

November 19, 2007

Duane K. Jones, Esq.
Alliance Federal Credit Union
8401 Quaker Avenue
Lubbock, TX 79424

Re: Permissibility of FCU Replacing Third-Party Collateral Protection Insurance (CPI) and Private Mortgage Insurance (PMI) with Internal Program.

Dear Mr. Jones:

You have asked if a federal credit union (FCU) may replace its third party CPI and PMI programs with internal programs. No, you may not establish an internal program to replace your CPI and PMI insurance providers, because you would be acting as an insurer. FCUs may not engage in the business of insurance.

Insurance activity is not an express power or incidental power for FCUs. 12 U.S.C. §§1757(7), 1757(17); 12 C.F.R. Part 721. NCUA's incidental powers regulation defines a permissible incidental power for FCUs as one that: is convenient or useful in carrying out the business of credit unions, is the functional equivalent or logical outgrowth of activities that are part of the business of credit unions; and involves risks similar in nature to those already assumed as part of the business of credit unions. 12 C.F.R. §721.2. Insurance activities involve additional risks, not risks similar in nature to those already assumed.

We note your proposed collateral protection program is significantly different from an internal collateral protection program we determined was not insurance in a previous opinion. OGC Op. 99-0447 (Dec. 9, 1999) (copy enclosed). In that opinion, we concluded an FCU's internal collateral protection program fell within an FCU's incidental powers because the collateral protection program was closely related to the express power to lend, and the ability to limit risk from lending activities is useful in carrying out the business of credit unions. That program, in contrast to your proposal, charged a uniform fee to all borrowers at loan origination. Your program would charge fees, using your prior insurer's rate schedule, only on loans where the member's insurance policy has lapsed. The program we approved replaced the FCU's blanket collateral protection policy, while your program would replace the member's individual, force-placed insurance policy. In summary, your proposed program would make your FCU an insurer, which, as discussed above, is not a permitted activity for FCUs.

Likewise, your proposed internal program to replace PMI is impermissible. Your proposed program would replace third party private mortgage insurance with fees collected on each loan with a loan-to-value ratio above 80%. These fees would then be used to cover any losses your FCU sustained on mortgage loans. Once again, your proposed program constitutes an impermissible insurance activity,

Mr. Duane Jones
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since your FCU is attempting to insure itself against losses. In addition, your proposed internal mortgage protection program would also create unacceptable safety and soundness risks. Your self-insurance proposal would cover only loans made by your FCU, and any losses above historical levels in your mortgage portfolio could threaten the FCU's safety and soundness.

If you have further questions, please feel free to contact Staff Attorney Elizabeth Wirick or me.

Sincerely,

Sheila A. Albin
Associate General Counsel

GC/EAW:bhs
07-0633

Enclosure