



NATIONAL CREDIT UNION ADMINISTRATION  
Washington, D.C. 20456

August 17, 1987

Office of General Counsel

GC/JT:sg  
4650

Mr. Ed Muehlenberg  
Vice President - Legislation  
Wisconsin Credit Union League  
10025 W. Greenfield Ave.  
West Allis, Wisconsin 53214

Dear Mr. Muehlenberg:

This is in response to your letter of June 10, 1987, in which you raised several questions with respect to Section 701.21(h) (member business loans) of the NCUA Rules and Regulations.

You note in your letter that Section 701.21(h)(1)(i)(A) excludes from the definition of member business loan a loan or loans fully secured by a lien on a 1 to 4 family dwelling that is: (1) the member's primary residence; or (2) the member's secondary residence; or (3) one other such dwelling owned by the member. You asked whether "property out in the country with acreage" would qualify under one of the Section 701.21(h)(1)(i)(A) exclusions. You provided the following fact patterns with respect to this question: (1) a former farm active in dairying or cash cropping; (2) a member that raises and houses horses as a hobby; (3) a member who pastures beef cattle for grazing purposes; (4) a member who rents excess land to others who farm in the area; and (5) a member who purchases property with the intent to return it to a natural state.

We would begin by noting that a member business loan is generally defined in Section 701.21(h)(1)(i) as any loan which will be used for a commercial, corporate, business, or agricultural purpose. Applying this definition to the examples you have provided leads us to the following. It would appear that your example (2), where a member obtains a real estate loan secured by property on which the member will raise horses as a hobby, is not a business loan within this definition. It is unclear as to whether the activity described in example (5) constitutes a business and, therefore, falls within the definition of business loan.

As to your remaining examples, we direct your attention to the definition of 1 to 4 family dwelling. The term "1 to 4 family dwelling" has been defined as a conventional home, condominium

FOIA Vol I Part C 30

Mr. Ed Muehlenberg

Page 2

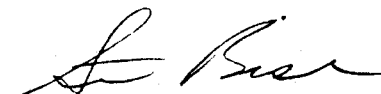
unit or cooperative unit. (See, 48 Fed. Reg. 52475, November 18, 1983). While it is not clear from the fact patterns you presented us, we assume that in each example there is a 1 to 4 family dwelling on the property. If not, the property is not within the Section 701.21(h)(1)(i)(A) exclusions. To the extent the property surrounding the dwelling is used for business purposes, as would appear to be the case in examples (1), (3), and (4), the property would not be within the Section 701.21(h)(1)(i)(A) exclusions.

You stated in your letter that the types of loans described by your fact patterns should be excluded from the business loan rule because they "will not create income to base any loan repayment upon." Although that may be the case, the source of the funds to repay the loan is not relevant in determining whether a given loan will be within the member business loan rule. Rather, it is the use of the proceeds of the loan that is determinative of whether or not the loan comes within the coverage of the rule.

Your final question pertained to Section 701.21(h)(3). Under this Section, a Federal credit union is prohibited from making member business loans to several individuals, including any member of the board of directors who is compensated as such. This provision is made applicable to federally-insured state credit unions by Section 741.3. You stated that, in Wisconsin, a director cannot be compensated for services performed as a director, but if the director is also an employee of the credit union, e.g., a loan officer, he could receive compensation for this service. You were concerned that a volunteer director who is also a compensated employee of the credit union would be prohibited by Section 701.21(h)(3) from obtaining member business loans. You need not be concerned. The prohibition applies only where the director is compensated for services he performs as a director. While you state that Wisconsin does not permit this type of compensation, there are states that do, making the prohibition necessary. Also, under Section 112 of the FCU Act, one board officer may be compensated as such. However, to the extent that the individual (director) performs services as an employee of the credit union and receives compensation only for such services, he/she would not be prohibited from obtaining a business loan from the credit union.

We trust this has been of assistance.

Sincerely,



STEVEN R. BISKER  
Assistant General Counsel

JT:sg