



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

May 31, 1990

Leslie K. Rosenfeld, Esq.
P.O. Box 8579
Kansas City, Missouri 64114

Re: Failure to provide taxpayer identification
number certification; payment of interest on shares
(Your April 5, 1990, Letter)

Dear Mr. Rosenfeld:

This is in response to your request for an opinion as to whether a credit union may refrain from paying interest on share accounts whose owners have failed to provide the credit union with taxpayer identification numbers certified under the penalties of perjury. We do not find anything in the Federal Credit Union Act (12 U.S.C. §1751 et seq.) or the National Credit Union Administration's Rules and Regulations (12 C.F.R. §700 et seq.) that precludes such action by a federal credit union (FCU). In our opinion, an FCU may institute a policy whereby members who fail to provide taxpayer identification numbers do not receive dividends on their shares.

An FCU member has a fundamental right to maintain a share account and to vote at annual and special meetings; those rights may not be withheld without formal expulsion under Section 118 of the FCU Act (12 U.S.C. §1764). However, we have stated previously that an FCU may suspend any and all member services other than those fundamental rights to members who have caused a loss to the FCU.

The NCUA Rules and Regulations do not require that dividends be paid on all shares. Enclosed is a copy of a letter explaining our basis for permitting elimination of dividends on shares held by members who cause a loss to the FCU. In the past, we have approved suspension of services (including payment of dividends) to members who have caused losses by defaulting on loans, declaring bankruptcy, abusing check-writing privileges, and bringing about an increase in the FCU's loan protection insurance premium due to an FCU

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collecting under the policy for a loan not repaid due to bankruptcy. The situation that you describe is analogous to those in which we have approved suspension of services: the members' failure to comply with the IRS's taxpayer identification number certification requirements has caused the FCU's to incur penalties as well as legal and administrative expenses. We believe that the losses suffered by the FCU's justify suspension of dividend payments to the members involved.

We note that your letter does not specify whether all of the credit unions you represent are FCU's. Please be advised that our analysis pertains only to FCU's. In the event that you represent state-chartered credit unions as well, you should consult the Missouri credit union authorities concerning suspension of services to members of state-chartered credit unions.

Further, while suspension of services does not violate the FCU Act or NCUA Rules and Regulations, an FCU's right of suspension may be restricted by contract and by other federal and state laws. We offer no opinion as to whether the policy under discussion violates any other federal or state laws. You should determine whether any other laws are relevant and whether the course you propose is allowed under those laws.

Sincerely,


Hattie M. Ulan
Associate General Counsel
Office of General Counsel

Enclosure
GC/MRS:sg
SSIC 3600
90-0414



NATIONAL CREDIT UNION ADMINISTRATION
Washington, DC 20543

August 17, 1987

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Office of General Counsel

Gerry Goodgion, Esq.
Executive Vice President and General Counsel
Connecticut Credit Union League, Inc.
P.O. Box 5001
Wallingford, CT 06492

Dear Mr. Goodgion:

This is in response to your letter concerning our opinion that dividends on regular share accounts of members who have defaulted on their loans or who have caused the FCU to suffer a loss because they entered bankruptcy may be reduced or otherwise eliminated.

It has been our stated opinion that a Federal credit union ("FCU") may have a policy to eliminate FCU services, including limiting or eliminating dividends on regular shares of a member who is in bankruptcy or who has defaulted on a loan, without violating the FCU Act or the National Credit Union Administration Rules and Regulations. However, the policy could not go so far as to preclude the member from voting at annual and special meetings.

Section 107(6) of the FCU Act (12 U.S.C. §1757(6)) states, in part, that:

A Federal credit union . . . shall have power -

To receive from its members . . . (A) shares which may be issued at varying dividend rates; (B) share certificates which may be issued at varying dividend rates and maturities, and (C) share draft accounts authorized under Section 205(f); subject to the terms, rates and conditions as established by the board of directors, within limitations prescribed by the Board."
(Emphasis added.)

Gerry Goodgion, Esq.
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Section 117 of the FCU Act (12 U.S.C. §1763) addresses dividends and states, in part, as follows:

"At such intervals as the board of directors may authorize, and after provision of required reserves, the board of directors may declare a dividend to be paid at different rates on different types of shares, at different rates and maturity rates in the case of share certificates, and at different rates on different types of share draft accounts. . . ." (Emphasis added.)

In rendering our prior opinion in question here, we relied on the language highlighted above in Sections 107(6) and 117 of the FCU Act. We believe one can look to certain characteristics of the owners of shares when classifying "types of shares" for purposes of varying dividend rates. It is our opinion that an FCU can classify the shares of defaulters/bankrupts (debtors) differently from other shares and limit or completely eliminate dividends paid on such shares. Although it is our opinion that such treatment does not violate the FCU Act or NCUA Rules and Regulations, we do not render an opinion on any other applicable state or Federal laws.

I hope that we have been of assistance.

Sincerely,



STEVEN R. BISKER
Assistant General Counsel

HMU:sg