



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

April 13, 1987

GC/JT:sy
3600

Office of General Counsel

Mr. Carlo N. Castiglione, Jr.
President/CEO
IBM Kingston Employees Federal Credit Union
P.O. Box 1429
Kingston, NY 12401

Dear Mr. Castiglione:

This is in response to your letter of January 13, 1987, regarding the circumstances in which a Federal credit union (FCU) can expel a member.

I am enclosing a copy of a prior letter from this Office in which this issue was addressed. As you will see from the enclosed letter, there are two methods of expulsion provided for by Section 118 of the FCU Act, 12 U.S.C. §1764: (1) expulsion pursuant to a two-thirds vote of the members present at a special meeting called for that purpose; and (2) expulsion pursuant to an expulsion policy based on a member's nonparticipation in the affairs of the FCU. The enclosure discusses the prerequisites for both expulsion methods.

You enclosed a copy of the October 10, 1986 column entitled "General Counsel Corner," which is contained in the publication NCUA Watch. As you may know, NCUA Watch is not published by the NCUA. The October 10, 1986, General Counsel Corner contained a digest of a letter issued by this Office with respect to expulsion of a member. The column is somewhat misleading as it appears to state that where a member's conduct towards FCU employees and officers has the effect of disrupting FCU operations, the member could be expelled pursuant to a non-participation policy. That statement does not represent the position of this Office. Disruptive conduct would generally not constitute nonparticipation. We suggest that you or your retained counsel evaluate the conduct of the member at issue to determine if it constitutes nonparticipation. The examples of

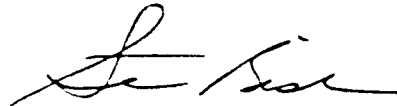
Mr. Carlo' N. Castiglione, Jr.

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nonparticipation provided in the enclosed letter may assist you in this regard. You may also wish to consider the alternative method of expulsion.

I hope this has been of assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "S. Bisker".

STEVEN R. BISKER .
Assistant General Counsel

JT:sg

Enclosure



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

Office of General Counsel

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3700
2/21/86

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,

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STEVEN R. BISKER
Assistant General Counsel

Enclosure

YG:cch