

February 27, 1993

Nancy J. Nichols  
Manager  
The Blade Federal Credit Union  
524 Orange St.  
Toledo, OH 43604-1727

Re: Member in Good Standing Policy (Your Letter of February 4, 1993)

Dear Ms. Nichols:

You requested a legal review of your draft Member in Good Standing Policy (the "Policy," attached). The Policy will be in accord with the Federal Credit Union ("FCU") Act and the NCUA Rules and Regulations with slight modification. However, if the proposed Truth in Savings rule is adopted in its present form by the NCUA Board, the penalty fees would need to be disclosed to all members. In addition, this letter does not address any laws over which NCUA does not have interpretational authority. For an analysis of federal and state laws not discussed, we suggest that the FCU's counsel review the Policy. Moreover, NCUA does not promote the suspension of services and assessment of penalty fees upon a member who has caused a loss to the FCU.

#### ANALYSIS

**Suspension of Services** An FCU member has a fundamental right to maintain a share account and to vote in annual and special meetings. 12 U.S.C. ~1759. No other services are required by the FCU Act or NCUA Rules and Regulations. An FCU cannot withhold these rights without a formal expulsion based on Section 118 of the FCU Act. 12 U.S.C. ~1764. In our opinion, an FCU may limit all services, except the member's fundamental rights, to those that have caused a loss to the FCU. In order to do this, the FCU's board of directors would need to adopt a modified Policy setting forth the fundamental rights and disseminate it to members. The board should monitor the Policy after its adoption.

It is conceivable that the Policy could be construed to violate the Equal Credit Opportunity Act ("ECOA") and the Fair Housing Act ("FHA"). The ECOA prohibits FCUs from discriminating in lending practices on the basis of race, color, religion, national origin, sex or marital status, and age, or against individuals deriving income from a public assistance program, or against individuals who exercise in good faith their ECOA rights. 15 U.S.C. ~1691(a). The Board of Governors of the Federal Reserve System ("FRB") has issued implementing regulations for the ECOA known as Regulation B. 12 C.F.R. Part 202. The NCUA has ECOA enforcement authority for FCUs, while the FRB interprets Regulation B. 15 U.S.C. ~1691c(a)(3). If any denial of credit has a disproportionate effect on any of the protected classes, a violation of the ECOA and Regulation B may have occurred. Similarly, the FHA makes it unlawful for any person or entity engaged in residential real estate-related transactions to discriminate in either making available the transaction or in the terms and conditions of the transaction on the grounds of race, color, religion, sex, handicap, familial status, or national origin. 42 U.S.C. ~3605(a). In accordance with the FHA and Executive Order No. 12259 (46 Fed.Reg. 1253 (December 31, 1980)), NCUA promulgated Section 701.31 of its Rules and Regulations, which applies to FCUs. Total denial of credit may also violate the FHA.

Moreover, an FCU may be limited in what services are denied to a member by contract and other federal and state laws. We give no opinion as to whether a suspension of services policy violates other laws, including the Federal Bankruptcy Act or applicable state laws. FCU's should contact their local counsel

concerning compliance with the Bankruptcy Code and any other applicable laws.

#### Penalty Fees

It seems that penalty fees for loan losses would not need to be disclosed under Truth In Lending Requirements. Charges for exceeding a credit limit, or for delinquency, default or a similar occurrence are excluded from the definition of finance charge. 12 C.F.R. ~226.4(c)(2). Nor would it be considered an "other charge." 12 C.F.R. ~226.6(b), ~226.7(h), which would be discloseable. However, penalty fees might be impermissible under applicable state laws. See, e.g., *Perdue v. Crocker National Bank*, 38 Cal.3d 913, 216 Cal.Rptr. 345, 702 P.2d 503 (1985) (unconscionable fees).

Presently, an FCU can assess fees upon share accounts at will. 12 C.F.R. ~701.35(c). However, the proposed Truth in Savings regulation (57 Fed.Reg. 56686, November 30, 1992, enclosed) would require disclosure of "the amount of any fee that may be imposed in connection with the [member's] account (or an explanation of how the fee will be determined) and the conditions under which the fee may be imposed." Proposed 12 C.F.R. ~707.4(b)(4), 57 Fed.Reg. 56713. Therefore, if the proposed Truth in Savings rule is adopted in its present form, FCUs would have to disclose such fees as are proposed in your Policy. Again, NCUA does not opine on other possible applicable federal and state laws over which it has no interpretative authority. It is suggested that you contact the FCU's own counsel for such advice.

Sincerely,

Hattie M. Ulan  
Associate General Counsel

Enclosure

GC/MEC:sg  
SSIC 4600  
93-0217