

SUBJECT: Conflicts of Interest

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INTRODUCTION

This release applies to all credit unions, state and federal. It describes the rules limiting officers, directors, or even employee's activities where there is a conflict of interest.

EXECUTIVE SUMMARY

In accepting a position as an officer or director, an individual must recognize that the interests of the credit union and its members have priority over any personal interests that the individual may have. The position at the credit union should not be used to gain personal profit or advantage. Acceptance of a position involves an assumption of fiduciary responsibilities, some of which are set forth in the Wisconsin Statutes, Federal Credit Union Act, NCUA Rules and Regulations, credit union bylaws, and state laws and rules. Other fiduciary duties, such as the duty to exercise due care and diligence, stem from common law.

This release describes conflicts of interest in general as well as various state and federal issues that relate to conflicts in specific areas.

In some cases, short descriptions of NCUA general counsel opinions are provided in this release, each interpreting how a rule applies to a specific situation. Follow the links provided to see the full analysis.

Additional guidance on conflicts of interest as well as director and officer liability insurance may be available from your bond carrier.

Please keep in mind when using this release that each restriction is binding as described. If you see that one rule permits a situation, you must still be sure that another rule does not prohibit it. Directors should review *ii Release No. 0180 - Duties, Liabilities & Protections of Credit Union Directors* for more information about their role at the credit union.

WHAT IS A CONFLICT OF INTEREST?

A conflict of interest is basically defined by the Merriam-Webster dictionary as a conflict between the private interests and the official responsibilities of a person in a position of trust.

Having a conflict is not wrongful in itself. It is common for officials to encounter conflicts of interest. But putting private interests above those of the credit union to which a person owes their loyalty - is corrupt. Because this is so important, when a director or officer has a conflict of interest, they must not take part in decision making at all because of the *risk* of being corrupted. The official must abstain from voting, and from taking part in discussions on the issue. It is not enough to merely disclose the conflict – recusal is required.

BYLAWS

The Federal Credit Union Bylaws and Wisconsin's Model Credit Union Bylaws restrict officials, employees, or agents from acting on matters affecting that person's financial interests. The *2017 Wisconsin Model Credit Union Bylaws* provide:

Article XIII - General Provisions

Section 2. Conflict of Interest. No Director, officer, committee member, agent or employee of this Credit Union shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting his or her pecuniary or personal interest or the pecuniary interest of any Organization or association in which the person is directly or indirectly interested. In the event of disqualification of any Director or member of the credit committee respecting any matter presented to the Board or credit committee for deliberation or determination, such Director or committee member shall withdraw from the deliberation or determination. If a Director or credit committee member withdraws from any deliberation or determination, the remaining qualified Directors or credit committee members present at the meeting may exercise all powers of the Board or credit committee, provided the number of Directors or credit committee members present, including the disqualified Directors or members, constitutes a quorum.

Wisconsin state-chartered credit unions may gain insights into their conflicts of interest bylaw by reviewing what the NCUA has said about the very similar federal credit union bylaw.

The standard *Federal Credit Union Bylaws* provide:

Article XVI. General

Section 4. Conflicts of interest prohibited. No director, committee member, officer, agent, or employee of this credit union may participate in any manner, directly or indirectly, in the deliberation upon or the determination of any question affecting his or her pecuniary or personal interest or the pecuniary interest of any corporation, partnership, or association (other than this credit union) in which he or she is directly or indirectly interested. In the event of the disqualification of any director respecting any matter presented to the board for deliberation or determination, that director must withdraw from the deliberation or determination; and if the remaining qualified directors present at the meeting plus the disqualified director or directors constitute a quorum, the remaining qualified directors may exercise with respect to this matter, by majority vote, all the powers of the board. In the event of the disqualification of any member of the credit committee, if applicable, or the supervisory committee, that committee member must withdraw from the deliberation or determination.

The NCUA General Counsel's office has issued many opinion letters on the conflicts of interest bylaw:

- NCUA Opinion Letter: FCU volunteer director *not* barred from acting as seller's agent when the seller/member faces foreclosure by the first mortgagee and default on a home equity loan obtained from the FCU, *if* the director withdraws from deliberations and voting on related matters before the board. March 21, 2011. [Available here](#).
- NCUA Opinion Letter: An attorney who represents a labor union which shares members with the FCU may serve on the FCU's board or committees, provided that such individual withdraws from the decision-making process regarding any issue in which the attorney has a pecuniary interest. See FCU Bylaws XIX, Section 4. June 17, 1999. [Available here](#).
- NCUA Opinion Letter: 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.

