

October 3, 2000

David Kohler, Deputy General Counsel
U.S. Small Business Administration
409 Third Street SW, Suite 7200
Washington, D.C. 20416

Re: Credit Union Participation in SBA 504 Loan Guarantee Program.

Dear Mr. Kohler:

We received a letter from the National Association of Development Companies (NADCO) dated June 23, 2000. The letter, addressed to both you and me, expresses concern that the Small Business Administration (SBA) might exclude credit unions from participation as first mortgage lenders in the SBA's 504 mortgage guarantee program. Specifically, NADCO believes that the SBA might interpret OMB Circular A-129 (OMB A-129), where it restates a prohibition on the use of federal guarantees established in Section 149(b) of the Internal Revenue Code (IRC), as prohibiting the federal guarantee of credit union loans. OMB A-129, Policies for Federal Credit Programs and Non-Tax Receivables, Section II.2.c.; 26 U.S.C. §149(b). We agree with NADCO that the cited prohibition does not apply to credit unions and should not bar credit union participation in SBA's 504 loan guarantee program.

While OMB A-129 characterizes IRC Section 149(b) as prohibiting the federal guarantee, directly or indirectly, of "tax-exempt obligations," Section 149(b), by its express terms, applies to state and local bonds. Credit unions are member-owned cooperatives. Credit union loans do not involve state or local bond issues. When making a loan, a credit union does not act as the agent of a state or local government for the use of funds raised by such bond issues. In our opinion, neither IRC Section 149(b) nor OMB A-129 prohibit the federal guarantee of a credit union loan.

Staff Attorney Paul Peterson and I have discussed this issue with several attorneys at SBA. If you have any questions about this issue, please feel free to contact Paul Peterson or me at (703) 518-6540.

Sincerely,

Sheila A. Albin
Associate General Counsel

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cc: Tim Pierce, NADCO VP, Technical Issues