May 20, 2004

James W. Hammersley, Director
Loan Programs Division
U.S. Small Business Administration
409 3rd Street, SW
Suite 8300
Washington, DC 20416

Re: Small Business Administration (SBA) Loans Originated by Federal Credit Unions.

Dear Mr. Hammersley:

You have asked if federal credit unions (FCUs) may make business loans under the terms and conditions of the SBA 7(a) lending program. The Federal Credit Union Act (the Act) and our lending regulations permit FCUs to make member business loans (MBLs)[1] under the terms and conditions of a government program that secures the loans with insurance or a guarantee if the program's terms and conditions are consistent with our MBL regulation. FCUs may make business loans under the terms and conditions of the SBA 7(a) program except for certain collateral requirements in our MBL regulation with which FCUs must currently comply.

The Act and our lending regulations generally authorize FCUs to make loans to members, including loans for a business purpose, subject to certain limitations. 12 U.S.C. §1757(5); 12 C.F.R. §701.21 & Part 723. The Act's limitations include maturity limits based on loan type, a usury ceiling, and a prohibition against prepayment penalties. Id. NCUA's MBL rule has additional limitations, such as collateral and equity requirements. 12 C.F.R. Part 723.

The Act provides an exception to its limitations if a loan is insured or guaranteed by a government agency and this exception is incorporated in NCUA's lending regulations. The Act provides:

> [A] loan secured by the insurance or guarantee of, or with advance commitment to purchase the loan by, the Federal Government, a State government or any agency of either may be made for the maturity and under the terms and conditions specified in the law under which such insurance, guarantee, or commitment is provided . . . .

[1] An MBL is generally defined as any loan where the borrower uses the proceeds for a commercial, corporate, business investment property or venture, or agricultural purpose. 12 U.S.C. §1757a(c)(1); 12 C.F.R. §723.1(a). Loans that are made for a business purpose but are excepted from the MBL definition, such as loans fully guaranteed by a federal or state agency, are not subject to NCUA's MBL rule, Part 723. 12 C.F.R. §723.1(b).

12 U.S.C. §1757(5)(A)(iii). NCUA's general lending rule mirrors this provision of the Act[2] and states that these guaranteed and insured loans "may be made for the maturity and under the terms and conditions, including rate of interest, specified in the law, regulations or program under which the insurance, guarantee or commitment is provided." 12 C.F.R. §701.21(e).

Our MBL rule also incorporates this exception for government guaranteed and insured loan programs:

> The provisions of §701.21(a) through (g) [thus, incorporating §701.21(e)] of this chapter apply to member business loans granted by federal credit unions **to the extent they are consistent with this part.**

12 C.F.R. §723.4 (emphasis added). Thus, the MBL rule permits FCUs to make MBLs under government programs, as authorized under §701.21(e), to the extent the terms and conditions under which the guarantee or insurance is provided are consistent with Part 723. 12 C.F.R. §723.4. As the MBL rule does not address maturity or interest rate limitations, FCUs may rely on the exception provided in §701.21(e) and make MBLs as part of a government insured or guaranteed loan program for the maturity and interest rates permitted under the program.[3] We note that, for business loans that are exempt from the MBL rule, for example, those for $50,000 or less, the exception in the general lending rule permits FCUs to make business loans as part of a government guaranteed loan program under all of the terms and conditions required or permitted by the program. 12 C.F.R. §§701.21(e), 723.1(b).

The SBA is a government agency offering guaranteed loan programs to which the foregoing exception applies. It is an independent agency in the executive branch of the federal government assisting small business concerns in various ways including

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[2] NCUA has long recognized that government loan guarantee and insurance programs "encourage lending for certain social or economic objectives. NCUA believes that Congress did not intend for Federal credit unions to be precluded from participating in government insured or guaranteed loan programs simply because of rising interest rates." Interpretive Ruling and Policy Statement (IRPS) 80-10 (Withdrawn). IRPS 80-10 interpreted Section 107(5)(A)(iii) of the Act and was the predecessor to §701.21(e). The IRPS permitted FCUs to charge interest rates in excess of the statutory usury limit if a higher rate was either expressly required or expressly permitted by the laws and regulations governing the insured or guaranteed loan program. NCUA withdrew IRPS 80-10 in 1997 as unnecessary since the guidance is restated in §701.21(e). 62 Fed. Reg. 50245, 50246 (Sept. 25, 1997).