Although this is a FISCUS, we note 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. January 30, 2009. [Available here](#).

- NCUA Opinion Letter: A CU director is currently the comptroller of an association that offers its members certain services through outside vendors. By offering many of the same products to their overlapping memberships, the FCU and the association are in direct competition.

Although not automatically a violation of law, we caution that the individual must be careful not to breach his fiduciary duty to the credit union. This may be difficult given the fact that the two entities are in direct competition. Article XIX, Section 4 of the FCU Bylaws prohibits a director from participating in any manner in the deliberation upon or the determination of any question affecting the pecuniary interest of any association in which he is directly or indirectly interested. Under this provision, if any of the matters the board is deliberating on affect the pecuniary interest of the association, then the director should recuse himself from the deliberations. This would need to be addressed on a case-by-case basis. Sept. 1, 1998. [Available here.](#)

- NCUA Opinion Letter: Conflict of interest situation analyzed where board members are employed by or volunteer with the credit union's sponsor organizations.

The FCU Bylaw provision also covers matters affecting the pecuniary interests of an organization in which a director, or the others enumerated in the provision, is directly or indirectly interested. FCU Bylaws, Article XVI, Section 4.

Whether a conflict of interest exists requiring a director to be disqualified depends on the particular facts and circumstances involved. Sometimes the determination is obvious, for example, a director should not vote on whether a credit union should enter into a contract with a company of which the director is the sole or majority owner. But, for example, if a director has a *modest* investment in a publicly traded corporation, like Intel, that director need not be disqualified from voting on a contract with Intel to purchase computers. While any new contract for Intel would likely benefit the corporation –its pecuniary interest will be affected -- that director's interest in the corporation is likely so attenuated that his interest in the corporation will not be affected. The director need not be disqualified.

The conflict of interest analysis under the bylaw provision is:

First, whether the board's decision will affect a director's own private (pecuniary or personal) interests.

Second, where an organization is involved in which a director has an interest, the analysis is:

- (a) whether a decision will affect the *organization's pecuniary interest* and, also,
- (b) whether the decision regarding the organization will affect the *director's interest* in the organization.

Note that the conflict of interest provision in the bylaws requires a *real or actual effect*, not a hypothetical or speculative effect, on the individual or organization's interest in order for a conflict to exist. Also, as noted in the example above, not all board decisions affecting an organization's pecuniary interest will affect a director's interest in the organization.

Directors make many decisions for a credit union that may affect their interests, and even the pecuniary interest of organizations in which they have an interest, but the decisions are not of the type that raises a conflict of interest requiring disqualification. For example, the directors establish dividend rates and, as members, will benefit. The decision, however, is *affecting all members*, not affecting particularly the directors' personal or pecuniary interests.

Also, a director may be able to vote on policies affecting an organization in which the director has an interest. For example, a board may be considering a policy to provide payroll deductions as a member benefit in cooperation with employer sponsors. A director may be an employee of a sponsoring entity. Because the *policy will affect all employer sponsors*, most likely, a director who is also a sponsor's employee should not be disqualified. January 13, 2010. [Available here.](#)

OATH OF OFFICE

(Wis. Stats. § 186.071)

Under state law, every director, officer, committee member and employee of a Wisconsin state-chartered credit union must sign an oath of office, which requires them to:

- Keep confidential the financial affairs of credit union members, unless state and federal laws, security requirements or sound lending practices permit disclosure.
- Keep confidential the records and accounts of the credit union and the deliberations of the board of directors unless state or federal law permits disclosure.

- Familiarize themselves with the credit union laws, bylaws, rules and policies.
- Avoid initiating or participating in any insider dealings using credit union funds or the credit union's power or authority.
- Avoid initiating or participating in any action that may present to that person a personal conflict of interest.

This oath remains in effect after the board member's term expires. So, even former directors are not to share confidential information about the credit union or its members.

