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NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

December 29, 1988

Office of General Counsel

Walter T. Eccard, Esq.
Brown & Wood
One Farragut Square South
Washington, D.C. 20006

Re: Federal Agricultural Mortgage Corporation (Your
October 7, 1988 Letter)

Dear Mr. Eccard:

You have asked whether a Federal credit union ("FCU") may invest in the common stock of the Federal Agricultural Mortgage Corporation ("Farmer Mac") pursuant to Section 107(7)(E) of the Federal Credit Union Act ("FCU Act") [12 U.S.C. 1757(7)(E)]. Neither Section 107(7)(E) nor the Agricultural Credit Act of 1987 (Pub. L. 100-233, codified at 12 U.S.C. 2279aa et seq.), which established Farmer Mac, specifically authorize FCU's to purchase stock in Farmer Mac. While Congress may have contemplated that FCU's would purchase and hold stock in Farmer Mac, it did not provide that authority. For this reason, we believe FCU purchase of common stock of Farmer Mac is impermissible. FCU's may, however, invest in securities guaranteed by Farmer Mac.

BACKGROUND

Farmer Mac was created as a federally-chartered instrumentality of the United States [12 U.S.C. 2279aa-1(a)(1)]. Its purpose is to facilitate a secondary market for agricultural real estate loans. Farmer Mac has three principal statutory duties in facilitating the secondary market. It must develop uniform underwriting, security appraisal, and repayment standards for qualified loans; determine the eligibility of agricultural mortgage marketing facilities to contract with Farmer Mac for the provision of guarantees for specific mortgage pools; and provide guarantees for the repayment of principal and interest on securi-

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ties representing interests in, or obligations backed by, pools of qualified loans. 12 U.S.C. 2279aa-1(b).

You have asked whether FCU investment in common stock of Farmer Mac is permissible under Section 107(7)(E) of the FCU Act which authorizes investment in, among other things:

obligations, participations or other instruments of or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association or the Government National Mortgage Association; or in mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to Section 305 or Section 306 of the Federal Home Loan Mortgage Corporation Act; or in obligations or other instruments or securities of the Student Loan Marketing Association; or in obligations, participations, securities, or other instruments of, or issued by, or fully guaranteed as to principal and interest by any other agency of the United States . . . (Emphasis added).

You state that Farmer Mac should be viewed as a Federal agency for purposes of Section 107(7)(E).

ANALYSIS

FCU's investment/deposit authority is contained in Sections 107(7), 107(8), and 107(15) of the FCU Act [12 U.S.C. 1757(7), (8) and (15)]. Part 703 of NCUA's Rules and Regulations [12 C.F.R. Part 703] interprets and places certain restrictions on these authorities. An FCU may also make investments that are authorized by a Federal law other than the FCU Act provided the basis for FCU investment is clearly set forth in the law. For example, to recapitalize the Federal Savings and Loan Insurance Corporation, the Competitive Equality Banking Act of 1987 (Pub. L. 100-86) amended the Federal Home Loan Bank Act [12 U.S.C. 1421 et. seq.] by creating a new entity, the "Financing Corporation." 12 U.S.C. 1441(a). Bonds issued by the Financing Corporation may be purchased by FCU's because:

All persons having the power to invest in, sell, underwrite, purchase for their own accounts, accept as security, or otherwise deal in obligations of the Federal Home Loan Banks shall also have the power to do so with re-

spect to obligations of the Financing Corporation. 12 U.S.C. 1441(e)(6).

FCU's have the authority to invest in "obligations issued by . . . Federal home loan banks" under Section 107(7)(E) of the FCU Act and therefore have the authority to invest in obligations of the Financing Corporation.

The Agricultural Credit Act authorizes investment in securities guaranteed by Farmer Mac as follows:

securities representing an interest in, or obligations backed by, pools of qualified loans with respect to which . . . [Farmer Mac] has provided a guarantee shall be authorized investments of any person, trust, corporation, partnership, association, business trust, or business entity created pursuant to or existing under the laws of the United States or any State to the same extent that the person, trust, corporation, partnership, association, business trust, or business entity is authorized under any applicable law to purchase, hold, or invest in obligations issued by or guaranteed as to principal and interest by the United States or any agency or instrumentality of the United States. . . .
12 U.S.C. 2279aa-12(c).

Since FCU's are business entities chartered and existing under the laws of the United States and are authorized by Section 107(7)(E) of the FCU Act to invest in any instrument issued by an agency of the United States, FCU's may invest in the securities described in 12 U.S.C. 2279aa-12(c).

While the Agricultural Credit Act specifically addresses investment in securities guaranteed by Farmer Mac, it does not directly address the issue of investment in the common stock of Farmer Mac. You state that Farmer Mac should be considered an agency of the United States for purposes of Section 107(7)(E) because it is similar in organizational structure to the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), the Student Loan Marketing Association (Sallie Mae), and the Government National Mortgage Association (Ginnie Mae). You state that Farmer Mac was created to serve the same function in the development of the secondary market for ag-

gricultural real estate loans that Ginnie Mae, Fannie Mae, Freddie Mac, and Sallie Mae serve in establishing a secondary market for other types of loans.

In determining whether an entity is an "agency of the United States" for purposes of Section 107(7)(E), we have looked to the enabling statute of the entity to see if the entity is characterized as an agency. In this case, the Agricultural Credit Act provides that Farmer Mac is a "federally chartered instrumentality of the United States." 12 U.S.C. 2279aa-1(a)(1). Farmer Mac is therefore not an agency for purposes of Section 107(7)(E). We would note that investment in the obligations of Ginnie Mae, Fannie Mae, Freddie Mac, and Sallie Mae is permissible because such investment is expressly authorized in the FCU Act, and not because they are "agencies of the United States."

FCU's primary role in the secondary market for agricultural loans will be as loan originators. The Agricultural Credit Act defines "originator" as:

. . . any Farm Credit System institution, bank, insurance company, business and industrial development company, savings and loan association, association of agricultural producers, agricultural cooperative, commercial finance company, trust company, credit union or other entity that originates and services agricultural mortgage loans. 12 U.S.C. 2279aa(7).

The Agricultural Credit Act provides that the board of directors of Farmer Mac may require institutions that wish to participate in the secondary market for agricultural loans, including loan originators, to make capital contributions to Farmer Mac in exchange for common stock. 12 U.S.C. 2279aa-4(b). The Farmer Mac interim board of directors has determined that institutions must purchase common stock of Farmer Mac in order to participate in the Farmer Mac program. Pursuant to the Farmer Mac Offering Circular dated October 7, 1988, exception can be granted to the ownership requirement if originators are legally restricted from purchasing such stock.

The Agricultural Credit Act does not specifically authorize FCU purchase of Farmer Mac stock. Since FCU's investment authority is statutorily limited, we cannot make a determination that FCU purchase of Farmer Mac stock is permissible where there is no clear Congressional grant of authority for FCU investment. It is

Walter T. Eccard, Esq.
December 29, 1988
Page 5

our understanding that this determination will not affect an FCU's ability to participate in the Farmer Mac program as a loan originator.

Sincerely,

Hattie M. Ulan

HATTIE M. ULAN
Acting Assistant General Counsel

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