[3] Prior legal opinions have recognized the application of this exception to federal and state guarantee programs. See attached OGC Legal Opinions 99-0437, dated Aug. 10, 1999; 89-0714, dated Sept. 12, 1989; Letter from Timothy P. McCollum to Peg Kamens, dated Sept. 16, 1988.

providing financial assistance through guarantees of portions of business loans made by lenders, including credit unions. The SBA 7(a) program provides loan guarantees from 50% to 85%, depending on the size of the loan, and a maximum loan amount of two million dollars, with a maximum loan maturity of 25 years for real estate and certain equipment loans. 13 C.F.R. §120.212. We also understand that currently the 7(a) program permits a lender to charge a maximum interest rate of the prime rate plus 4.75 percent, depending on the loan size and maturity term. See 13 C.F.R. §§120.213-.215. Based on our analysis, FCUs participating in the 7(a) program may make loans with the interest and maturity terms permitted under the program. Our analysis would be the same for other similar SBA programs, such as the Certified Development Company (504) Loan Program.

Prepayment Penalties and Subsidy Recoupment Fees

The SBA's subsidy recoupment fee, which is part of the 7(a) program, does not appear to be a prepayment penalty and an FCU may collect it but we also conclude that, even if the fee were a prepayment penalty, an FCU could charge it. While an FCU generally cannot charge a prepayment penalty on a loan, it can if it is part of government guaranteed or insured loan program. 12 U.S.C. §1757(5)(A)(iii) and (viii); 12 C.F.R. §§701.21(c)(6) and (e), 723.4. We note that, unlike other SBA programs, the 7(a) program specifically prohibits a lender from charging a fee for full or partial prepayment of a loan. 13 C.F.R. §120.221(e). The 7(a) program does provide for a subsidy recoupment fee that borrowers pay to the SBA for the prepayment of loans with a maturity of 15 years or more if a borrower makes a voluntary prepayment within the first three years of the loan. 15 U.S.C. §636(a)(4)(C); 13 C.F.R. §120.223. The subsidy recoupment fee is in the nature of a service charge imposed as a condition of SBA's guarantee that a lender forwards directly to the SBA when a borrower prepays the loan without obtaining any benefit from the fee.

Collateral and Loan-To-Value (LTV) Requirements

An FCU may not rely on the exception for government guaranteed loans to avoid the MBL rule's collateral requirements because the MBL rule expressly sets a borrower equity requirement for construction and development MBLs and maximum LTV ratios. 12 C.F.R. §§723.3(b), 723.7. If the SBA guarantees an MBL, however, the MBL rule's general LTV requirements are relaxed. 12 C.F.R. §723.7(a)(1). In that case, an FCU may exceed the rule's general 80% maximum LTV ratio requirement, up to 95%, because the MBL is guaranteed by an agency of the federal government. Id. It appears that an SBA 7(a) guarantee on a secured MBL provides an additional safeguard to protect the FCU from undue risk as contemplated by the rule's general LTV

requirement. Alternatively, an FCU may seek a waiver from the appropriate NCUA regional office of the LTV requirements. 12 C.F.R. §723.10. We also note that the MBL rule provides exceptions from the general collateral requirements for unsecured loans and certain vehicle MBLs. 12 C.F.R. §723.7(c)-(e).

NCUA is currently considering revisions to Part 723 to align the rule with SBA's lending programs, as noted in the preamble to NCUA's most recent MBL rule amendment. 68 Fed. Reg. 56537, 56538 (Oct. 1, 2003).

