

May 28, 2009

David Adams, President and CEO
Michigan Credit Union League
P.O. Box 8054
Plymouth, Michigan 48170-8054

Re: Shared Appreciation Loan Modifications.

Dear Mr. Adams:

You have asked if federal credit unions (FCU) can offer shared appreciation loan modifications. The answer is yes. Shared appreciation loan modifications, as described below, are a matter of contract between an FCU and the individual borrower and a permissible exercise of an FCU's authority to contract with and lend to members under the Federal Credit Union Act (the Act). 12 U.S.C. §1757(1), (5). You also asked if we have any concerns about these loan modifications. As discussed below, we note a few factors, including some regulatory requirements, FCUs should keep in mind.

Your letter indicates the Michigan Credit Union Foundation is exploring the possibility of shared appreciation loan modifications, as a tool for credit unions to help reduce the home foreclosure rate. Under the proposed arrangement, an FCU would enter into a written agreement with a troubled borrower to modify an existing residential mortgage. The agreement would state that, in exchange for a reduction of the principal balance of the troubled borrower's outstanding residential mortgage loan, the borrower would agree to share with the FCU any future increase in the home's appreciation. Shared appreciation would be based on a predetermined calculation and occur upon the sale of the property at some future date.

NCUA encourages credit unions to work with members who could benefit from various loan modification arrangements. See e.g., NCUA LCU 09-CU-04 (Mar. 2009); NCUA LCU 07-CU-06 (April 2007). Prudent workout arrangements can be in the best interest of all parties involved. NCUA encourages credit unions to consider reasonable loan modifications, whenever safe and sound, to help keep members in their homes. Shared appreciation agreements could be an effective tool in helping members who are struggling financially to avoid foreclosure.

The Act expressly permits FCUs to contract with and make loans to members and this authority includes the ability to enter into loan modification agreements, subject to compliance with NCUA's regulations implementing the lending

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authority. 12 U.S.C. §1757(1), (5); 12 C.F.R. §701.21. Nothing in our lending rules prohibits an FCU from offering a shared appreciation loan modification, assuming it is done in a safe and sound manner. The modification is a matter of contract between an FCU and a troubled borrower.

Your letter notes you have considered the Department of the Treasury's (Treasury) Making Home Affordable (MHA) Program. The program requires all participants to service eligible loans under the rules of the program and encourages them to comply with the Treasury loan modification guidelines (available at www.FinancialStability.gov). Treasury strongly urges participants to use its standard documents, including the uniform Home Affordable Modification Agreement (Agreement). We note the uniform Agreement does not include any provision for a shared appreciation arrangement. You will need to contact Treasury to determine whether a shared appreciation loan modification is permissible under the MHA Program.

We also note shared appreciation loan modifications can raise tax issues for members. The Internal Revenue Service has issued a revenue ruling addressing the federal income tax consequences to a mortgagor under a shared appreciation mortgage loan used to finance the purchase of a home. Rev. Rul. 83-51; 1983-1 C.B. 48 (1983). We encourage you to consult with a competent tax adviser to discuss if there are similar tax implications for shared appreciation loan modifications.

Finally, we note credit unions must report any loan modifications, including those made under the Making Home Affordable program, on their NCUA 5300 reports. Credit unions should refer to Statement of Financial Accounting Standard No. 15, *Accounting by Debtors and Creditors for Troubled Debt Restructurings*, to determine whether to define a modification as a "Troubled Debt Restructuring" and report it accordingly.

Sincerely,

/s/

Robert M. Fenner
General Counsel

GC/PWY:bhs
09-0426