If anyone breaks that oath, Wis. Stats. §186.071 provides:

(2) REMOVAL FOR VIOLATION. If an individual refuses to sign the oath of office or knowingly and willfully violates the oath of office, the board shall remove that individual as a director, officer or committee member or shall direct that the individual be terminated as an employee.

CODE OF CONDUCT

The NCUA encourages boards of directors of federally-insured credit unions to establish codes of conduct to guide officials and employees in avoiding conflicts of interest. See *ii Release No. 0122* for a sample Credit Union Code of Conduct created to address compliance with the Federal Bank Bribery Act. All should shun actions from which they would derive personal gain from the business of the credit union, other than normal salaries, benefits, and permissible non-preferential loans.

NCUA EXAMINER'S GUIDE – CONFLICTS OF INTEREST

(Ch. 7 - Management)

The NCUA Examiner's Guide says that conflicts of interest (or the appearance of such) can adversely affect a credit union's profitability and reputation risk and can undermine member confidence. Officials have a fiduciary duty to avoid advancing their own personal or business interests, or those of others with whom they have a personal or business relationship, at the expense of the credit union. Thus, officials must avoid conflicts of interest of any sort, or even the appearance of a conflict of interest. They should also avoid nepotism.

The sale of assets to insiders, including fixed assets, repossessed assets, OREOs, and foreclosures, can constitute a conflict of interest and may carry additional reputation risk to the credit union and a potential cost to the share insurance fund. The sale of assets to insiders raises the possibility of negative public perception of such transactions. Insider sales may appear as sweetheart deals, even if economically sound. Credit unions must ensure that sales of covered assets occur as arms-length transactions.

The credit union should have a specific plan for dealing with conflicts of interest, including implementation of controls for avoiding abuses and procedures for dealing with policy violations. The examiner should determine if directors and management comply with the policy and, if not, comment in the examination report and take appropriate action on actual or apparent conflicts of interest.

On rare occasions, examiners may request additional information about related organizations or individuals, in order to properly analyze the financial situation of a credit union. If they do not receive the information, the examiners should contact the supervisory examiner for assistance in working with the regional office. If necessary, the Office of General Counsel may issue an order of investigation and an administrative subpoena.

INDEMNIFICATION LIMITATIONS FOR WISCONSIN CREDIT UNIONS

(Wis. Stats. §§ 186.082-186.096)

In the 1980s, many directors and officers of corporations became concerned with the risk of personal liability for actions taken in their official capacity. Many states, including Wisconsin, enacted measures that require organizations to indemnify officials in many situations when liability is imposed. However, Wisconsin law does not limit civil liability of state-chartered credit union directors or officers who have breached or failed to perform a duty he or she owes to the credit union, which constitutes any of the following:

- A willful failure to deal fairly with the credit union or its members in connection with a matter in which the director or officer has a material conflict of interest.
- A violation of criminal law, unless the director or officer had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe his or her conduct was unlawful.

- A transaction from which the director or officer derived an improper personal profit.

The credit union is not required to indemnify directors or officers for liability in the above situations.

CONFLICT OF INTEREST TRANSACTION NOT NECESSARILY VOIDABLE

(Wis. Stats. § 186.07(8))

A provision in the Wisconsin credit union statutes relates to director conflict of interest transactions, defined as a transaction with a Wisconsin state-chartered credit union in which a director of the credit union has a direct or indirect interest. It specifies that a conflict of interest transaction is not voidable by the credit union solely because of the director's interest in the transaction if the transaction was fair to the credit union or if the material facts were disclosed or known and the transaction was authorized, approved, or ratified in the manner specified. See Wis. Stats. [§186.07\(8\)](#) for full details. The law addresses the impact of a conflict on a credit union transaction. There still may be consequences to the director with the conflict such as removal, director liability and limitations on director indemnification, at [§§186.082- 186.096](#).

MANAGEMENT OFFICIAL INTERLOCKS – PROHIBITIONS

(NCUA Rules and Regulations § 711.3 Prohibitions)

This rule generally prohibits a management official from serving two credit unions or other depository organizations in situations where the interlock likely would have an anticompetitive effect.

The NCUA states that Section 711.4(c) of the rule exempts a management official of a credit union from the prohibitions of the Interlocks Act when the individual serves as a management official of another credit union. Therefore, the Interlocks Act prohibitions described below only apply to a management official of a credit union when that individual also serves as a management official of *another* type of depository organization (usually a bank or thrift).

