

STATE OF FLORIDA
DEPARTMENT OF BANKING AND FINANCE
DIVISION OF BANKING

IN RE

FLORIDA-CHARTERED)
CREDIT UNIONS)
)
Lending Limits)
_____)

DBF B 1995-423 OGA
Administrative Proceeding
No. 3427-B-8\95
Docketed – 9/6/95

ORDER OF GENERAL APPLICATION

In the exercise of the power and authority vested in the Department of Banking and Finance (Department), pursuant to Sections 655.01 2(3) and 655.061, Florida Statutes, The Department hereby issues the Order of General Application regarding the lending limits of Florida-chartered credit unions.

FINDING OF FACT

1. The Department is authorized by Section 655.061, Florida Statutes, to issue an order of general application.
2. Section 107, The Federal Credit Union Act, establishes the legal lending limits for federal credit unions. The legal lending limit is ten percent of unimpaired capital and surplus of the credit union. The credit union's model by-laws defines unimpaired capital and surplus.
3. Section 107(5)(A)W, the Federal Credit Union Act, states: " loans must be approved by the credit committee or loans office, but no loan may be made to any member if, upon the making of that loan, the member would be indebted to the Federal credit union upon loans made to him in an aggregate amount which would exceed 10 per centum of the credit union's unimpaired capital and surplus.' Further, the credit union's model by-laws define unimpaired capital as the balance of paid-in-share accounts as of a set date, less any losses that may have been incurred for which there is no reserve or which have not been charged against undivided earnings. Also, surplus is defined as the credit balance of the undivided earnings account on such set date, after all losses have been provided for and net earnings or net losses have been added or deleted therefrom.

4. Further, Section, 701.21 (c)(5), National Credit Union Administration's Rules and Regulations, states: "Ten percent limit. No loans or line of credit advance may be made to any member if such loan or advance would cause the member to be indebted to the Federal Credit Union upon loans and advances made to the member in an aggregate amount exceeding 1 0% of the credit union's total unimpaired shares and surplus. In the case of member business loans as defined in Section 701.21(h)(1)(l), additional limitations apply as set forth in Section 701.21(h)(2)(ii)."

5. Section 657.038(3), Florida Statutes, establishes the legal lending limits for Florida-chartered credit unions, which limit total obligations of any one member to a maximum of 25 percent of equity of the credit union, and Section 657.038(2), limits unsecured obligations of any one member to a maximum of 15 percent of equity of the credit union. Further, Section 657.002(9), Florida Statutes, defines equity as: 'undivided earnings, reserves, and allowance for loan losses.' A smaller or de novo credit union, which has not generated equity would be limited to the statutory minimum of \$1,000.00 per loan. The Federal credit union regulations allow for ten percent of unimpaired shares and surplus, which would be a broader pool of funds thus allowing larger, more profitable loans.

6. Section 655.061, Florida Statutes, provides that:

Subject to the prior approval of the department pursuant to rule or order of general application, state financial institutions subject to the financial institutions codes... are entitled to all privileges and protections granted federally chartered or regulated financial institutions of the same type under federal statutes and regulations... in issuing an order or rule under this section, the department shall consider the importance of maintaining a competitive dual system of financial institutions and whether such an order or rule is in the public interest.

CONCLUSIONS OF LAW

7. It is in the public interest and important to the maintenance of the competitive dual system of regulation for de novo Florida-chartered credit unions to exercise the same powers as a de novo Federal credit union operating in Florida with reference to lending limitations to individual members.

ORDER

It is therefore ordered that the lending restrictions of Section 657.038(2) and (3), Florida Statutes, shall not apply to loans or line of credit advances made for Florida chartered credit unions which have been opened for less than five years;

PROVIDED, that the loans and line of credit advances meet the other criteria set forth in Section 657.038, Florida Statutes and rule 3C-30.013, Florida Administrative Code.

DONE AND ORDERED this 6th day of September, 1995, in Tallahassee, Florida.

ROBERT F. MILLIGAN, Comptroller
and Head of the Department of Banking
and Finance