



National Credit Union Administration

Securities Act of 1933, Section 3(a)(2)
Securities Exchange Act of 1934, Section 3(a)(42)(A)

September 24, 2010

Division of Corporation Finance
Office of Chief Counsel
Division of Trading and Markets
Office of Chief Counsel
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: **Corporate Credit Union Legacy Assets Resolution Program of the
National Credit Union Administration – Guaranteed Securities**

Ladies and Gentlemen:

The National Credit Union Administration (the “NCUA”) respectfully submits this request for confirmation from the Securities and Exchange Commission (the “SEC”) of the NCUA’s interpretation of (i) Section 3(a)(2) (“Section 3(a)(2)”) of the Securities Act of 1933, as amended, 15 U.S.C. § 77a et seq. (the “Securities Act”), and (ii) Section 3(a)(42)(A) (“Section 3(a)(42)(A)”) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. § 78a et seq. (the “Exchange Act”), as each relates to the exempt status of certain securities (the “Guaranteed Securities”) to be issued by one or more special purpose entities (which may be corporations, limited liability companies, statutory trusts, common law trusts or other business entities for which REMIC, grantor trust or other tax elections may or may not be made (each a “SPE” and collectively the “SPEs”)) established by the NCUA as a part of its proposed securitization program, the Legacy Assets Resolution Program (“Resolution Program”). In connection with the Resolution Program, the NCUA as guarantor of the Guaranteed Securities will issue a full faith and credit guaranty to holders of the Guaranteed Securities of timely payment of any and all amounts of principal and interest due and payable on the Guaranteed Securities, whether at maturity or otherwise (each a “NCUA Guaranty” and collectively, the “NCUA Guaranties”).

Securities Act Exemption and Exchange Act Definition

Section 3(a)(2) of the Securities Act generally provides for the exemption of certain securities from the registration requirements of the Securities Act. In relevant part, Section 3(a)(2) provides that “exempted securities” shall include “any security issued or guaranteed by the United States . . . or by any person controlled or supervised by and acting as an

instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States.”

Section 3(a)(12)(A)(i) of the Exchange Act defines “exempted securities” as including “government securities, as defined in paragraph (42) of this subsection.” Further, Section 3(a)(42)(A) of the Exchange Act defines “government securities” as including “securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States.”

The NCUA was created by an act of the Congress of the United States as an independent agency within the executive branch of the United States Government. *See* 12 U.S.C. § 1752a. The NCUA is controlled by a Board whose three members are appointed by the President and confirmed by the Senate. 12 U.S.C. § 1752a(b). There is a long-established presumption that when Congress provides authorization for a federal agency to incur obligations, “those obligations are supported by the full faith and credit of the United States, unless the authorizing statute specifically provides otherwise.” 6 Op. O.L.C. 262, 264 (1982) (*citing* 41 Op. Att’y Gen. 403, 405 (1959); 42 Op. Att’y Gen. 341, 344 (1967); 41 Op. Att’y Gen. 424, 430 (1959); *Perry v. United States*, 294 U.S. 330, 353, 54 (1935); and *Lynch v. United States*, 292 U.S. 571, 580 (1934)). The Attorney General has also opined that “[i]t is enough to create an obligation of the United States if an agency or officer is validly authorized to incur such obligation on its behalf and validly exercises that power.” 41 Op. Att’y Gen. 403, 405 (1959).

The NCUA has statutory authority granted by Congress to enter into, incur obligations under and perform under the NCUA Guaranties in connection with the liquidation of corporate credit unions (“CCUs”) that will be part of the Resolution Program, and the applicable statutory provisions contain no limitation or prohibition against such obligations being deemed obligations supported by the full faith and credit of the United States. *See* 12 U.S.C. §§ 1766(b), 1766(i)(2), 1787, 1788(a)(2), 1788(b) and 1789(a). Further, in each NCUA Guaranty the NCUA will provide that its obligations to make payments under the NCUA Guaranty represent obligations of the United States Government backed by its full faith and credit.

