



NATIONAL CREDIT UNION ADMINISTRATION

Washington, D.C. 20456

357-1100

November 6, 1987

GC/HMU:sg

4650

Office of the Board

Mr. Theodore M. Therriault  
President, Seattle Telco Federal Credit Union  
800 Stewart Street  
Seattle, WA 98101

Dear Mr. Therriault:

This is in response to your recent letter concerning two issues (1) the maturity of a Federal credit union (FCU) loan made when a residential vessel is the collateral for the loan; and (2) a proposed FCU policy on membership expulsion.

We will first address the issue of the maturity on a loan collateralized by a vessel used as a primary residence. In general, the maturity limit for FCU loans is twelve years. (See Section 107(5) of the FCU Act, 12 U.S.C. 1757(5).) A maturity limit in excess of twelve years exists for certain types of FCU loans. Certain residential real estate loans can have a maturity of up to forty years. (See Section 107(5)(A)(i) of the FCU Act, 12 U.S.C. 1757(5)(A)(i), and Section 701.21(g) of the NCUA Rules and Regulations, 12 C.F.R. 701.21(g).) Loans collateralized by residential vessels do not qualify under this authority since such loans do not qualify as real estate loans. In addition, FCU's may make certain other loans with a maturity not to exceed 15 years or any longer term that the NCUA Board may allow. (See Section 107(5)(A)(ii) of the FCU Act, 12 U.S.C. 1757(5)(A)(ii), and Section 701.21(f) of the NCUA Rules and Regulations, 12 C.F.R. 701.21(f).)

The authority to grant loans with a maturity in excess of 15 years was recently added to the FCU Act and the NCUA Board has not yet allowed for a term in excess of 15 years. As noted in Sections 107(5)(A)(ii) and 701.21(f), three types of loans may be made pursuant to the 15-year authority.

The first type of 15-year loan is for the purchase of a mobile home to be used as the member/borrower's residence. A vessel does not qualify as a mobile home.

The second type of 15-year loan is one for the repair, alteration

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or improvement of a residential dwelling, which is the residence of the member/borrower. The legislative history that accompanied Section 107(5)(A)(ii) of the FCU Act does not address or define what is acceptable as a "residential dwelling." Case-law has not limited residential dwelling to a house affixed to real estate. Rather, a residential dwelling that is a residence of the member is the place (e.g., a vessel) where the member lives and makes his home. A vessel can qualify as a residential dwelling. Hence, pursuant to Section 107(5)(A)(ii) of the FCU Act and Section 701.21(f) of the NCUA Regulations, an FCU can make a loan with a maturity of up to 15 years if the loan is one for the repair, alteration or improvement of a vessel that is the residential dwelling and residence of the member/borrower.

The third, and last, type of 15-year loan an FCU can make is a second mortgage loan (or a nonpurchase money first mortgage loan in the case of a residence on which there is no existing first mortgage) if the loan is secured by a residential dwelling that is the residence of the member/borrower. If the member/borrower has a vessel that is his residential dwelling and residence, a second mortgage loan (or nonpurchase money first mortgage loan) with a maturity of up to 15 years can be made to the member/borrower if that loan is secured by the vessel.

Although we have concluded that certain 15 year loans collateralized by a member's vessel are legal under the FCU Act and NCUA Rules and Regulations, there are certain safety and soundness concerns that an FCU should take into consideration before granting any loans collateralized by a vessel. Some of these concerns are the age and condition of the vessel, obtaining a valid appraisal of the vessel, the financial soundness of the facility at which the vessel is docked, availability of hazard and title insurance and the fact that the vessel/collateral is mobile.

The second issue about which you inquire concerns membership expulsion. You submitted a proposed membership expulsion policy with your letter. Pursuant to Section 118 of the FCU Act, 12 U.S.C. §1764, a member may be expelled in one of two ways -- by a 2/3rds vote of the membership obtained at a special meeting of the members or based on a board policy of the member's non-participation in the affairs of the credit union. A member's failure to vote at annual meetings or failure to purchase shares from or obtain a loan from or lend to the FCU are examples of nonparticipation set forth in Section 118(b). This second method of expulsion does not require a membership meeting.

The first paragraph of your proposed expulsion policy mirrors the first method of expulsion set forth in Section 118 -- a 2/3rds vote of the membership held at a special meeting giving the

Mr. Theordore M. Therriault  
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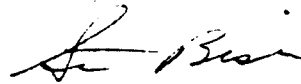
member to be expelled an opportunity to be heard. This is an appropriate expulsion policy pursuant to Section 118(a) of the FCU Act.

The second paragraph of your policy indicates that members can be expelled based on a charged-off loan without a vote held at a special membership meeting. It is reasonably clear that a charged-off loan balance does not fall within the category of nonparticipation in the affairs of the credit union. Hence, in order to expel for this reason, a special membership meeting is necessary. You indicated in a telephone conversation with Hattie Ulan of this Office that your intent is that all expulsions will be handled at special membership meetings. We recommend that your proposed policy be revised to indicate such intent.

Your proposed policy also references the Bankruptcy Code. The policy states that renewal of membership will be based upon repayment (reaffirmation) of certain debts discharged in Bankruptcy. This may present problems under the Bankruptcy Code. We suggest that you consult local counsel as to these potential problems under the Bankruptcy Code.

I hope that we have been of assistance.

Sincerely,



STEVEN R. BISKER  
Assistant General Counsel

HMU:sg

cc: RD, Region VI  
E&I