

National Credit Union Administration

§ 701.31

Federal credit union (as defined in paragraph (c)(1) of this section), and immediate family members of such individuals, may not receive any salary, commission, investment income, or other income or compensation from a credit union service organization either directly or indirectly, or from any person being served through the credit union service organization. This provision does not prohibit an official or senior management employee of Federal credit union from assisting in the operation of a credit union service organization, provided the individual is not compensated by the credit union service organization. Further, the credit union service organization may reimburse the Federal credit union for the services provided by the individual.

(ii) The prohibition contained in paragraph (d)(6)(i) of this section also applies to any employee not otherwise covered if the employee is directly involved in dealing with the credit union service organization unless the board of directors determines that the employee's position does not present a conflict of interest.

(iii) All transactions with business associates or family members not specifically prohibited by this paragraph (d)(6) must be conducted at arm's length and in the interest of the credit union.

(7) *Accounting procedures; Access to information*—(i) *Federal credit union accounting*. A Federal credit union must follow generally accepted accounting principles (GAAP) in its involvement with credit union service organizations.

(ii) *Credit union service organization Accounting; audits and financial statements; NCUA access to books and Records*. An affiliated Federal credit union must obtain written agreements from a credit union service organization, prior to investing in or lending to the organization, that the organization will:

(A) Follow GAAP,

(B) Render financial statements (balance sheet and income statement) at least quarterly and obtain a Certified Public Accountant audit annually and provide copies of such to the affiliated Federal credit union, and

(C) Provide the NCUA Board, or its representatives, with complete access to any books and records of the credit union service organization, as deemed necessary by the Board in carrying out its responsibilities under the Federal Credit Union Act.

(8) *Preexisting credit union service organizations*. (i) Any Federal credit union investments in existence prior to the effective date of this regulation, May 27, 1986, must conform with this regulation not later than May 27, 1987, unless the NCUA Board grants its prior approval to continue such investment for a stated period.

(ii) Any Federal credit union loans in existence prior to the effective date of this regulation must conform with this regulation not later than May 27, 1987, unless:

(A) The NCUA Board grants its prior approval to continue the loan for a stated period, or

(B) Under the terms of its loan agreement the Federal credit union cannot require accelerated repayment without breaching the agreement.

(e) *Other laws*. A credit union service organization must comply with applicable Federal, state and local laws.

[51 FR 10360, Mar. 26, 1986, as amended at 52 FR 43570, Nov. 13, 1987]

§§ 701.28—701.29 [Reserved]

§ 701.30 Safe deposit box service.

A Federal credit union may lease safe deposit boxes to its members.

[46 FR 7934, Jan. 26, 1981]

§ 701.31 Nondiscrimination requirements.

(a) *Definitions*. As used in this part, the term:

(1) *Application* carries the meaning of that term as defined in 12 CFR 202.2(f) (Regulation B), which is as follows:

An oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested;

(2) *Dwelling* carries the meaning of that term as defined in 42 U.S.C. 3602(b) (Fair Housing Act), which is as follows: "Any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and

any vacant land which is offered for sale or lease for the construction or location thereon of any building, structure, or portion thereof"; and

(3) *Real estate-related loan* means any loan for which application is made to finance or refinance the purchase, construction, improvement, repair, or maintenance of a dwelling.

(b) *Nondiscrimination in Lending.* (1) A Federal credit union may not deny a real estate-related loan, nor may it discriminate in setting or exercising its rights pursuant to the terms or conditions of such a loan, nor may it discourage an application for such a loan, on the basis of the race, color, national origin, religion, sex, handicap, or familial status (having children under the age of 18) of:

(i) Any applicant or joint applicant;

(ii) Any person associated, in connection with a real estate-related loan application, with an applicant or joint applicant;

(iii) The present or prospective owners, lessees, tenants, or occupants of the dwelling for which a real estate-related loan is requested;

(iv) The present or prospective owners, lessees, tenants, or occupants of other dwellings in the vicinity of the dwelling for which a real estate-related loan is requested.

(2) With regard to a real estate-related loan, a Federal credit union may not consider a lending criterion or exercise a lending policy which has the effect of discriminating on the basis of race, color, national origin, religion, sex, handicap, or familial status (having children under the age of 18). Guidelines concerning possible exceptions to this provision appear in paragraph (e)(1) of this section.

