



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

January 25, 1991

Susan B. Hodges  
Assistant Manager  
Delaware State Police Federal Credit Union  
P.O. Box 528  
Georgetown, DE 19947

Re: **Member Reinstatement** (Your December 27, 1990,  
Letter)

Dear Ms. Hodges:

You have asked whether a federal credit union (FCU) is obligated to reinstate FCU membership to an individual who was previously terminated because of the involuntary withdrawal of all of her funds from the FCU. Under your fact scenario, the person's membership has not been terminated. In a telephone conversation on January 10, 1991, you also inquired about notification requirements relating to involuntary termination.

**BACKGROUND**

A member became delinquent on a loan. In July 1989, the loan was charged off and the funds remaining in the member's account were absorbed through the application of the statutory lien. The account funds did not amount to the full amount of the loan due. In 1990, the individual paid the remaining amount owed the FCU and asked to be reinstated as a member of the FCU.

**ANALYSIS**

Termination of Membership

Article III, Section 3, of the Standard FCU Bylaws (Bylaws) provides that:

A member who fails to complete payment  
of one share within \_\_\_\_\_ of his admission

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to membership or within \_\_\_\_\_ from the increase in the par value of shares, or a member who reduces his share balance below the par value of one share and does not increase the balance to at least the par value of one share within \_\_\_\_ of the reduction may be terminated from membership. (Note: The board shall specify the time period of at least 6 months and insert the same time period in each blank.)

In a telephone conversation on January 11, you informed us that your FCU has a two year time period in which members may get a share account up to par before being terminated from membership. Article III, Section 3 has been interpreted to apply when a member's account is involuntarily reduced by the FCU through the assessment of maintenance fees, late charges, or the statutory lien. In your fact scenario, the individual's membership may not be terminated until July 1991. Therefore, the member has time to increase her share account to par value before there is a termination of membership.

#### Membership Policy

Assuming the member does not get her share account to par value within two years, the member cannot increase her balance thereafter but must reapply for membership. Membership in the FCU through reapplication is not automatic. Section 109 of the FCU Act (12 U.S.C. §1759) states:

Federal credit union membership shall consist of the incorporators and such other persons and incorporated and unincorporated organizations, to the extent permitted by rules and regulations prescribed by the Board, as may be elected to membership. . . .  
(Emphasis added.)

Section 113 of the FCU Act (12 U.S.C. 1761b) authorizes the FCU board of directors to "act upon applications for membership or appoint membership officers," "review at each

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monthly meeting a list of approved or pending applications for membership" and "provide for the furnishing of the written reasons for any denial of a membership application to the applicant upon the request of the applicant." (12 U.S.C. 1761b(1), (15), and (16)).

When read together, Sections 109 and 113 of the FCU Act provide an FCU's board of directors with some discretion in setting policy regarding the acceptance of members in the FCU. Neither the FCU Act nor the NCUA Rules and Regulations address setting such a policy as long as field of membership and common bond standards are met. Therefore, an FCU policy of denying membership to former members who were delinquent on their loans, is legally permissible under the FCU Act and NCUA Regulations. One additional note. If a membership policy is based on bankruptcy, different laws may apply. You may wish to consult local counsel familiar with bankruptcy law and any other applicable federal and state laws before adopting such a membership policy.

#### Notification

In Letter to Credit Union No. 70, dated November 29, 1982, notification to a member was discussed in relation to a possible loss of membership due to the application of Article III, Section 3 of the Bylaws. The letter states:

Since this standard bylaw amendment may result in loss of membership if payment of one share is not fully completed within the specified time frame, Federal credit unions adopting the amendment should notify all members of the change and what they must do to avoid adverse consequences.

We have not taken the position that notification to a member is necessary each time a share account is reduced below par

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value. However, members should be aware of the FCU's policy of closing an account based on its falling below par value due to absorption through lien or fees.

Sincerely,

*Hattie M. Ulan*

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Associate General Counsel

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