Federally Insured State-chartered Credit Unions (FISCUs)

NCUA's MBL rule applies to FISCUs unless they operate under one of seven states' MBL rules the NCUA Board has exempted from the federal rule. We note the statutory exception provided in the Act for FCUs does not apply to FISCUs. 12 U.S.C. §1757(5)(A)(iii). State law will determine whether an FISCU may make loans under the terms and conditions of a government guarantee program to the extent they are consistent with NCUA's MBL rule.

We believe many FCUs would greatly benefit from participating in programs like the SBA Basic 7(a) Loan Program, however, they can create some additional safety and soundness concerns. These loans may have more risk and many FCUs would not make these kinds of loans without the security the guarantee provides. NCUA is aware that SBA guarantee programs generally place stringent requirements on participating lenders to comply with program requirements or face losing the guarantee. Some of these requirements can be complex and compliance may be difficult for some FCUs. Accordingly, NCUA recommends that, before an FCU becomes a participating lender, it makes certain that it fully understands the terms of the program and has procedures in place to assure its compliance with all program requirements. See 12 C.F.R. §723.5.

Sincerely,

Sheila A. Albin
Associate General Counsel

OGC/CJL/SAA:bhs
03-0911
Enclosures

August 10, 1999

Ralph Goodwin, President/CEO
Grant-Baker Federal Credit Union
650 West Main Street
John Day, Oregon 97845

Re: Maturity Limit on Member Business Loans.

Dear Mr. Goodwin:

You have asked whether loans secured by agricultural real estate that includes the borrower's personal residence are subject to the 12-year maturity limit for member business loans. You note that 90% of the loan amount may be sold to the secondary market or guaranteed by the Farm Service Agency of the Department of Agriculture. You have asked whether those facts affect classification of the loans as business loans subject to a 12-year maturity limit.

We first note that the maturity limit for all federal credit union loans is 12 years unless covered by an exception. 12 U.S.C. §1757(5). Exceptions from the 12-year maturity limit include long-term residential mortgages that have a 40-year maturity limit, certain other residential loans that have a 20-year maturity limit and lines of credit that have no maturity limit. 12 C.F.R. §§701.21(g), 701.21(f), 701.21(c)(4).

Your specific questions are discussed more fully below. Briefly summarized, the purpose of a loan is generally the determining factor in deciding whether a loan is defined as a member business loan. A loan on property that combines agricultural and residential components will generally be treated as a business loan, assuming that the loan is made for a business purpose. However, the maturity limit for a loan guaranteed by a federal government agency may be as provided by the law under which the guarantee is made.

First, you have asked, if a credit union originates a $300,000 loan secured by agricultural real estate that includes the member's personal residence and then sells $270,000 (90%) to the secondary market, whether the remaining $30,000 is a member business loan subject to the 12-year maturity limit. The purpose of the loan is the determining factor in deciding whether it will be considered a member business loan. NCUA's regulation defines a member business loan as:

> [A]ny loan, line of credit, or letter of credit (including any unfunded commitments) where the borrower uses the proceeds for the following purposes: (1) Commercial; (2) Corporate; (3) Other business investment property or venture; or (4) Agricultural.

VOL I, C, 20 - member business Loans

12 C.F.R. §723.1(a). Loans fully secured by a lien on a 1 to 4 family dwelling that is the member's primary residence and loans under $50,000 are exempt from the member business loan requirements. 12 C.F.R. §723.1(b). A loan on property that is secured by real estate that combines agricultural and residential uses will generally be treated as a business loan if the loan is made for a business purpose; however, the determination will depend on the specific facts in each case. A loan is classified at the time the credit union originates the loan. If the loan is classified as a business loan, it will have a maturity limit of 12 years and that maturity limit will apply to the remainder of the loan, even if a portion of the loan is sold leaving $50,000 or less on the credit union's books. In your example, the remaining $30,000 would have a 12-year maturity limit.

