



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

August 22, 1986

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Office of General Counsel

Alan N. Newman, Esq.
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Dear Mr. Newman:

This is in reply to your letter dated May 7, 1986, to Mr. Robert M. Fenner, and in furtherance of our telephone conversation on July 3, 1986, concerning the conflict of interest arising from the compensation of an attorney/director performing real estate loan closings on behalf of a Federal credit union (FCU) for a fee. It is your opinion that there is no conflict of interest when an attorney/director performs such closings on behalf of an FCU.

As noted in our February 18, 1986, opinion, Section 701.21(c)(8) of the NCUA Rules and Regulations has been interpreted to prohibit the involvement of a director where remuneration is received by the director for activities related to the initiation, processing, documenting, approving, or closing of FCU loans. The phrase "procuring or insuring" has been held to include a time period beginning sometime before the loan application is submitted and continuing for some period after approval of the loan and disbursement of the loan proceeds. This phrase has not, however, been interpreted to go as far as to include activities related to loan defaults and foreclosures (loan collection activities). Accordingly, handling loan collection cases would not be prohibited by Section 701.21(c)(8).

Section 701.21(c)(8) was promulgated because of the Board's concern that actions taken by FCU directors, and others (officials, committee members, and employees) with respect to FCU loans might be tainted if, in conjunction with the procuring or insuring of a loan, a commission, fee or other compensation were to be received by one of these individuals. As a director of the FCU you are responsible for establishing lending policies (See Section 113(20) of the FCU Act, 12 U.S.C. §1761b(20)). Where decisions are made by a board of directors that can impact on the personal financial interest of a board member, a conflict arises. Although the board member, under such circumstances, would be required by Article XIX, Section 4 of the standard FCU

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Bylaws, not to participate in the discussion or vote on such a matter, this is not, in NCUA's opinion, sufficient in matters involving loans. Since the establishment and review of lending policies is one of the major functions of an FCU board of directors, to remove oneself from participating in discussions and deliberations would significantly impact on the fiduciary role of such a director. In order to avoid those situations and for safety and soundness reasons, NCUA promulgated Section 701.21 (c)(8) to prohibit the activity. In the case presented, it is clear that a lending policy that places a greater emphasis on real estate loans than other loans (consumer, student, etc.) will result in more closings, and therefore, in more remuneration for the attorney performing such closings.

This approach has also been taken with respect to FCU investments and deposits (see Section 703.4(e)), FCU investments in and loans to CUSO's, (see Section 701.27(d)(6)), and FCU involvement in insurance and group purchasing (see Section 721.2(c)). The NCUA's authority to promulgate the lending rule, as well as those other rules noted here, is based on the authority provided in Sections 120(a) and 209(a) (11) of the FCU Act (12 U.S.C §§1766(a) and 1789(a) (11)).

Lastly, you should note that the prohibitions are not aimed solely at you or other attorneys who are directors, but would also apply to other professionals and nonprofessionals, including accountants, brokers, insurance agents, and appraisers. Also, the prohibition would apply in those circumstances where a director, or other individual described in the rule, receives a "finder's fee" for lining up a borrower with the FCU. As you can see, there are many cases where the safe and sound operation of an FCU could be jeopardized if the prohibited activities were allowed.

I hope that we have been responsive to your inquiry. Please let me know if you have any further comments or questions.

Sincerely,

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STEVEN R. BISKER
Assistant General Counsel

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