



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

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12/10/85

OFFICE OF GENERAL COUNSEL

Ms. Kim E. Shelly
Vice President
Credit Union Mortgage Association
P.O. Box 305
Fairfax, VA 22030

Dear Ms. Shelly:

This responds to your letter dated October 16, 1985, to Ms. Yvonne Gilmore of this Office concerning the purchase of member mortgage loans from a third party by Federal credit unions (FCU). In that letter, you ask whether it is permissible for an FCU to purchase a member's mortgage loan from a third party even though the interest rate differs from (but does not exceed 21% maximum) what the FCU would charge.

Pursuant to Section 701.23 of the NCUA Rules and Regulations, an FCU may purchase the "eligible obligations" (defined in Section 701.23(a)(1) as a loan or group of loans) of its members so long as it is a loan the credit union is empowered to grant. For example, the interest rate, maturity, etc., must comport with those to which FCU's may be subject. If the loan is not one the credit union is empowered to grant, the loan must be refinanced within 60 days after it is purchased to bring it in compliance with Section 701.21 of the NCUA Rules and Regulations. (Of course, the member must satisfy the FCU's customary credit-worthiness standards when refinancing any such loan.)

In response to your question, an FCU conforming with the above noted requirements can purchase a member's mortgage loan from a third party even though the interest rate of the loan differs from that charged by the FCU.

For your convenience, I have enclosed a copy of Section 701.23 in its entirety.

If you have any further questions, please let me know.

Sincerely,

(5)
STEVEN R. BISKER
Assistant General Counsel

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Attachment

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§701.23 Purchase, Sale, and Pledge of Eligible Obligations.

(a) For purposes of this Section:

(1) "Eligible obligation" means a loan or group of loans;

(2) "Student loan" means a loan granted to finance the borrower's attendance at an institution of higher education or at a vocational school, which is secured by and on which payment of the outstanding principal and interest has been deferred in accordance with the insurance or guarantee of the Federal Government, of a State government, or any agency of either.

(3) "Real estate loan" means a loan granted on a one-to-four family dwelling that is or will be the principal residence of the borrower and which is secured by a first lien or first security interest on the dwelling.

(b) Purchase.

(1) A Federal credit union may purchase, in whole or in part, within the limitations of the board of directors' written purchase policies:

(i) Eligible obligations of its members, from any source, if either (A) they are loans it is empowered to grant or (B) they are refinanced with the consent of the borrowers, within 60 days after they are purchased, so that they are loans it is empowered to grant;

(ii) Eligible obligations of a liquidating credit union's individual members, from the liquidating credit union;

(iii) Student loans, from any source, if the purchaser is granting student loans on an ongoing basis and if the purchase will facilitate the purchasing credit union's packaging of a pool of such loans to be sold or pledged on the secondary market; and

(iv) Real estate loans, from any source, if the purchaser is granting real estate loans pursuant to Section 701.21(g) on an ongoing basis and if the purchase will facilitate the purchasing credit union's packaging of a pool of such loans to be sold or pledged on the secondary mortgage market.

(2) A Federal credit union may make purchases in accordance with subsection (b), provided:

(i) The board of directors or investment committee approves the purchase; and

(ii) A written agreement and a schedule of the eligible obligations covered by the agreement are retained in the purchaser's office.

(3) The aggregate of the unpaid balances of eligible obligations purchased under subsection (b) shall not exceed 5 percent of the unimpaired capital and surplus of the purchaser. Student loans purchased in accordance with subsection (b)(1)(iii) and real estate loans purchased in accordance with subsection (b)(1)(iv) shall not be included in considering this 5 percent limitation.

(c) Sale.

(1) A Federal credit union may sell, in whole or in part, to any source, eligible obligations of its members, eligible obligations purchased in accordance with subsection (b)(1)(ii), student loans purchased in accordance with subsection (b)(1)(iii), and real estate loans purchased in accordance with subsection (b)(1)(iv), within the limitations of the board of directors' written sale policies, provided:

(i) The board of directors or investment committee approves the sale; and

(ii) A written agreement and a schedule of the eligible obligations covered by the agreement are retained in the seller's office.

(d) Pledge.

(1) A Federal credit union may pledge, in whole or in part, to any source, eligible obligations of its members, eligible obligations purchased in accordance with subsection (b)(1)(ii), student loans purchased in accordance with subsection (b)(1)(iii), and real estate loans purchased in accordance with subsection (b)(1)(iv), within the limitations of the board of directors' written pledge policies, provided:

(i) The board of directors or investment committee approves the pledge;

(ii) Copies of the original loan documents are retained; and

(iii) A written agreement covering the pledging arrangement is retained in the office of the credit union that pledges the eligible obligations.

(2) The pledge agreement shall identify the eligible obligations covered by the agreement.

(e) Servicing.

A Federal credit union may agree to service any eligible obligation it purchases or sells in whole or in part.

(f) 10 Percent Limitation.

The total indebtedness owing to any Federal credit union by any person, inclusive of retained and reacquired interests, shall not exceed 10 percent of its unimpaired capital and surplus.