Unless otherwise permitted by Part 711 of the NCUA rules, credit unions officials must comply with the following:

- *Community.* A management official of a depository organization may not serve at the same time as a management official of an unaffiliated depository organization if the depository organizations in question (or a depository institution affiliate thereof) have offices in the same community.
- *RMSA.* A management official of a depository organization may not serve at the same time as a management official of an unaffiliated depository organization if the depository organizations in question (or a depository institution affiliate thereof) have offices in the same Relevant Metropolitan Statistical Area (RMSA) and each depository organization has total assets of \$50 million or more.
- *Major assets.* A management official of a depository organization with total assets exceeding \$2.5 billion (or any affiliate thereof) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding \$1.5 billion (or any affiliate thereof), regardless of the location of the two depository organizations. The NCUA will adjust these thresholds, as necessary, based on year-to-year change in the average of the Consumer Price Index for the Urban Wage Earners and Clerical Workers, not seasonally adjusted, with rounding to the nearest \$100 million. The NCUA will announce the revised thresholds by publishing a notice in the Federal Register.

The term *management official* means:

- A director;
- An advisory or honorary director of a depository institution with total assets of \$100 million or more;
- A senior executive officer, or a person holding an equivalent position regardless of title;

[The term *senior executive officer* means a credit union's chief executive officer (typically this individual holds the title of president or treasurer/manager), any assistant chief executive officer (e.g., any assistant president, any vice president or any assistant treasurer/manager) and the chief financial officer (controller). The term “senior executive officer” also includes employees of an entity, such as a consulting firm, hired to perform the functions of positions covered by the regulation.]

- A branch manager;

- A trustee of a depository organization under the control of trustees; and
- Any person who has a representative or nominee serving in any of the capacities in this paragraph (m)(1).

The term *management official* does not include:

- A person whose management functions relate exclusively to the business of retail merchandising or manufacturing;
- A person whose management functions relate principally to the business outside the United States of a foreign commercial bank; or
- A person described in the provisions of section 202(4) of the Interlocks Act (12 U.S.C. 3201(4)) (referring to an officer of a State-chartered savings bank, cooperative bank, or trust company that neither makes real estate mortgage loans nor accepts savings).

CONSUMER HARM FROM PRODUCTION INCENTIVES

Although not phrased as a conflict of interest or a violation of a fiduciary duty, the CFPB addresses *Detecting and Preventing Consumer Harm from Production Incentives* in its Compliance Bulletin 2016-03 (Nov. 28, 2016).

The Bulletin compiles guidance the CFPB has already given in other contexts and highlights examples from the CFPB's supervisory and enforcement experience in which incentives contributed to substantial consumer harm. It also describes compliance management steps that supervised entities should take to mitigate risks posed by incentives. CFPB says the Bulletin is a non-binding general statement of policy describing considerations relevant to the Bureau's exercise of its supervisory and enforcement authority.

America's Credit Unions says the Bulletin provides a non-exhaustive list of specific examples of problems related to production incentives, including the following:

- Sales goals that may encourage employees to open accounts or enroll consumers in services without their knowledge or consent;
- Sales benchmarks that could encourage employees to market a product deceptively;
- Paying compensation based on terms or conditions of transactions (such as interest rate) that could encourage employees to overcharge customers;
- Paying more compensation for some types of transactions than for others that could have been offered to meet consumers' needs, which could lead employees to steer consumers towards certain transactions not in their interests.

Whenever there are employee incentives, the CFPB expects supervised entities to have proper controls in place and monitoring of the program to ensure that the type of deceptive activities described above are not occurring. The bulletin lays out what CFPB considers to be the elements of effective controls, which includes:

- Board of directors and management oversight;
- Compliance program, including policies and procedures, training, and monitoring;
- Consumer complaint management program; and
- Independent compliance audit.

Please see *Compliance Bulletin 2016-03* for details.

CRIMINAL OFFENSES

A number of federal criminal statutes also apply to federally-insured credit unions. Criminal liability may result from actions such as:

- Falsifying credit union records;
- Misusing or misapplying funds or assets of the credit union;
- Structuring or assisting transactions for money laundering or to avoid currency transaction reporting requirements;
- Asking for or accepting fees or gifts to influence, or as a reward for, credit union business;
- Making false statements generally; and
- Attempting to deceive an examiner.

