

Martin



National Credit Union Administration

December 20, 1993

Terry R. West  
President  
JAX Navy  
Federal Credit Union  
P.O. Box 45085  
Jacksonville, FL 32232-5085

Re: Delegation of Loan Review Authority  
(Your Letter of October 12, 1993)

Dear Mr. West:

You requested an answer to several questions regarding the delegation of loan review authority in federal credit unions ("FCUs"). Your questions arose out of your review of a recently issued NCUA opinion letter. Letter from James J. Engel, NCUA Deputy General Counsel, to Robert McCormick, Vice President, Max FCU, Re: Delegation of Loan Review Authority, dated June 24, 1993 (enclosed). We note that Jax Navy FCU disbanded its Credit Committee several years ago, and after appropriate bylaw and policy changes, delegated the review of loan appeals to its Policy Committee. Your questions, with our answers, follow.

1. Since the Jax Navy FCU's Policy Committee is a standing committee of the board of directors ("Board"), may it serve as final authority on loan denials when the denial is not overturned and when the member has made a written request to appeal the decision?

Answer. No. Section 113 of the FCU Act (12 U.S.C. §1761b(17)) does allow the FCU to appoint a review committee with delegated authority to review loan denials. The review committee, however, cannot substitute for the Board as the ultimate decision maker with regard to loan appeals. 12 U.S.C. §1761c(b). Therefore, the Policy Committee review of loan denials can function only as a mid-level appeal. Although the Policy Committee may overturn denials by loan officers, it may not substitute for the board as the ultimate denial authority with regard to loan appeals. Since the FCU Act grants a member the right to have the board review loan

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denials, any denial not overturned by the Policy Committee must be reviewed by the board upon written request of the member.

2. If an FCU member only makes a verbal request to appeal their decision, does an FCU Board have any obligation to review the appeal?

Answer. No, the FCU Board is only required to review written appeals.

3. If the appeal, written or otherwise, does not specifically request that the FCU member have his or her loan reviewed by the Board, must the Board review the appeal or could it be handled by the Policy Committee?

Answer. The board must review member appeals, irregardless of whether or not the member specifically requests "board review." In your instance, appeals may first be handled by the Policy Committee. See answer #1. A member may appeal the decision of the Policy Committee, however, and in that instance the board must accept the appeal.

4. If someone is eligible for FCU membership, yet has not joined the FCU, may the FCU require that the individual become a member before his or her loan request is reviewed either by an FCU loan officer, the Policy Committee, or the Board?

Answer. Yes. The FCU is under no obligation to review a loan request from a nonmember. Loans cannot be made to nonmembers. 12 U.S.C. § 1757(5).

5. If applications from nonmembers must be reviewed, are they entitled to appeal the Board upon denial?

Answer. For the answer to this question, see answer #4.

6. Are there any situations where a nonmember, ineligible to join the FCU may have rights to apply for a loan with the FCU?

Answer. No, unless the nonmember is applying for a loan against FCU-repossessed/foreclosed property or FCU-owned property, and such loan has been preapproved by the appli-

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cable NCUA Regional Office. See Letter from Hattie M. Ulan, NCUA Associate General Counsel, to David R. Seely, Kirtland FCU, Re: Financing of Abandoned Property, dated October 11, 1990 (enclosed). Loan appeal rights do not apply in such cases.

7. If the FCU denies an FCU member a loan because the FCU's lending policies do not grant the type of loan requested, does the member have appeal rights and must the Board review the member's appeal upon written request since the FCU has not yet established policies to grant the type of loan requested?

Answer. No.

8. If the FCU does not have a policy for granting a particular type of loan, must the FCU take the member's application for the loan request, or will a simple verbal discussion that FCU policies do not provide for that type of loan suffice?

Answer. Section 202.2 of Regulation B (12 C.F.R. §202.2(c)(2)(v)) indicates that an adverse action notice is not required when the FCU denies a loan not covered under the FCU's lending policy. NCUA believes that since an adverse action notice is not required, the FCU is under no obligation to accept the application. A verbal discussion of the FCU's lending policies will suffice.

Sincerely,



Richard S. Schulman  
Acting Associate General Counsel

cc: H. Allen Carver, Region III Director

GC/MEC:sg  
SSIC 3600  
93-1025



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

Chronfile

June 24, 1993

Robert J. McCormick,  
Vice President of Credit  
Max Federal Credit Union  
P.O. Box 244040  
Montgomery, Alabama 36124-4040

Re: Delegation of Loan Review Authority  
(Your April 22, 1993, Letter)

Dear Mr. McCormick:

You asked whether the board of directors of Max Federal Credit Union ("Max") may delegate its loan review authority to a "review committee." Under Max's bylaws, loans are approved by loan officers, and the board reviews a loan denial upon written request by a member. The board wants to delegate this review authority to a review committee, in order to speed up and otherwise improve its loan approval process.

