

SUBJECT: Denial of Services

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INTRODUCTION

This release applies to all credit unions, state and federal. It describes compliance issues involved in denying services to members who cause losses or other problems.

EXECUTIVE SUMMARY

Credit unions often want to deny various services to members who have caused the credit union a loss or who engage in other objectionable behavior. This release addresses four main topics:

1. General compliance issues that a denial of services policy raises.
2. The issues involved with denying specific types of services, such as accounts or new loans.
3. The process for expelling members from the credit union altogether.
4. Special issues that arise when the credit union wants to deny services to or expel a member who is in (or has gone through) bankruptcy.

General Denial of Services Concerns

Before attempting to deny any services to any member for any reason, the credit union's board of directors may adopt a written "denial of services" policy, and communicate that policy to members.

Before 2017, the state's Model Bylaws said that only a "member in good standing" could 1) receive notice of membership meetings, 2) vote, 3) serve as a director, or 4) hold credit union accounts. In 2017, the Model Bylaws were revised to eliminate the "member in good standing" section. For that reason, a credit union that has adopted the 2017 Model Bylaws can only prevent a member from voting or from holding a basic membership share account by expelling that person from membership; otherwise the credit union may not treat any member as not being in "good standing" – even (for example) a member who is delinquent on a loan or other obligation to the credit union. All members must be notified of member meetings and allowed to vote, serve as a director, or hold credit union accounts – subject to other restrictions in the bylaws.

A denial of services policy would be applied uniformly to all members, to help the credit union avoid discrimination claims.

Credit unions could have policies to deny services for members who causes losses, as well as for members who engage in other objectionable behavior, such as threatening or behaving inappropriately towards staff or other members, presenting counterfeit items, or kiting checks.

The requirement to keep a member's information confidential continues even if that member is denied services or expelled.

Denying Specific Services

Short of expulsion, the credit union might consider denying specific services to members, for example:

- *Closing deposit accounts (other than the membership share account).* Various regulations may require notices and/or waiting periods before closing a member's deposit account, depending on the type of account and the services tied to it. A credit union may take certain precautions to help protect itself if it decides to close a member's account(s):
 - Check the deposit account agreement for authority to close the account;
 - Give 30 days' notice before closing deposit accounts that receive federal benefits;
 - Provide periodic statements for periods when the deposit account is open;
 - Notify the member three or four weeks in advance, even if there are no federal benefits being received; and
 - Provide adverse action notices when necessary.

The credit union may not withhold dividends from a member's share account as part of a policy of denying services.

A credit union likely may limit the ability of members to name someone who has caused a loss as a joint accountholder. The credit union would need a reasonable basis for such a restriction, and it would need to be included in the denial of services policy.

- *Denying applications for new credit.* If the credit union denies applications for new credit from a member who caused a loss, its adverse action notices should show that this was a principal reason for denying an application.
- *Taking action on existing loans or lines of credit.* A credit union's internal policies, loan and account agreement forms, and state or federal laws may restrict the ability to call existing loans due or cancel existing lines of credit.

The fact that a member has caused a loss may not automatically allow the credit union to call due *other* existing closed-end loans, or to lower credit limits or suspend advances on *other* existing open-end lines of credit – if the member is not in default on those particular loans or lines of credit.

- *Taking action on other contracted services, such as safe deposit boxes.* Check the terms of applicable contract(s) with a member before denying such services. For example, a safe deposit box lease may limit the credit union's rights.
- *Restricting electronic account access.* In 2016, the Consumer Financial Protection Bureau (CFPB) cited Navy Federal Credit Union for “unfair, deceptive or abusive” acts or practices (UDAAP) involving a variety of debt collection practices, including improperly restricting members' electronic account access.

Unless/until the CFPB issues additional guidance, The League cannot say what level of electronic account access restrictions is allowed under UDAAP or what notices/disclosures should be given before a credit union imposes such restrictions. As a result, we recommend that credit unions should not suspend electronic account access (including suspending debit cards) as a collection strategy to prompt payments or communications from delinquent borrowers.

If a credit union believes that it can suspend a member's debit card, be aware that the federal Electronic Fund Transfers Act and Reg. E require a 21-day advance notice before the credit union can suspend a member's electronic fund transfer services – such as ATM cards, debit cards, online banking privileges, telephone banking access, etc.

It is never a good idea to try denying *all* services to any member unless the credit union goes through the required process to expel the member. That's because the NCUA has issued numerous legal opinions that a federal credit union cannot deprive a member of two fundamental rights – the right to vote at annual or special meetings and the right to maintain a share account – without going through the expulsion process. The analysis seems sound for state-chartered credit unions. The Wisconsin Office of Credit Unions has not published an opinion on this issue, but they indicate that they may be likely to take a similar position.

