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NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

2/11/96

Office of General Counsel

Bruce D. Foreman, Esq.
Melman, Gekas, Nicholas &
Lieberman
3207 North Front Street
Harrisburg, PA 17108-0902

Dear Mr. Foreman:

This responds to your letter of January 22, 1986, concerning the issue of termination or expulsion of Federal credit union (FCU) members. Specifically, you ask whether an FCU may adopt a written policy providing for expulsion where the member has caused financial loss to the credit union by failing to repay debts or other obligations or by discharging the same in bankruptcy or where the member disrupts the operation of the credit union with respect to conduct towards the credit union's officers or employees.

Article XVI, Section 1 of the FCU Bylaws states that a member may be expelled only in the manner provided in the FCU Act. As you have stated in your letter, Section 118 of the FCU Act, 12 U.S.C. §1764 addresses expulsion of members. Two methods of expulsion are set out in Section 118.

Pursuant to Section 118(a), a member may be expelled by a two-thirds vote of the members present at a special meeting called for that purpose, but not before the member to be expelled is given an opportunity to be heard. There are no restrictions as to what reasons constitute cause for expelling a member under Section 118(a).

Section 118(b), on the other hand, provides that an FCU may adopt an expulsion policy based on a member's "nonparticipation" in the affairs of the credit union. A member's failure to vote in annual credit union elections or failure to purchase shares from, obtain a loan from, or lend to the FCU are examples, provided in the Act, of what should be considered in formulating a nonparticipation policy. Under this method of expulsion, a special meeting need not be called but the policy must be reduced to a written form and mailed to each member of the credit union.

As seen from the above, it is reasonably clear that losses sustained by an FCU due to a member's discharged debts would not fall within the statutory provision of "nonparticipation. . . in the affairs of the credit union." Therefore, an FCU cannot adopt a written policy of expelling members based on losses suffered from discharged debts pursuant to the authority in Section 118(b). However, Section 118(a), which permits expulsion for any reason, would provide the authority for an FCU to expell a member based on losses he or she may have caused the FCU to suffer from discharged debts.

In addition to the ultimate sanction of expulsion, FCU's have various options available to address problems, injuries, or losses which the FCU incurs as a result of actions by certain members. An FCU's board of directors has the flexibility to fashion a whole host of policies which may be effective in dealing with the problems. An FCU is not precluded, under the FCU Act or NCUA Rules and Regulations from implementing a policy that denies access to virtually every credit union service (e.g., ATM services, credit cards, loans (assuming the policy is not violative of Regulation B or the Equal Credit Opportunity Act), preauthorized transfers, etc.), to anyone whose bankruptcy or loan default results in a loss to the credit union. However, the member must still be permitted to vote at all annual and special membership meetings, and to continue maintaining a deposit account (although, there is nothing which requires that the account still earn a dividend). I have enclosed copies of previous opinions on this issue for your convenience.

I hope we have been of assistance. If you have any further questions, please let me know.

Sincerely,

-S -

STEVEN R. BISKER
Assistant General Counsel

Enclosure

YG:cch

NATIONAL CREDIT UNION ADMINISTRATION
WASHINGTON, D.C. 20456

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GC/RWK:dlp
3210
3600
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