Second, you have asked whether a credit union that makes a loan on agricultural property, that includes the member's residence and is 90% guaranteed by the Farm Service Agency, USDA, can have a maturity greater than 12 years. This type of loan can have a maturity limit in excess of 12 years. The Federal Credit Union Act states:

> [A] loan secured by the insurance or guarantee of, or with advance commitment to purchase the loan by, the Federal Government, a State government or any agency of either may be made for the maturity and under the terms and conditions specified in the law under which such insurance, guarantee, or commitment is provided.

12 U.S.C. §1757(5)(A)(iii). Therefore, if the Farm Service Agency is guaranteeing the loan, the maturity can be greater than 12 years, as long as the maturity is consistent with the terms and conditions of the guarantee. This provision is reflected in our member business loan regulation that exempts loans guaranteed or insured by a federal agency from the definition of a member business loan. 12 C.F.R. §723.1(b)(4). However, if a loan is not fully guaranteed, it will be considered a business loan subject to the limitations of the member business loan regulation if the amount of the loan that is not guaranteed exceeds $50,000. See 64 Fed. Reg. 28721,28722 (May 27, 1999).

Sincerely,

Sheila A. Albin
Associate General Counsel

GC/MJMcK:bhs
SSIC 3501
99-0437

NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

September 12, 1989

Office of General Counsel

GC\RRD:sg
SSIC 4650
89-0714

John W. Millazzo, President & CEO
Campus Federal Credit Union
P. O. Box 16049A
Baton Rouge, LA 70893

Re: State Guaranteed Student Loans (Your July 3, 1989, Letter)

Dear Mr. Millazzo:

Your letter to Chairman Jepsen has been referred to this Office for a reply. We have reviewed the correspondence between Campus Federal Credit Union and NCUA Region III concerning sale of excess computer operating capacity, student loans, and loans to fraternal organizations. We hope the information and guidance below will assist your Credit Union in serving your members.

EXCESS COMPUTER OPERATING CAPACITY

Background

Campus Federal Credit Union ("Campus FCU") purchased equipment for share draft processing. Campus FCU's data processing requirements utilize about 20% of the equipment's capacity. The Campus board of directors would like to sell some of this excess capacity to other credit unions. The board questioned whether a credit union service corporation ("CUSO") should be formed in order to offer the service.

Analysis

Campus FCU may offer this service directly to others or through a CUSO. Section 701.26 of the NCUA's Rules and Regulations (12 C.F.R. §701.26) permits Federal credit unions ("FCU's") to

Vol. VII

sell data processing capacity, in excess of their immediate needs, to other credit unions. Enclosed is a letter dated April 13, 1987, on the subject. In general, an FCU may sell its data processing capacity in excess of its own immediate needs, but it may not be in the business of selling data processing. Please note the case of National Retailer Corp. v. Valley National Bank, 411 F. Supp. 308 (D. Ariz. 1976) aff'd, 604 F. 2d 32 (9th Cir. 1979) which held that a bank could not market or offer data processing services to the general public. The court held that such service was not within the incidental powers of a national bank.

A CUSO could be formed to offer data processing services. Section 701.27(e)(5)(i) of the NCUA Rules and Regulations (12 C.F.R. §701.27(e)(5)(i)) lists the permissible operational activities for CUSO's. "Data processing" is among the listed activities. CUSO's may provide services to other credit unions pursuant to Section 701.27(d)(4) of the CUSO regulation. Of course, an FCU investing in a CUSO must comply with all of the requirements of Section 701.27.

STUDENT LOANS

Background

Campus FCU offers guaranteed student loans to its members. Campus FCU is finding itself at a disadvantage when competing with other financial institutions because of the requirement that students receiving loans must be members of the credit union. Louisiana State University ("LSU") financial aid officials are reluctant to use Campus FCU as its student loan funding institution because all student loan applicants are not members of Campus FCU.