Credit union officials and employees have the responsibility to report suspected criminal activities to FinCEN, the U.S. Treasury's Financial Crimes Enforcement Network, on the NCUA's Suspicious Activity Report. See § 748.1 of NCUA Rules and Regulations, as well as *ii Release No. 0109*.

FCU CREDIT UNION SERVICE ORGANIZATIONS (CUSOS)

(NCUA Rules and Regulations § 712.8)

When a federal credit union has invested in or made loans to a credit union service organization (CUSO), the credit union's officials, senior management employees, or their immediate family members may not receive any salary, commission, investment income, or other compensation from the CUSO, either directly or indirectly, or from any person being served through the CUSO. An official or senior management employee may assist in operating the CUSO if compensation from the CUSO is not involved. The CUSO may also reimburse the credit union for services provided by the individual if it does so within 120 days.

FCU OWNERSHIP OF FIXED ASSETS – PROHIBITED TRANSACTIONS

(NCUA Rules and Regulations § 701.36(d))

A federal credit union may not buy or lease premises (with the exception of an informal lease maturing in less than a year) from any of the following without a waiver from the NCUA:

- An official or senior management employee or immediate family member of such person;
- A corporation in which any of the above-named persons is an officer or director or has a stock interest of 10% or more; or
- A partnership LLC, or other entity in which any of the above-named persons is a general partner or a limited partner with an interest of 10% or more.

A credit union's officials and employment must conduct all transactions with business associates or family members that are not specifically prohibited above at arm's length and in the credit union's best interest.

FCU INVESTMENT ACTIVITIES – CONFLICTS OF INTEREST

(NCUA Rules and Regulations §§ 703.17)

A federal credit union's officials and senior management employees, and their immediate family members, may not receive anything of value in connection with its investment transactions. This prohibition also applies to any other employee, such as an investment officer, if the employee is directly involved in investments, unless the federal credit union's board of directors determines that the employee's involvement does not present a conflict of interest. This prohibition does not include compensation for employees.

A federal credit union's officials and employment must conduct all transactions with business associates or family members that are not specifically prohibited above at arm's length and in the federal credit union's best interest.

FCU INCIDENTAL POWERS

(NCUA Rules and Regulations §721.7)

What are the potential conflicts of interest for officials and employees when credit unions engage in activities approved under the NCUA's incidental powers rule?

[Although Wisconsin's state chartered credit unions are not subject to this rule, this discussion is still informative.]

Conflicts. No official, employee, or their immediate family member may receive any compensation or benefit, directly or indirectly, in connection with your engagement in an activity authorized under this part, except as otherwise provided below. This section does not apply if a conflicts of interest provision within another section of this chapter of the NCUA Rules and Regulations applies to a particular activity; in such case, the more specific conflicts of interest provision controls. For example: An official or employee that refers loan-related products offered by a third-party to a member, in connection with a loan made by you, is subject to the conflicts of interest provision in §701.21(c)(8) of the NCUA Rules and Regulations.

Permissible payments. This rule does not prohibit:

- Payment, by you, of salary to your employees;

- Payment, by you, of an incentive or bonus to an employee based on your overall financial performance;
- Payment, by you, of an incentive or bonus to an employee, other than a senior management employee or paid official, in connection with an activity authorized by this part, provided that your board of directors establishes written policies and internal controls for the incentive program and monitors compliance with such policies and controls at least annually; and
- Payment, by a person other than you, of any compensation or benefit to an employee, other than a senior management employee or paid official, in connection with an activity authorized by this part, provided that your board of directors establishes written policies and internal controls regarding third-party compensation and determines that the employee's involvement does not present a conflict of interest.

Business associates and family members. All transactions with business associates or family members not specifically prohibited above must be conducted at arm's length and in the interest of the credit union.

Definitions. For purposes of this rule, the following definitions apply.

- Senior management employee means your chief executive officer (typically, this individual holds the title of President or Treasurer/Manager), any assistant chief executive officers (e.g. Assistant President, Vice President, or Assistant Treasurer/Manager), and the chief financial officer (Comptroller).
- Official means any member of your board of directors, credit committee or supervisory committee.
- Immediate family member means a spouse or other family member living in the same household.

