NATIONAL CREDIT UNION ADMINISTRATION
WASHINGTON, D.C. 20456

LS/SRB:cch
4650
July 19, 1985

Jonathan Bromberg, Esquire
Suite 230
50 West Montgomery Avenue
Rockville, MD 20850

Dear Mr. Bromberg:

This is in response to your letter dated July 9, 1985, to Robert Fenner concerning loans to formerly bankrupt members. Specifically, you seek our opinion "regarding the propriety of establishing a lending policy at a Federal credit union whereby loans may be denied to members on the grounds that the member has filed for bankruptcy."

This issue has previously been addressed. We have enclosed a copy of an opinion letter from this Office which addresses the issue. We should point out that, although the Bankruptcy Code was amended subsequent to the enclosed letter (specifically Section 525(b) relating to private employer discrimination), our previously stated opinion on this issue would still be applicable today. Also, you should be aware that the discussion in the enclosure on reaffirmation is affected by the amendments to the Bankruptcy Code.

I hope that we have been of assistance.

Sincerely,

/s/

STEVEN R. BISKER
Assistant General Counsel

Enclosure

FOIA Vol I Part C

NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

GC/RPK:dlp
3210
3500
3600
March 22, 1982

Board of Directors
Travis AFB Federal Credit Union
P.O. Box 1536
Travis AFB, California 94535

Dear Board Members:

We have been asked to review your proposed policy statement to deal with losses caused by member bankruptcies. This policy would have the effect of precluding members whose bankruptcy proceedings resulted in a loss to the credit union from being eligible for any credit union services until such time as the loss is made up by reaffirmation and full repayment.

It is assumed that a member whose bankruptcy brings him within the scope of this proposal will nevertheless not be denied the right to vote at annual and special membership meetings. Based on this assumption, it is our opinion that the policy statement you propose is not in conflict with either the Federal Credit Union Act or NCUA's attendant rules and regulations. With specific reference to the relation between a member's bankruptcy and his subsequent loan application, enclosed is an excerpt from the August, 1981 edition of the NCUA Review, which speaks directly to this point.

As you know, there is no basis upon which this Office can render an authoritative or binding opinion with respect to the application of the Federal Bankruptcy Code. However, you should be aware of the following. Section 525 of the Code (11 U.S.C. §525) protects a bankrupt from discriminatory treatment by any "governmental unit" that is based upon the fact of going through bankruptcy. The Code does not address discrimination by private parties. The legislative history of this section makes clear, however, that its prohibition is not intended to be exhaustive. It is intended to permit further development to prohibit actions by ". . . other organizations that can seriously affect the debtor's livelihood or fresh start, such as exclusion from a [labor] union . . . ." House Judiciary Committee Report No. 95-595, p. 367. Case law construing this provision is scarce, but we have found two cases that apply the ban on discrimination to state colleges and universities that had refused to provide transcripts to any graduate whose unpaid student loan was discharged in bankruptcy. Lee v. Bd. of Higher Education in City of New York, D.C. N.Y. 1979, 1 B.R. 781; Matter of Heath, Bkrtcy. Ill. 1980, 3 B.R. 351. I make note of this essentially for your information and suggest to you that it may bear further research by your own retained counsel. I would also simply point out that section 524 of the Code (11 U.S.C. §524) provides that no reaffirmation

agreement concerning a dischargeable debt is enforceable against the debtor unless the criteria set forth at subsection (c) of 524 have been met.

I hope this letter proves of value to you.

Sincerely,

JOHN L. OSTBY
General Counsel

By: JAMES J. ENGEL
Assistant General Counsel

Enclosure

The NCUA Review

August 1981

NATIONAL CREDIT UNION ADMINISTRATION, WASHINGTON, D.C. 20456 (202) 357-1050

NCUA URGES ASSET-LIABILITY BALANCE

Variable Rate Loans

The NCUA Board July 22 authorized Federal credit unions to offer variable rate consumer loans and adjustable rate mortgages, both of which are expected to greatly improve the ability of credit unions to match assets with liabilities. Both regulations were effective immediately.

