

November 17, 2003

Rosemary B. Hardiman, Esq.
Hardiman & Hardiman
6464 Blarney Stone Court
Springfield, VA 22152

Re: Maturities for Loans Secured by Manufactured Homes.

Dear Ms. Hardiman:

You have asked if a federal credit union (FCU) may make loans secured by a manufactured home with the same maturities permissible for residential real estate loans. We have reconsidered certain previous legal opinions and think FCUs may make loans secured by manufactured homes for the longer maturities permissible for residential real estate loans if those loans meet our regulatory requirements for residential real estate loans.

The FCU Act (the Act) and NCUA's regulations establish permissible maturities for various types of loans. 12 U.S.C. §1757(5); 12 C.F.R. 701.21(c). The Act generally provides that the maturity of FCU loans may not exceed twelve years but provides for longer maturities for certain loans, including loans for residential real estate, second mortgages, home improvement, and mobile homes. 12 U.S.C. §1757(5)(A). Specifically, the Act provides that loans for residential real estate and mobile homes will have maturities of 30 and 15 years respectively but grants the NCUA Board the authority to set a longer maturity term. *Id.* NCUA's loan regulation provides loan maturities for residential real estate loans and mobile homes respectively of 40 and 20 years. 12 C.F.R. §701.21(f)-(g).

We no longer equate mobile homes with manufactured homes for purposes of interpreting our lending regulation. Until about two years ago, we interpreted "mobile home" for purposes of the 20-year maturity limit as being limited to a property meeting the definition of a manufactured home, as established by the National Manufactured Home Construction and Safety Standards Act. 42 U.S.C. §5402(6); OGC Opinion 92-1235; OGC Opinion 96-0217. We reconsidered that position in light of the tax treatment of certain recreational vehicles (RVs) and house trailers, under the Internal Revenue Code (IRC). We determined that certain types of RVs may qualify as mobile homes for purposes of our lending regulation, provided they have cooking, sleeping and toilet facilities and serve as the borrower's primary residence. OGC Opinion 01-0262. We specifically noted the IRC criteria for deduction of interest on these loans and concluded that, if a loan qualifies for the deduction of interest under the IRC, we believe it is appropriate for it to qualify for the 20-year maturity limit for mobile homes. Shortly thereafter, we issued a legal opinion concluding that a boat could be considered a mobile home and a boat loan could qualify for the 20-year maturity limit if it met these same criteria. OGC Opinion 01-0640.

We believe changes in the housing industry support distinguishing a manufactured home permanently affixed to the ground from a mobile home for purposes of our lending regulation. Your letter discusses significant changes in the manufactured housing industry within the last several years, including enhancements to quality and standards for construction. Most significantly, we note that a manufactured home, although constructed at a factory and not built on-site, is designed and intended to be permanently affixed to the land. Unlike a mobile home, which is also constructed in a factory, a manufactured home is not intended to be moved once it has reached its ultimate destination. According to the Federal Home Loan Mortgage Corporation (FHLMC) web site, manufactured homes are one of the fastest growing segments in

the housing industry, comprising nearly thirty percent of all new home construction. Manufactured homes are typically more affordable than traditional site-built housing and are thus likely to be within reach of more people, particularly first time home buyers.

To qualify for the longer maturity, a loan secured by a manufactured home must meet all our regulatory requirements for real estate loans. 12 C.F.R. §701.21(g). The manufactured home must qualify as real property by being titled as real property, as determined by the law of the state where it is located. We note the FHLMC takes this position in determining if it will purchase loans secured by manufactured homes. We believe nothing unique to the nature of a manufactured home as collateral presents an insurmountable hurdle to compliance.

We are aware that, in some manufactured home communities, the owner of the manufactured home leases, rather than owns, the land on which a manufactured home is located. In these cases, we view the existence of an agreement between the credit union and the owner of the land, providing for cooperation in the event of default and foreclosure, to be of fundamental importance in assuring the effectiveness of the first lien position retained by the credit union, as required by our lending regulation. 12 C.F.R. §701.21(g)(2), (4). In addition, in cases where the underlying land is leased rather than owned by the borrower, the credit union should assure itself, as a matter of safety and soundness, that the term of the lease is at least as long as the term of the loan.

We caution FCUs that our regulatory requirements describe the minimum components of any sound lending program and FCUs should carefully evaluate

the additional risks and safety and soundness concerns longer maturities may present before implementing a manufactured home lending program.

Sincerely,

Sheila A. Albin
Associate General Counsel

OGC/RPK/SAA:bhs
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