provides:

At such intervals as the board of directors may authorize, and after provision for required reserves, the board of directors may declare a dividend to be paid at different rates on different types of shares, at different rates and maturity dates in the case of share certificates, and at different rates on different types of share draft accounts. Dividends credited may be accrued on various types of shares, share certificates, and share draft accounts as authorized by the board of directors. If the par value of a share exceeds \$5, dividends shall be paid on all funds in the regular share account once a full share has been purchased.

An FCU is not required to declare dividends. In fact, dividends may only be paid if an FCU has available current earnings and/or retained earnings. As noted in Section 117, different dividend rates may be paid on different types of accounts. It has been longstanding NCUA policy that dividends may be declared on one type of account (e.g., share certificate or minimum balance account) and not on another type of account (e.g., regular share account).

An FCU board of directors has discretion in declaring dividends. Section 117 of the FCU Act states that the board of directors may authorize dividends after reserves are made. Section 701.35(a) of the NCUA Rules and Regulations (12 C.F.R. 701.35(a)) states:

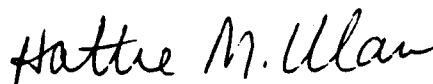
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(a) Federal credit unions may offer share, share draft, and share certificate accounts in accordance with Section 107(6) of the Act (12 U.S.C. §1757(6)) and the board of directors may declare dividends on such accounts as provided in Section 117 of the Act. (12 U.S.C. §1763). (Emphasis added.)

Your specific questions and our answers follow:

- 1) Must an FCU pay the same dividend rate on the regular share account regardless of balance (assuming the member had paid in full the par value of a share)? Yes, if par value is greater than \$5, once a full share has been purchased and dividends have been declared, dividends must be paid on the total dollar amount in all regular share accounts. If par value is \$5 or less, dividends may be paid on each par value increment. However, as noted in the Accounting Manual for FCU's, FCU members need not establish a regular share account in order to establish membership.
- 2) May an FCU offer a zero percent dividend rate on the regular share account and structure another account for the member to select which could have a tiered rate structure based upon savings balances? No, because by definition, a regular share account must qualify for the possibility of dividends.
- 3) Is it possible to limit a member's share purchase to one share and require future deposits to be made to the tiered savings account? Yes, there is no restriction in the FCU Act or the NCUA Rules and Regulations which would prohibit an FCU from limiting a member's purchase to one share. This is left to the discretion of each individual FCU.
- (4) Is the board of directors required to declare a dividend on a regular share account if the credit union is financially stable and capable of paying a dividend? As discussed above, the board of directors has some discretion in determining the payment of dividends and is not required to declare a dividend on a regular share account even if the FCU is financially stable and capable of paying a dividend.

Sincerely,



HATTIE M. ULAN
Associate General Counsel