



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

June 28, 1990

P. Ronald Cooper, Esq.
Reding, Rea & Cooper, P.C.
1233 Oliver Building
Pittsburgh, Pennsylvania 15222

Re: Request for approval of bylaw amendment
(Your June 1, 1990, Letter)

Dear Mr. Cooper:

This is in response to your request for approval of a proposed nonstandard bylaw amendment. Although addressed generally to the NCUA, your letter was forwarded to this Office.

In the past, we have consistently stated that causing a loss to a credit union by failing to repay a loan does not warrant the expulsion of a member for nonparticipation. I am enclosing copies of two earlier letters on this subject.

Should you still wish to have your proposed bylaw amendment considered, be advised that all requests for approval of non-standard bylaw amendments must be submitted to the appropriate Regional Office, which then circulates them to all Regional Offices and the General Counsel's Office in accordance with NCUA procedure. If you elect to proceed with formal consideration of the proposed bylaw, you should contact the NCUA's Region II Office at 1776 G Street, N.W., Suite 800, Washington, D.C. 20006, telephone (202) 682-1900.

I hope that we have been of assistance.

Sincerely,

Hattie M. Ulan

Hattie M. Ulan,
Associate General Counsel
General Counsel's Office

GC/MRS:sg
SSIC 3701
90-0608
Enclosures

FOIA

Vol. III A, 7

1/1 III 0361



NATIONAL CREDIT UNION ADMINISTRATION
Washington, DC 20456

GC/TFR
3600

August 22, 1988

Office of General Counsel

Mr. Thomas P. Munley
Vice-President
Chryco Newark Federal Credit Union
P.O. Box 8065
Newark, Delaware

Re: Expulsion of Members (Your May 20, 1988, Letter)

Dear Mr. Munley:

A Federal credit union ("FCU") board may not expel members from an institution for "nonparticipation" under Section 118(b) of the FCU Act [12 U.S.C. §1764(b)] simply because they have caused the credit union a loss. A member can be expelled for causing a loss only by a member vote under Section 118(a) [12 U.S.C. §1764(a)]. Of course, the FCU board may refuse to extend credit and take other reasonable actions against such persons. Article XVI, Section 1 of the FCU Standard Bylaws states:

[a] member may be expelled only in the manner provided by the [FCU] Act. Expulsion or withdrawal shall not operate to relieve a member of any liability to this credit union. All amounts paid in on shares by expelled or withdrawing members, prior to their expulsion or withdrawal, shall be paid to them in the order of their withdrawal or expulsion, but only as funds become available and only after deducting therefrom any amounts due from such members to this credit union.

Section 118 of the FCU Act [12 U.S.C. §1764] sets out two methods of expulsion of members. Section 118(a) states: "[e]xcept as provided in subsection (b) of this section, a member may be expelled by a two-thirds vote of the members of a Federal credit union present at a special meeting called for that purpose, but only after opportunity has been given him to be heard." There are no restrictions as to what reasons constitute cause for expelling a member under Section 118(a); a member can be expelled under this procedure simply for causing the institution a financial loss.

Mr. Thomas P. Munley
August 22, 1988
Page Two

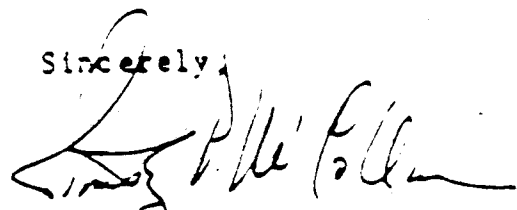
Section 118(b) provides:

[t]he board of directors of a Federal credit union may, by a majority vote of a quorum of directors, adopt and enforce a policy with respect to expulsion from membership based on nonparticipation by a member in the affairs of the credit union. In establishing its policy, the board should consider 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 Federal credit union. If such a policy is adopted, written notice of the policy as adopted and the effective date of such policy shall be mailed to each member of the credit union at the member's current address appearing on the records of the credit union not less than 30 days prior to the effective date of such policy. In addition, each new member shall be provided written notice of any such policy prior to or upon applying for membership.

A member's causing the FCU a loss would not fall within the statutory provision of "nonparticipation . . . in the affairs of the credit union." It is not akin to failing to vote, purchase shares, obtain a loan from or lend to an FCU. Therefore, an FCU board cannot use its Section 118(b) authority to expel a member based on losses suffered because of the member's actions. .

Only Section 118(a), which permits expulsion for any reason, provides authority for an FCU to expel a member based on losses he or she may have caused the FCU.

Sincerely,



TIMOTHY P. MCCOLLUM
Assistant General Counsel



NATIONAL CREDIT UNION ADMINISTRATION
Washington, DC 20546

2/1/86

Bruce D. Foreman, Esq.
Melman, Gexas, 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.

Page Two

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

YG:cch