

January 2, 1997

Thomas M. Hogan, Esq.  
Hogan & Company  
933 W. 14th Street  
Suite #7  
Casper, WY 82601

Re: Loan Participation and Business Lending (Your November 27, 1996, Letter)

Dear Mr. Hogan:

You have asked us to reconsider our September 18, 1996 opinion to you regarding the interplay of the member business loan regulation and loan participation requirements. As explained below, based upon the additional information you have provided we have modified our prior opinion.

You now advise that the loan would be sold by the originating lender without recourse. In light of this, NCUA's Offices of General Counsel and Examination and Insurance have concluded that NCUA's regulation limiting a credit union's business loans to any one member to 15% of the credit union's reserves should only apply to the amount retained by the originating lender. 12 C.F.R. §701.21(h)(2)(iii). However, there are some restrictions on this. Both the originating FCU and the non originating FCU must comply with Section 701.21(h)(2)(i) of NCUA's member business loan rule. This section 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.

Also, as explained in the attached article, it may be necessary to consult with an accountant and attorney to obtain an opinion "that the transferred assets have been

isolated from the transferor - put presumptively beyond the reach of the transferor and its creditors, even in bankruptcy or other receivership." *American Banker*, FASB Complicates Participation Accounting, August 13, 1996.

Sincerely,

Michael J. McKenna  
Acting Associate General Counsel

Enclosure  
GC/MFR:bhs  
SSIC 3500  
96-1203