(3) Consideration of any of the following factors in connection with a real estate-related loan is not necessary to a Federal credit union's business, generally has a discriminatory effect, and is therefore prohibited:

(i) The age or location of the dwelling;

(ii) Zip code of the applicant's current residence;

(iii) Previous home ownership;

(iv) The age or location of dwellings in the neighborhood of the dwelling;

(v) The income level of residents in the neighborhood of the dwelling.

Guidelines concerning possible exceptions to this provision appear in paragraph (e)(2) of this section.

(c) *Nondiscrimination in appraisals.* (1) A Federal credit union may not rely upon an appraisal of a dwelling if it knows or should know that the appraisal is based upon consideration of the race, color, national origin, religion, sex, handicap, or familial status (having children under the age of 18) of:

(i) Any applicant or joint applicant;

(ii) Any person associated, in connection with a real estate-related loan application, with an applicant or joint applicant;

(iii) The present or prospective owners, lessees, tenants, or occupants of the dwelling for which a real estate-related loan is requested;

(iv) The present or prospective owners, lessees, tenants, or occupants of other dwellings in the vicinity of the dwelling for which a real estate-related loan is requested.

(2) With respect to a real-estate related loan, a Federal credit union may not rely upon an appraisal of a dwelling if it knows or should know that the appraisal is based upon consideration of a criterion which has the effect of discriminating on the basis of race, color, national origin, religion, sex, handicap, or familial status (having children under the age of 18). Guidelines concerning possible exceptions to this provision appear in paragraph (e)(1) of this section.

(3) A Federal credit union may not rely upon an appraisal that it knows or should know is based upon consideration of any of the following criteria, for such criteria generally have a discriminatory effect, and are not necessary to a Federal credit union's business:

(i) The age or location of the dwelling;

(ii) The age or location of dwellings in the neighborhood of the dwelling;

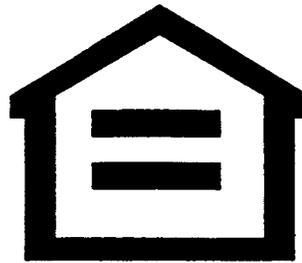
(iii) The income level of the residents in the neighborhood of the dwelling.

(4) Notwithstanding paragraph (c)(3) of this section, it is recognized that there may be factors concerning location of the dwelling which can be properly considered in an appraisal. If any

such factor(s) is relied upon, it must be specifically documented in the appraisal, accompanied by a brief statement demonstrating the necessity of using such factor(s). Guidelines concerning the consideration of location factors appear in paragraph (e)(3) of this section.

(5) Each Federal credit union shall make available, to any requesting member/applicant, a copy of the appraisal used in connection with that member's real estate-related loan application. The appraisal shall be available for a period of 25 months after the applicant has received notice from the Federal credit union of the action taken by the Federal credit union on the real estate-related loan application.

(d) *Nondiscrimination in advertising—*
 (1) *Advertising notice of nondiscrimination compliance.* (i) No Federal credit union may directly or indirectly engage in any form of advertising of real estate-related loans which implies or suggests that the Federal credit union discriminates in violation of the provisions of the Fair Housing Act or of this section. Advertisements of such loans shall include a facsimile of the following:



**EQUAL HOUSING
LENDER**

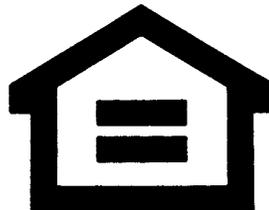
**We Do Business in Accordance With the
Federal Fair Housing Law and the
Equal Credit Opportunity Act**

(ii) Advertisements of real estate-related loans which are broadcast on the radio shall contain the following statement:

The (insert name) Federal Credit Union is an equal housing lender.

(2) *Lobby notice of nondiscrimination compliance.* Every Federal credit union which engages in real estate-related lending shall conspicuously display in the public lobby of such credit union and in the public area of each office where such loans are made, in a manner so as to be clearly visible to the general public entering such lobby or area, a notice that incorporates a facsimile of the logotype and notice appearing in paragraph (d)(3) of this section. Posters containing this notice and logotype may be obtained from the Regional Offices of the National Credit Union Administration.

