

March 21, 2002

(b)6

Re: Member Expulsion and Election Dispute.

Dear Mr. (b)6:

By letter dated February 13, 2002, Chairman Dennis Dollar, on behalf of the Board of the National Credit Union Administration (NCUA), told you he was asking the Office of General Counsel to respond to your request to appeal a decision by NCUA's Region III office. Your request relates to your complaint against (b)8 (FCU. You also wrote to me directly and, in your letter received March 7, 2002, you again stated that you were appealing the Region III decision.

First, I want to clarify that, when members have complaints about internal credit union matters, there is generally no right of appeal to the NCUA Board. NCUA's long-standing policy is not to become involved in internal FCU disputes unless it involves a violation of law or regulation or there are safety and soundness concerns. Nevertheless, our regional offices try to resolve member complaints by contacting the officials of a federal credit union to investigate. Typically, a regional office will review information provided by a member and the federal credit union and then will provide its view in hope of facilitating a resolution among the parties. If members are not satisfied, they may, of course, pursue whatever other remedies may be available.

Your complaint does not involve violations of law or regulation or raise safety and soundness concerns. Briefly summarized, your complaint is that the FCU improperly reduced the number of seats on its board of directors before an election in which you were a candidate. You also contend that your expulsion from the FCU's membership was improper. In connection with the expulsion, you are dissatisfied about the information provided to you by the FCU. You also contend that it was a conflict of interest for the FCU's Supervisory Committee to use the FCU's legal counsel in its review of your complaint. Specifically, you ask that you be reinstated as a member of the FCU, along with other members expelled at a meeting last August. Also, you ask that the NCUA direct the FCU to permit you and another individual to serve the remainder of terms on the board of directors of the FCU.

Regarding the reduction in the number of directors, the FCU's bylaws provide that the board of directors may change the number of seats to any odd number between five and fifteen by resolution of the board. A Certificate of Resolution evidences that (b)8 FCU's board voted to reduce the number of seats by two, from nine to seven on February 23, 1999. The FCU minutes reflect that there were four vacancies. The FCU bylaws further provide that "No reduction in the number of directors may be made unless corresponding vacancies exist as a result of deaths, resignations, expiration of terms of office, or other actions provided by these

bylaws.” NCUA has long maintained that the bylaws function as a contract between an FCU and its members and that they should be interpreted according to state law. If you disagree with our interpretation of the bylaws, you should consult with your own legal counsel.

Regarding your expulsion from membership, the Federal Credit Union Act (the Act) provides for the expulsion of a member by two-thirds vote of the FCU’s members present at a meeting called for that purpose. 12 U.S.C. §1764(a). The FCU must give the member an opportunity to be heard and there are no restrictions as to what reasons constitute cause for expelling a member under this provision of the Act. The FCU notified you of its reasons for proposing your expulsion in a letter to you from (b)6, dated August 9, 2001, and provided you with an opportunity to be heard at a special meeting called for member expulsions, as required by the Act. If you are dissatisfied about the information provided to you by the FCU, you should consult with your own legal counsel about whether you may have the right under state law to view credit union records.

Although you did not highlight this issue in your correspondence to Chairman Dollar or me, I note you raised an issue in correspondence to Region III Director Swann about how the vote for member expulsion was taken at the special meeting in August 2001. If members at a special meeting are asked to vote for expulsion of a list of members, it may be appropriate, depending on the circumstances, to permit a separate vote for expulsion of individual members if a member requests it. The Act gives a member whose expulsion is proposed the opportunity to be heard. 12 U.S.C. §1764(a). A member’s right to be heard allows the voting members to consider the member’s arguments against his or her expulsion. If members vote on the expulsion of several members at once, the all-or-nothing effect prevents members from considering the merits of each case. This may be important for a member disputing his or her expulsion. In your case, I understand that you are the only member who appeared at the meeting to object to your expulsion. Given that fact and the reported results of the vote, it may not have made any difference if the vote on your expulsion was taken separately. Neither the Act nor our regulations address this issue and I suggest you consult with your own legal counsel.

Regarding your contention that the Supervisory Committee’s use of the FCU’s legal counsel was a conflict of interest, we disagree. Generally, the Supervisory Committee should be able to use the FCU’s counsel if it needs legal advice in its review of credit union matters instead of hiring its own counsel. This is discussed in the attached legal opinion from me to Steven Bisker, dated October 27, 1997.

As you requested, I am enclosing copies of documents referenced in this letter. If you want to pursue this matter further, you should consult with your own legal counsel about what remedies may be available to you.

Sincerely,

Sheila A. Albin
Associate General Counsel

GC/CJL/SAA:bhs
SSIC 3700
02-0228

Enclosures

cc: Region III
Chairman Dollar
(b)8 (Supervisory Committee)