Analysis

Section 107(5) of the FCU Act (12 U.S.C. §1757(5)) is quite explicit when it limits an FCU's loan making authority "to members of the FCU, other credit unions, and credit union organizations." As you note, this limits Campus FCU's student loan activity to members. We are aware of some FCU's which pay a member's initial share in order for the person to become a member of the FCU. It is our opinion that such payments are a permissible promotional activity. If all students on the LSU campus are within your field of membership, any LSU student loan applicant could become a member of the FCU with the FCU paying the initial membership share.

LOANS TO FRATERNAL ORGANIZATIONS

Background

You requested guidance concerning loans to fraternal organizations organized at LSU. The loans are used for construction or purchase of fraternity or sorority housing. The NCUA examiner classified these loans as illegal because the loans were to nonnatural persons in excess of their shareholdings in the credit union. These loans also carried the endorsement of alumni members. In addition, the loans are guaranteed by the State of Louisiana through LSU. LSU will guarantee these loans up to 75% of the cost of construction or purchase amount. In most cases, the national fraternal organizations will provide additional guarantees.

Analysis

Government Guaranteed or Insured Loans

Section 107(5)(A)(iii) of the FCU Act (12 U.S.C. §1757(5)(A)(iii)) provides that an FCU may make:

> a loan secured by the insurance or guarantee of, or with advance commitment to purchase the loan by, the Federal Government, a State government or any agency of either may be made for the maturity and under the terms and conditions specified in the law under which such insurance, guarantee, or commitment is provided;

Section 701.21(e) of the NCUA's Rules and Regulations (12 C.F.R. §701.21(e)) mirrors this Section of the FCU Act and also clarifies that the FCU may make such loans at the interest rate provided in the program.

Using this authority, Campus FCU may extend loans to member organizations for the purchase or construction of fraternity and sorority houses under the terms and conditions (maturity and loan interest rate) specified by the State of Louisiana for such loans. Your letter indicated that such loans were guaranteed in amounts up to 75% of the cost of construction or purchase price. This indicates that some loans could carry less than a 75% guarantee. The fact that some portion of these loans are insured or guaranteed by the State of Louisiana does not exempt Campus FCU from following sound business practices in extending such

loans. Campus FCU loans which carry less than a full government guarantee\insurance as to principal and interest are subject to safety and soundness concerns of the NCUA Regional Director and the NCUA Office of Examination and Insurance.

Classification as Business Loans

Section 701.21(h)(2)(i) of the NCUA's Rules and Regulations (12 C.F.R. §701.21(h)(2)(i)) provides, in part:

> The board of directors must adopt specific business loan policies and review them at least annually. The policies shall, at a minimum, address the following:
>
> * * *
>
> (D) Maximum amount of credit union assets, in relation to reserves, that will be invested in a given category or type of business loan.

Section 701.21(h)(1)(i)(D) provides that the following shall not be considered a business loan:

> (D) A loan, the repayment of which is fully insured or guaranteed, or where there is an advance commitment to purchase in full by, any agency of the Federal government or of a state or any of its political subdivisions.

Section 701.21(h)(2)(ii) provides:

> Loans to One Borrower. Unless a greater amount is approved by the NCUA Board, the aggregate amount of outstanding member business loans to any one member or group of associated members shall not exceed 20% of the credit union's reserves. If any portion of a member business loan is fully . . . insured or guaranteed by, or subject to an advance commitment to purchase by, any agency of the Federal Government or of a state or any of its political subdivisions, such portion shall not be calculated in determining the 20% limitation.

Unless such loans are fully insured or guaranteed as to principal and interest, they will be considered member business loans, and the uninsured\nonguaranteed portion must be considered in computing the 20% limitation on business loans provided in Section 701.21(h)(2)(ii).

Your letter indicated that the State of Louisiana, through the LSU, will guarantee up to 75% of the cost of construction or purchase price of on-campus fraternity and sorority houses. The portion not covered by a government guarantee must be considered in calculating the 20% business loan limitation.