Expulsion

Any credit union should have an expulsion policy separate from its denial of services policy. For state-chartered credit unions, The League offers a sample expulsion policy as an exhibit to *ii Release No. 0001*.

The rules for expulsion differ for state-chartered and federally chartered credit unions:

- State chartered credit unions must take a series of steps – including a board of directors' resolution for expulsion, notice to the member, and reconsideration of the expulsion by the board if requested by the member.
- Federal credit unions may expel members by following the procedures in their bylaws. Note that the NCUA's Model Bylaws for federal credit unions (which are found in Appendix A to Part 701 of the NCUA regulations) were amended in 2023 to simplify the expulsion process.

Note, however, that the Wisconsin Statutes were amended in 2016 to simplify the expulsion process for state-chartered credit unions. The updated statutory procedures are reflected in the 2017 Wisconsin Model Bylaws (Article III, Section 5). However, unless a credit union has updated its bylaws to take advantage of the 2016 change to the Wisconsin Statutes, it must follow the expulsion provisions in its existing bylaws.

Bankruptcy

The credit union cannot use its denial of services policy as a way to collect on a debt that is part of a pending bankruptcy case or one that has been discharged in bankruptcy. Credit unions should consult counsel before communicating with a member during or after a bankruptcy about its denial of services policy.

A credit union is free to deny an application for new credit on the basis that the applicant has previously discharged a loan from the credit union in bankruptcy and caused a loss.

GENERAL DENIAL OF SERVICES CONCERNS

Before a credit union takes any action to deny services to a member, for any reason, it should think through a number of general compliance concerns. For example, it must have a sound policy, and it must apply that policy fairly.

Denial of Services Policy

Before attempting to deny any services to any member for any reason, the credit union's board of directors should adopt a "denial of services" policy.

Over the years, the NCUA has repeatedly given the legal opinion that the policy must be in writing, approved by the board of directors, and provided to all members so that they are aware of it. The board should also monitor the policy and update it as needed.

The policy should not be limited to losses caused by a bankruptcy. Losses may also occur through a member's failure to repay a debt, failure to deposit funds to cover a deposited item that is returned, etc.

The policy should define when a "loss" is deemed to have occurred. Consider issues such as:

- When does a delinquency become a loss? At default? When the loan is charged off? At some other point?
- If a member is in the process of repaying a loss, will the credit union continue to deny services to the member? What if the member is *voluntarily* repaying a debt that was discharged in bankruptcy, without a legal obligation to continue making payments?
- If the member is in a Chapter 13 bankruptcy, will he/she be considered to have caused a loss if the bankruptcy plan calls for full payment of all principal and interest at the contract rate? If the plan provides for repayment of principal but not interest? If the plan provides for repayment of less than all outstanding principal?
- If the member defaults on a loan that is then paid by a co-signer or guarantor, has the member caused a loss?

If the credit union wants to deny services to members for other reasons, such as abusive behavior (as discussed later in this release), the policy should give examples of acceptable reasons.

Take care to follow the policy, including providing any notice(s) the policy requires.

The policy would not provide that members will be denied *all* services, except through the expulsion process addressed later in this release. Unless a member is expelled, the credit union cannot deny a member the right to vote or to maintain a membership share account, as explained later in this release.

The policy would address whether the credit union will allow members to name someone who has caused a loss as a joint accountholder, as discussed later in this release.

Before 2017, the state's Model Bylaws said that only a "member in good standing" could 1) receive notice of membership meetings, 2) vote, 3) serve as a director, or 4) hold credit union accounts.

In 2017, the Model Bylaws were revised to eliminate the "member in good standing" section, for two reasons:

- The NCUA has issued numerous legal opinions that a federal credit union cannot deprive a member of two fundamental rights – the right to vote at annual or special meetings and the right to maintain a share account – without going through the formal expulsion process. Their analysis seems sound for state-chartered credit unions, as well: They can have policies to deny certain services to members who have caused a loss or created other problems, but short of expulsion, they cannot go so far as to deny any member the basic rights to vote or to hold a share account. The League has warned credit unions that the "member in good standing" concept is a potential "compliance trap."
- Ch. 186 does not use the term "member in good standing." There is no sound legal basis for creating a second "class" of members who are not in "good standing." Someone is either a credit union member or not.

