

December 2, 1996

Karen Stapp, President  
Uni Wyo Federal Credit Union  
564 North 15th Street  
Laramie, Wyoming 82070

Re: Loan Participation and Business Lending  
(Your October 23, 1996, Letter to Region V)

Dear Ms. Stapp:

Region V has asked this office to review the loan participation agreement entered into between Uni Wyo FCU (non originating lender) and Wyoming Bank and Trust (originating lender) on April 1, 1996. As explained below, we have several legal objections to the above referenced participation agreement.

First, the borrower is Wyoming Territorial Prison Corporation, a non-profit corporation. At the time the participation agreement was entered into, the borrower was not a member of Uni Wyo FCU. Section 701.22(d)(2) of NCUA's Regulations states that a federal credit union (FCU) that is not an originating lender may "participate in participation loans **only if made to its own members or members of another credit union.**" (emphasis added). The FCU's charter includes "employees of the following entities who work in or are headquartered in Laramie, Wyoming: Wyoming Territorial Prison Corp." and "organizations of such persons." In an effort to correct the violation, Wyoming Territorial Prison Corp. has joined the FCU. The sponsor is not within the FCU's FOM and therefore is not a valid member. The FCU should have applied to Region V to have its charter amended to include Wyoming Territorial Prison Corp. You should discuss with Region V the implications of Wyoming Territorial Prison Corporation's illegal membership.

Second, as discussed above, the borrower is a non-profit corporation. Article XII, Section 1 of the FCU Bylaws states that "(l)oans to a member other than a natural person shall not be in excess of its shareholdings in this credit union." There is a FCU Standard Bylaw Amendment to Article XII which permits loans to other than natural persons in excess of their shareholdings if:

the loan is made jointly to one or more natural person members and a business organization in which they have a majority interest, or if the nonnatural person is an association, the loan is made jointly to a majority of the members of the association and to the association in its own right.

Federal Credit Union Standard Bylaw Amendments and Guidelines, Article XII. The participation loan is in violation of both versions of Article XII. Section 701.22(d)(1) limits an FCU that is not the originating lender to, among other things, participating only in loans it is empowered to grant.

Third, the participation loan is a business loan and therefore, must comply with Section 701.21(h), NCUA's member business loan rule. Section 701.21(h)(2)(i) requires an FCU engaging in business loans to have a comprehensive set of written loan policies in place and personnel on staff with a minimum of two years experience in commercial lending. The Exam Report indicates that your FCU failed to comply with these requirements. As stated above, an FCU may only participate in loans it is permitted to grant.

We are forwarding a copy of this legal opinion to Region V. The Region will contact you to discuss an appropriate resolution of the matter.

Sincerely,

Michael J. McKenna  
Acting Associate General Counsel

GC/MFR:bhs  
SSIC 4650  
96-1108

cc: Phillip Crider, Region V Director  
Kevin Mahloch, Region V Examiner