(3) *Logotype and notice of nondiscrimination compliance.* The logotype and text of the notice required in paragraph (d)(2) of this section shall be as follows:



**EQUAL HOUSING
LENDER**

**We Do Business in Accordance With
Federal Fair Lending Laws**

**UNDER THE FEDERAL FAIR HOUSING ACT, IT IS ILLEGAL, ON THE BASIS OF
RACE, COLOR, NATIONAL ORIGIN, RELIGION, SEX, HANDICAP, OR FAMILIAL
STATUS (HAVING CHILDREN UNDER THE AGE OF 18), TO:**

- Deny a loan for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling, or deny any loan secured by a dwelling; or
- Discriminate in fixing the amount, interest rate, duration, application procedures or other terms or conditions of such a loan, or in appraising property.

**IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED
AGAINST, YOU SHOULD SEND A COMPLAINT TO:**

**Assistant Secretary for Fair Housing and Equal Opportunity
Department of Housing & Urban Development
Washington, D.C. 20410**

**For processing under the Federal Fair Housing Act
and to:**

**National Credit Union Administration
Office of Examination and Insurance
Washington, D.C. 20456**

For processing under NCUA Regulations



**UNDER THE EQUAL CREDIT OPPORTUNITY ACT, IT IS ILLEGAL
TO DISCRIMINATE IN ANY CREDIT TRANSACTION:**

- On the basis of race, color, national origin, religion, sex, marital status, or age,
- Because income is from public assistance, or
- Because a right was exercised under the Consumer Credit Protection Act.

**IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED
AGAINST, YOU SHOULD SEND A COMPLAINT TO:**

**National Credit Union Administration
Office of Examination and Insurance
Washington, D.C. 20456**

NCUA 1563 (Rev. 3-98)

(e) *Guidelines.* (1) Compliance with the Fair Housing Act is achieved when each loan applicant's creditworthiness is evaluated on an individual basis, without presuming that the applicant has certain characteristics of a group.

If certain lending policies or procedures do presume group characteristics, they may violate the Fair Housing Act, even though the characteristics are not based upon race, color, sex, national origin, religion, handicap, or familial status. Such a violation occurs when otherwise facially nondiscriminatory lending procedures (either general lending policies or specific criteria used in reviewing loan applications) have the effect of making real estate-related loans unavailable or less available on the basis of race, color, sex, national origin, religion, handicap, or familial status. Note, however, that a policy or criterion which has a discriminatory effect is not a violation of the Fair Housing Act if its use achieves a legitimate business necessity which cannot be achieved by using less discriminatory standards. It is also important to note that the Equal Credit Opportunity Act and Regulation B prohibit discrimination, either per se or in effect, on the basis of the applicant's age, marital status, receipt of public assistance, or the exercise of any rights under the Consumer Credit Protection Act.

(2) Paragraph (b)(3) of this section prohibits consideration of certain factors because of their likely discriminatory effect and because they are not necessary to make sound real estate-related loans. For purposes of clarification, the prohibited use of location factors in this section is intended to prevent abandonment of areas in which a Federal credit union's members live or want to live. It is not intended to require loans in those areas that are geographically remote from the FCU's main or branch offices or that contravene the parameters of a Federal credit union's charter. Further, this prohibition does not preclude requiring a borrower to obtain flood insurance protection pursuant to the National Flood Insurance Act and part 760 of NCUA's Rules and Regulations, nor does it preclude involvement with Federal or state housing insurance programs which provide for lower interest rates for the purchase of homes in certain urban or rural areas. Also, the legitimate use of location factors in an appraisal does not constitute a violation of the provision of paragraph (b)(3)

of this section, which prohibits consideration of location of the dwelling. Finally, the prohibited use of prior home ownership does not preclude a Federal credit union from considering an applicant's payment history on a loan which was made to obtain a home. Such action entails consideration of the payment record on a previous loan in determining creditworthiness; it does not entail consideration of prior home ownership.

(3)(i) Paragraph (c)(3) of this section prohibits consideration of the age or location of a dwelling in a real estate-related loan appraisal. These restrictions are intended to prohibit the use of unfounded or unsubstantiated assumptions regarding the effect upon loan risk of the age of a dwelling or the physical or economic characteristics of an area. Appraisals should be based on the present market value of the property offered as security (including consideration of specific improvements to be made by the borrower) and the likelihood that the property will retain an adequate value over the term of the loan.

