

December 9, 1997

Gary R. Chandler, General Counsel
RTN Federal Credit Union
600 Main Street
Waltham, Massachusetts 02154

Re: The Credit Practices Rule
Your letter dated September 12, 1997

Dear Mr. Waltham:

You have asked whether Section 706.4(a) of NCUA Rules and Regulations, which prohibits the practice of the "pyramiding of late fees" in consumer loans, is applicable to real estate mortgage loans. No, it is not.

You state that, according to most standard mortgage loan documents, a lender is allowed to charge a late fee if a borrower fails to make a timely loan payment. When a late fee is assessed, a lender will apply the monthly loan payment first to the late fee, then to escrow, interest, and principal. To illustrate, you gave an example in which a borrower, whose monthly loan payment is \$200, has incurred a \$10 late fee. The lender applies the first \$10 of the \$200 loan payment to the late fee, leaving \$190 to be applied to the mortgage. This causes the borrower to be \$10 short on the monthly loan payment. The following month the borrower makes a timely monthly loan payment, but the lender assesses another late fee because the lender still considers the borrower's loan payment for the prior month to be delinquent. Thus, the lender applies the following month's loan payment first to the second late fee, creating a pyramiding of late fees.

Section 706.4(a) prohibits an FCU from pyramiding late fees in consumer loans. A consumer is defined as "[a] natural person who seeks or acquires goods, services, or money for personal, family or household use." 12 C.F.R. §706.1(b). NCUA's definition of consumer does not specifically exclude the purchase of real property as does the Credit Practice Rule drafted by the Federal Reserve Board, 12 C.F.R. §227.12(a). However, our position is that, by definition, the terms "goods, services, or money," do not include real property and, thus, Section 706.4(a) does not apply to real estate mortgage loans.

Sincerely,

Sheila A. Albin
Associate General Counsel

GC/NSW:bhs
SSIC 3500 / 97-0943