

October 4, 2002

Aletta L. Shutes, Executive Vice President

Florida Credit Union League, Inc.

P.O. Box 3108

Tallahassee, Florida 32315-3108

Re: Federally Insured Credit Unions (FICUs) as Qualified Public Depositories Under Florida Law.

Dear Ms. Shutes:

Your association is considering asking the Florida Legislature to amend the state's Security for Public Deposits Act so that credit unions may become public depositories. Chairman Dollar has asked this office to respond to your inquiry as to whether the Federal Credit Union (FCU) Act permits FICUs to receive public deposits when state law requires each public depository to guarantee the public deposits held by like-chartered institutions. In reconsidering our previous position on this question, we have determined that, if authorized under their charter laws, FICUs may guarantee public deposits in this manner subject to the NCUA Board's approval. The FCU Act, therefore, does not impose any impediment to your proposed amendment of the Florida law.

Florida permits federally insured banks and savings associations to serve as public depositories if each depository guarantees public depositors against losses caused by the default or insolvency of other depositories of the same type. FLA. STAT. ch. 280 (2001). For example, banks guarantee against losses caused by other banks. FLA. STAT. §280.07. Florida does not allow credit unions to serve as public depositories. Florida law provides for private share insurance, but currently all Florida-chartered credit unions have share insurance through the National Credit Union Share Insurance Fund (NCUSIF). FLA. STAT. §§657.251, *et seq.*

Under the FCU Act, FCUs may be public depositories of public moneys and act as a guarantor for public depositors. 12 U.S.C. §§1767, 1789a, 1757(17). An FCU may pledge any of its assets to secure the payment of public funds deposited with it. 12 U.S.C. §1767(b). In previous opinions, we recognized an FCU's authority to accept public deposits and to pledge its assets to secure such deposits. We did not find any authority, however, that permitted them to act as guarantors of losses caused by other credit unions. This interpretation would

have effectively prevented FCUs in Florida from becoming public depositories if Florida permitted them to qualify as such. We have reconsidered this view and believe that under the analysis of our incidental powers rule, an FCU may guarantee public deposits held by other credit unions when required to do so by state law as a condition of accepting public deposits. 12 C.F.R. §721.2.

The FCU Act allows federally insured state-chartered credit unions to serve as public depositories. 12 U.S.C. §1789a. Whether or not Florida-chartered credit unions may accept public deposits and act as a guarantor is a function of state law that we cannot address. If they have the same authority as FCUs, Florida charters with federal insurance are subject to the FCU Act and NCUA's rules regarding the assumption of another credit union's liabilities.

Federally insured state charters and FCUs may not assume the public deposit obligations of a defaulting or insolvent credit union without legal authority to do so. 12 U.S.C. §1785(b)(1)(B), (b)(3). The FCU Act permits FICUs to assume the liabilities of other credit unions only if they obtain the approval of the NCUA Board (Board). *Id.* The FCU Act states:

Except with the prior written approval of the Board, no insured credit union shall merge or consolidate with any other insured credit union or, either directly or indirectly, acquire the assets of, or assume liability to pay any member accounts in, any other insured credit union.

12 U.S.C. §1785(b)(3). Note that member accounts include nonmember units of federal, state or local governments and their political subdivisions. 12 U.S.C. §1752(5). FICUs also must obtain the Board's approval before assuming the liabilities to pay member accounts in any noninsured credit union. 12 U.S.C. §1785(b)(1)(B) and 12 C.F.R. §741.8(a).

If Florida allows credit unions to become public depositories under its current scheme, FICUs that have received the Board's approval may participate in the public deposits guarantee pool. 12 U.S.C. §1785(b)(1)(B), (b)(3). In evaluating an FICU's request, the Board, or its designee, will consider the FICU's financial condition, adequacy of reserves, management, and related factors. 12 U.S.C. §1785(c). The Board may also place conditions on its approval, particularly those based on safety and soundness considerations and risk to the NCUSIF. For example, the maximum amount of all public unit and nonmember accounts in an FCU cannot exceed 20% of the FCU's total shares or \$1.5 million, whichever

is greater, without NCUA approval. 12 C.F.R. §701.32(b)(1). As we have noted above, however, the FCU Act does not prohibit FICUs from becoming public depositories under the terms of Florida's Security for Public Deposits Act.

Sincerely,

Robert M. Fenner

General Counsel

GC/CJL:bhs

SSIC 3000

02-0446a