A credit union that has adopted the 2017 Model Bylaws can only prevent a member from voting or from holding a basic membership share account by expelling that person from membership; otherwise the credit union may not treat any member as not being in "good standing" – even (for example) a member who is delinquent on a loan or other obligation to the credit union. All members must be notified of member meetings and allowed to vote, serve as a director, or hold credit union accounts – subject to other restrictions in the bylaws.

Exceptions

Exceptions to the policy should be rare; treating some members differently from others under the policy could lead to claims of discrimination, as discussed next.

Avoiding Discrimination

A denial of services policy requires uniform application to all members, to help the credit union avoid discrimination claims. Various state and federal laws prohibit discrimination based on certain characteristics, such as age, race, or gender. Even if the credit union's denial of services policy is applied consistently to all members and is neutral on its face, it could violate those laws.

For example, the federal Equal Credit Opportunity Act and Reg. B say that a policy may be discriminatory (even if it is applied consistently and is neutral on its face) if it results in certain groups having less access to credit than others because of their age, race, gender, etc. This is called “disparate impact” discrimination. For example, it would be “disparate impact” discrimination if the policy leads to denying services to more women who have caused losses than to men who have caused losses.

The credit union can help guard against claims of disparate impact discrimination by being able to show that it has a sound business purpose for its denial of credit policy and that it has periodically tested the program to see that it has no disparate impact on certain groups. For more on Reg. B, see The League’s *ii Release No. B041*.

Employees

The policy would not be applied differently for insiders, whether staff, management or directors. However, the bankruptcy code says no private employer may discriminate solely due to bankruptcy. Denying loans or other services to credit union employees because of a bankruptcy would violate this law.

Reasons for Denying Services

The NCUA says that a credit union can deny most services (except certain fundamental rights, such as the right to vote in credit union elections or to hold a membership share account) if a member has caused the credit union a loss. (See *Legal Opinion Letter 93-0217 (Feb. 27, 1993)*: “[A]n FCU may limit all services, except the member's fundamental rights, to those that have caused a loss to the FCU.”)

For example, ATM services, credit cards, loans, share draft privileges, preauthorized transfers might be denied to a member who has caused a loss, the NCUA has said. See *Legal Opinion Letter 96-0530 (June 10, 1996)*.

However, the credit union must be aware that contract rights and state or federal laws often limit the credit union’s right to restrict certain services, as discussed in this release.

Before denying any services to a member, the credit union should take care to document its reasons for doing so.

Denying services for other reasons

What if a member has not caused a loss, but has engaged in other objectionable behavior, such as threatening or behaving inappropriately towards staff or other members, presenting counterfeit items, kiting checks, or making suspicious transactions? A credit union can deny certain services in those situations, within limits.

In *Legal Opinion Letter 08-0431 (Aug. 12, 2008)*, the NCUA explained that a federal credit union may suspend certain services to members when there is a “rational basis” for the policy and a “logical relationship” between the objectionable conduct and the services to be suspended:

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. ...

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 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.

For example, in *Legal Opinion Letter 90-0119 (Feb. 20, 1991)*, the NCUA suggested that a credit union “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 authorized to impose such sanctions against a member who violates stated standards of behavior toward the staff.” Denial of such services might be preferable to expulsion, which the NCUA characterized as “an extremely harsh remedy.”

Privacy

Credit unions are generally obligated to keep member information confidential, both by federal privacy rules (as explained in *ii Release No. 0152*) and by the oath of office required for state-chartered credit unions (Wis. Stats. § 186.071). The duty of confidentiality continues even if a member is denied services or expelled (unless one of the exceptions in the privacy rules allows the credit union to share the information).

In *Legal Opinion Letter 98-0404 (April 22, 1998)*, the NCUA said that it is impermissible for a credit union to post the names of members who have caused a loss to the credit union.

However, as explained later in this release, an FCU (but not a state-chartered credit union) can expel a member for any reason by a two-thirds vote of members at a special meeting. The NCUA says that members should be notified only that the special meeting is for the purpose of expelling a member for causing a loss. Details about the nature of the loss should not be shared with the membership.

DENYING SPECIFIC SERVICES

Various compliance issues must be considered when the credit union denies a member certain kinds of services. This release discusses the following:

- Closing deposit accounts (other than the membership share account);
- Denying new credit;
- Taking action on existing closed-end & open-end loans;
- Taking action on other contracted services;
- Suspending electronic fund transfer privileges;
- Denying all services – which should not be done unless the credit union expels the member.

Closing Deposit Accounts (Other than the Membership Share Account)

Various regulations may require notices and/or waiting periods before a credit union can close a member's deposit account, depending on the type of account and the services tied to it.

