

March 21, 2011

Patricia R. Hall-Miller, Board President  
Lake County Educational Federal Credit Union  
1595 Mentor Avenue  
Painesville, Ohio 44077

Re: Conflict of Interest of Federal Credit Union (FCU) Director.

Dear Ms. Hall-Miller:

You have asked whether a director may represent a member as a real estate agent in the sale of the member's home, when the member faces foreclosure by the first mortgagee and default on a home equity loan obtained from the FCU. While we make no determinations regarding applicable state common law, the NCUA FCU Bylaws do not bar the director from acting as seller's agent provided she does not participate in decisions related to her arrangement with the member. Although the lending rule prohibits a compensated director from receiving a commission under these circumstances, a volunteer director may receive outside compensation provided no one associated with the FCU steered the member to the director's real estate business.

Article XVI, Section 4 of the FCU Bylaws states that "[n]o director . . . may participate in any manner, directly or indirectly, in the deliberation upon or the determination of any question affecting his or her pecuniary or personal interest . . . in which he or she is directly or indirectly interested." To prevent such a potential conflict of interest, the FCU Bylaws require that an interested director withdraw from the deliberation and determination process. As such the director must recuse herself when the board considers and decides any issue in which the director may have a pecuniary interest as real estate agent for the member.

We also note NCUA's lending rule generally prohibits a director from "receiving directly or indirectly, any commission, fee or other compensation in connection with any loan made by the credit union." 12 C.F.R. §701.21©(8)(i). In adopting the final rule, the NCUA Board determined that "listing or selling property financed by the credit union *is* 'in connection with' the loan." 60 Fed. Reg. 51886, 51887 (October 4, 1995).

The lending rule, however, grants an exception for volunteer officials who receive compensation from an outside party for a "service or activity performed outside the credit union, provided that no referral has been made by the credit union or the official." 12 C.F.R. §701.21©(8)(iii)(D). "Thus, the borrower's receipt of a loan from the credit union should be unconnected to his or her participation in the outside activity of the official." 60 Fed. Reg. 51887. The NCUA Board adopted

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the exception so as not to discourage volunteers from serving on boards or interfere with their livelihoods. In this case, if the FCU does not compensate the director under FCU Bylaws Article VII, Section 1, she may receive a commission from an outside party for selling property secured by a loan made by the FCU, absent any steering of the borrower to the director's business interests.

If you have any questions, please contact Staff Attorney Chrisanthy Loizos or me.

Sincerely,

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Hattie M. Ulan  
Associate General Counsel

cc: NCUA Examiner Tara Mobley

GC/CJL:bhs  
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