The Board also clarified that Federal credit unions are required to have due on sale clauses in conventional long term mortgage loan instruments, regardless of state law. This gives them the option of calling the loan if the mortgage is sold or transferred. NCUA Board Chairman Lawrence Connell noted that members who wish to prepay any credit union loan may do so without penalty.

Here are highlights of the new authorizations:

VARIABLE RATE CONSUMER LOANS

As the name implies, these are loans for such things as cars, boats and home improvements with interest rates that may be adjusted up or down according to market fluctuations.

Under the regulation, credit union boards of directors have broad flexibility to establish their own variable rate

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Share Certificate Changes

In recent months, NCUA has approved unprecedented changes to its share certificate regulation, and has proposed others that are equally dramatic, including a plan to increase the regular share dividend ceiling by five percentage points.

These changes are designed to give Federal credit unions the tools to better compete for savings in an increasingly competitive environment.

NCUA's share certificate regulation is now the most liberal of its kind among financial regulatory agencies, allowing Federal credit unions to offer share certificates of any denomination with any maturity between 14 days and six years at attractive rates.

Here are highlights of recent Board action on share certificates:

--A schedule was approved for the phase-out of dividend ceilings on share certificates by 1985. The first step was the removal of the 12 percent cap on share certificates, with the new ceiling equal to the 2 1/2 year Treasury rate. This was effective June 29, a month before the cap on time deposits at banks and thrifts was removed. The second

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areas: management, operations and data communication.

The EDP operations review will take place at the location of the computer, which could be at credit unions with in-house operations or at the servicer's data center for those credit unions receiving EDP services. This examination will review the following areas: EDP audit, management, systems and programming, data integrity, computer operations, teleprocessing, and customer services.

Inquiries regarding the EDP examination program should be addressed to: Office of Examination and Insurance, National Credit Union Administration, 1776 G Street, N.W., Washington, D.C. 20456.

Bankruptcy: Acceptable Reason for Denying Credit

Bankruptcy is generally a legally acceptable reason to deny credit, according to NCUA's Offices of General Counsel and Consumer Affairs.

The Federal Reserve's Regulation B, Equal Credit Opportunity, expressly permits the use of bankruptcy as a reason for credit denial. See page 15 of the regulation for a model adverse action form that lists bankruptcy as an acceptable reason for loan denial.

If a member's bankruptcy occurred a long time ago, or as a result of a unique hardship, cooperative principles would suggest that credit unions should assist their members in establishing their creditworthiness. NCUA encourages credit union officials to evaluate each member on the basis of his or her creditworthiness without making general assumptions concerning bankruptcy.

Credit union officials should be cautious, however, in denying credit because of bankruptcy. The new Federal Bankruptcy Code, which became effective Oct. 1, 1979, prohibits creditors from soliciting reaffirmation of debts that are discharged under the new bankruptcy procedures.

As such, NCUA believes that any practice or policy which might be interpreted as encouraging reaffirmation of the debt could expose the credit union to liability under the Bankruptcy Code. It would therefore be unwise to implement a policy or practice that prohibits the extension of credit to members who have failed to reaffirm debts to the credit union in connection with bankruptcy, but permits loans to previously bankrupt members who have reaffirmed their debts to the credit union.

CLEARLY A "CATCH 22"

This is clearly a "Catch 22" situation for credit unions when attempting to minimize their losses. Once again, however, it is clear that credit unions that deny loans on the basis of bankruptcy are less likely to provoke a lawsuit under the Bankruptcy Code if they interpret bankruptcy as a direct reflection of the creditworthiness of the member.

In a related area, NCUA has been asked whether a credit union may have a policy of denying loans to anyone who has caused the credit union a loss in the past.

NCUA believes a credit union can have such a policy. If bankruptcy was the cause of the loss, the above discussion of bankruptcy and its relationship to creditworthiness would still apply.

However, if the loss against the credit union resulted because a member brought a complaint or action under the Consumer Protection Act (which includes the Truth-in-Lending Act, among others), the credit union would be in violation of the Equal Credit Opportunity Act if it denied credit to the member because of the loss.