Letter of Comment No:
File Reference: 1200-SRI
Date Received: 5/7/04



----Original Message----

From: Bill Adler [mailto:wja@law4cus.com]

Sent: Friday, May 07, 2004 6:54 PM

To: Director - FASB

Subject: Setoff and Isolation

Dear Sir:

Our office advises a number of state and federally chartered credit unions. We note with interest the FASB's Request for Information, dated April 9, 2004. The views on this matter submitted below are the views of this office and are not expressed on behalf of any particular credit union.

Among other things, the FASB has inquired as to the common law right of debtors and creditors to set off (net) amounts due to one another if one of the parties defaults, becomes insolvent, or enters into bankruptcy or receivership.

is our understanding that federal credit unions and federally insured credit unions are not subject to bankruptcy but rather to liquidation or receivership proceedings by the federal regulator, the National Credit Union Administration (NCUA).

In addition, we thought it might be helpful for the FASB to consider the apparent non-applicability of the common law right of offset to credit unions. It is our understanding that a long held position of the NCUA is that the relationship between a federal credit union and its members is a "debt-equity" relationship, similar to the relationship between a shareholder and a corporation. As such, the NCUA has advised us that they do not believe that there is sufficient mutuality for the common law right of set off to apply. Indeed, NCUA has previously advised this office that it believes that mutuality exists between a bank/creditor and its deposit/borrower but not between a credit union and its member. That the lack of mutuality is the reason that credit unions lack common law offset authority even though banks possess it.

Respectfully Submitted,

William J. Adler
Attorney
Styskal, Wiese & Melchione, LLP
550 N. Brand Blvd., Ste. 550
Glendale, CA 91203
Phone: (818) 241-0103
Fax: (818) 241-5733
E-mail: wja@law4cus.com
Website: www.law4cus.com

TCE: This communication may contain privileged or other confidential information. If are not the intended recipient, or believe that you have received this communication in error, please do not print, copy, retransmit, disseminate, or otherwise use the information contained herein. Also, please indicate to the sender that you have received