INSURANCE COMMISSIONS

(Wis. Stats. §186.36)

Any insurance agent who is an officer or employee of the credit union must pay any commission over to the credit union.

Chapter 58 of the Wisconsin Office of Credit Union regulations, which addressed “Sale of Credit Life and Health and Accident Insurance in Connection with Credit Union Loans,” was repealed in 2021.

PROHIBITED MEMBER BUSINESS LOANS

(Wis. Admin. Code DFI-CU 72.03)

Officers. A Wisconsin chartered credit union may not make “member business loans” to any of the following:

- The chief executive officer (typically the president, treasurer, or manager);
- Any assistant chief executive officer (e.g., assistant president, vice president, or assistant treasurer, or assistant manager);
- The chief financial officer (e.g., comptroller); or
- Any associated member or immediate family member of any of the above.

Equity agreements or joint ventures. A credit union cannot grant a member business loan if any additional income received by the credit union or its senior management employees is tied to the profit or sale of the business or commercial endeavor for which the loan is made.

Directors. A credit union cannot grant a member business loan to one of its directors unless the board of directors approves granting the loan and the director is recused from the decision-making process. For federal credit unions, this restriction applies to compensated directors only.

FCU MEMBER BUSINESS LOANS – PROHIBITED ACTIVITIES

(NCUA Rules & Regulations § 723.7)

NOTE: Although the NCUA rule says it applies to federally insured credit unions, that is not the case in Wisconsin. The NCUA has officially approved Wis. Admin. Code Ch. DFI-CU 72 as the member business loan rule for Wisconsin’s federally insured credit unions to follow, instead of the federal rule.

(a) *Ineligible borrowers.* A federally insured credit union may not grant a commercial loan to the following:

- (1) Any senior management employee directly or indirectly involved in the credit union's commercial loan underwriting, servicing, and collection process, and any of their immediate family members;
- (2) Any person meeting the definition of an associated borrower with respect to persons identified in paragraph (a)(1) of this section; or
- (3) Any compensated director, unless the federally insured credit union's board of directors approves granting the loan and the compensated director was recused from the board's decision making process.

(b) Equity agreements/joint ventures. A federally insured credit union may not grant a commercial loan if any additional income received by the federally insured credit union or its senior management employees is tied to the profit or sale of any business or commercial endeavor that benefits from the proceeds of the loan.

(c) Conflicts of interest.

Any third party used by a federally insured credit union to meet the requirements of this part must be independent from the commercial loan transaction and may not have a participation interest in a loan or an interest in any collateral securing a loan that the third party is responsible for reviewing, or an expectation of receiving compensation of any sort that is contingent on the closing of the loan, with the following exceptions:

- (1) A third party may provide a service to the federally insured credit union that is related to the transaction, such as loan servicing.
- (2) The third party may provide the requisite experience to a federally insured credit union and purchase a loan or a participation interest in a loan originated by the federally insured credit union that the third party reviewed.
- (3) A federally insured credit union may use the services of a credit union service organization that otherwise meets the requirements of §723.3(b)(3) of this rule even if the credit union service organization is not independent from the transaction, provided the federally insured credit union has a controlling financial interest in the credit union service organization as determined under GAAP.

LOANS AND LINES OF CREDIT TO OFFICIALS – NON-PREFERENTIAL TREATMENT

(NCUA Rules and Regulations §§ 701.21(d)(5), 741.203)

Any state or federal credit union official, immediate family member, or other person having a common ownership, investment, or other pecuniary interest in a business enterprise with an official or immediate family member may not obtain a loan or line of credit with preferential rates, terms, or conditions, or act as guarantor or endorser thereon.

- NCUA Opinion Letter: Preferential loan to an employee who also serves as a volunteer on the credit committee prohibited. Credit union employees may receive reduced loan rates, but the rates for officials must not be more favorable than comparable loan rates to other credit union members. April 18, 2006. [Available here](#).

NON-PREFERENTIAL LOAN TREATMENT FOR OFFICIALS

(Wis. Admin. Code Ch. DFI-CU 69)

For this rule, an "official" means any director, executive officer, credit committee member or internal auditor of a Wisconsin state-chartered credit union.