(ii) The term "age of the dwelling" does not encompass structural soundness. In addition, the age of the dwelling may be used by an appraiser as a basis for conducting further inspections of certain structural aspects of the dwelling. Paragraph (c)(3) of this section does, however, prohibit an unsubstantiated determination that a house over X years in age is not structurally sound.

(iii) With respect to location factors, paragraph (c)(4) of this section recognizes that there may be location factors which may be considered in an appraisal, and requires that the use of any such factors be specifically documented in the appraisal. These factors will most often be those location factors which may negatively affect the short range future value (up to 3-5 years) of a property. Factors which in some cases may cause the market value of a property to decline are recent zoning changes or a significant number of abandoned homes in the immediate vicinity of the property. However, not all zoning changes will cause a decline in property values, and proximity to abandoned buildings may not

affect the market value of a property because the cause of abandonment is unrelated to high risk. Proper considerations include the condition and utility of the improvement and various physical factors such as street conditions, amenities such as parks and recreation areas, availability of public utilities and municipal services, and exposure to flooding and land faults.

[54 FR 46223, Nov. 2, 1989, as amended at 59 FR 36041, July 15, 1994]

§ 701.32 Payment on shares by public units and nonmembers.

(a) *Authority.* A Federal credit union may, to the extent permitted under Section 107(6) of the Act and this section, receive payments on shares, (regular shares, share certificates, and share draft accounts) from public units and political subdivisions thereof (as those terms are defined in § 745.1) and nonmember credit unions, and to the extent permitted under the Act, this section and § 701.34, receive payments on shares (regular shares, share certificates, and share draft accounts) from other nonmembers.

(b) *Limitations.* (1) Unless a greater amount has been approved by the Regional Director, the maximum amount of all public unit and nonmember shares shall not, at any given time, exceed 20% of the total shares of the federal credit union or \$1.5 million, whichever is greater.

(2) Before accepting any public unit or nonmember shares in excess of 20% of total shares, the board of directors must adopt a specific written plan concerning the intended use of these shares and forward a copy of the plan to the Regional Director. The plan must include:

(i) A statement of the credit union's needs, sources and intended uses of public unit and nonmember shares;

(ii) Provision for matching maturities of public unit and nonmember shares with corresponding assets, or justification for any mismatch; and

(iii) Provision for adequate income spread between public unit and nonmember shares and corresponding assets.

(3) A federal credit union seeking an exemption from the limits of paragraph (b)(1) of this section must submit

to the Regional Director a written request including:

(i) The new maximum level of public unit and nonmember shares requested, either as a dollar amount or a percentage of total shares;

(ii) The current plan adopted by the credit union's board of directors concerning the use of new public unit and nonmember shares;

(iii) A copy of the credit union's latest financial statement; and

(iv) A copy of the credit union's loan and investment policies.

(4) Where the financial condition and management of the credit union are sound and the credit union's plan for the funds is reasonable, there will be a presumption in favor of granting the request. When granted, exemptions will normally be for a two-year period. The Regional Director will provide a written explanation for an exemption that is granted for a lesser time period.

(5) The Regional Director will provide a written determination on an exemption request within 30 calendar days after receipt of the request. The 30 day period will not begin to run until all necessary information has been submitted to the Regional Director. All denials may be appealed to the NCUA Board in a timely manner. Appeals should be submitted through the Regional Director.

(6) Upon expiration of an exemption, nonmember shares currently in the credit union in excess of the limits established pursuant to (b)(1) of this section will continue to be insured by the National Credit Union Insurance Fund within applicable limits. No new shares in excess of the limits established pursuant to (b)(1) of this section shall be accepted. Existing share certificates in excess of the limits established pursuant to (b)(1) of this section may remain in the credit union only until maturity.

(c) The limitations herein do not apply to accounts maintained in accordance with § 701.37 (Treasury Tax and Loan Depositories; Depositories and Financial Agents of the Government) and matching funds required by § 705.7(b) (Community Development Revolving Loan Program for Credit Unions). Once a loan granted pursuant to part 705 is repaid, nonmember share