As explained later in this release, the NCUA says that the credit union should not close anyone's membership share account without going through the expulsion process. The analysis seems sound for state-chartered credit unions. The Wisconsin Office of Credit Unions has not published an opinion on this issue, but they indicate that they may be likely to take a similar position.

The following steps outline The League's best suggestions to help protect the credit union if it decides to close a member's account(s).

Check the deposit account agreement

The first step is to see whether your agreement with the account holder(s) even allows the credit union to close the account. If your credit union uses The League's forms, the "Your Account Agreement, with Arbitration Agreement" and "Your Account Agreement" brochures say, "The Credit Union reserves the right to close your account at any time for any reason." If you use forms from another vendor, look for similar language. The credit union will have to abide by any restrictions that appear in the account agreement.

Saver's Sweepstakes accounts

Saver's Sweepstakes is The League's prize-linked savings program. The credit union has the right to close a Saver's Sweepstakes account, just as it would have a right to close any other savings account. If an account is closed, the primary account holder is ineligible to open another Saver's Sweepstakes account for a period of 90 days.

That being said, as long as the Saver's Sweepstakes account remains open, the credit union should not deny entries to the primary account holder – even if he/she has caused the credit union a loss. Closing the account may be an option, but withholding entries your member has earned toward drawings is not.

For details, see The League's *ii Release No. 0184 – "Saver's Sweepstakes™ Compliance FAQs."*

Federal benefits

If a member has federal benefits directly deposited into a deposit account via ACH, federal rules require the credit union to give the member 30 days' notice before it can close the account (except in cases of fraud). (31 C.F.R. § 210.4.)

The *U.S. Treasury "Green Book"* offers this guidance:

Financial institutions may close an account to which benefit payments are currently being sent thereby revoking the enrollment authorization by providing a 30-day written notice to the recipient prior to closing the account. In cases involving fraud, accounts may be closed immediately. The financial institution cannot revoke the enrollment authorization by notifying the Federal agency and not the recipient.

The 30-day written notice should remind the recipient to make other arrangements for the handling of his / her payments. The financial institution must credit to the recipient's account any payments received during the 30-day notice period. The financial institution must also immediately return to the Federal government all payments received after the 30-day notice period. A financial institution that closes the account without properly termination the enrollment must make the funds available to the recipient until proper notice is provided.

The recipient or beneficiary must immediately advise the Federal agency if the enrollment authorization is revoked by the financial institution.

Periodic statements

The deposit account holder(s) will still have right to receive periodic statements for any statement period during which the account is open. For example, if the credit union sends monthly statements on the last day of each month, and you close an account on the 5th of the month, a statement should still be sent to show the activity on the account on the 1st through the 4th of the month.

If closing a deposit account cuts off the member's ability to access electronic statements, be sure to provide any remaining statements for the statement cycle in paper format.

Notifying the member

The credit union may reduce the risk of lawsuits by sending the member a letter or notice informing him/her that the credit union plans to close the deposit account. A credit union may consider including the following in such a letter, as applicable:

- Explain why the account is being closed.
- Cite any contract language that gives the credit union the right to unilaterally close the account. If you use The League's "Your Account Agreement, with Arbitration Agreement" or "Your Account Agreement" brochures, they say: "The Credit Union reserves the right to close your account at any time for any reason." Forms from another vendor may contain similar language.
- Give a specific date when the deposit account will be closed. Consider giving three to four weeks' notice, to reduce damages if the member were to prevail in an action in court over this. (And remember, at least 30 days' notice is needed if federal benefits are deposited into any account.)
- Explain that funds left in the account when it is closed will be sent to the member.

- Explain what the credit union plans to do if there is a negative balance when the account is closed, such as taking legal action to collect the amount due, reporting any unsatisfied overdraft to a consumer reporting agency, and so on. Do not threaten action that the credit union does not intend to take or has no legal right to take.
- If the account being closed is a checking account, instruct the member not to write any additional checks or to make deposits other than those necessary to cover checks already written.
- Encourage the member to make any future deposits in cash and indicate that all other deposited items will be subjected to the maximum holds allowed by law. (See The League's *ii Release No. 0100* for information on check holds, including the exception hold that may be placed on deposits where the account has been repeatedly overdrawn during the preceding six months.)
- Provide the name and contact information for a credit union employee who can respond to any questions.

Send the letter in such a way to have an official record that it was sent. Certified mail could be used, or the employee who deposits it into the U.S. Mail could sign an affidavit of mailing.

If a member is in bankruptcy, the credit union should consult its bankruptcy attorney to review any communications before they are sent, to avoid a violation of the automatic stay.

Adverse action notices

Closing a deposit account may require the credit union to send the account holder(s) an adverse action notice. Two separate federal regulations require adverse action notices, and either or both may apply.

