NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

October 29, 1986

Office of General Counsel

GC/HMU:sg
4650

Mr. Randy Burklund
Vice President, Sales
MidNation Funding Corporation
P.O. Box 26880
Oklahoma City, OK 73126

Dear Mr. Burklund:

This is in response to your letter of June 24, 1986, concerning the involvement of Federal credit unions (FCU's) with MidNation's mortgage origination system. You presented three questions in your letter. Your questions and our answers follow.

"1. Does the mortgage [origination system] fall under Section 721? If so can a fee be paid? On what basis: $ per loan or % basis? Can the credit union make a profit on the program or only cover its costs?"

Federal credit union (FCU) involvement with third party mortgage lenders is subject to Part 721 of the NCUA Rules and Regulations (12 C.F.R. Part 721). Prior to the last deregulation of NCUA's lending regulations in 1984, this activity was subject to a rule entitled "Business Relationship with Mortgage Lender." In July of 1984, this regulation was repealed. The discussion in the preamble, with respect to the deletion of the rule, noted that such activity would, henceforth, be governed under Part 721. (See 49 FR 30685, August 1, 1984.)

Part 721 of the NCUA Rules and Regulations allows an FCU to perform administrative functions and to be reimbursed or compensated by a vendor (such as a mortgage lender) in an amount not exceeding the "cost amount" for group purchasing plans that do not involve insurance. "Cost amount" is defined in Section 721.2 of NCUA Rules and Regulations as the:

> "total of the direct and indirect costs to the Federal credit union of any administrative functions performed on behalf of the vendor. The Federal credit union must be able to justify this amount using standard accounting procedures."

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A fixed percentage reimbursement, or flat fee per loan payment to the FCU, would be allowed under Section 721.2 of the Regulations only if the FCU can document that such a percentage or flat fee closely approximates the costs to the FCU for the administrative functions that it performs.

"2. Is this program an allowable exception to Part 721? Can a profit be realized by the credit union?"

There are no exceptions to Part 721 (however, activities expressly authorized by the FCU Act are not subject to Part 721). All group purchasing and insurance plans are subject to its provisions. While the regulation permits FCU's to realize a profit under certain insurance plans as explained above, the FCU can only recover its costs in the mortgage program -- it cannot realize a profit under the program.

"3. Does a CUSO have to be set up to administer the program?"

No, the FCU can offer the program without the use of a CUSO under Part 721. As explained, the FCU cannot make a profit from the program and is subject to the reimbursement limitations of Part 721. However, the program could also be offered through an FCU's CUSO.

CUSO's (*see* Section 701.27 of NCUA's Rules and Regulations, 12 C.F.R. §701.27) are not subject to the reimbursement limitations of Part 721. Section 701.27 of the NCUA Rules and Regulations contains a list of permissible CUSO activities. Among the listed activities is "loan processing, servicing and sales." (*See* Section 701.27(d)(5)(i).) Pursuant to such authority, a CUSO can offer the program for a profit provided the CUSO complies with the provisions of Section 701.27.

I hope that we have been of assistance.

Sincerely,

/S/

STEVEN R. BISKER
Assistant General Counsel

HU:sg

cc: Ken Moore

MIDNATION FUNDING CORPORATION

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June 24, 1986

Mr. Steve Bisker
1776 G. Street NW
Washington, D.C. 20456

Dear Mr. Bisker:

I wish to thank you for the time you spent last week discussing the MidNation Funding Mortgage Program. In order for you to better understand our concept I have enclosed our information kit.

MidNation is offering a mortgage origination system to credit unions for the benefit of their members. We have found that in most cases the credit unions have not, nor do they wish to, set up an in-house mortgage program. By utilizing our system they can offer this valuable benefit to their members.

As compensation to the credit union for time spent in marketing the program and counseling the applicant we are paying a fee. The options are as follows:

- Flat fee per loan closed (example: $250 per loan).
- Percentage basis (example: ¼% of the loan amount).

Questions have come up concerning this fee that need clarification. According to our conversation last week there are three main questions.

1) Does the mortgage fall under Section 721? If so can a fee be paid? On what basis: $ per loan or % basis? Can the credit union make a profit on the program or only cover its costs?

2) Is this program an allowable exception to Section 721? Can a profit be realized by the credit union?

3) Does a CUSO have to be set up to administer the program?

Please review the informtion I have enclosed. Your written response to the above questions should alleviate the concern both we at MidNation and the credit unions have concerning the mortgage program.

I appreciate your assistance. If you need additional information, please call me.

Sincerely,

Randy Burklund

Randy Burklund
Vice-President, Sales

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