

February 20, 1991

Frank E. Berrish,
President/CEO
IBM Endicott/Owego Employees Federal Credit Union
3301 Country Club Road
Endwell, New York 13760-3437

Dear Mr. Berrish:

Thank you for your letter of January 16, 1991 to Chairman Jepsen of the NCUA Board. Mr. Jepsen has asked that I re- spond to the legal issues raised by your letter.

You state in your letter that one member of the IBM Endicott/Owego Employees Federal Credit Union (the "FCU") has been extraordinarily abusive to certain FCU staff members. You believe that expulsion from membership in the FCU would be an appropriate remedy for the problems caused by this one member. In light of the fact that the FCU has over 60,000 members, you do not consider a membership vote on expulsion under Section 118(a) of the Federal Credit Union Act to be feasible. (We note that expulsion for nonparticipation under Section 118(b) would not be appropriate in this instance.) Further, you are concerned that providing the general membership with notice of the reason for seeking expulsion would impinge unreasonably upon the privacy rights of the member in question. You suggest that the Federal Credit Union Act (12 U.S.C. ~1751 et seq.) (the "Act") be amended to provide for expulsion by an FCU's board of directors of a member who commits significant violations of rules promulgated by the board for the conduct of members in their dealings with FCU personnel.

Since you are requesting Congressional action on a matter unrelated to safety and soundness, you may wish to contact a credit union trade association or the New York Credit Union League in order to pursue an amendment. However, I must advise you that the NCUA does not consider such an amendment necessary at this time, and would be very unlikely to support a proposal to enlarge the expulsion power of FCU boards of directors. Expulsion is an extremely harsh remedy best left to the discretion of the membership, except in the limited circumstance described in the Act.

As an alternative to expulsion of the member in question, we suggest limiting the FCU services available to him. The Act grants all FCU members two basic rights: the right to main- tain a share account, and the right to vote at annual and special meetings. However, nothing in the Act precludes an FCU from restricting the availabilty of certain services, provided that there is a rational basis for doing so. The FCU may wish to implement a policy denying abusive members access to FCU premises and to services which involve personal contact with FCU staff. The board of directors could be au- thorized to impose such sanctions against a member who violates stated standards of behavior toward the staff. It seems to us that implementation of such a policy would accom- plish your goal of protecting the FCU staff from abusive mem- bers, without requiring a vote of the entire membership, intruding on any legitimate privacy concerns (although we do not agree that notice regarding a vote on proposed expulsion would violate a memebre's privacy right), or necessitating amendment of the Act. We caution you, however, that the policy should be reduced to writing and that the general membership should be made aware of it before it is enforced against any individual.

Thank you for expressing your concerns and ideas on this is- sue. I hope that we have been of assistance.

Sincerely,

Robert M. Fenner
General Counsel

cc: Chairman Jepsen

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