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NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

March 31, 1988

Office of General Counsel

Jacqueline A. Owens, Esq.
Legal and Information Services Division
New York State Credit Union League, Inc.
2 Wall Street
Albany, NY 12212

RE: Effect of FCU Member Bankruptcy
(Your February 19, 1988, Letter)

Dear Ms. Owens:

You have asked if a Federal credit union ("FCU") can prohibit a member who, as a result of declaring bankruptcy, has caused it a loss, from serving on its board. Though an FCU cannot establish such a prohibition, its nominating committee may consider a member's bankruptcy loss in selecting candidates for membership vote and the loss can be made known to members prior to their voting.

Section 111(a) of the FCU Act [12 U.S.C. §1761(a)] states: "The board shall . . . be elected from members as the bylaws provide." Article VII, Section 1, of the Standard FCU Bylaws states: "The board shall consist of ___ members, all of whom shall be members of this credit union." Article VI, Sections 1 and 2, of the Bylaws adds:

Section 1. At least 30 days prior to each annual meeting, the executive officer shall appoint a nominating committee of not fewer than three members. It shall be the duty of the nominating committee to nominate at least one member for each vacancy, including any unexpired term vacancy, for which elections are being held.

Section 2. After the nominations of the nominating committee have been placed before the members, the executive officer shall call for nominations from the floor. When nominations are closed, tellers shall be appointed by the executive officer, ballots shall be distributed, the vote shall be taken and tallied by the tellers, and the results announced.

FOIA

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Section 205(d) of the FCU Act [12 U.S.C. §1785(d)] states:
"Except with the written consent of the [NCUA] Board, no person shall serve as a director . . . of an insured credit union who has been convicted, or who is hereafter convicted, of any criminal offense involving dishonesty or breach of trust."

The sole prerequisites to a person's serving on an FCU board are that he or she be a member* and not have been convicted of a crime "involving dishonesty or breach of trust." Bankruptcy by itself affects neither of these, and therefore cannot be a basis for excluding a person from serving on the board.

However, the nominating committee has the responsibility of selecting candidates to be "placed before the members." This is a discretionary function; the committee may consider a prospective nominee's FCU loan history, including any loss caused by a bankruptcy, in deciding whether to place a person's name before the members. Moreover, a nomination proposed from the floor may be opposed on the ground the member has caused the FCU a loss through bankruptcy.

Sincerely,



TIMOTHY P. MCCOLLUM
Assistant General Counsel

TPM:jrm

* A member may be expelled from an FCU only by a two-thirds vote of the FCU members present at a special meeting called for the purpose, or by the board if the member has not participated "in the affairs of the credit union." 12 U.S.C. §1764(a), (b).