NATIONAL CREDIT UNION ADMINISTRATION
WASHINGTON, D.C. 20456

March 17, 1992

Allen M. Upchurch, Jr.,
Vice President
SRP Federal Credit Union
1920 Whiskey Road South
Aiken, South Carolina 29803

Re: **Legality of Requirement that Loan Co-Signers Be Credit Union Members** (Your January 10, 19912, Letter)

Dear Mr. Upchurch:

This is a follow up to our letter of February 20, 1992, regarding your questions about SRP Credit Union's policy of limiting co-signers or co-makers on loans to members of the credit union. When we responded to your January 10, 1992, letter, we were under the impression, based on your letterhead, that SRP was a state-chartered credit union. For that reason, we stated that our analysis of the legality of a requirement that loan co-signers be credit union members did not apply to SRP and was for information only. Our Region III Office has since advised us that SRP recently converted to a federal charter. Therefore, the analysis in our earlier letter is applicable to SRP.

Our previous letter did not address your question about the effect of Regulation B on SRP's loan policy, again because we believed SRP to be a state-chartered credit union. Our analysis of the Regulation B issue follows.

Under the Federal Credit Union Act, 12 U.S.C. 1757(5), federal credit unions ("FCUs") may only make loans to their members. Both the Equal Credit Opportunity Act ("ECOA") and Regulation B, its implementing regulation, recognize that limitation. ECOA exempts from its coverage "any credit assistance program administered by a nonprofit organization for its members or an economically disadvantaged class of persons. 15 U.S.C. 1691(c)(2). Regulation B repeats the exemption set forth in ECOA. 12 C.F.R. 202.8(a)(2). The preamble

FOIA Vol. I, C, 3, Vol. III B 10

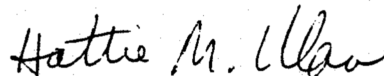
to the 1976 revision of Regulation B makes clear that the exemption is intended to cover credit unions, allowing them to refuse to extend credit to nonmembers. (Generally under the FCU Act, loans to nonmembers are prohibited.) However, ECOA and Regulation B do apply to an FCU's extension of credit to its members. Thus, within an FCU's field of membership, no person or group of persons may be discriminated against on a prohibited basis.

The term "prohibited basis" is defined in Regulation B to include race, color, religion, national origin, sex, marital status, age, receipt of public assistance income, or exercise of rights under the Consumer Credit Protection Act. (See, 12 C.F.R. 202.2(z).) SRP's policy would be illegal if it discriminated against persons within SRP's field of membership on one of these prohibited basses. On its face, the policy does not appear to us to constitute such discrimination.

However, a credit policy that is facially neutral may still violate Regulation B if it fails an "effects test;" that is, if, although not intended to discriminate, it nonetheless has a negative impact upon a protected class of persons. While it seems to us unlikely that SRP's policy would have such an impact, we do not have sufficient facts to make such a determination. SRP may wish to have its own counsel review this matter further.

I hope that we have been of assistance.

Sincerely,



Hattie M. Ulan
Associate General Counsel

cc: Region III Director

GC/MRS:sg
SSIC 3500
92-0114a