The interest rates, terms, and conditions of any loan made to an official or on which loan an official is a co-maker or guarantor, or of a loan made for the substantial benefit of any official, [may](#) not be more favorable than the rates, terms and conditions prevailing at that time for comparable loan transactions of any other member.

LOANS TO MEMBERS – PROHIBITED COMMISSIONS, FEES, OR OTHER COMPENSATION

(NCUA Rules and Regulations §§ 701.21(c)(8), 741.203)

No official or employee of a credit union (or immediate family member of an official or employee) may receive, directly or indirectly, any commission, fee, or other compensation in connection with any loan made by a federally chartered or federally-insured credit union.

However, very limited exceptions to the rule permit the credit union (*not* vendors) to pay:

- Salary to employees;
- An incentive or bonus to an employee based on the credit union's overall financial performance; and
- An incentive or bonus to an employee, other than a senior management employee, in connection with a loan or loans made by the credit union, *provided that* the board of directors of the credit union:
 - Establishes written policies and internal controls in connection with such incentive or bonus, and
 - Monitors compliance with such policies and controls at least annually.

Another exception to the rule permits receipt of compensation from a person outside a credit union by a volunteer official or non-senior-management employee of the credit union (or an immediate family member of a volunteer official or employee of the credit union) for a service or activity performed outside the credit union, *provided that* no referral has been made by the credit union or the official, employee, or family member. This reflects the reality that these individuals may have jobs outside the credit union in areas such as insurance or real estate, where customers of the outside business happen to choose to obtain loans from the credit union.

- NCUA Opinion Letter: Board member performing legal work for credit union and paid monthly retainer for services. is work in connection with a credit union loan and is impermissible under our lending regulation. NCUA opinion letter, October 21, 1999. [Available here.](#)
- NCUA Opinion Letter: A realtor who, from time to time, performs loan appraisals on federal credit union loans with the fee paid by the borrower, is prohibited from serving as a member of the federal credit union's education committee. August 7, 2001. [Available here.](#)
- NCUA Opinion Letter: A credit union asked whether a third party insurance vendor can pay incentives to the CU's loan officers and insurance staff for selling mechanical breakdown insurance contracts. CU employees cannot receive, directly or indirectly, any commission, fee, or other compensation in connection with a loan made by the CU unless one of the exceptions in the regulation applies in 12 C.F.R. §721.2(c). None of the exceptions, however, allow a third party to provide compensation to an CU's employees for performing credit union activities. November 4, 1998. [Available here.](#)
- NCUA Opinion Letter: Hiring a director who is an attorney as a part-time employee where his duties include collections on loans does not violate the loan compensation rule if he is paid only straight salary as a bona fide employee with no commission or extra fee or commission April 16, 2003. [Available here.](#)
- NCUA Opinion Letter: FCU volunteer director not barred from acting as seller's agent when the seller/member faces foreclosure by the first mortgagee and default on a home equity loan obtained from the FCU, if the director withdraws from deliberations and voting on related matters before the board.

The borrower's receipt of a loan from the credit union should be unconnected to his or her participation in the outside activity of the official. The NCUA Board adopted the exception so as not to discourage volunteers from serving on boards or interfere with their livelihoods. In this case, if the FCU does not compensate the director under FCU Bylaws Article VII, Section 1, she may receive a commission from an outside party for selling property secured by a loan made by the FCU, absent any steering of the borrower to the director's business interests. March 21, 2011. [Available here.](#)

- NCUA Opinion Letter: FCU employee, who serves as the Director of Lending, has a conflict of interest when she disapproves member loans and then refers them to a mortgage banker that also compensates her, March 21, 2011, even if she is not a senior management employee, since both the credit union and the employee seem to have a referral arrangement with the mortgage banker. Same result for a federally insured credit union. NCUA is also concerned that this referral arrangement may violate RESPA. [Available here.](#)
- NCUA Opinion Letter: Conflict of interest provision in the general lending regulation would not preclude a credit union from selling loans to a bank in which one of the credit union's directors owns approximately .5% of the outstanding shares in the bank stock, January 30, 2009. 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 loans. But this is a problem under the general conflict of interest provision in the bylaws. [Available here.](#)

