

April 10, 2012

Larry Middleman, President/CEO
CU Business Group, LLC
8909 SW Barbur Boulevard
Portland, Oregon 97219

Re: Appraisals for Member Business Loans (MBLs).

Dear Mr. Middleman:

You have asked if it is necessary to obtain an appraisal when a credit union sells a participation interest in an MBL under the Interagency Appraisal and Evaluation Guidelines (Guidelines). The Guidelines do not require that an appraisal be obtained under the facts you have presented. A purchasing credit union, however, should continue to perform its risk assessment and due diligence consistent with agency guidance on real estate lending and loan participation programs.

You have stated your organization works with credit unions that offer to sell participations in commercial real estate secured MBLs to other credit unions from the originating credit union's MBL portfolio. You state the MBLs have been held on the originating credit union's books for several years, are in current repayment status, and have a loan to value ratio of less than 80%, with no deterioration in the subject property. The terms, conditions and pricing of the loan at origination remain the same at the time of the participation sale.

Part 722 of NCUA Rules and Regulations sets appraisal requirements for federally-related real estate transactions. 12 C.F.R. Part 722. The Guidelines clarify the appraisal rule and provide supervisory guidance about prudent appraisal and evaluation programs in order for federally insured credit unions (FICUs) to conduct real estate lending in a safe and sound manner. 75 Fed. Reg. 77450 (Dec. 10, 2010).

The appraisal rule contains exemptions from the appraisal requirement by identifying certain real estate-related financial transactions that do not require the services of an appraiser. An exemption is established under the rule for a transaction that involves:

[T]he purchase, sale, investment in, exchange of, or extension of credit secured by, a loan or interest in a loan, pooled loans, or interests in real property, including mortgage-backed securities, and each loan or interest in a loan, pooled loan, or real property interest met the requirements of this regulation, if applicable, at the time of origination;

12 C.F.R. §722.3(a)(6). The “Transactions Involving Real Estate Notes” exemption applies to the sale of an interest in a loan.¹ Under the facts you presented, the sale of a participation interest in an MBL secured by commercial real estate is exempt from the appraisal requirement provided the note meets the criteria discussed in the Guidelines.

Appendix A of the Guidelines discusses the application of the “Transactions Involving Real Estate Notes” exemption as follows:

If each note or real estate interest meets the . . . regulatory requirements for appraisals at the time the real estate note was originated, the institution need not obtain a new appraisal to support its interest in the transaction. The institution should employ audit procedures and review a representative sample of appraisals supporting pooled loans or real estate notes to determine that the conditions of the exemption have been satisfied.

75 Fed. Reg. at 77467.

Under the facts presented, an appraisal would not be required by the rule provided the loans met the appropriate appraisal requirements when originated. FICUs, though, should maintain risk management systems and policies that address the level of risk associated with loan participations. The Guidelines state that a FICU should have policies and procedures that address the need for obtaining current collateral valuation information to understand its collateral position over the life of a credit and effectively manage the risk in its real estate credit portfolios.² In addition, even though an exemption from the appraisal requirement may apply, the Guidelines note that NCUA may require a FICU to obtain an appraisal or evaluation when there are safety and soundness concerns on an existing real estate secured credit. 75 Fed. Reg. at 77464.

Sincerely,

/S/

Hattie M. Ulan
Associate General Counsel

OGC/CJL:bhs
11-1126

¹ The preamble to the proposed 1995 rulemaking makes clear that the exemption applies to loan participations. “The Board is proposing to amend the exemption regarding the purchase of real estate-secured loans, loan participations, pooled loans, interests in real property and mortgage-backed securities. . . .” 60 Fed. Reg. 13388, 13389 (March 13, 1995).

² NCUA Letter to Credit Unions 08-CU-26, “Evaluating Loan Participation Programs” provides additional guidance.