Nonnatural Person Lending Limit

Article XII, Section 1, of the Standard FCU Bylaws provides:

* * *

> Loans to a member other than a natural person shall not be in excess of its shareholdings in this credit union.

The fact that a portion of loans may be guaranteed by LSU has no effect on this bylaw requirement.

A standard bylaw amendment to Article XII, Section 1, permits greater flexibility by providing:

* * *

> Loans to a member other than a natural person shall not be in excess of its shareholdings in this credit union, unless the loan is made jointly to one or more natural person members and a business organization in which they have a majority interest, or if the nonnatural person is an association, the loan is made jointly to a majority of the members of the association and to the association in its own right.

We recently approved a nonstandard bylaw amendment which provides somewhat more flexibility. The nonstandard bylaw provides:

* * *

Loans to a member other than a natural person shall not be in excess of its shareholdings in this credit union, unless the loan is made jointly to one or more natural person members and a business organization in which they have majority interest, or if the nonnatural person is an association or professional organization made up of persons who are within the field of membership of this credit union, the loan shall be approved by the board of directors of such organization. The note and other legal documents evidencing the loan shall be signed on behalf of the organization by all the members of the board of directors of such organization.

Your letter to Region III (Atlanta) indicated that the sorority and fraternal organizations and LSU alumni groups are eligible for membership in Campus FCU and that individual members may be willing to co-sign on the loans. These two bylaw amendments may assist you in the loans in question. If you wish to adopt the nonstandard amendment, it must be submitted to your NCUA Regional Office for approval.

Sincerely,

Hattie M. Ulan

HATTIE M. ULAN
Assistant General Counsel

Enclosures

cc: Regional Director, Region III (Atlanta)

GC-RD-89
4650

NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

September 16, 1988

Office of General Counsel

Peg Kamens, Esq.
National Federation of Community Development Credit Unions
29 St. John St., Suite 1603
New York, New York 10038

Re: Loans to Housing Cooperatives (Your June 6, 1988, Letter)

Dear Ms. Kamens:

You have asked: (1) whether a Federal credit union ("FCU") may grant a loan to a member secured by an apartment with over four units for a term of twelve years or less; (2) whether an FCU may grant such a loan for a term of more than twelve years if the loan is insured or guaranteed by a state, state agency, or state political subdivision; (3) if so, whether such an insured loan would be treated as a member business loan; and (4) if so, how the amount of such a loan would be included in computing the 20-percent-of-reserves limitation on business loans to one person.

An FCU may generally extend a loan to a member secured by apartments with over four units so long as the term does not exceed twelve years. Such a loan can exceed a twelve year term if at least partly insured or guaranteed by "the Federal Government, a State government, or any agency of either." Unless such a loan is fully insured or guarantee as to principal and interest, it will be considered a member business loan, and the uninsured portion must be considered in computing the 20 percent limitation. Please note, however, that all loans made to nonnatural person members such as a housing cooperative are limited to the shares that person has in the FCU, unless the FCU has adopted an appropriate bylaw amendment and the loan is also made to a majority of the business's or association's interest holders.

VOL. I Part C(19) Guaranteed Loans & Loans

BACKGROUND

Your organization is assisting New York member FCU's in extending loans for low income housing. The FCU's plan to make the loans to member "non-profit groups and tenant cooperatives," which will use the funds to purchase apartment buildings -- generally with six to twenty units. Repayment of the loans will be insured or guaranteed up to 75 percent by the State of New York Mortgage Agency ("SONYMA"). You have stated that SONYMA is a governmental agency [N.Y. Pub. Auth. Law §2402 (McKinney)], created to provide mortgage insurance for the purchase of low-income housing in New York City.