- First, if the credit union is closing the deposit account because of information it received from a consumer reporting agency (such as ChexSystems), then the Fair Credit Reporting Act requires the credit union to send the member an adverse action notice. Do not use the same adverse action form that may be sent for loan denials. A different form, such as The League's "Deposit Account Adverse Action Notice Based on Consumer Report" (WCUL #82058), should be used in connection with member accounts.
- Second, if the deposit account being closed is tied to an overdraft line of credit that will also be closed, Reg. B may require the credit union to send an adverse action notice. This is from The League's *ii Release No. 0169* on overdraft protection programs:

The ECOA and Regulation B also contain specific rules concerning procedures and notices for credit denials and other adverse action. Regulation B defines "adverse action," and generally requires a creditor who takes adverse action to send a notice to the consumer providing, among other things, the reasons for the adverse action.

Some actions taken by creditors under overdraft protection programs might constitute adverse action but would not require notice to the consumer if the credit is deemed to be "incidental credit" as defined in Regulation B. "Incidental credit" includes consumer credit that is not subject to a finance charge, is not payable by agreement in more than four installments, and is not made pursuant to the terms of a credit card account. Overdraft protection programs that are not covered by TILA would generally qualify as incidental credit under Regulation B.

For more information on Reg. B and the Equal Credit Opportunity Act, see The League's *ii Release No. B041*.

The League's adverse action notice (WCUL #82029) is designed for loan denials.

Payment of dividends

In *Legal Opinion Letter 99-0448 (May 19, 1999)*, the NCUA said that it is impermissible to withhold dividends from a member's share account as part of a policy of suspending services to a member who has caused a loss to the credit union; to do so would violate NCUA's Truth-in-Savings regulation, as well as the federal Truth in Savings Act.

Joint accountholders

In Legal Opinion Letter No. 05-0723 (Sept. 20, 2005), the NCUA said that an FCU could limit the ability of members to name someone who has caused a loss as a joint accountholder. The credit union would need a reasonable basis for such a restriction, and it should be included in the denial of service policy. As always, take care not to violate federal and state non-discrimination laws.

The Wisconsin Office of Credit Unions has not offered an opinion on this topic.

Denying New Credit

Perhaps the most common step credit unions take when a member has caused a loss is to deny that member's applications for new credit.

If the credit union denies applications for new credit from a member who caused a loss, its adverse action notices should show that this was a principal reason for denying an application. For details on adverse action requirements, see The League's *ii Release No. B041*.

The League's adverse action notice (WCUL #82029) is designed for loan denials. It includes checkboxes that can be used to show the principal reason for loan denial. The box labeled "poor credit performance with us" should be used when a member is denied a loan because he/she has caused a loss to the credit union.

Taking Action on Existing Closed-End & Open-End Loans

The fact that a member has caused a loss may not automatically allow the credit union to call due other existing closed-end loans, or to lower credit limits or suspend advances on other existing open-end lines of credit – if the member is not in default on those particular loans or lines of credit.

The credit union must honor the terms of its loan agreements; if a particular loan or line of credit is not in default, the borrower must be allowed to pay it under the contractual payment schedule, even if the member has caused a loss on some other obligation.

The credit union must examine the specifics of the situation and the terms of the member's loan agreement to determine whether the loan is in default and what steps the credit union may or may not take. For example, the Wisconsin Consumer Act would generally prohibit calling a loan due because of a default on a different loan, but non-consumer forms may allow more leeway.

Of course, if a member causes a loss on a particular loan or line of credit, the credit union may have remedies as to that particular loan or line of credit. Still, various compliance issues could delay or prevent the credit union from taking steps to collect on the affected loan or line of credit. For example:

- The Wisconsin Consumer Act (if it applies to the loan) restricts the credit union's ability to accelerate the loan's balance or take other collection steps unless the loan meets the Act's definition of "default" and the credit union provides any required Notice of Right to Cure and allows the member 15 days to cure the default. For details, see The League's *ii Release No. B031*.
- Before the credit union attempts to set off on the member's accounts to recover on a defaulted loan or line of credit, it should work through the setoff checklist in The League's *ii Release No. B013*.
- The credit union is only allowed to suspend advances on a home equity line of credit in certain situations. For information on when this may be allowed and the notice of the suspension that must be provided, see The League's *ii Release No. B064* – in particular, the section titled, "Reg. Z Contract Limitations on HELOCs."

Taking Action on Other Contracted Services

Always check the terms of your contract(s) with a member before closing an account or denying other services. The parties' contract rights may prevent the credit union from taking the action it wants to take.

