The Commonwealth of Massachusetts

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February 6, 2003

Mr. Daniel F. Egan
President
Massachusetts Credit Union League, Inc.
304 Turnpike Road
Southborough, MA 01772-1709

Dear Mr. Egan:

This letter is written in response to your correspondence of November 19, 2002 to the Division of Banks (the "Division") on behalf of the Massachusetts credit union community requesting clarification relative to the parameters of organization member services offered by state chartered credit unions. Specifically, your request inquires as to the type and structure of products and services that may be offered to certain organization members that qualify for membership including identification of the statutory and regulatory provisions governing such services.

As you are aware, the Massachusetts Credit Union Act, G.L. c. 171 (the "Act"), has a lengthy history[1] of authorizing "organization members" full membership benefits in a state chartered credit union. An "organization member" is defined in section 1 of said chapter 171 as:

> any fraternal organization, voluntary association, partnership or corporation, having a usual place of business within the Commonwealth and composed principally of individual members or stockholders who are themselves eligible to membership in a credit union or the Central Credit Union Fund, Inc.

The Division notes your reference to the Secretary of State's recognition of a variety of corporation, partnerships and voluntary associations as business entities under state law.[2] You request a determination as to whether the Division would view such entities, in light of previous Division positions, as included within the statutory definition of "organization member" and therefore eligible for membership. The Division's previous interpretations appear to control the range of corporate entities that are eligible for "organization member" status.[3] The Division, therefore, suggests that any widening of the term to include newer corporate forms, such as a limited liability corporation, be accomplished through a legislative amendment.

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[1] Chapter 273 of the Acts of 1926 inserted provisions in the Act recognizing membership rights of non-natural persons, including corporations, thus impacting a previous Attorney General Opinion requiring credit unions to confine membership to individuals and exclude corporations. *See* 5 Op. Atty. Gen. 1918, p. 269.
[2] *See e.g.* G.L. c. 156A professional corporations; c. 156C limited liability companies.
[3] *Decision Relative to the Application of Workers Credit Union Fitchburg, Massachusetts to Amend its Bylaws Governing Associations which Qualify Persons for Membership,* (July 13, 1998) at 5-6.

I. SHARE AND DEPOSIT ACCOUNTS

With respect to deposit services, it is the Division's position that a credit union may offer deposit services of the types authorized by the Act for natural persons[4] to properly qualified organization members. The Division has previously opined that a state-chartered credit union may offer negotiable order of withdrawal or "NOW" accounts as either interest bearing or non-interest bearing to natural person members.[5] It is the Division's opinion that a state-chartered credit union may also offer NOW accounts to organization members and such accounts may be either interest bearing or non-interest bearing.[6] In addition, parity authority presently exists for credit unions to offer interest bearing corporate checking accounts.[7] The Division's parity regulation also permits a state-chartered credit union to offer Treasury Tax and Loan Remittance accounts subject to specified requirements and limitations.[8] The Division notes that state-chartered credit unions are subject to certain statutory deposit limitations.[9] The deposit limitations for organization member accounts are specified in the Act and the maximum limit on deposits of all organization members is equal to 25% of the assets of the credit union.[10]

II. LOANS

As you are aware, the concept of including "member business loans" in the most recent amendments to the Division's parity regulation was considered by the Division and a determination was made not to adopt such a provision as part of the final regulation. This determination was made largely resulting from the Division's longstanding position that state-chartered credit unions have historically had the ability to offer products and services to "organization members" as defined in G.L. c. 171, §1 including loans falling within the purview of the "member business loan" which exists in federal law. The Division, however, retains the authority to promulgate a parity regulation expressly granting member business lending powers, as authorized under the Federal Credit Union Act and regulations, if it determines that such powers are advisable upon charter parity or other considerations.

In general, a credit union may make loans to a properly qualified organization member, of the types authorized and with the limitations prescribed by Massachusetts General Laws chapter 171, sections 59, 59A, 60, 62, 64 and 65.[11] The Division requires credit unions engaged in making business loans to adopt specific written loan policies and procedures, which address all aspect of business lending.

