



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

August 14, 1986

GC/YG:sg
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Office of General Counsel

Michael Prokup, Esq.
Black, Epstein, Prokup & McCarthy
502 Turner Street
Allentown, PA 18102

Dear Mr. Prokup:

This responds to your letter dated July 15, 1986, to this Office concerning the issue of termination or expulsion of Federal credit union members. Specifically, you ask whether an FCU may adopt a 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.

We have recently reviewed and answered the above question in an opinion letter to Bruce D. Foreman, Esquire, a copy of which is enclosed. I trust the enclosed opinion satisfactorily responds to your questions.

I hope we have been of assistance.

Sincerely,

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STEVEN R. BISKER,
Assistant General Counsel

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Enclosure

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Enclosure

NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

2/11/86

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.

Bruce D. Foreman, Esq.

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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

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