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NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

March 29, 1989

Office of General Counsel

Mr. Scott W. Draughon
Oklahoma Credit Union League Affiliates
214 East Skelly Drive
Tulsa, OK 74170-2297

Re: Expulsion and Suspension of Credit Union
Services Based on Causing a Loss (Your
February 24, 1989, Letter)

Dear Mr. Draughon:

You have asked whether Federal credit unions ("FCU's") and state-chartered credit unions may adopt a policy to suspend services and expel members based on a loss to the credit union. You asked if increased insurance premiums paid by a credit union due to a member loan loss qualify as a loss which would permit suspension of services. In our opinion, such increased insurance premiums may be described as a loss to the FCU warranting a suspension of FCU services. A policy of expulsion without a membership vote may not be based on loss. You should contact the Oklahoma credit union authorities concerning expulsion and limitation of services to members of state-chartered credit unions. The analysis described below applies only to federally-chartered credit unions.

BACKGROUND

An FCU member files for bankruptcy and the FCU incurs a loss. The FCU is reimbursed for the loss under its insurance policy. The insurance company increases the FCU's insurance premiums due to the claim. You asked if the higher insurance premiums qualify as a loss to the FCU warranting: 1) a suspension of services to the FCU member; and/or 2) formal expulsion of the FCU member.

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ANALYSIS

Suspension of Services

An FCU member has a fundamental right to maintain a share account and to vote in annual and special meetings. No other services are required by the FCU Act or NCUA Rules and Regulations. An FCU cannot withhold these rights without a formal expulsion based on Section 118 of the FCU Act (12 U.S.C. §1764). In our opinion, an FCU may limit all services, except the member's fundamental rights, to those that have caused a loss to the FCU, including a loss reimbursed by insurance that has resulted in higher insurance premiums. Such a suspension in services is permitted without a formal expulsion.

An FCU may be limited in what services are denied to a member by contract and other Federal and state laws. We give no opinion as to whether a suspension of services policy violates other laws, including the Federal Bankruptcy Act or applicable state laws. FCU's should contact their local counsel concerning compliance with the Bankruptcy Act and any other applicable laws.

Expulsion

Section 118 of the FCU Act (12 U.S.C. §1764) provides two exclusive methods for expulsion of FCU members. Section 118(a) provides for expulsion by a two-thirds vote of the members of an FCU present at a meeting called for the purpose of expelling the member. The member to be expelled must be given an opportunity to be heard. There are no restrictions as to what reasons constitute cause for expelling a member under Section 118(a) of the FCU Act.

Section 118(b) authorizes the FCU board to adopt a policy of membership expulsion based on nonparticipation in the FCU. No membership meeting is required in expulsions under Section 118(b). An FCU board cannot utilize Section 118(b) to expel a member who has caused a loss to the FCU. Examples of nonparticipation set forth in Section 118(b) are failure to vote in FCU elections, failure to purchase shares from, obtain a loan from, or lend to the FCU. Causing a loss to the FCU cannot be described as nonparticipation.

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Enclosed please find several opinion letters concerning suspension of services to bankrupt members and expulsion of members.

Sincerely,

Hattie M. Ulan

HATTIE M. ULAN
Assistant General Counsel

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Enclosures