



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

December 17, 1991

Steven Bisker, Esq.
616 South Washington Street
Alexandria, Virginia 22314

Re: Section 701.21(f) of NCUA's Rules and
Regulations (Your October 11, 1991, Letter)

Dear Mr. Bisker:

You have asked whether a federal credit union (FCU) is authorized under Section 701.21(f) of NCUA's Rules and Regulations (Regulations) (12 C.F.R. 701.21(f)) to either 1) finance the purchase of a vacation home to be used by the member; or 2) refinance an existing first lien on a vacation home owned by the member. The answer to the first question is yes if the vacation home is a mobile home. Except for mobile homes, the only type of first mortgage authorized under Section 701.21(f) is a nonpurchase money first mortgage. The answer to the second question is no because an FCU can not refinance a vacation home when there already is an existing first mortgage on the residence.

BACKGROUND

Section 107(5)((A)(ii) of the FCU Act (12 U.S.C. 1757(5)(A)(ii), hereafter referred to as the 15-year authority, authorizes an FCU to make:

a loan to finance the purchase of a mobile home, which shall be secured by a first lien on such mobile home, to be used by the credit union member as his residence, a loan for the repair, alteration, or improvement of a residential dwelling which is the residence of a credit union member, or a second mortgage loan secured by a residential dwelling which is the residence of a credit union member,

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shall have a maturity not to exceed 15 years or any longer term which the Board may allow.

Section 701.21(f) simply incorporates into the Regulations the above cited statutory language and also adds the authority for an FCU to make a nonpurchase first mortgage loan to a member on a home in which the member currently resides. The board has allowed for a 20 year term for these types of loans. In past opinion letters we have stated that the term "residence" in Section 701.21(f) means a principal residence as well as a vacation home. You believe Section 701.21(f) also authorizes an FCU to grant loans to acquire or refinance vacation homes.

ANALYSIS

Your argument for permitting FCUs to either finance a member's purchase of a vacation home or to refinance an existing first mortgage on a member's vacation home under the 15-year authority is that such loans carry less risk than those loans explicitly authorized under Section 701.21(f) for second mortgages and home improvements. Since your question relates solely to "vacation homes," we will use that term rather than residence for purposes of our discussion.

ACQUISITION

The preamble to Section 701.21(f) clearly indicates that Section 701.21(f) does not provide any authority for an FCU to finance the acquisition of a vacation home unless it is a mobile home. When Section 701.21(f) was finalized in 1984, the preamble discussed the types of first mortgages authorized under the section. At that time we interpreted the 15-year authority narrowly. The preamble (49 F.R. 30683, 8/1/84) stated that Section 701.21(f):

. . . allows certain first mortgage loans with maturities of up to 15 years pursuant to this authority. To clarify the purpose of this authority, the relevant language of the final section 701.21(f) is limited to nonpurchase money first mortgages.

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This narrow interpretation of the 15-year authority results from a study of the legislative history. In 1977, Congress added to the FCU Act the authority for FCUs to make loans with a maturity not to exceed 15 years for the purpose of purchasing a mobile home and making home improvements (See Pub. L. No. 95-22, 4/19/77.) Although the financing of the mobile home needed to be secured by a first lien on the mobile home, there was no statutory requirement that a home improvement loan be secured by the residence. In 1982, Congress again amended the FCU Act to include second mortgages. As the legislative history states (Senate Report No. 97-536, 97th Cong., 2d Sess. reprinted in 1982 U.S. Cong. & Ad. News 3054, 3121), the amendment:

deletes the distinction between second mortgages made for the purposes of home improvement and all other second mortgages. Presently, second mortgages for home improvements may have maturities up to 15 years, but a maximum maturity of 12 years is applicable to all other seconds. The distinction has created problems in defining "home improvement".

Thus, the second mortgage provision was added to the FCU Act to alleviate confusion resulting from the definition of home improvement. It expanded an FCU's authority to the degree that all second mortgages on a residence, rather than just second mortgages for home improvements, were authorized. Although you state that a second mortgage on a vacation home carries more risk than a first mortgage to acquire or refinance a vacation home and therefore such first mortgages should be allowed under the 15-year authority, the legislative history indicates a narrowly tailored authority. The legal authority must first be established and it is not present here.

REFINANCING

The discussion in the preamble to proposed Section 701.21(f) clearly indicates that the 15-year authority does not authorize an FCU to refinance a vacation home when there already is an existing first mortgage on the residence. It was stated in the preamble (48 F.R. 52475, 11/18/83) that:

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The proposal would clarify that first mortgage loans may be made pursuant to this authority in the case of a residence on which there is no existing first mortgage. Thus, under circumstances where a member has no mortgage on the house he or she currently resides in, a first mortgage loan may be made with a maturity up to 15 years without regard to the additional statutory and regulatory provisions [contained in 107(5)(a)(i) of the Act and 701.21(g) of the Regulations].

This narrow interpretation of the 15-year authority again results from a study of the legislative history. In addition to the above-noted discussion on the legislative history of the 15 year authority, in 1982, Congress amended Section 107(5)(A)(i) of the FCU Act (12 U.S.C. 1757(5)(A)(i)), hereafter referred to as the 30-year authority, to permit refinancing by deleting the "acquisition" language from the 30-year authority. The legislative history of the 1982 amendments discusses refinancing but only as it relates to the 30-year long term mortgage authority. It is important to remember that the 30-year refinancing authority and the second mortgage authority amendments were written and added contemporaneously to the FCU Act. In discussing the 30-year authority, the Senate Report (Senate Report No. 97-536, 97th Cong., 2d Sess. reprinted in 1982 U.S. Cong. & Ad. News 3054, 3121) stated that the amendment:

. . . permits federal credit unions to refinance members' first mortgages so that the members can use their accumulated equity for their own purposes. At present, federal credit unions are prohibited from refinancing first mortgages since the loan must be to finance the acquisition of a residence.

Refinancing for the 15-year authority was not discussed in the report. It appears then, that Congress intended that refinancing would only occur under the 30-year authority and then only with respect to principal residences, not vacation homes.

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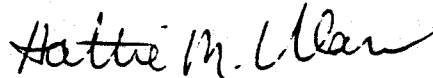
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ALTERNATIVES

As an alternative to granting a loan under the 15 year authority, the FCU may make a 12-year mortgage loan to acquire or refinance a vacation home subject to the regulatory requirements in Section 701.21. Another alternative is for a member to use the proceeds from a nonpurchase money first mortgage on his residence under either the 15-year or 30-year authority to purchase or refinance a vacation house. One additional note. A line of credit can be secured by a residence (home equity) and is not subject to any maturity limit.

Sincerely,



Hattie M. Ulan
Associate General Counsel

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