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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.

FOIA
Vol I Part C (17) Guaranteed Insured 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 determining 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:

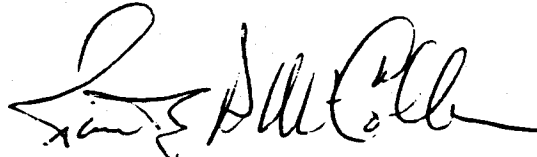
Loans to a member other than a natural person shall not be in excess of its shareholdings in this credit union, unless the loan is made jointly to one or more natural person members and a business organization in which they have a majority interest, or if the nonnatural person is an association, the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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy P. McCollum". The signature is fluid and cursive, with a long horizontal stroke at the end.

TIMOTHY P. MCCOLLUM
Assistant General Counsel

RD:sg