For example, when it comes to safe deposit boxes, the lease spells out the rights and responsibilities of the credit union (the box lessor) and the members (the box lessee). Check the terms of the lease to see whether it allows the credit union to terminate the agreement and on what grounds – such as non-payment of rent. Do not assume that the credit union can close out the box as it would a deposit account. For example, The League’s Credit Union Safe Deposit Box Lease (WCUL #81071) says:

- We may terminate this Lease at any time with or without cause by written notice to any of you. In such event, you agree to immediately surrender the Box and both keys. Thereafter, we shall refund to you a prorated portion of the rent paid for the remaining period of the lease, less any charges due.

If the credit union uses forms from other vendors, be sure to check the terms before taking any action.

Suspending Electronic Fund Transfer Privileges

The League recommends that credit unions should not suspend electronic account access (including suspending debit cards) as a collection strategy to prompt payments or communications from delinquent borrowers.

In 2016, the Consumer Financial Protection Bureau (CFPB) announced a *Consent Order* against Navy Federal Credit Union, citing it for “unfair, deceptive or abusive” acts or practices (UDAAP) involving a variety of debt collection practices, including improperly restricting members’ electronic account access.

According to the Consent Order, between 2013 and 2015 Navy Federal froze electronic account access and disabled electronic services for about 700,000 accounts after consumers became delinquent on Navy Federal loans or had overdrawn deposit accounts. Navy Federal also made no exceptions for accounts with protected federal benefits, like Social Security income.

In addition to monetary penalties, Navy Federal was ordered to “cease and desist from engaging in any unfair act or practice involving restricting a consumer’s electronic account access when the consumer is delinquent over overdrawn on any Navy Federal Credit Union account.”

Navy Federal “violated the UDAAP protections of the Consumer Financial Protection Act (CFPA) by unfairly restricting consumers’ electronic account access – blocking debit cards, ATM usage, and online account functions – when the consumers had an overdrawn deposit account or delinquent credit account,” the Consent Order said. Navy Federal’s restrictions prevented consumers from “managing their accounts online,” “accessing online or mobile platforms to check account balances” and “adding travel alert[s] to the consumer’s account through mobile platforms.”

However, the Consent Order left questions unanswered about what level of electronic account access restrictions, if any, might have been appropriate. For example:

- The Consent Order noted that the account restrictions were applied at the member level, meaning that a delinquency or overdraft on one account would trigger a freeze of the consumer’s electronic account access and certain electronic services for all of the consumer’s Navy Federal Credit Union accounts. The Consent Order did not say, however, that the restrictions would have been proper if they had only been applied to delinquent accounts alone.
- The CFPB noted that “the account restrictions also prevented consumers from having Social Security Administration verification requests processed, impeding consumers’ ability to have their eligibility determined for certain Social Security benefits.” The Consent Order did not say, however, that the restrictions would have been proper if they had not affected Social Security benefits.

The CFPB said that the electronic account access restrictions violated the UDAAP provisions of the CFPA because the injuries to consumers “were not reasonably avoidable by consumers.” Consumers could not avoid the injuries because Navy Federal’s “policies and practices regarding electronic access and service restrictions were not adequately disclosed to consumers when they opened their deposit accounts, when they opened their credit accounts, or before they became delinquent on a credit account.”

However, the Consent Order left questions unanswered about what disclosures might have been appropriate. For example:

- Should a credit union disclose its policy on restricting electronic account access when it opens deposit accounts, opens credit accounts, and before a member becomes delinquent on a credit account? Or is any one disclosure sufficient?
- Does the disclosure need specific language?
- Must the disclosure be conspicuous – e.g., set apart by a bold font – or can it be included in the “fine print” of loan and account documents (a practice the Consent Order also criticized)? Can it be included with other disclosures?
- How much advance notice would be sufficient? As explained in the next subsection of this this Release, Reg. E seems to require a 21-day advance notice before a credit union may suspend a member’s debit card – even if the member has caused a loss. Would a Reg. E notice by Navy Federal have been sufficient? Probably not, for at least two reasons:
 - Navy Federal restricted borrowers’ electronic account access generally – it did not just suspend debit cards. Reg. E does not apply to online account access. The Consent Order never mentions Reg. E. It finds that Navy Federal’s practices were unfair under the UDAAP provision of the CFPA. So Reg. E compliance would not necessarily have satisfied the CFPB.
 - Even giving a Reg. E notice before suspending debit cards would not have satisfied any need to disclose the practice in account opening disclosures or before a member becomes delinquent. Giving a Reg. E notice after someone has become delinquent and the credit union has decided to suspend a debit card would not have, by itself, provided adequate warning that a consequence of late loan payments would be suspension of electronic services.

