

March 9, 1993

George Poitou,
Vice President of Research
and Information
California Credit Union League
2350 South Garey Avenue
Pomona, California 91766-5898

Re: Prepayment Penalties - Waiver of Fees (Your January 28, 1993, Letter)

Dear Mr. Poitou:

You asked whether a federal credit union's ("FCU") conditional waiver of appraisal and title fees on its home equity lines of credit ("HELOC") would violate Section 107(5)(A)(viii) of the Federal Credit Union Act ("FCU Act") and Article XII, Section 6 of the Standard Federal Credit Union Bylaws ("Bylaws"), both of which permit FCU members to prepay loans prior to maturity without penalty. We do not believe that the program you describe would violate the FCU Act or the Bylaws.

Background

A California FCU proposes to implement a marketing promotion under which it would conditionally waive appraisal and title fees for all HELOC applicants. California appraisal and title fees generally total approximately \$500, so the FCU's waiver would be a strong incentive to members. However, the waived fees creates a considerable expense for the FCU, which may not be offset by interest income within the first year of the HELOC. For that reason, the FCU plans to stipulate that the fee waiver is conditional; that is, a member who pays off and closes his HELOC within its first year will have to pay the previously waived appraisal and title fees. Presumably, the stipulation would be included in the loan agreement.

Analysis

As you note, Section 107(5)(A)(viii) of the FCU Act and Article XII, Section 6 of the Bylaws permit a member to prepay his loan without penalty. Section 701.21(c)(6) of the NCUA Rules and Regulations ("Regulations") also authorizes prepayment without penalty. In our opinion, the FCU's proposed conditional waiver plan does not violate the FCU Act, the Bylaws, or the Regulations.

In our view, an agreement that a borrower will pay the FCU for fees initially waived if he closes his HELOC within one year does not constitute a prepayment penalty. When an FCU pays loan settlement costs, such as appraisal and title fees, it confers a benefit on the borrower. If a borrower closes his HELOC within a year and has to reimburse the FCU for the appraisal and title fees, he has simply lost the benefit. This is not the same as imposition of a prepayment penalty.

To sum up, neither the FCU Act, the Regulations or the Bylaws prohibits the plan described in your letter.

Sincerely,

Hattie M. Ulan
Associate General Counsel

GC/MRS:sg

SSIC 3500
93-0206