NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

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3700
2/21/86

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.

FOIA Vol III, A.3.

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,

SRB

STEVEN R. BISKER
Assistant General Counsel

Enclosure

YG:cch

NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

GC:SRB:cch
3600
12/23/85

OFFICE OF GENERAL COUNSEL

Mr. Henry W. Wirz
President
S.A.F.E. Federal Credit Union
P.O. Box 1057
North Highlands, CA 95660-9985

Dear Mr. Wirz:

This is in response to your recent letters to the National Credit Union Administration Board concerning the expulsion of Federal credit union members. Specifically, you describe the actions of a member of your FCU which posed a threat to the physical safety of other members and FCU staff and for which you feel expulsion is the appropriate remedy. It is your belief that Section 118 of the FCU Act (12 U.S.C. §1764), the statutory authority for expelling members, is inadequate in its present form to rectify this type of situation.

I was originally alerted to this problem during a conversation with Peter Buck. Upon receipt of your letters, the Board asked that I review the matter in greater detail and respond directly back to you. Steven Bisker of my staff telephoned Mr. Buck on December 19, and they discussed the various options presently available to your Credit Union to deal with the problem described in your letter and other member problems.

My initial reaction to the example in your letter was that expulsion of the member may not be the ultimate resolution of the problem. Mere expulsion would not be effective in prohibiting the individual from continuing his lewd and indecent actions. Rather, an injunction or peace bond might be required to legally restrain the individual from further unacceptable activity. In any event, I certainly can understand why you might find it desirable to expel such a member under such circumstances. In this regard, I believe Section 118 would provide a method by which this member may be expelled.

Two methods of expulsion are set out in Section 118. Pursuant to subsection (a), a member may be expelled by a two-thirds vote of the members present at a special meeting called for that purpose after the member is given an opportunity to be heard. There is no restriction on the reason for which a member may be expelled under Section 118(a). On the other hand, Section 118(b)

authorizes an FCU to adopt a policy with respect to expulsion based on a member's nonparticipation in the affairs of the credit union. Violation of such a policy would be grounds for expulsion without the necessity of a special meeting. I have enclosed a copy of a prior opinion letter which provides our interpretation of Section 118.

In addition to the ultimate sanction of expulsion, FCU's have various options available to address problems or injuries which they incur as a result of actions by certain members. As discussed with Mr. Buck, in addition to the problem noted in your letter, you would like to be able to effectively deal with members who have defaulted on loans (charged off due to bankruptcy of the member) and with members who have otherwise damaged or caused a loss to be suffered by the Credit Union. Mr. Bisker explained that 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. For example, the board could institute a policy whereby members causing a loss to the FCU would not be eligible for services sponsored by the FCU, such as ATM services or loans (assuming the policy is not violative of Regulation B or the Equal Credit Opportunity Act).

In light of the above, amendments to Section 118 of the FCU Act, such as those suggested in your letter, would not appear to be necessary. Further, the thrust of the proposed amendments, in authorizing an FCU's board of directors to adopt any type of policy, which if violated by a member can be cause for expulsion, opens up the door for potential abuse. Since the current statutory provision does authorize expulsion for any reason (provided it is supported by the members at a special meeting), we see no need to amend the law at this time.

If you would like to discuss this further, please feel free to call (202) 357-1030, or write again.

Sincerely,

ROBERT M. FENNER
General Counsel

Enclosure

SRB:cch

cc: Chairman
Vice Chairman
Ms. Burkhart

NATIONAL CREDIT UNION ADMINISTRATION
WASHINGTON, D.C. 20456

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3210
3500
3600
5/22/[illegible]

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

(travis) Vol II P+J- FCU bkruptcy policy

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

/s/

By: JAMES J. ENGEL
Assistant General Counsel

Enclosure

NATIONAL CREDIT UNION ADMINISTRATION
WASHINGTON, D.C. 20456

LS/MMU:cch
4/10/84
SSIC 3

Ms. Doris R. Painton
Manager
Webster School District Federal
Credit Union
1063 Christy Lane
Webster, NY 14580

Dear Ms. Painton:

This is in response to your letter of March 29, 1984, to Bucky Sebastian concerning the expulsion of a Federal credit union ("FCU") member.

As stated in Article XVI, Section 1 of the FCU Bylaws, a member may be expelled only in the manner provided in the FCU Act. 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. According to Section 118(a), a member may be expelled by a two-thirds vote of the members of an FCU present at a special meeting called for the purpose, after the member is given an opportunity to be heard. There is no restriction on the reason for which a member may be expelled under Section 118(a). Section 118(b) states that an FCU may adopt a policy with respect to expulsion based on a member's nonparticipation in the affairs of the credit union. Under this method of expulsion, a special meeting need not be called. The expulsion policy under Section 118(b) can only be based on nonparticipation and all FCU members must be given written notice of the policy.

We hope that we have been of assistance.

Sincerely,

JAMES J. ENGEL
Assistant General Counsel

file: Vol. III, a, 3, c - Expulsion of Members
ENCLOSURE

NATIONAL CREDIT UNION ADMINISTRATION
WASHINGTON, D.C. 20456

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3500
3600
5/18/82

David A. Brewer, Esq.
Saxon, Alt and Brewer
3838 Camino Del Rio North
San Diego, CA 92108

Dear Mr. Brewer:

This responds to your April 15, 1982, letter concerning the authority of a Federal credit union to terminate from membership anyone who has obtained a discharge from his debts in a bankruptcy proceeding. Although it is not clear from your letter, I assume that the credit union proposes to terminate from membership only those persons whose bankruptcy discharge has resulted in a loss to the credit union.

I have enclosed for your reference two letters recently prepared and sent by us that touch upon this topic. You will note that the first of these (marked by us "enclosure 1") conveys our views on the question of whether a member of a Federal credit union may be expelled from membership in a manner not outlined in the Federal Credit Union Act. For the reasons there set forth, we are skeptical of the validity of such an action. However, your review of the second of the two letters I have enclosed will reveal that, in our opinion, a Federal credit union is not precluded, under the FCU Act or NCUA's rules and regulations, from implementing a policy that denies access to virtually every credit union service to anyone whose bankruptcy caused a loss to the credit union. As the letter makes clear, we feel that any such individual must still be permitted to vote at all annual and special membership meetings. In addition, it would be our view that such persons must be allowed to continue maintaining a deposit account at the credit union, although nothing requires that the account still earn a dividend.

I am hopeful that these materials will be of assistance to you. If I can be of further help, do not hesitate to contact me.

Sincerely,

JOHN L. OSTBY
General Counsel

151

By: JAMES J. ENGEL
Assistant General Counsel

bcc: Region VI

5/17/82

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ch Vol V(2) Vol III(A)(3)(c). expulsion after bkruptcy