

January 30, 2009

Daniel R. Loritz, Esquire  
Okun Loritz, LLP  
655 N. Central Avenue, 17th Floor  
Glendale, CA 91203

Re: Conflict of Interest When Selling Loans to a Bank.

Dear Mr. Loritz:

You have asked if the conflict of interest provision in the National Credit Union Administration's (NCUA's) general lending regulation would preclude a credit union from selling loans to a bank in which one of the credit union's directors owns stock. 12 C.F.R. 701.21(c)(8). We conclude the conflict of interest provisions prohibiting credit union officials from receiving any compensation in connection with making loans does not apply when a credit union sells loans it previously made but, nevertheless, we recommend that, in the circumstances you described, an interested director should recuse himself from deliberating or voting on the transaction.

You have described the circumstances given rise to your questions as follows. A federally-insured, state-chartered credit union (FISCU) wants to sell whole loans and loan participations to a publicly-traded bank; the bank will not provide any ongoing services to the FISCU in connection with the sale. You state a member of the FISCU's board of directors owns approximately .5% of the outstanding shares in the bank but you specifically noted the interested director will not receive any fee, commission, or other compensation in connection with the sale.

NCUA's general lending regulation provides that federal credit union officials are prohibited from receiving, directly or indirectly, any compensation in connection with the making of a loan. 12 C.F.R. §701.21(c)(8). The prohibition also applies to FISCU officials, unless the state supervisory authority has adopted a substantially equivalent rule. 12 C.F.R. §741.203(a). The purpose of the prohibition is "to ensure that an individual who is in a position of authority . . . does not put self-interest ahead of the credit union's interest in making good loans and providing good services to members." 60 Fed. Reg. 19690 (April 20, 1995) (proposed rule).

Section 701.21(c)(8) applies when credit unions make loans to their members. The provision does not apply to a credit union's sale of whole loans or participation interests in loans it has granted. Credit union officials are cautioned, however, to avoid any impropriety when deliberating on or participating in the determination of any matter affecting their pecuniary interest, including the sale

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of credit union loans to a bank in which an official owns a minority interest. Although this is a FISCO, we note as guidance for you that the Federal Credit Union (FCU) Bylaws prohibit a director from participating in the deliberation on or the determination of any questions affecting his or her pecuniary interest or the pecuniary interest of any corporation, partnership, or association, other than the FCU, in which he or she is directly or indirectly interested. 12 C.F.R. Part 701, Appendix A, Art. XVI, §4 (FCU Bylaws).

If you have any further questions, please feel free to contact Staff Attorney Tonya Green or me at (703) 518-6540.

Sincerely,

/S/

Sheila A. Albin  
Associate General Counsel

OGC/MIG:bhs  
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