

May 28, 2002

Re: Application of 10% Loans-to-One-Borrower Limit to Share-Secured Loans.

Dear :

You have asked several questions about the 10% limit on loans to one borrower in the National Credit Union Administration's (NCUA) lending rule. 12 C.F.R. §701.21(c)(5). Primarily, you seem concerned about whether the 10% limit applies to share-secured loans. Yes, it does. Your specific questions and our answers are set forth below.

You have asked for a definition of "unimpaired shares." The lending rule describes the loans-to-one-borrower limit as follows:

No loan or line of credit advance may be made to any member if such loan or advance would cause that member to be indebted to the Federal credit union upon loans and advances made to the member in an aggregate amount exceeding 10% of the credit union's total unimpaired capital and surplus. In the case of member business loans as defined in §723.1 of this chapter, additional limitations apply as set forth in §§723.8 and 723.9 of this chapter.

12 C.F.R. §701.21(c)(5)(emphasis added). We believe your question arises from a typographical error that appears in a version of the rules printed by the Government Printing Office and distributed by NCUA. It incorrectly substitutes the word "shares" for "capital." This error has been corrected in the most recent version distributed by the NCUA.

The correct statement of the loans-to-one-borrower limit, as quoted above, appears in the official publication of NCUA regulations in the Code of Federal Regulations. *Id.* This regulatory provision limiting loans to one borrower is contained in the Federal Credit Union Act (Act). 12 U.S.C. §1757(5)(A)(x). For your information, NCUA rules define "unimpaired capital and surplus" as "shares plus post-closing, undivided earnings." 12 C.F.R. §700.2(f), (j).

In addition, you have asked if share secured loans fall into the category of "unimpaired shares" as it relates to §701.21(c)(5). As noted above, the limitation on loans to one borrower is based on unimpaired *capital* and surplus. Regardless, loans are not shares or capital and would not be included in calculating the limitation on loans to one borrower.

Finally, you have asked if the 10% limitation "set by" §701.21(c)(5) includes business loans that are fully secured by shares. The 10% limit applies to all loans. As noted above, the limitation on loans to one borrower is a statutory limitation; although it is repeated in our lending regulation, it is not set by regulation. There are no exceptions in the Act or our rules based on the purpose of the loan or on how the loan is secured. Although not related to the 10% loans-to-one-borrower

limit, we note that business loans fully secured by shares in the lending credit union or deposits in other financial institutions are exempt from the requirements of our member business loan rule. 12 C.F.R. §723.1(b)(2).

Sincerely,

Sheila A. Albin
Associate General Counsel

GC/PMP:bhs
SSIC 3501
02-0458

cc: Regional Director, Region I