- NCUA Opinion Letter: Director's ownership interest in companies that provide indirect lending services and through which the credit union has sold GAP insurance violates the conflict of interest provision in NCUA's lending rule, May 1, 2006. *Available here.*

For the purposes of this rule:

- *Compensation* includes non-monetary items, except those of nominal value.
- *Immediate family member* means a spouse or other family member living in the same household.
- *Loan* includes line of credit.
- *Official* means any member of the board of directors or a volunteer committee.
- *Person* means an individual or an organization.
- *Senior management employee* means the credit union's chief executive officer (typically, this individual holds the title of President or Treasurer/Manager), any assistant chief executive officers (e.g., Assistant President, Vice President, or Assistant Treasurer/Manager), and the chief financial officer (Comptroller).
- *Volunteer official* means an official of a credit union who does not receive compensation from the credit union solely for his or her service as an official.

The following chart may help clarify application of the rule.

**PROHIBITED COMMISSIONS, FEES, OR OTHER COMPENSATION
IN CONNECTION WITH ANY LOAN MADE BY A FEDERALLY INSURED CREDIT UNION**
(NCUA Rules and Regulations §§ 701.21(c)(8), 741.203. Other laws and regulations may also impose
limitations, such as those found in RESPA, appraisal rules, insurance rules, etc.)

General rule: Except as provided below, no official or employee of a credit union, or immediate family member (spouse or other family member living in same household) of an official or employee of a Federal credit union, may receive, directly or indirectly, any commission, fee, or other compensation in connection with any loan made by the credit union.

Type of Payment	Recipient of Payment		
	EMPLOYEE (other than senior management.)	SENIOR MANAGEMENT EMPLOYEE • CEO (e.g., Pres. or Treas./Mgr.), • Asst. CEOs (e.g., Asst. Pres., V.P., or Asst. Treas./Mgr.), • CFO (Comptroller)	OFFICIAL (member of the board of directors or a volunteer committee.)
Salary	Permitted, <i>if</i> paid by credit union.	Permitted, <i>if</i> paid by credit union.	PROHIBITED
Incentive or bonus based on the credit union's overall financial performance	Permitted, <i>if</i> paid by credit union	Permitted, <i>if</i> paid by credit union	PROHIBITED
Incentive or bonus in connection with a loan or loans made by the credit union	Permitted, <i>if</i> paid by the credit union, and <i>provided that</i> the board of directors of the credit union: • establishes written policies and internal controls in connection with such incentive or bonus, and • monitors compliance with such policies and controls at least annually.	PROHIBITED	PROHIBITED
Receipt of compensation, from a person outside the credit union, for a service or activity performed outside the credit union	Permitted, <i>provided that</i> no referral has been made by: • the credit union, • the employee, or • their immediate family member. Also permitted for immediate family members of the employee.	PROHIBITED	PROHIBITED, <i>except for:</i> • volunteer official (no compensation), and immediate family members, • provided that no referral has been made by the CU or official or family member.
Other commission, fee, or other compensation, whether paid by the credit union or any other party.	PROHIBITED	PROHIBITED	PROHIBITED

REG. Z LOAN ORIGINATOR COMPENSATION

(Regulation Z 12 CFR 1026.36)

In addition to complying with the NCUA rules that prohibit certain fees in connection with loans to members (explained in the previous section), all credit unions must also comply with Reg. Z's limits on loan originator compensation for closed-end mortgage loans secured by a dwelling.

The Reg. Z rules have three parts:

- No one (except a consumer directly) may pay compensation (directly or indirectly) to a mortgage broker or loan originator on a covered loan if the compensation is based on the loan's terms or conditions (other than the loan amount). Compensation records must be kept for two years after loan closing.
- Loan originators cannot receive compensation directly from a consumer and from others on the same transaction.
- Loan originators cannot steer a consumer to accept a mortgage loan that is not in the consumer's interest in order to increase the originator's compensation.

To comply with these rules, it is critical that a credit union analyze all of its closed-end mortgage lending to determine whether or when the credit union and its staff meet the regulation's definitions of "creditor," "loan originator," or "mortgage broker." The release explains what each term means. A credit union itself can be considered a loan originator in certain situations, and its employees may be loan originators, too.

See *ii Release No. B071* for details.

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Legal Affairs Department

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