

August 17, 1998

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Re: Member Business Loan Requirements, §701.21(h), for Participation Loans,  
§701.22(d)(1).

Dear Ms. Wong:

We apologize for the delay in our response. You have asked several questions regarding the application of §701.21(h)(1)(i)(C), Member Business Loans, to §701.22(d)(1), Loan Participations. Your questions concern whether a participation loan interest in a member business loan must satisfy the member business loan requirements.

Under §701.21(h)(1)(i)(C), a loan, otherwise meeting the definition of a member business loan, is not considered a business loan if the loan amount, when added to other business loans of a borrower, is less than \$50,000. A federal credit union's participation interest in a business loan does not have to satisfy the member business loan requirements if the participation loan amount, when added to other business loans of the borrower, is less than \$50,000.

Your questions and our responses are below.

Hypothetical 1: Credit Union A is the originating lender of a \$75,000 member business loan (Loan 1) and a \$100,000 member business loan (Loan 2) to John Doe. Credit Union B wants to acquire a participation interest of \$10,000 in Loan 1 and \$20,000 in Loan 2. Credit Union B makes no other loans, directly or by participation, to John Doe or any associated member. *Do Loan 1 and Loan 2 have to satisfy the member business loan requirements of Credit Union B?*

No, the loans are not considered member business loans because the amount of Credit Union B's participation interests in Loan 1 and Loan 2 does not exceed \$50,000, separately or combined.

Hypothetical 2: Credit Union B wants to acquire, contemporaneously, a \$30,000 participation interest in Loan 1 and a \$35,000 participation interest in Loan 2. *If Loan 1 and Loan 2 are acquired together, must both loans satisfy the member business loan requirements of Credit Union B?*

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No, only one of the loans has to satisfy the member business loan requirements. The reason is that the contemporaneous purchase of Loan 1 and Loan 2 is treated as the purchase of two separate loans by Credit Union B. Thus, if Credit Union B acquired Loan 1 first, the loan would be exempt from the member business loan requirements because it is less than \$50,000. Thereafter, if Credit

Union B acquired Loan 2, Loan 2 must satisfy the member business loan requirements because the amount of Loan 2 when added to Loan 1 exceeds \$50,000.

Hypothetical 3: Assuming the facts in Hypothetical 1, Credit Union B now wants to acquire an additional participation interest of \$60,000 in a member business loan (Loan 3) made to John Doe from Credit Union A.

*A. Can Credit Union B acquire a participation loan interest in Loan 3 irrespective of whether Loan 1 and Loan 2 have satisfied the member business loan requirements of Credit Union B?*

Yes, Credit Union B can acquire a participation interest of \$60,000 in Loan 3 provided Loan 3 satisfies Credit Union B's member business loan requirements.

*B. Can Credit Union B acquire a participation interest in Loan 3 if Loan 3 does not satisfy the member business requirements of Credit Union B but if the outstanding principal amounts of Loan 1 and Loan 2, when added to the proposed amount for Loan 3, is less than \$50,000?*

Yes, Credit Union B may acquire a participation interest in Loan 3, if the outstanding principal balances on Loan 1 and Loan 2, when added to the proposed amount for Loan 3, do not exceed \$50,000.

Sincerely,

Sheila A. Albin  
Associate General Counsel

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