



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

JUL 5 1987

GC/HMU:sg
4690

Office of General Counsel

David A. Brewer, Esq.
Saxon, Alt, Dean, Mason, Brewer & Kincannon
4275 Executive Square
Suite 700 La Jolla, CA 92037-1477

Dear Mr. Brewer:

This is in response to your letter of June 22, 1987, concerning a Federal credit union (FCU) purchasing property to build a branch office.

It is our understanding that your FCU client wishes to enter into a partnership with a California corporation to own and develop real property for the FCU's planned branch office. The California corporation and the FCU will each have a 50% interest in the partnership and the partnership will own the property.

The authority for an FCU to invest in a partnership or corporation such as the one described in your letter is found in Section 107(7)(I) of the FCU Act (12 U.S.C. §1757(7)(I)). Section 107(7)(I) authorizes an FCU to invest its funds: "in the shares, stocks or obligations of any other organization, providing services which are associated with the routine operations of credit unions, up to one per centum of the total paid in and unimpaired capital and surplus of the credit union" Section 701.27 of the NCUA Rules and Regulations (12 C.F.R. 701.27) is the implementing regulation for Section 107(7)(I). An FCU making an investment pursuant to Section 107(7)(I) must comply with Section 701.27 of the Regulations. There is no statutory or regulatory provision for the variance you requested in your letter.

An FCU also has the authority to "purchase, hold and dispose of property necessary or incidental to its operations" pursuant to Section 107(4) of FCU Act (12 U.S.C. 1757(4)). Although this Section does not authorize FCU investments in corporations or partnerships, an FCU itself could become a co-owner of property with a corporation and build a branch office. In this instance, since no investment in a corporation or partnership is involved, Section 701.27 of the NCUA Rules and Regulations would not be applicable.

FCIA file: Vol. I, B - Use of Property

In addition to the requirements noted above, if an FCU obtains land for a building through either investment in a corporation or partnership pursuant to Section 107(7)(I) of the FCU Act and Section 701.27 of the Regulations or directly pursuant to Section 107(4) of the FCU Act, the FCU must be in compliance with NCUA's fixed asset regulation (Section 701.36, 12 C.F.R. Section 701.36). A copy of Section 701.36 is enclosed.

I hope that we have been of assistance. Please contact us if further questions arise.

Sincerely,

B

STEVEN R. BISKER
Assistant General Counsel

Enclosure

HMU:sg

buildings may not affect the market values of a property because the cause of abandonment is unrelated to high risk. Proper considerations include the condition and utility of the improvement and various physical factors such as street conditions, amenities such as parks and recreation, and the availability of public utilities and transportation services, and exposure to flooding and land faults.

§701.32 Deleted April 1982

§701.33 Compensation of officials.

(a) With the exception of the treasurer, no director or member of a credit committee or supervisory committee may receive compensation for performing the duties or responsibilities of the board or committee position to which the person was elected or appointed.

(b) For purposes of this section, the term "compensation" specifically excludes (1) reasonable and proper costs incurred by or on behalf of an official (whether on a reimbursement basis or paid directly by the credit union) in carrying out the responsibilities of the position to which the person was elected or appointed; and (2) reasonable health and accident and related types of personal insurance protection supplied for the above officials at the expense of the credit union: Provided, That such insurance protection shall exclude life insurance, shall be limited to areas of risk, including accidental death and dismemberment, to which the official is exposed by virtue of carrying out the duties or responsibilities of his or her credit union position and shall cease immediately when the insured person leaves office without providing residual benefits other than from pending claims, if any.

§701.34 Deleted December 1980.

§701.35 Share, Share Draft, and Share Certificate Accounts.

(a) Federal credit unions may offer share, share draft, and share certificate accounts in accordance with Section 107.6 of the Act (12 U.S.C. 1757.6) and the board of directors may declare dividends on such accounts as provided in Section 117 of the Act (12 U.S.C. 1763).

(b) A Federal credit union shall accurately represent the terms and conditions of its share, share

draft, and share certificate accounts in all advertising, disclosures, or agreements, whether written or oral.

(c) A Federal credit union is empowered to determine the types of disclosures, fees or charges, time for crediting of deposited funds, and all other matters relating to the operation of its share draft or share certificate account. To the extent that state law attempts to regulate such activity, it is not applicable. Nothing herein is intended, however, to allow a Federal credit union to amend or modify its contract with a member unilaterally unless it has previously reserved the right to do so.

(d) For purposes of this Section, "state law" means the constitution, statutes, regulations, and judicial decisions of any state, the District of Columbia, the several territories and possessions of the United States, and the Commonwealth of Puerto Rico.

