

August 6, 1997

Linda J. Lehnertz, Associate General Counsel

P.O. Box 391
5910 Mineral Point Rd.
Madison, WI 53701-0391

Re: Indirect Lending
Your letter of May 30, 1997.

Dear Ms. Lehnertz:

You have asked whether a federal credit union's (FCU's) actions under CUNA Mutual's point of purchase lending (POPLS) program constitute making loans or purchasing eligible obligations. Based on your description, an FCU's actions under the POPLS program constitute making loans.

FCUs may participate in indirect lending arrangements under the authority to make loans to members, 12 U.S.C. §107(5); 12 C.F.R. §701.21, rather than the authority to purchase eligible obligations, 12 U.S.C. §107(13); 12 C.F.R. §701.23, as long as two conditions are met. First, the FCU must make the final underwriting decision. That is, before the retailer and the member complete the loan or sales contract, the FCU must review the application and determine that the transaction conforms to its lending policies. This is because an FCU may not delegate its lending authority to a third party. Second, the retailer must assign the loan or sales contract to the FCU very soon after it is completed. Assignment close in time to the making of the loan allows the retailer to function as the facilitator of the loan while the FCU remains the true lender. As the time between completion and assignment of the loan lengthens, the FCU's payment to the retailer becomes the purchase of the loan rather than part of the processing of the loan.

Under the POPLS program, a retailer enters a credit union member's loan application information into its computer and transmits the information to CUNA Mutual's data processor for automated credit scoring. The application receives a credit score that is based on the credit union's lending criteria. The retailer is informed, via computer, whether the member qualifies for a loan. If the member qualifies, the retailer makes a loan and assigns it to the credit union within one business day. Upon assignment, a credit union employee conducts an administrative review of the loan documents. If they are in order, the credit union accepts assignment, pays the retailer the loan amount, and enters the loan on its books.

An FCU's use of a credit scoring system does not constitute the delegation of lending authority as long as the "score" obtained from the system is the sole determinant for granting credit. When an FCU board establishes the qualifying score for an extension of credit, it effectively is making an advance decision on a particular application. As long as the individual entering the member's application information does not exercise any judgment regarding that information, the score generated will reflect the FCU's lending policies. Therefore, the POPLS program meets the requirement that the FCU make the underwriting decision. The POPLS program also meets the timing requirement, as assignment within one business day is soon enough for the retailer to function as the facilitator of the loan.

Sincerely,

Sheila A. Albin
Associate General Counsel

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