



NATIONAL CREDIT UNION ADMINISTRATION  
Washington, D.C. 20456

June 11, 1987

Office of General Counsel

Stephen J. Edwards, Esq.  
Epstein, Epstein & Bosek  
P.O. Box 705  
Springfield, NJ 07081

GC/HMU:sg  
4650

Dear Mr. Edwards:

This is in response to your letter of March 9 concerning loan participation agreements and Section 701.22 of the NCUA Rules and Regulations, 12 C.F.R. §701.22.

You pose the following question in your letter: "Can a Credit Union agree to participate in future loans to be made by an originating credit union?" As explained below, it is our opinion that a Federal credit union ("FCU") can agree to participate in future loans to be made by an originating credit union and remain in compliance with Section 701.22 of the NCUA Regulations.

Section 701.22(a)(1) defines "participation loan" as "a loan made in participation with one or more eligible organizations, where the written commitment to participate in the loan precedes final disbursement" (emphasis added). "Eligible organizations" is defined in Section 701.22(a) to mean "a credit union, credit union organization, or financial organization." Section 701.22(d) places certain additional limitations on a participating FCU that is not the originating lender, among which is the requirement that it participate in participation loans only if made to its own members or members of another participating credit union. See Section 701.22(d)(2).

You note that Section 701.22(b)(2) requires that prior to disbursement of the loan proceeds, a written participation agreement identifying the participating loans must be executed. This is consistent with the definition of participation loan noted above. Section 701.22(d)(3) requires that participating FCU's retain a schedule of the loans covered by the agreement. An FCU would be in compliance with the requirements of Section 701.22 even though it entered into a general agreement to participate in future loans, provided that, before it disburses funds, it has a schedule specifically identifying the loans for which the funds are being disbursed.

FOIA Vol. I, C, 15

Stephen J. Edwards, Esq.  
Page Two

You asked whether Section 701.22 requires that the originating credit union package a group of loans and then sell a participation interest in them. The preamble to proposed Section 701.22 stated that:

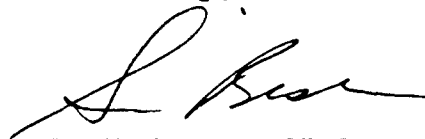
"the participation regulation applies where a third party funnels funds into a credit union with the intent of actually participating in making the loan. . . . The participation regulation does not apply where an organization merely arranges to purchase loans subsequently originated by the credit union." (See 46 Fed. Reg. 31661, June 17, 1981.)

If the credit unions involved purchase future loans and do not transfer funds until after the loans are made and proceeds are disbursed, the credit union is purchasing a loan rather than participating in it and Section 701.23 of the NCUA Regulations (Purchase, Sale and Pledge of Eligible Obligations) would apply rather than Section 701.22.

The program described in your letter implies that the credit union will pay its percentage after the loan is made. If this is the case, the credit union would be purchasing a portion of a loan rather than participating in it. Section 701.23 rather than Section 701.22 of the NCUA Regulations would apply.

I hope that we have been of assistance. Please contact us if you have further questions.

Sincerely,



STEVEN R. BISKER  
Assistant General Counsel

HMU:sg