The Federal Credit Union Act ("Act") gives a federal credit union ("FCU") two options for structuring its loan approval and review process. Under the first option, the FCU has a credit committee, which reviews all loan applications denied by loan officers. 12 U.S.C. 1761c(b). Under the second option, there is no credit committee, and the board reviews loan denials upon written request of a member. 12 U.S.C. 1761b(17) & 1761c(b). Any member who makes a written request has the right to board review of his denied loan application. 12 U.S.C. 1761c(b). It appears from your letter that Max does not have a credit committee, so, under the Act, the board must review loan denials upon request.

As you note, Section 113(13) of the Act, 12 U.S.C. 1761b(13), states that the board may, if the bylaws so provide, appoint an executive committee "and any other committees to which it can delegate specific functions." In our opinion, Section 113(13) is broad enough to permit Max's board to appoint a

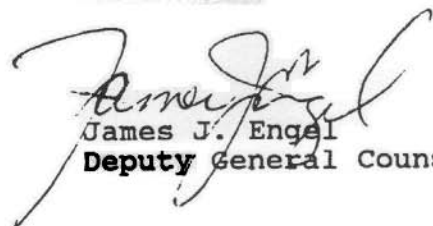
Robert J. McCormick  
June 24, 1993  
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review committee with delegated authority to review loan denials. However, the review committee may function only as a mid-level appeal; although it may overturn denials by loan officers, it may not substitute for the board as the ultimate decision maker with regard to loan appeals. Since the Act grants a member the right to have the board review his loan denial, any denial not overturned by the review committee must be reviewed by the board upon written request of the member.

You also asked whether the review committee may be comprised of non-board members. We do not believe that the Act requires the review committee members to be board members.

Please note that if Max wishes to proceed with a review committee, (with the limitations described above), the committee must be provided for in the bylaws, in compliance with Section 113(13) of the Act. This would necessitate a nonstandard bylaw amendment, which must be approved by NCUA. The amendment should make clear both that the review committee is not a substitute or replacement for the credit committee, and that if the review committee does not overturn a loan officer's denial of a member's loan application, the member is entitled to a review by the board, upon written request. Max should contact NCUA's Region III Office for guidance on submitting a nonstandard bylaw amendment for approval.

Sincerely,



James J. Engel  
Deputy General Counsel

GC/MRS:sg  
SSIC 3600  
93-0435



NATIONAL CREDIT UNION ADMINISTRATION

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WASHINGTON, D.C. 20456

October 11, 1990

Mr. David R. Seely  
President  
Kirtland Federal Credit Union  
Kirtland Air Force Base  
Albuquerque, NM 87117-7438

RE: Financing of Abandoned Property  
(Your Letter of August 9, 1990)

Dear Mr. Seely:

You requested an opinion on the permissibility of a federal credit union ("FCU") to finance the sale of an abandoned branch office to a non-member. You also requested an opinion on the permissibility of financing of \$250,000 in expansion and improvement costs to the non-member purchaser of the abandoned branch office. If permitted by a Regional Office, an FCU may finance the sale of abandoned or foreclosed property to a non-member, including reasonable construction and improvement financing.

The authority of an FCU to sell abandoned or foreclosed property to a non-member arises from Section 107(4) of the FCU Act. 12 U.S.C. §1757(4). This section grants an FCU the power "to purchase, hold, and dispose of property necessary or incidental to its operations." The NCUA has set forth an accounting policy on the repossession and sale of collateral property, but not on abandoned or surplus property. As the two situations deal with the disposal of unwanted property by the FCU, they seem sufficiently analogous to draw parallels between the two. In its policy on the sale of repossessed or foreclosed property, the NCUA recommends that collateral property be sold for cash; however, an FCU "may accept a note for all or a portion of the proceeds of sale or enter into some other kind of contractual agreement with the purchaser for the payment of the purchase price over a reasonable period of time." NCUA Accounting Manual for Federal Credit

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October 11, 1990

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Unions, §5110.1.4 (1989). The same section also permits sales to members and non-members. Id. Although it is a rarity, a Regional Office may permit an FCU to also finance reasonable construction and improvements to the abandoned or foreclosed property. In making a decision, a Regional Office will review to its satisfaction such factors as whether the financing is necessary to close the sale; whether there are any other credible bidders for the property; whether the purchaser is creditworthy; whether the transaction is on an arms' length basis and at prevailing market value; whether any other lenders are available to finance the transaction and, if not, the reasons for the unavailability of credit; whether financing is secured by marketable collateral; and whether the financing will adversely affect the safety and soundness of the FCU.

If you plan on proceeding with any financing of the abandoned branch office, you must contact John S. Ruffin Regional Director, Region V, NCUA, 4807 Spicewood Springs Road, Suite 5200, Austin, Texas 78759 (tel. 512-482-4500). We have taken the liberty to send Mr. Ruffin a copy of this response.

Sincerely,



Hattie M. Ulan  
Associate General Counsel

GC/MEC:sg  
SSIC 4650  
90-0829

cc: John S. Ruffin  
Regional Director,  
Region V