Based on the foregoing and the additional facts set forth herein, it is our opinion that the Guaranteed Securities fall within the exemption provided by Section 3(a)(2) of the Securities Act, and are “government securities” as defined in Section 3(a)(42)(A) of the Exchange Act, because they represent securities guaranteed by the United States or an instrumentality of the Government of the United States.

The Resolution Program

The Resolution Program is designed to provide isolation and permanent funding for distressed assets primarily consisting of asset-backed securities (including residential mortgage-backed securities, commercial mortgage-backed securities and consumer asset-backed securities (including but not limited to floorplans, autos, credit cards and student loans)) as well as commercial loans (the “Legacy Assets”) held by certain CCUs to be placed in liquidation by the NCUA pursuant to the Federal Credit Union Act, 12 U.S.C. §§ 1766(b)(1), 1787(a)(1)(A).

Accordingly, all assets of these CCUs will be under the control of the NCUA in its capacity as Liquidating Agent of the CCUs.

Under the Resolution Program, the NCUA in its capacity as Liquidating Agent will engage in a series of transactions involving the sale and transfer to a SPE of either (i) record title to Legacy Assets, or (ii) a participation interest in the cash flows received by CCU liquidation estates from Legacy Assets (collectively, the “Transferred Assets”). Each SPE will offer and sell Guaranteed Securities to investors, and use the net proceeds of such sale of Guaranteed Securities to purchase the Transferred Assets from the applicable CCU or CCUs.

The Guaranteed Securities and NCUA Guaranties

The Guaranteed Securities will not be registered under the Securities Act. It is proposed that, if the confirmation requested by this letter is received, the Guaranteed Securities will be offered and sold in transactions exempt from registration in reliance on Section 3(a)(2).

Investors in the Guaranteed Securities issued by a particular SPE will be provided with online access to the original offering materials and material transaction documents relating to the Transferred Assets sold to such SPE by the NCUA in its capacity as Liquidating Agent. The offering materials relating to the Transferred Assets will provide investors with information regarding such Transferred Assets and loan level information regarding the collateral securing such Transferred Assets as of the time of closing of the various transactions to which the Transferred Assets relate. In addition, investors in the Guaranteed Securities will be provided with online access to recent Trustee Remittance Reports relating to each Transferred Asset being sold to the applicable SPE, which will provide information regarding cashflows, delinquencies and losses with respect to the Transferred Assets and the collateral securing them as of the period immediately preceding the issuance of Guaranteed Securities by each SPE. Investors in the Guaranteed Securities will also be provided with access to monthly reports prepared by the Trustee of the SPE and posted on its website containing certain current information regarding the Guaranteed Securities and the Transferred Assets on an ongoing basis.

Each transaction completed under the Resolution Program will be structured differently depending on the nature of the applicable Transferred Assets and demands of investors in the Guaranteed Securities. However, each transaction will involve a SPE offering and selling Guaranteed Securities to investors. The entitlement of a holder of Guaranteed Securities to receive payments will be set out in a pooling and servicing agreement or an indenture (collectively with a NCUA Guaranty and any other documents entered into in relation to the particular transaction, the “Operative Documents”).

Payments under the NCUA Guaranties will be made in accordance with the provisions of the respective Operative Documents, and will include the following payment obligations: (a) the due and punctual payment on each distribution date and on the maturity date of all interest accrued and payable on the related Guaranteed Securities and (b) the due and punctual payment of the principal of the related Guaranteed Securities whenever such principal becomes due and payable in accordance with the Operative Documents, whether at stated maturity, by

acceleration, upon call or otherwise (collectively the “Guaranty Payments”). The NCUA will agree and represent in each NCUA Guaranty that its obligation to pay the Guaranty Payments to holders of the Guaranteed Securities represents an obligation of the United States Government backed by its full faith and credit.

Each NCUA Guaranty will expire upon the earlier of (i) the maturity of the Guaranteed Securities or (ii) the termination of the related SPE and retirement of the Guaranteed Securities. The principal amount of each NCUA Guaranty will be equal to the face amount of the related Guaranteed Securities at issuance; provided, however, that as described above, each NCUA Guaranty will cover both such principal amount (as described in clause (b) of the preceding paragraph), as well as all interest accrued and payable on the related Guaranteed Securities (as described in clause (a) of the preceding paragraph).