Unless/until the CFPB issues additional guidance, The League cannot say what level of electronic account access restrictions is allowed under UDAAP or what notices/disclosures should be given before a credit union imposes such restrictions. Credit unions should take care to review their policies and procedures, their disclosures, and any system of restricting electronic account access for delinquent borrowers. *Consider dropping any practices to suspend electronic account access (including suspending debit cards) for delinquent borrowers until we know what disclosures and practices regulators would treat as satisfying UDAAP.*

Reg. E notice before suspending [electronic services](#)

If a credit union believes that it can suspend a [member’s electronic services, such as a](#) debit card, it must first comply with Reg. E notice requirements.

Under the federal Electronic Fund Transfers Act and Reg. E, a 21-day advance notice is required before the credit union can suspend a member’s electronic fund transfer services – such as ATM cards, debit cards, online banking privileges, telephone banking access, etc. (Reg. E § 1005.8.) Technically, Reg. E says that notice is required before making a change in terms that would result in (among other things):

- Fewer types of available electronic fund transfers; or
- Stricter limitations on the frequency or dollar amount of transfers.

Reg. E makes an exception to the 21-day notice requirement, as explained in The League’s *ii Release No. 0120*:

If an immediate change in terms or conditions is necessary to maintain or restore the security of an EFT system or account, the credit union need not give prior notice. If such a change is to be permanent, however, the credit union must provide written notice of the change to the consumer on or with the next regularly scheduled periodic statement or within 30 days of when the change becomes permanent, unless disclosures would jeopardize the security of the system or account.

The credit union may need to consult its own legal counsel as to whether that exception will allow immediate suspension of EFT services, without a 21-day notice, which depends on the facts involved.

Don't Deny All Services without Expelling Member

It is never a good idea to try denying *all* services to any member, unless the credit union goes through the required process to expel the member, which is covered in the next section of this release.

Over the years, the NCUA has issued numerous legal opinion letters saying that a federal credit union cannot deprive a member of two fundamental rights – the right to vote at annual or special meetings and the right to maintain a share account – without going through the expulsion process.

In fact, even restricting a member's share account (not closing it completely) may be going too far. The NCUA said in *Legal Opinion Letter 99-0435 (June 23, 1999)* the NCUA said:

[I]t is impermissible to restrict a member [who had acted in an abusive and threatening manner toward credit union employees] to holding one share in a share savings account. We view that action as denying a member the right to maintain a share account, one of the two basic rights, along with the right to vote at annual and special meetings, provided in the FCU Act. Denying members their basic rights is tantamount to expulsion ...

The analysis seems sound for state-chartered credit unions. The Wisconsin Office of Credit Unions has not published an opinion on this issue, but they indicate that they may be likely to take a similar position. Furthermore, as explained previously in this release, a Wisconsin state-chartered credit union that has adopted the 2017 Model Bylaws can only prevent a member from voting or from holding a basic membership share account by expelling that person from membership; otherwise the credit union may not treat any member as not being in "good standing" – even (for example) a member who is delinquent on a loan or other obligation to the credit union.

If the credit union wants to close a member's share account or deny him/her the right to vote, it should go through the required expulsion process. A credit union may prefer to avoid the expulsion process by only denying specific services without affecting a member's two fundamental rights.

MEMBER EXPULSION

Any credit union should have an expulsion policy separate from its denial of services policy. For state-chartered credit unions, The League offers a sample expulsion policy as an exhibit to *ii Release No. 0001*.

The rules for expulsion differ for state-chartered and federally chartered credit unions.

State-chartered credit unions

Important note: The Wisconsin Statutes were amended in 2016 to simplify the member expulsion process for state-chartered credit unions. The material below summarizes the current legal requirements for expulsion, which are also reflected in the 2017 Wisconsin Model Bylaws (Article III, Section 5). Until a credit union has updated its bylaws to take advantage of the 2016 change to the Wisconsin Statutes (that is, by adopting the 2017 Wisconsin Model Bylaws for state-chartered credit unions), it must follow the expulsion provisions in its existing bylaws. Check your credit union's current bylaws and follow the expulsion requirements they set out in Article III.

In Wisconsin's state-chartered credit unions, the board of directors may expel members for failure to comply with the bylaws or Chapter 186 of the Wisconsin Statutes, or for other just cause, but several steps are required:

- The board of directors must have adopted a written expulsion policy before it may expel members.
- The board must determine that the member has failed to comply with the bylaws or Chapter 186, or that other just cause exists for expulsion.
- The board must pass a resolution expelling the member.
- The credit union must provide the member with a written notice stating the reason for expulsion. The notice must also describe the member's right to petition the board of directors for reconsideration of the matter if requested in writing within 45 days of receipt of the expulsion notice.

