

February 10, 1992

Bob Roush
Compliance/Quality Control Officer
Fort Knox Federal Credit Union
P.O. Box 1000
Fort Knox, Kentucky 40121-1000

Re: Real Estate Liens on Consumer Loans (Your January 24, 1992, Letter)

Dear Mr. Roush:

You have asked whether it is permissible for a federal credit union to add a real estate lien to a consumer loan to enable the member to deduct the interest paid on the loan on his income tax return. There is nothing in the FCU Act or NCUA's Rules and Regulations which prohibits such a practice. However, the Regional Office may have safety and soundness concerns regarding such a loan program.

BACKGROUND

Fort Knox Federal Credit Union (FCU) is considering implementing an equitable mortgage lending program (the "Program"). Under the Program, the FCU would grant an automobile loan to the member, file a lien on the automobile, and report it as an automobile loan on the NCUA 5300 call report. Furthermore, the FCU would file an "equitable" mortgage on the member's home to enable the member to deduct the interest paid on the loan on his income tax return. The FCU would report interest paid on the loan as mortgage interest to the Internal Revenue Service ("IRS"). The FCU will also develop and use a disclaimer to release it from any liability should a member claim more mortgage interest than permissible by law or regulation.

ANALYSIS

There is nothing in the FCU Act or NCUA's Regulations which prohibit this type of loan program. We can not state whether the program complies with IRS regulations concerning interest deductibility because the IRS has not made a formal ruling on this type of real estate secured loan. We recommend that you contact the IRS to determine whether the program is in compliance with its regulations. You may also wish to contact your credit union trade association for assistance with the IRS.

We have two additional comments about the operation of the program. Any loan made under this program must be reported on the NCUA 5300 Report as a real estate loan, and not as an automobile loan. Furthermore, any automobile loan over \$50,000, secured by real estate must meet the requirements of the appraisal regulation (Part 722 of NCUA's Regulations (12 C.F.R. Part 722)), unless otherwise exempted from the regulation.

Sincerely,

Hattie M. Ulan
Associate General Counsel

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