



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

October 5, 1990

Edward F. Harrington, Esq.
190 William Street
New Bedford, Massachusetts 02740

Re: First Citizens Federal Credit Union - Loans to
Officers and Directors (Your September 4, 1990,
Letter)

Dear Mr. Harrington:

You asked two questions regarding limits on loans to uncompensated officers and/or directors. Specifically, you asked (1) whether there is a ceiling on commercial loans to uncompensated officers and/or directors; and (2) whether there is a ceiling on loans to officers and/or directors which are either unsecured or secured by residential real estate. The answer to both your questions is yes. The specific limitations are discussed below.

All loans to FCU members are subject to the general requirements set forth in Section 107 of the Act (12 U.S.C. §1757) and Section 701.21 of NCUA's Rules and Regulations (the "Regulations") (12 C.F.R. §701.21). The following provisions of the Act and Regulations are also relevant to your inquiry.

Section 107(5)(A)(x) of the Act (12 U.S.C. §1757(5)(A)(x)) precludes an FCU from making a loan to a member "if, upon the making of that loan, the member would be indebted to the Federal credit union upon loans made to him in an aggregate amount which would exceed 10 per centum of the credit union's unimpaired capital and surplus." This limitation is also set out in Section 701.21(c)(5) of the Regulations (12 C.F.R. §701.21(c)(5)), which includes line of credit advances with loans.

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Section 701.21(h) (12 C.F.R. §701.21(h)) of the Regulations governs member business loans. As a rule, the aggregate amount of outstanding business loans to any one member or group of associated members may not exceed 20% of the credit union's reserves. However, if any portion of the business loan is fully secured by a one to four family dwelling that is the member's primary residence, secondary residence or one other such dwelling owned by the member, or by shares in the credit union, or deposits in another financial institution, or insured or guaranteed by, or subject to an advance commitment to purchase by, any agency of the Federal government or of a state or any of its political subdivisions, that portion shall not be included in calculation of the 20% limit. (Section 701.21(h)(2)(ii), 12 C.F.R. §701.21(h)(2)(ii).)

We also note that Section 701.21(h)(3)(i) of the Regulations prohibits an FCU from making business loans to nonvolunteer senior management officials. Since you asked about noncompensated officers and directors, this provision is not applicable to your situation.

Section 107(5)(A)(iv) of the Act (12 U.S.C. §1757(5)(A)(5)(iv)) requires that an FCU's board of directors approve any loan to a director or credit or supervisory committee member in excess of \$10,000.00 plus pledged shares. Section 701.21(d) of the Regulations imposes additional limitations on loans and lines of credit to directors and officials. Under Section 701.21(d)(2), "official" is defined as "any member of the board of directors, credit committee or supervisory committee." The FCU's board of directors must review and approve or deny any loan on which an official is a direct obligor or an endorser, cosignor or guarantor, if the loan amount, calculated under the formula provided in the regulation, is more than \$10,000.00.

In granting loans to directors and other officials, First Citizens should also be aware of certain conflict of interest provisions. Section 701.21(d)(5) prohibits preferential rates, terms or conditions on any loan or line of credit made to, or endorsed or guaranteed by an official, a member of the official's immediate family, and any individual having a common ownership, investment or other pecuniary interest with an official or immediate family member. "Immediate family member" is defined as "a spouse or other family member living in the same household."

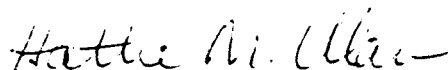
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First Citizens should also consider the effect of the general conflict of interest provision of the Standard Federal Credit Union Bylaws. That bylaw (Article XIX, Section 4) prohibits any director, committee member, officer, agent or employee of an FCU from participating, directly or indirectly, in the deliberation upon or determination of any question affecting his pecuniary interest or the pecuniary interest of any corporation, partnership or association in which he is directly or indirectly interested. Any individual covered by this bylaw would have to disqualify himself from consideration of any loan application that fell within the scope of the bylaw.

As in the case of any loan, First Citizens should also take safety and soundness concerns into account in developing its policy on loans to directors and officials. First Citizens may impose restrictions over and above those contained in the Act and Regulations, if it believes such additional restrictions to be necessary, and provided that they do not violate any applicable federal or state law.

I hope that we have been of assistance.

Sincerely,



Hattie M. Ulan
Associate General Counsel

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