§701.36 FCU Ownership of Fixed Assets.

(a) *A Federal credit union's ownership in fixed assets shall be limited as described in this chapter.*

(b) *Definitions—As Used in This Section:*

(1) Premises includes any office, branch office, suboffice, service center, parking lot, other facility, or real estate where the credit union transacts or will transact business.

(2) Furniture, Fixtures, and Equipment includes all office furnishings, office machines, computer hardware and software, automated terminals, heating and cooling equipment.

(3) Fixed Assets means premises and furniture, fixtures and equipment as these terms are defined above.

(4) Investments in fixed assets means:

(i) any investment in real property (improved or unimproved) which is being used or is intended to be used as premises;

(ii) any leasehold improvement on premises;

(iii) the aggregate of the lease payments pursuant to a lease agreement on fixed assets;

(iv) any investment in the bonds, stock, debentures, or other obligations of a partnership or corporation holding any fixed assets used by the Federal credit union and any loans to such partnership or corporation; or

(v) any investment in furniture, fixtures and equipment.

(5) Abandoned premises means former Federal credit union premises from the date of reloca-

tion to new quarters, and property originally acquired for future expansion for which such use is no longer contemplated.

(6) Immediate family member means a spouse, or a child, parent, grandchild, grandparent, brother or sister, or the spouse of any such

share drafts, share certificates, other savings) and retained earnings means regular reserve, reserve for contingencies, supplemental reserves, reserve for losses and undivided earnings.

(c) *Investment in Fixed Assets*

(1) No Federal credit union with \$1,000,000 or more in assets, without the prior approval of the Administration, shall invest in fixed assets if the aggregate of all such investments exceeds 5 percent of shares and retained earnings.

(2) A Federal credit union shall submit such statement and reports as the NCUA regional director may require in support of any investment in fixed assets in excess of the limit specified above.

(3) If the Administration determines that the proposal will not adversely affect the credit union, an aggregate dollar amount or percentage of assets will be approved for investment in fixed assets. Once such a limit has been approved, and unless otherwise specified by the regional director, a Federal credit union may make future acquisitions of fixed assets, provided the aggregate of all such future investments in fixed assets does not exceed an additional 1 percent of the shares and retained earnings of the credit union over the amount approved.

(4) Federal credit unions shall submit their requests to the NCUA regional office having jurisdiction over the geographical area in which the credit union's main office is located. The regional office shall inform the requesting credit union, in writing, of the date the request was received. If the credit union does not receive notification of the action taken on its request within 45 calendar days of the date the request was received by the regional office, the credit union may proceed with its proposed investment in fixed assets.

(5) Federal credit unions with assets of between \$1,000,000 and \$2,000,000 that have investments in fixed assets in excess of 5 percent as of the effective date of this rule (December 31, 1984) may honor existing firm commitments to acquire fixed assets without the Administration's approval; however, these Federal credit unions must notify the appropriate NCUA regional office of

the existence of such commitments within 30 days of the effective date of this rule.

(d) *Premises*

(1) When real property is acquired for future expansion, at least partial utilization should be accomplished within a reasonable period, which shall be determined by the Administration. After real property acquired for future expansion has been held for 1 year, a board resolution with definitive plans for utilization must be available for inspection by an NCUA examiner.

(2) A Federal credit union shall endeavor to dispose of "abandoned premises" at a price sufficient to reimburse the Federal credit union for its investment and costs of acquisition. Current documents must be maintained reflecting the Federal credit union's continuing and diligent efforts to dispose of "abandoned premises." After "abandoned premises" have been on the Federal credit union's books for 4 years, the property must be publicly advertised for sale. Disposition must occur through public or private sale within 5 years of abandonment, unless otherwise approved in writing by the Administration.

(e) *Prohibited Transactions*

With the exception of a short term informal lease agreement (maturity less than one year) no Federal credit union may acquire or lease premises without the prior written approval of the Administration from any of the following:

(1) a director, member of the credit committee or supervisory committee, official or employee of the Federal credit union, or immediate family member of such director, member of the credit committee or supervisory committee, official or employee.

(2) a corporation in which any director, member of the credit committee or supervisory committee, official or employee, or immediate family member of such director, member of the credit committee or supervisory committee, official or employee, is an officer or director, or has a stock interest of 10 percent or more;

(3) a partnership in which any director, member of the credit committee or supervisory committee, official or employee, or immediate family member of such director, member of the credit committee or supervisory committee, official or employee is a general partner, or a limited partner with an interest of 10 percent or more.