

June 10, 1996

Pasquale Alfano, President  
Division 726 Federal Credit Union  
129 Butler Avenue  
Staten Island, NY 10312

Re: Request for Interpretation of Section 118 of the Federal Credit Union Act (Your May 15, 1996, Letter)

Dear Mr. Alfano:

You have asked whether a federal credit union (FCU) may adopt a policy to suspend all services and/or expel a member who has caused a loss to the credit union through bankruptcy. As explained below, there are limits to the actions an FCU may take against a member who has caused a loss.

#### Suspension of Services

The FCU board of directors may fashion a policy which restricts the number of services available to a member who has caused a loss to the FCU. An FCU is not precluded under the FCU Act or NCUA Rules and Regulations, from implementing a policy that denies most credit union services (e.g., ATM services, credit cards, loans, share draft privileges, preauthorized transfers, etc.) to a member whose bankruptcy results in a loss to the FCU. An FCU member, however, has a fundamental right to maintain a share account and to vote in annual and special meetings.

Although a 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. FCUs should contact their local counsel concerning compliance with the Federal Bankruptcy Act or other applicable state laws.

#### Expulsion

Section 118 of the FCU Act (12 U.S.C. §1764) provides the two exclusive methods for expulsion of FCU members. Section 118(a) provides for expulsion by two-thirds vote of the members of an FCU present at a meeting called for the purpose of expelling the member. The member 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.

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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 for expulsions under Section 118(b). An FCU 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.

Sincerely,

Richard S. Schulman

Associate General Counsel

GC/MFR:bhs

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