NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

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Office of General Counsel

Juan Canino-Pieve, Esq.
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Hato Rey, Puerto Rico 00918

Dear Mr. Canino:

This is in reply to your letter dated December 11, 1985, concerning the authority for Federal credit unions (FCU's) to serve as trustees of individual retirement accounts (IRA's) established pursuant to the Commonwealth of Puerto Rico law.

As explained in Interpretive Ruling and Policy Statement (IRPS) 85-1, an FCU's authority to serve as a trustee for an IRA or Keogh account is derived from ERISA and Section 207(c)(3) of the FCU Act. There is no similar authority, express or derivative, in the FCU Act, which would allow FCU's to serve as trustees for IRA or Keogh accounts not established pursuant to ERISA.

Similarly, your reference to the Federal Home Loan Bank Board (FHLBB) Rule, 12 C.F.R. §§545.102 is inapposite. Section 545.102 was enacted as incident to the FHLBB's power under 12 U.S.C. §1464(n)(1) to grant full trust powers to Federal associations. See, 48 Fed. Reg. 23035, May 23, 1983, copy enclosed. FCU's, on the other hand, have no general trust power. Therefore, NCUA has no statutory authority upon which to promulgate a rule or regulation authorizing FCU's to serve as trustees for IRA or Keogh accounts established pursuant to Puerto Rico law.

Nevertheless, we are sympathetic to the situation of FCU's in Puerto Rico. Accordingly, we plan to seek the necessary legislative amendments to the FCU Act from Congress to alleviate the problem.

We regret that we could not be of more assistance at this time. Please feel free to check with me from time to time about the status of this matter.

Sincerely,

STEVEN R. BISKER
Assistant General Counsel

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Federal associations to attract deposits from entities acting in a fiduciary capacity. Another commenter supported proposed § 563.8–2 but suggested that the thirty-day period for FSLIC to exercise its right to purchase collateral be reduced to ten business days, based on a concern that the longer period could have an impact on the price an association would receive for collateral it had to sell.

The final regulation governing the authority of Federal associations to borrow and to give security eliminates the prohibition on collateralization of savings deposits and provides express authority for such activities, deleting the existing requirement of authorization by charter or in writing by the Board. The FSLIC right to purchase is adopted as proposed, and will also apply to collateral used by a Federal association to meet its obligation under a suretyship agreement. Upon consideration the Board has concluded that the protection of the insurance fund requires that the FSLIC continue to be permitted to have 30 days to exercise a right to purchase collateral that is not liquid or actively traded in organized markets.

Borrowing From State-Chartered Central Reserve Institutions

Both the existing and proposed regulations include a section concerning borrowing from a state-chartered central reserve institution, including a state mortgage finance agency. This provision is deleted by the final amendments. The restrictions on borrowing from state mortgage finance agencies are contained in 12 U.S.C. 1464(b)(3), with the exception of proposed § 545.4–1(e), which is a matter which is within the authority of the state mortgage finance agency. Federal associations will continue to be subject to the express provisions of the statute. The Board views borrowing from state-chartered central reserve institutions as an aspect of a Federal association's general power to borrow, contained in 12 U.S.C. 1464(b)(2) and implemented by § 545.20.

Remote Service Units

The Board did not propose changes in the remote service unit (RSU) regulation, but received two comments concerning this section. One commenter suggested that the definition of an "RSU account" should be expanded to include demand accounts. The Board has adopted this suggestion and has also provided that an RSU may not be used to open a demand account. Another commenter expressed several concerns about the current regulations. The commenter stated that the regulation precluded the use of personal security identifiers (PSIs) other than a personal identification number. The Board does not regard the regulation as prohibiting the use of other identification techniques. The final regulation does retain the prohibition on the use of a passbook as a PSI. The commenter requested that nonautomated telephone transfer systems be exempted from the requirement that an accountholder not be required to disclose a PSI to another person. The Board notes that this type of transaction is not subject to the RSU provision. The commenter also suggested changes in the provision of security for RSUs. The Board believes that the current regulation provides appropriate guidance and procedures for Federal associations. In response to a comment, the Board has clarified § 545.140(f) by providing that a Federal association may share an RSU controlled by a party not subject to examination by a Federal regulatory agency if that party agrees that the RSU is subject to examination by the Board. The final regulation also deletes the provisions regarding service charges and bonding because the Board believes there is no need to address these matters by regulation.

Passive Trusts

The proposal included an amendment to § 545.17–1 authorizing Federal associations to act as trustees having no active fiduciary duties, without obtaining Board approval under 12 CFR Part 550, provided that state law permitted other financial institutions to act in such a capacity. The Board regards this authorization to be incident to its power under 12 U.S.C. 1464(n)(1) to grant full trust powers to Federal associations. The Board received three comments supporting this proposal, and adopts the amendment as proposed. In accordance with this amendment, Federal associations in Puerto Rico may act as trustees for IRA-type accounts established under Puerto Rican law.

Issuance of GNMA-guaranteed, Mortgage-Backed Securities

The proposal included the existing section concerning the authority of Federal associations to issue and sell GNMA-guaranteed mortgage-backed securities. One commenter suggested that the provision be extended to apply to FNMA-guaranteed mortgage-backed securities. The final regulation deletes the existing section, since broad authority for Federal associations to deal in loans and to issue securities includes the issuance and sale of GNMA securities and the marketing of FNMA securities.

Correspondent Services

The correspondent services regulation was unchanged in the proposal. The Board received one comment suggesting that the regulation authorize associations to receive interest-bearing as well as noninterest-bearing deposits from correspondent institutions. In the final rule this provision has been deleted. The Board regards the HOLA as providing the implied authority for a Federal association to provide to other parties, primarily other depository institutions, services it would be authorized to generate in-house for itself in the course of its regular business. The Board also notes that two aspects of correspondent services have been expressly authorized by the DIA. Federal associations may accept either interest-bearing deposits, which may now be made by other Federal associations pursuant to Section 323 of the DIA (12 U.S.C. 1464(c)(1)(G)), or noninterest-bearing demand deposits pursuant to Section 312 of the DIA (12 U.S.C. 1464(b)(1)(A)). The Board has also deleted the provisions of previously existing § 545.9–2 which expressly permitted maintenance of accounts at institutions subject to state deposit insurance programs in conjunction with a correspondent relationship. This authority is inherent in the authority to maintain correspondent relationships.

Investment Powers

Real Estate Loans

Section 322 of the DIA provides that Federal associations may make "[l]oans on the security of liens upon residential or nonresidential real property" subject to a forty percent-of-assets limitation for investments in nonresidential real property. In implementing this provision, the Board proposed to define the terms "residential real estate" and "nonresidential real estate," to revise other definitions pertaining to real estate lending, and to reorganize and consolidate many of the remaining real estate lending regulations. The Board also proposed to retain the existing loan-to-value ratios, notwithstanding their deletion from the statute, for reasons of safety and soundness, but requested comment on whether the ratios were necessary. The Board further requested comment on whether a loan on the security of an interest in a time-share unit should be considered a real estate loan in those instances where state law gives the owner a fee simple interest in the real estate comprising the unit. The proposal included a Board ruling that would allow Federal associations to receive a portion of the