GENERAL MATURITY LIMIT FOR FCU LOANS

Section 107(5) of the FCU Act [12 U.S.C. §1757(5)] empowers an FCU "to make loans, the maturities of which shall not exceed twelve years except as otherwise provided herein ...." Section 701.21(c)(4) of NCUA's Rules and Regulations [12 C.F.R. §701.21(c)(4)] provides that as a "[g]eneral [r]ule .... [t]he maturity of a loan to a member may not exceed 12 years." An FCU can therefore make up to 12 year term loans for the purchase of apartment buildings with more than four units.

MATURITY LIMIT ON STATE-GUARANTEED LOANS

Section 107(5)(A)(iii) of the FCU Act [12 U.S.C. 1757(A)(iii)] provides an FCU may make:

> a loan secured by the insurance or guarantee of, or with advance commitment to purchase the loan by, the Federal Government, a State government or any agency of either may be made or the maturity and under the terms and conditions specified in the law under which such insurance, guarantee, or commitment is provided ....

Section 701.21(e) of NCUA's Rules and Regulations [12 C.F.R. 701.21(e)] tracks the statute:

> A loan which is secured by the insurance or guarantee of, or with an advance commitment to purchase the loan by, the Federal Government, a State government, or

> any agency of either, may be made for the maturity and under the terms and conditions, including rate of interest, specified in the law, regulations or program under which the insurance, guarantee or commitment is provided.

You have stated that SONYMA is a "State agency." Therefore, an FCU may make a loan to a member for purchase of an apartment with more than four units for a term longer than twelve years if repayment is guaranteed in part by SONYMA and if the "terms and conditions ... specified in the law, regulations or program under which the insurance, guarantee or commitment is provided" permit.

CLASSIFICATION AS A BUSINESS LOAN

Section 701.21(h)(1)(i) of NCUA's Rules and Regulation [12 C.F.R. §701.21(h)(1)(i)] defines "member business loan" as:

> any loan, line of credit or letter of credit, the proceeds of which will be used for a commercial, corporate, business, or agricultural purpose, except .....
>
> (D) A loan, the repayment of which is fully insured or fully guaranteed by, or where there is an advance commitment to purchase in full by, any agency of the Federal Government or of a state or any of its political subdivisions.

Section 701.21(h)(2)(ii) of the Rules and Regulations [12 C.F.R. 701.21(h)(2)(ii)] provides:

> Unless a greater amount is approved by the NCUA Board, the aggregate amount of outstanding member business loans to any one member or group of associated members shall not exceed 20% of the credit union's reserves. If any portion of a member business loan is fully ... insured or guaranteed by, or subject to an advance commitment to purchase by, any agency of the Federal Government or of a state or any of its political subdivisions,

> such portion shall not be calculated in determing the 20% limit.

The FCU's you advise plan to loan directly to "non-profit groups and tenant cooperatives." A loan made to one of these groups as an entity (as opposed to loans made to individuals within the entity to purchase a unit in an apartment or shares in a cooperative corporation) are "commercial, corporate, [or] business" loans. Since the loans are not "fully insured or fully guaranteed" by SONYMA, they are subject to the member business loan regulation. However, the portion of the loan that is insured is excluded from calculation of the 20 percent limitation.

NON-NATURAL PERSON LENDING LIMIT

Article XII, Section 1, of the Federal Credit Union Bylaws provides:

> Loans to a member other than a natural person shall not be in excess of its shareholdings in this credit union.

A standard bylaw amendment to Article XII, Section 1, permits slightly greater flexibility:

> Loans to a member other than a natural person shall not be in excess of its shareholdings in this credit union, unless the loan is made jointly to one or more natural person members and a business organization in which they have a majority interest, or if the nonnatural person is an association, the loan is made jointly to a majority or the members of the association and to the association in its own right.

The net effect of this bylaw provision, if adopted, is to limit loans to an entity: (a) to the entity's shares in the

FCU; or (b) to joint loans to the entity and those natural persons having a majority interest in the entity.

Sincerely,

TIMOTHY P. McCOLLUM
Assistant General Counsel

RD:sg