As (i) each NCUA Guaranty will be an irrevocable and unconditional general obligation of the NCUA covering any and all amounts of principal and interest due and payable under the related Guaranteed Securities whether at maturity or otherwise, (ii) the NCUA will agree and represent in each NCUA Guaranty that its obligation to pay the Guaranty Payments to holders of the Guaranteed Securities represents an obligation of the United States Government backed by its full faith and credit and (iii) the NCUA has all necessary statutory authority to incur the obligations represented by the NCUA Guaranties as obligations backed by the full faith and credit of the United States Government, it is the view of the NCUA that each Guaranteed Security guaranteed by a NCUA Guaranty will be a security exempt from registration under Section 3(a)(2) of the Securities Act, and a “government security” as defined in Section 3(a)(42)(A) of the Exchange Act.

Each NCUA Guaranty will also provide for, among other things, certain ongoing notice and reporting requirements including a requirement that the trustee of each SPE, on behalf of the holders of the Guaranteed Securities, notify the NCUA when it has determined that a Guaranty Payment will be required and that the trustee, on behalf of the holders of the Guaranteed Securities, make a demand for such payment in the event the required Guaranty Payment is not made when due. Each NCUA Guaranty will also provide that notwithstanding the designation of the trustee as authorized representative of the holders of Guaranteed Securities, individual beneficial holders of the Guaranteed Securities may opt out of such representation and may make demand directly to the NCUA as guarantor. Giving effect to the “opt-out,” the Operative Documents will provide that if a SPE has failed to make a scheduled payment, and the NCUA as guarantor, after notice, fails to do so, any beneficial holder of the related Guaranteed Securities who has opted out of representation may immediately bring suit on its own behalf directly against the NCUA as guarantor for payment of all amounts then due and payable under such Guaranteed Securities.

Finally, the Operative Documents will require that each SPE reimburse the NCUA for any Guaranty Payments made under the respective NCUA Guaranty and will further require the subrogation of the NCUA as guarantor to all rights of the holders of the related Guaranteed Securities against the respective SPE to the extent of Guaranty Payments made. Additionally, the Operative Documents will provide that the trustee, on behalf of the holders of the Guaranteed

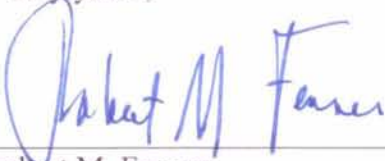
Securities, or an individual holder of Guaranteed Securities that has made a demand for payment directly against the NCUA as guarantor, will be deemed to have assigned to the NCUA as guarantor any and all claims it may have against the applicable SPE to the extent such holders have received payment from the NCUA as guarantor under the related NCUA Guaranty, and will require that written assignments of such claims be executed at the NCUA's request. The failure of the respective SPE to comply with any of these obligations imposed under the related Operative Documents will not affect the NCUA's full and unconditional guaranty in support of all related Guaranteed Securities then issued and outstanding.

No-Action Request

Based on the foregoing, we hereby respectfully request your confirmation of our understanding that the Guaranteed Securities to be issued by the various SPEs as described above will be considered to be securities which are (i) guaranteed by an instrumentality of the United States Government for purposes of Section 3(a)(2) of the Securities Act and (ii) obligations guaranteed as to principal or interest by the United States for purposes of Section 3(a)(42)(A) of the Exchange Act, thus qualifying as "exempted securities" as defined in Section 3(a)(12) of the Exchange Act and therefore not subject to registration under Section 12 of the Exchange Act.

We would appreciate your early consideration of this matter. If you have any questions as to any of the foregoing, please contact me at (703) 518-6540, or our counsel Kevin Kundra at (215) 564-8183 or David Joseph at (215) 564-8090. Thank you.

Very truly yours,

By: 
Robert M. Fenner
General Counsel