



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

February 4, 1992

Kevin L. Johnson
Trimmier, Atchison and Hayley, P.C.
P.O. Box # 1885
Birmingham, Alabama 35201-1885

Re: Vacation Homes (Your December 17, 1991, Letter)

Dear Mr. Johnson:

You have asked whether a loan to a member for a second home that is used by the member on weekends, holidays and vacations is a business loan. In general, a loan secured by a member's second home is not classified as a business loan if the loan proceeds will not be used for a commercial or investment purpose or if the property will be the principal residence of the member.

ANALYSIS

Prior to January 1, 1992, a loan secured by a member's primary residence, secondary residence or one other residence, was exempted from the definition of a business loan. As of January 1, 1992, the member business loan rule no longer excludes loans secured by a second home and one other home from its coverage. Section 701.21(h)(1) of NCUA's Rules and Regulations currently defines a member business loan, in part:

. . . as any loan, line of credit, or letter of credit, the proceeds of which will be used for a commercial, corporate, business, investment property or venture, or agricultural purpose, except that the following shall not be considered member business loans for the purpose of this section: (A) A loan or loans fully secured by a lien on a 1 to 4 family dwelling that is the member's primary residence.

Kevein L. Johnson

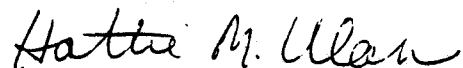
February 4, 1992
Page 2

The preamble to the final member business loan rule (56 F.R. 48421, 9/25/91) states in part that:

Loans secured by a member's primary residence are considered a lesser overall risk than loans secured by other residences. In determining whether an exemption is allowable, the credit union must determine whether the subject property is or will be the principal residence of the member-borrower. If so, the loan is not within the purview of §701.21(h) but may be subject to rules concerning long-term mortgage lending, §701.21(g).

Therefore, under the current rule, a loan secured by a member's secondary residence (i.e. vacation home) that is used solely by the member and is not an investment property is not classified as a business loan. However, if the vacation home has any commercial or investment feature, a loan secured by such property is a business loan unless it meets the "is or will be" test stated above. For example, if the secondary residence generates any income (e.g. the home is rented to a third-party in the summer) then the loan is classified as a business loan unless the vacation home will be the member's principal residence. The mere fact that a member may make a profit from the sale of the home collateralizing a loan at some future date does not, however, make it a business loan. As you can see from the above discussion, the answer to whether a loan secured by a member's secondary residence is a business loan will vary depending on the facts surrounding the loan.

Sincerely,



Hattie M. Ulan
Associate General Counsel

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