

August 12, 2008

Debra Droppleman, CFO
Fairmont Federal Credit Union
402 Tenth Street
Fairmont, WV 26654

Re: Suspension of Services Policy.

Dear Ms. Droppleman:

You state your federal credit union (FCU) has a suspension of services policy it applies to members who cause a loss to the credit union, and you have asked if it can be extended to other situations, such as members who threaten or behave inappropriately towards staff or other members, have presented counterfeit items, kite checks, or engage in suspicious transactions. An FCU may have a policy suspending or limiting services to members in various circumstances if there is a rational basis for the policy and members receive notice of the policy, but a credit union cannot terminate a member's right to vote in annual elections or maintain a share account without complying with the FCU Act's requirements for expulsion.

The Federal Credit Union Act (FCU Act) grants all members two basic rights: the right to maintain a share account and the right to vote at annual meetings. 12 U.S.C. §§1759, 1769. These rights cannot be suspended or terminated without following the process for expelling a member in the FCU Act. 12 U.S.C. §1764. Nothing in the FCU Act or the National Credit Union Administration's (NCUA) regulations, however, precludes an FCU from restricting the availability of certain services to members, provided the FCU has a rational basis for doing so and member have notice of the policy.

Your proposal would extend your current suspension of services policy to members who are abusive to credit union staff and members or who present a risk of loss to the credit union. In a previous opinion, letter we addressed suspension of service policies as applied to an abusive member. OGC Op. 91-0119 (February 20, 1991). That letter provides that an FCU may establish a policy denying an abusive member access to FCU premises or to services that involve personal contact with FCU employees.

You noted we have not directly addressed all the circumstances you raised. Generally, we would have no objection to suspending certain services to members where there is a logical relationship between the objectionable conduct and the services to be suspended, for example, denying access to credit union premises if a member has been abusive or threatening towards staff. Another example would be denying services involving an extension of credit where a member has caused a loss or repeatedly

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presented counterfeit items for cash or deposit. We caution that mere suspicion regarding a member's activities would not constitute a rational basis for suspending member services without more direct evidence of the member causing actual harm or loss to the FCU. Before any suspension of services policy can be enforced, FCUs need to ensure that the policy is in writing and provided to all members so that members are aware of it.

Finally, we note that contract provisions in your account and other member service agreements, as well as federal and state laws, affect an FCU's ability to implement a suspension of services policy. Specifically, the Equal Credit Opportunity Act (ECOA) and its implementing regulation, Regulation B, 12 C.F.R. Part 202, are intended to ensure the availability of credit to creditworthy applicants, regardless of race, color, religion, national origin, sex, marital status or age. The proposed program does not appear, on its face, to violate ECOA or Regulation B. Policies that are facially neutral, however, may be impermissible under the so-called "effects test." Under the "effects test," a policy is discriminatory if it has a negative impact on a protected class of persons, even if there is no intent to discriminate. We suggest you consult with your own legal counsel to determine the applicability of ECOA, contract provisions in your member agreements, and state law to your suspension of services policy.

We hope you find this guidance helpful.

Sincerely,

/S/

Sheila A. Albin
Associate General Counsel

08-0431
GC/JMA:bhs