

August 9, 2004

Mark Bostock, President
Centennial Lending, LLC
600 S. Airport Road, Bldg. D-300
Longmont, CO 80503

Re: NCUA's Member Business Loan (MBL) Rule.

Dear Mr. Bostock:

You have asked if a credit union may use the services of Centennial Lending, LLC (Centennial), a credit union service organization (CUSO), to satisfy the MBL rule's requirement that a credit union use the services of an individual with at least two years direct experience with the type of business lending it will be doing. You also have asked if Centennial's fee based services of underwriting and servicing MBLs violates the conflict of interest provisions of the MBL rule. In brief, a credit union may satisfy the two-year expertise requirement by engaging the services of a CUSO with sufficient expertise. This relationship does not violate the conflict of interest provisions of the MBL rule if the CUSO is independent from the transaction or otherwise meets an exception to the independence requirement.

You have provided us with the following information. Centennial is owned equally by Premier Members Federal Credit Union (FCU), Norlarco Credit Union, Warren FCU, and SunCorp. Centennial has underwritten and serviced residential mortgages and MBLs for credit union clients for over four years. Centennial staff, many of whom you believe individually possess sufficient experience to satisfy the two-year expertise requirement, perform all underwriting functions and provide loan packages for consideration to the Centennial Lending Loan Committee (Committee). The Committee comprises individual representatives of the CUSO's owners; you state these individuals possess sufficient experience to satisfy the two-year expertise requirement. The Committee reviews the loan packages and determines if they are of sufficient quality to fund. If so, participating credit unions are given the opportunity to determine for themselves if they wish to fund all or part of a particular loan. We understand that Centennial's services are limited to underwriting and servicing loans and do not include brokering loan participations.

A credit union's board of directors must adopt specific business loan policies and review them annually to implement an MBL program and, additionally, must use the services of an individual with at least two years direct experience with the type of business loans the credit union will make. 12 C.F.R. §723.5(a). For example, a loan officer with 10 years experience making agribusiness loans would satisfy the two-year expertise requirement for a credit union that makes agribusiness loans, but not for a credit union that makes taxi cab loans. A credit union does not have to hire staff to satisfy this

requirement. Rather, it can use the services of a qualified CUSO, independent contractor, employee of another credit union, or other third party. Id. Although the credit union may use the expert services of these third parties, the actual decision to grant a loan must be made by the credit union. Id.

To avoid conflicts of interest, a credit union may only use a third party to satisfy its two-year expertise requirement if the third party is independent from the transaction it is reviewing, has no participation interest in the loan, and has no interest in the collateral securing the loan. 12 C.F.R. §723.5(b). Exceptions to this rule include: 1) the third party may provide a service to the credit union related to the transaction, such as loan servicing; 2) the third party may purchase from the credit union a loan or a participation in a loan that it reviewed; and 3) a CUSO providing services to the credit union need not be independent from that transaction providing the credit union has a controlling financial interest in the CUSO as determined under generally accepted accounting principles. Id. The prohibition against a third party having an interest in the sale of a loan it reviews does not bar a smaller credit union from subsequently selling a participation to a larger credit union that had advised the smaller credit union before the smaller credit union originated the loan. 68 Fed. Reg. 56537, 56541, October 1, 2003.

Although we have noted generally that a qualified CUSO may help a credit union satisfy the two-year expertise requirement, we are unable to determine from the information you have provided if Centennial qualifies. Whether Centennial has the requisite expertise is a determination involving an evaluation of the experience of individual staff and the kinds of loans with which they work. If you have concerns about whether Centennial's staff meets the expertise requirements, we suggest you consult with regional staff.

Finally, based on our understanding of Centennial's operations and the services it provides, it does not appear that Centennial has any systemic conflicts of interest. Whether conflicts of interest exist depends on the particular circumstances surrounding each individual loan and requires an ongoing loan-by-loan analysis to address the issue. The fact that Centennial charges credit unions a fee for its services does not create a conflict of interest.

Sincerely,

/S/

Sheila A. Albin
Associate General Counsel