

**STATE OF FLORIDA
OFFICE OF FINANCIAL REGULATION**

6/6/07
nk

IN RE:

**USE OF SPLIT DOLLAR LIFE
INSURANCE PLANS IN EMPLOYEE
BENEFIT PROGRAMS BY FLORIDA
STATE-CHARTERED CREDIT UNIONS**

Administrative Proceeding
OFR No. 0303-B-5/06

ORDER OF GENERAL APPLICATION

In exercise of the powers and authority vested in it pursuant to Sections 655.012(1) and 655.061, Florida Statutes (2006), the Office of Financial Regulation (“OFR”) finds that:

1. Split dollar life insurance (“SDLI”) plans are commonly used by employers as part of employee compensation and benefit programs to recruit and retain qualified and experienced executive officers. SDLI plans for financial institutions are generally structured as “collateral assignment” employer-employee insurance arrangements in which a life insurance policy is purchased on an employee’s life and owned by the employee. The policy premiums are typically paid directly by the employer and treated as a “no interest” loan to the employee. For federal income tax purposes, the loan is considered to bear interest at the “applicable federal rate” specified by the Internal Revenue Service, and the employee either must pay the amount of that interest charge annually to the employer or the employee will be taxed on that mandated interest amount as additional personal income. The loan principal is later repaid to the employer from the assigned collateral of the life insurance policy's cash value or proceeds at the time of the employee's retirement or death, with the balance of the cash value or proceeds going to the employee or other designated beneficiary. Thus, the employee and the employer "split" both the costs and the benefits of a permanent life insurance policy.

2. The National Credit Union Administration (“NCUA”) has authorized Federal credit unions to use SDLI plans in employee benefit programs in accordance with NCUA Rule 701.19, which is applicable only to Federal credit unions. NCUA Legal Opinion Letter No. 05-0117 (January 13, 2005); 12 C.F.R. § 701.19 (2007). The NCUA has further noted that the “no interest” loan features of such plans are not preferential loans to credit union officials that are otherwise prohibited per NCUA Rule 701.21(d)(5), which applies to all federally insured credit unions, whether federal or state chartered, per NCUA Rule 741.203(a). NCUA Legal Opinion Letter No. 06-0924 (January 19, 2007); 12 C.F.R. §§ 701.21, 741.203.

3. Section 657.039, Florida Statutes, governs Florida state-chartered credit unions regarding loans and extensions of credit made to executive officers, directors, credit managers, and members of the supervisory, audit, and credit committees. Subsection (1)(a) of the statute provides that loans made to the individuals identified above must comply with all requirements under Chapter 657, Florida Statutes, with respect to credit extended to other borrowers, and can not be on terms more favorable than those extended to other borrowers. Subsection (4) of the statute also specifically states: “The limitations stated in this section shall not be enlarged by the provision of any other section of this chapter.” The provisions of Section 657.039 specifically supersede the application of any general Florida corporate law power that would otherwise be available to a credit union to offer or pay employee benefits through the application of Section 657.031, Florida Statutes. Since an SDLI plan’s “no interest loan” to an executive officer would be made on more favorable terms than a credit union member would receive in any loan or extension of credit, the SDLI plan’s loan feature is prohibited under Florida law. Therefore, SDLI plans are not permissible for use by Florida state-chartered credit unions.

4. Florida state-chartered credit unions are placed at a competitive disadvantage with Federal credit unions in recruiting and retaining executive officers and other employees in that they are not permitted to use SDLI plans as part of their employee compensation and benefit programs.

5. The OFR is specifically authorized to issue an order of general application to grant state financial institutions the necessary powers and privileges to maintain competitive equality with federal financial institutions, when such an order is in the public interest. Section 655.061, Florida Statutes, provides that (with emphasis added):

Subject to the prior approval of the office pursuant to commission rule or office order of general application, state financial institutions subject to the financial institutions codes may make any loan or investment or exercise any power which they could make or exercise if incorporated or operating in this state as a federally chartered or regulated financial institution of the same type and are entitled to all privileges and protections granted federally chartered or regulated financial institutions of the same type under federal statutes and regulations. The provisions of this section take precedence over, and must be given effect over, any other general or specific provisions of the financial institutions codes to the contrary. In issuing an order or rule under this section, the office or commission 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.

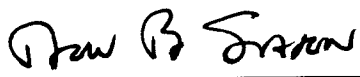
6. The OFR has therefore determined that it is in the public interest and important to the maintenance of the competitive dual system of regulation that Florida state-chartered credit unions are permitted to exercise the same powers as a Federal credit union operating in Florida to use split dollar life insurance plans as part of an employee benefit program.

Upon consideration of the foregoing, it is therefore **ORDERED**:

That Florida state-chartered credit unions, notwithstanding the restrictions of Section 657.039(1)(a), Florida Statutes (stating that any loan or extension of credit made to executive

officers be on terms not more favorable than those extended to other borrowers), may use split dollar life insurance plans (including those “collateral assignment” plans, where the credit union pays the premium on a policy owned by the employee and the employee pledges the policy to the credit union to secure repayment of the premium payments) as part of their employee compensation and benefit programs, providing that such use is reasonable with regards to the total compensation and benefits provided to any employee, does not create an unsafe or unsound practice or condition for the credit union, and complies with all other applicable provisions of Florida law, including Chapter 657 and all other remaining provisions in Section 657.039, and the NCUA rules and guidance that are applicable to comparable plans permissible for Federal credit unions operating in Florida.

DONE AND ORDERED this 6th day of June, 2007, in Tallahassee, Leon County, Florida.



Don B. Saxon, Commissioner
Office of Financial Regulation