



NATIONAL CREDIT UNION ADMINISTRATION

Washington, D.C. 20456

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46502

Office of General Counsel

Mr. David M. Stalls
Stern Brothers & Co.
555 Seventeenth St.
Anaconda Tower, Suite 3565
Denver, CO 80202

Dear Mr. Stalls:

This is in response to your letter of June 22, 1987, regarding the purchase and sale of loan participations in FHA Title I loans by Federal credit unions (FCU's). You raised several questions in your letter. Your questions and our responses are contained herein.

1. "Can a Federal credit union that originates FHA Title I loans sell a participation in those loans to an investor? Is there any restriction on who that investor can be?"

Pursuant to Section 701.23(c) of the NCUA Rules and Regulations, an FCU can sell, in whole or in part, to any source, eligible obligations of its members. For purposes of this section, "eligible obligation" means a loan or group of loans. This section therefore provides the authority for an FCU to sell to any investor an interest in FHA Title I loans that it originates.

The ability of an FCU to sell eligible obligations of its members pursuant to Section 701.23(c) should be distinguished from an FCU's ability to engage in loan participations pursuant to Section 701.22 of the NCUA Rules and Regulations. For purposes of Section 701.22, the term participation loan means a loan made in participation with one or more eligible organizations where the written commitment to participate in the loan precedes final disbursement. (The term "eligible organizations" is defined in Section 701.22(a)(2)). In your question, the FCU would be selling an interest in a loan it originated after it disbursed the loan proceeds. Therefore, Section 701.22 is not applicable to your question.

2. "Can an FCU purchase as an investment the 90% FHA insured portion of another lender's FHA Title I product? Is there any restriction on whose product they can purchase?"

FCIA

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The authority for FCU's to purchase loans is contained in Section 701.23(b). This section provides in relevant part that:

(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. . .

(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.

(Since Sections 701.23(b)(1)(ii) and (iii), which pertain to the purchase of eligible obligations of a liquidating credit union's individual members and student loans, are clearly not relevant to your issue, they have not been cited).

Pursuant to Section 701.23(b)(1)(i), an FCU can purchase the 90% FHA insured portion of another lender's FHA Title I product provided that the loan was made to a member of the purchasing FCU and the loan is of a type that it is empowered to grant or can be refinanced so that it becomes a loan it is empowered to grant. This section does not place any restrictions on the identity of the seller. Reference should be made to Sections 701.23(b)(2) and (3) which place certain restrictions on FCU purchase of eligible obligations.

Section 701.23(b)(1)(iv) authorizes FCU's to purchase real estate loans if the purchase will facilitate the purchasing credit union's packaging of a pool of Section 701.21(g) type loans for sale or pledge on the secondary market. Section 701.21(g) type loans are long-term residential real estate loans secured by a perfected first lien in favor of the FCU on such dwelling. The FHA Title I program you described consists of the sale of

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participations in home improvement loans which are generally secured by second mortgages. Therefore, Section 701.23(b)(1)(iv) would not provide FCU's with the authority to purchase such loans.

We trust this has been of assistance.

Sincerely,



STEVEN R. BISKER
Assistant General Counsel

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