

July 1, 1999

Suzanne Mason, Compliance Officer
Redstone Federal Credit Union
220 Wynn Drive
Huntsville, Alabama 35893

Re: Permissibility of a Real Estate Volume-Based Purchase/Bonus Program

Dear Ms. Mason:

You have asked whether a mortgage company can pay a federal credit union (FCU) a bonus based on the volume of mortgage loans the FCU originates and sells to the mortgage company. The FCU also plans on distributing a percentage of the bonus to key employees involved in the origination of the loans. Payment of the bonus to the FCU is permissible. Payment of the bonus to the FCU employees may be permissible under NCUA's regulations if it is solely an internal program of the FCU and not part of the arrangement with the mortgage company.

BACKGROUND

The FCU wishes to engage in a program with a mortgage company that provides for the mortgage company to pay the FCU a bonus for the purchase of service-released 30-year fixed rate loans originated by the credit union. The bonus would be determined by the amount of delinquencies and the volume of loans sold to the mortgage company. Volume would be calculated on Fixed-Rate Agency, FHA/VA ARMS, and Jumbo Fixed-Rate loans that are closed by the FCU and purchased each month by the mortgage company. The FCU would not be eligible for the bonus if it has excessive loan repurchases, outstanding documentation, serious delinquencies or early payment defaults. The FCU also plans on distributing a percentage of the bonus to key employees involved in the origination of the loans. As we understand it, this latter distribution is your FCU's proposal, not part of the arrangement with the mortgage company.

ANALYSIS

NCUA's regulations permit an FCU to sell its loans to any source, as long as the board of directors approves the sale and the FCU retains a written agreement with the schedule of the loans sold. 12 C.F.R. §701.23(c)(1). Although the sale of loans to a mortgage company with a bonus component based on sale volume is permissible, such an arrangement may present safety and soundness

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concerns. You may wish to contact your regional office before you enter into this arrangement.

Regarding your desire to pass part of the bonus to the FCU's employees involved in the loan origination, NCUA's regulations provide that no employee of an FCU may receive, directly or indirectly, any commission, fee, or other compensation in connection with a loan made by the credit union. 12 C.F.R. §701.21(c)(8)(i). The purpose of §701.21(c)(8)(i), called the prohibited fees regulation, is to ensure that an individual, who is in a position of authority at a credit union, does not put his or her self-interest ahead of the credit union's interest in making good loans. If the incentive to key employees to originate service-released 30-year fixed rate loans instead of other types of real estate loans is part of the arrangement with the mortgage company, then, the bonus that an FCU employee would receive from the company - even though paid through the FCU - would be considered compensation in connection with a loan made by the credit union and would violate §701.21(c)(8). The prohibition applies to both direct and indirect compensation. 12 C.F.R. §701.21(c)(8)(i). In other words, the mortgage company and FCU would not be permitted to establish a bonus program for credit union employees that is funded by the mortgage company and passed through the FCU to the employees.

If, however, the proposal to pass a portion of the bonus on to FCU employees is solely the FCU's own internal incentive program and not an integral part of the mortgage company's program, then it may qualify under the bonus exception contained in

§ 701.21(c)(8)(iii)(C). It would be permissible for the FCU to establish a loan bonus program for its employees as long as the compensation was unrelated to the mortgage company bonus program. The bonus should be based on the benefit of the employee's services to the FCU.

Sincerely,

Sheila A. Albin
Associate General Counsel

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