

May 13, 1998

Charles H. Felker, Managing Director of Regulatory Services
First Empire Securities, Inc.
8000 Towers Crescent Drive, Suite 1350
Vienna, Virginia 22182

Re: Permissibility of Federal National Mortgage Association Delegated Underwriting and
Servicing/Mortgage-Backed Securities
Your Letter dated May 1, 1998

Dear Mr. Felker:

You have asked whether a federal credit union may invest in "Federal National Mortgage Association (FNMA) Delegated Underwriting and Servicing/Mortgage-Backed Securities (MBS/DUS)." A question arises concerning MBS/DUS because the underlying collateral is comprised of mortgages secured by commercial real estate. Section 703.110(c) of NCUA's regulations states that a federal credit union may not purchase commercial mortgage related securities. We have concluded that the prohibition in §703.110(c) does not apply to securities issued by FNMA and, therefore, FNMA MBS/DUS are permissible. The Office of Investment Services agrees with this opinion.

Sections 107(7), (8), and (15) of the Federal Credit Union Act and Part 703 of NCUA's Regulations list those securities, deposits, and other obligations in which a federal credit union may invest. Federal credit unions have long been authorized to invest in mortgage related securities issued by federal instrumentalities such as the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

Section 703.150 defines commercial mortgage related securities as "a mortgage related security where the mortgages are secured by real estate upon which is located a commercial structure." Section 703.150 defines a mortgage related security as:

a security as defined in Section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41)), i.e. a privately-issued security backed by mortgages secured by real estate upon which is located a dwelling, mixed residential and commercial structure, residential manufactured home, or commercial structure.

Reading the definitions together, the prohibition on commercial mortgage related securities only applies to those that are privately-issued. This reading is supported by the preamble to the proposed regulation which indicates that the NCUA Board did not intend to include securities issued or guaranteed by the Small Business Administration within the prohibition. 60 Fed.Reg. 61219, 61225 (Nov. 29, 1995)

Therefore, these investments are authorized by the Federal Credit Union Act for federal credit

unions and are not prohibited by Part 703 of NCUA's Regulations. They are a permissible investment for federal credit unions.

Sincerely,

Sheila A. Albin
Associate General Counsel

GC/MJMcK:bhs
SSIC 3501
98-0506

cc: Director, Office of Investment Services