Specific authority to make real estate loans is derived from the various provisions within Section 65 of said chapter 171. For example, if a corporate entity qualifies as an "organization member" pursuant to said section 1, then real estate loans can be made to such members pursuant to the fourth paragraph of Massachusetts General Laws, chapter 65. Said fourth paragraph provides, in relevant part, that a credit union having assets of four million dollars or more "may loan, upon any one parcel of real estate, an amount not exceeding $200,000 and the total liability of any one member as borrower upon loans so secured shall not exceed $325,000." Under a different provision of said section 65, paragraph (3), a credit union may make a mortgage loan up to 80% of the value of the real estate. Said paragraph (3) does not require that the real estate be one-to-four family, owner-occupied property and therefore would authorize the Credit Union to make said loans secured by commercial real estate to a member as

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[4] G.L. c. 171, §29 shares and deposits; §31 negotiable withdrawal order accounts; §32 term share or deposit accounts; §33 club deposits; §34 special notice accounts; §35 profit sharing or retirement plans; §38 accounts for holding residential lease security deposits; §39 joint accounts; §40 trust accounts.
[5] *See* Division Opinion 94-151.
[6] Subject to applicable provisions of federal law. Division Opinion 95-062 modified by this position.
[7] *See* 209 CMR 50.09(3)(a).
[8] *See* 209 CMR 50.09(3)(b).
[9] *See* G.L. c. 171, §30.
[10] Id.
[11] G.L. c. 171, §59 authorizes personal loans; §59A credit cards; §60 loans for improvement of real estate; §62 recreational vehicles; §64 installment loans.

well as an entity that qualifies as an organization member subject to said limitations per parcel and per member. Accordingly, a state-chartered credit union is authorized by said statute to make said loans secured by commercial real estate to an organization member. The Division would consider a non-owner occupied mortgage loan on a 1-4 family residential property, lawfully made under G.L. c. 171, §65, to be a commercial real estate loan or a "member business loan" in NCUA parlance. It is the investment or business purpose of the loan rather than the residential characteristics of the real estate that governs its classification. It is the Division's practice to review the underwriting and credit analysis of these loans under generally accepted commercial loan examination procedures.

In addition, the statutory dollar limitations referred to herein may be impacted by any parity authority which may be granted to a particular credit union under 209 CMR 50.06(3)(j).

As a state-chartered, National Credit Union Administration ("NCUA") insured credit union, a credit union should also ensure that any loans are made in accordance with applicable NCUA requirements. Part 723 of the NCUA Rules and Regulations generally governs member business loans. The Division recognizes that the Credit Union Membership Access Act of 1998, through its amendments to Title II of the Federal Credit Union Act, imposed a new aggregate limit on a credit union's outstanding member loans of the lesser of 1.75 times the credit union's net worth or 12.25% of the credit union's total assets.[12] This limit applies to both Federal and federally insured credit unions. However, federally insured state-chartered credit unions are exempt from compliance with the provisions of Section 701.21(a) through (g) pursuant to 12 CFR 723.4, except as required by part 741 of the NCUA Rules and Regulations. Section 701.21 contains provisions relating to loans and lines of credit to members. The references to Section 701.21 within section 741 are to section 701.21(c)(8) concerning prohibited fees and section 701.21(d)(5) concerning nonpreferential loans.[13] Accordingly, the applicability to federally insured state-chartered credit unions of the section 701.21 requirements includes section 701(c)(8) and 701.21(d)(5). As an example, loan maturities are set at 12 years in section 701.21(c)(4). A state-chartered credit union could make member business loans with maturities greater than 12 years consistent with state law given that 701.21(c)(4) is a section not applicable to federally insured state-chartered credit unions.[14]

In addition, certain incidental authorities granted to state-chartered credit unions pursuant to the parity regulatory authority could also be made available to qualified organization members of the credit union. These parity powers are not automatic and must be exercised in accordance with the application process set forth in the Division's parity regulation.[15]

Please contact the Division should you have additional questions with respect to this letter.

The conclusions reached in this letter are based solely on the facts presented. Fact patterns that vary from that presented may result in a different position statement by the Division.

Sincerely,

Joseph A. Leonard, Jr.
Deputy Commissioner of Banks
And General Counsel

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[12] *See* implementing regulation at 12 CFR 723.16.
[13] *See* 12 CFR 741.203(a).
[14] Massachusetts law contains authority for a credit union to make certain types of real estate mortgage loans with terms in excess of 12 years. *See* G.L. c. 171, §65.
[15] *See* 209 CMR 50.07.