

November 28, 2001

Michael J. Welte, President/CEO  
First Choice Credit Union  
1055 South Congress Avenue  
West Palm Beach, Florida 33406

Re: Member Business Loan Participations.

Dear Mr. Welte:

You have asked whether it is permissible for First Choice Credit Union (First Choice CU), a federally insured, state-chartered credit union to purchase a participation interest in a commercial loan issued by another credit union. Your state regulator applies NCUA's member business loan and loan participation regulations to state-chartered credit unions and has asked you to request NCUA's opinion on your authority to enter into this transaction. Yes, it may be permissible, as discussed below.

First Choice CU's board of directors has adopted loan participation and business loan policies that specify its loan-underwriting standards. First Choice CU does not have a commercial lending person on staff, but intends to consult with an appropriate expert on a loan-by-loan basis. First Choice CU has not made any business loans to date.

NCUA's regulation covering the purchase of loan participation interests requires that the purchasing credit union be "empowered to grant" the loan itself. 12 C.F.R. §701.22(d)(1). The state regulator is concerned that, because First Choice CU has not granted any business loans itself, it is not empowered to purchase a participation interest in a commercial loan. This is not the case. Assuming First Choice CU meets all other requirements of NCUA's regulations, we see no legal impediment to its purchase of the participation interest in a commercial loan.

Under NCUA's member business loan regulation, a credit union must adopt specific business loan policies. 12 C.F.R. §723.5. You indicate that First Choice CU has adopted such policies. The credit union board must also utilize the services of an individual with at least two years experience with the type of lending the credit union will engage in. Id. Your plan to use an independent contractor on a loan-by-loan basis to assist you in assessing commercial loans is contemplated in the regulation. If First Choice CU complies with all other requirements of Part 723, the purchase of the participation interest does not violate the member business loan rule.

NCUA's loan participation regulation limits the types of loans in which the nonoriginating credit union may participate by requiring it have a participation policy in place that describes the loan underwriting standards it will apply before entering into a participation agreement. Also, the credit union may only purchase

participation interests in the types of loans that its loan participation policy permits the credit union to make itself. 12 C.F.R. §701.22(d)(1). You indicate that First Choice CU has adopted a loan participation policy. If the participation interest you are considering is permitted under the First Choice CU policy, then there would be no violation of §701.22(d)(1).

Sincerely,

Sheila A. Albin  
Associate General Counsel

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