- Upon such petition, the board of directors must reconsider the expulsion within 90 days of the date of the expulsion notice. (Wis. Stats. § 186.13.)

There is not likely to be a basis for claiming the member violated Chapter 186 of the Wisconsin Statutes, which places few obligations on credit union members. So usually, the board must have “just cause” to expel the member. This is a standard of fairness imposed by the law, so the board should document the factual basis for determining it has “just cause,” keeping in mind that the decision could be challenged in court. Causing a loss to the credit union might reasonably be expected to be just cause for expulsion – if the credit union’s expulsion policy is fairly and consistently applied to those who actually cause losses.

Expulsion does not relieve the member of any liability to the credit union; loans must still be repaid according to the payment schedule. Expelled members are entitled to the amounts paid in on shares, less amounts due and payable to the credit union. The latter does not include payments not yet due under loan contracts. Wis. Stats. §§ 186.13 and 186.14.

Federal credit unions

Federal credit unions may expel members by following the procedures spelled out in Section 118 of the Federal Credit Union Act and in their bylaws. Note that the NCUA’s Model Bylaws for federal credit unions (which are found in Appendix A to Part 701 of the NCUA regulations) were amended in 2023 to simplify the expulsion process.

Previously, FCUs were only permitted to expel a member through a 2/3 vote of the members present at a special meeting, or through a non-participation policy (which basically only applied to inactive members). Federal law was amended (and the NCUA’s model bylaws for FCUs were updated) to add a third option. It allows FCUs to expel members who engage in certain conduct “for cause” through a 2/3 vote of the FCU’s board of directors. Only FCUs that have adopted the 2023 bylaws revisions can take advantage of this new third option for expulsion.

BANKRUPTCY & DENIAL OF SERVICES

When a debtor files for bankruptcy protection, the “automatic stay” prohibits creditors from taking any steps to collect on existing debts. The automatic stay continues until the bankruptcy case is discharged. After the discharge, creditors are permanently prohibited from taking any steps to collect, recover, or offset the discharged debt as a personal liability of the debtor.

So, a credit union may be able to deny services to a member because of a loss from a bankruptcy, but it cannot deny services as a way to collect on a debt that is part of a pending bankruptcy case or one that has been discharged in bankruptcy.

Denying new credit

A creditor is generally recognized as free to deny an application for new credit on the basis that the applicant has previously discharged a loan from the credit union in bankruptcy and caused a loss. According to Collier’s on Bankruptcy, “[c]onsideration of a past discharge in determining whether to grant the debtor credit does not violate the [Bankruptcy] Code to the extent that the decision is made by a nongovernmental unit....” However, the credit union must be careful not to act in a way that violates the bankruptcy laws.

Telling the member about your denial of services policy

Credit unions are sometimes advised to use the denial of service policies to help persuade debtors in bankruptcy to reaffirm their debts by letting debtors know that if a debt is not reaffirmed and the credit union incurs a loss, it will deny certain services to the member. It *may* be allowable to inform the debtor about the credit union’s denial of services policy, but the credit union must not go too far and use such the policy to *coerce* a member into reaffirming or repaying a debt.

If the credit union wants to communicate its denial of services policy to a member during or after a bankruptcy, it must work with an experienced bankruptcy attorney for guidance on issues such as:

- What the credit union can and cannot say;
- When the credit can (or should) make the communication – before or after the bankruptcy court grants the member’s discharge; and
- To whom the credit union should communicate its policy – the debtor directly and/or the debtor’s attorney.

Any communication with the member should be written carefully. Bankruptcy court decisions in this area tend to focus on the content of the letters sent to debtors to advise them about the credit union’s policies, and not on the policies themselves.

Discrimination & Bankruptcy

Several bankruptcy court opinions have also said that denial of credit policies must be instituted on a non-discriminatory basis to anyone who has caused a loss, not just to those who have filed for bankruptcy or had credit union debts discharged in bankruptcy.

Employees

The bankruptcy code says no private employer may discriminate solely due to bankruptcy. Denying loans or other services to credit union employees because of a bankruptcy would violate this law.

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League publications are designed to provide accurate information with regard to the subject matter covered, with the understanding that The League does not render legal services. If you have general questions regarding this release, please call The League at (608) 640-4050 if local or (800) 242-0833. For specific legal advice, please consult your credit union’s attorney.

Legal Affairs Department

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