

April 6, 1999

Gerald E. Toland, President
Redstone Federal Credit Union
220 Wynn Drive
Huntsville, Alabama 35893

Re: Loans to Trusts.

Dear Mr. Toland:

You have asked whether a federal credit union (FCU) can accept a mortgage on real estate owned by a trust as collateral for a loan to the trust and, if so, whether the transaction is a loan to a natural or nonnatural member. Further, if the transaction is a loan to a nonnatural member, you have asked whether the FCU must amend its bylaws to allow for such a loan.

An FCU can accept a mortgage on real estate owned by an irrevocable trust, making a loan to the trust, if the trust is a member of the FCU. The trust would be a nonnatural member. A loan to a trust is considered a business loan and must meet the requirements set forth in Part 723 of NCUA's regulations. If the loan is for an amount that exceeds the trust's shareholdings in the FCU, the FCU would need to request approval for a nonstandard amendment of its bylaws to provide for such a loan.

An FCU can offer loans only to its members. Membership is open to natural and nonnatural persons within an FCU's field of membership (FOM). An irrevocable trust is eligible for membership if it is specifically named in an FCU's FOM or as an "organizations of such persons" if the FCU has opted to include organizations of such persons in its FOM. NCUA Chartering and Field of Membership Manual, Ch. 2, II.H, Other Persons Sharing Common Bond (IRPS 99-1). An organization of such persons means an organization composed exclusively of persons who are within an FCU's FOM. Article XVIII, §2(b), NCUA Bylaws. Thus, a trust is eligible for membership as an organization of such persons if the settlors, trustees, and beneficiaries of the trust are all within the FCU's FOM. Only irrevocable trusts will qualify for membership as an organization of such persons because they are operative upon formation, whereas, revocable trusts are not operative until the death of the grantor. This limitation on membership for a trust is discussed in the enclosed letter from Richard Schulman to Charles Williams, dated September 19, 1995. A trust would be a nonnatural member, and a loan to a trust would be a business loan subject to the member business loan requirements. 12 C.F.R. Part 723.

The NCUA Bylaws state that an FCU cannot make a loan to a nonnatural member in excess of the member's shareholdings in the FCU. Article XII, §1,

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NCUA Bylaws. There is a standard bylaw amendment for this section that permits loans to other than natural persons in excess of their shareholdings in circumstances where a loan is being made to a business organization or an association as long as natural persons who have a majority interest in the organization or association agree to be jointly liable for the loan. The basis for this requirement is that the personal liability of natural person members is required. 12 C.F.R. §723.7(b). While that standard amendment would not be

appropriate for a trust, you may want to consider requesting approval for a nonstandard amendment that would permit a loan to a trust and provide for the personal liability of members who are parties to the trust. I am enclosing a copy of page vi from the NCUA publication "Federal Credit Union Standard Bylaw Amendments and Guidelines." It explains the process of obtaining approval for a nonstandard bylaw amendment.

We suggest that the members having interests in the trust should consult with their own legal counsel about any potential tax implications or any aspects of the loan that would be governed by state trust law or the terms of the trust agreement.

Sincerely,

Sheila A. Albin
Associate General Counsel

GC/NSW/SAA:bhs
SSIC 3000
98-1116
Enclosures

cc: Alonzo A. Swann, III, Region III Director