



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

June 3, 1991

Theodore M. Therriault
President
Seattle Telco Federal Credit Union
800 Stewart Street
Seattle, WA 98101-1362

Re: Permissible Investment Opportunities
(Your March 19, 1991, Letter)

Dear Mr. Therriault:

You have asked about the permissibility of two potential investment opportunities for Seattle Telco Federal Credit Union (the FCU).

You first ask whether FCUs may purchase stock in a Federal Home Loan Bank (FHLB). As you are aware, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) authorized this investment for FCUs. However, FIRREA limited the investment to the minimum amount of stock required for FHLB membership or to secure an advance from a FHLB. We addressed this issue in an earlier letter which is enclosed for your information.

The FCU owns a partial interest in a credit union service organization (CUSO) which originates mortgages and wholly owns a CUSO which provides insurance services. You have asked whether the CUSOs or the FCU may purchase a mortgage servicing portfolio. Section 701.27(d)(5) of NCUA's Regulations, 12 C.F.R. §701.27(d)(5), authorizes FCUs to loan to or invest in CUSOs which perform a number of specific services, including loan processing, servicing, and sales. Accordingly, as long as the CUSOs continue to primarily serve credit unions and/or the membership of affiliated credit

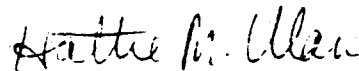
FOIA - Vol. I, E 1
FOIA Vol. II H
FOIA Vol. III C, 2, a

Theodore M. Therriault
June 3, 1991
Page 2

unions, 12 C.F.R. 701.27(d)(4), and to satisfy the other requirements of the CUSO regulation, they may purchase mortgage servicing portfolios.

We question, however, the authority of the FCU to purchase a mortgage servicing portfolio. FCUs can only engage in activities that are either expressly authorized by the FCU Act or incidental to one of those express powers. See 12 U.S.C. §1757. While an FCU may service loans it has made, purchased, or participated in, incidental to its express lending authority, see 12 U.S.C. §1757(5) and (13), it does not have the authority to service loans made by other lenders. The National Credit Union Administration (NCUA), however, has authorized FCUs to sell data processing capacity in excess of their immediate needs, as long as they are not in the business of providing others with data processing capacity. See National Retailer Corp. v. Valley Natl. Bank, 411 F. Supp. 308 (D. Ariz. 1976), aff'd, 604 F.2d 32 (9th Cir. 1979). Therefore, while an FCU could conceivably use its excess mortgage servicing capacity to service mortgages made by other lenders, it could not be in the business of servicing such mortgages. Since the purchase of a mortgage servicing portfolio appears to place the FCU in the business of servicing mortgages that it has not made, purchased, or participated in, we do not think it is a permissible activity.

Sincerely,



Hattie M. Ulan
Associate General Counsel

GC/LH:sg
SSIC 3800
91-0408



NATIONAL CREDIT UNION ADMINISTRATION
Washington, DC 20556

November 1, 1989

Office of General Counsel

GC/JT:sg
SSIC 3446
89-0837

Mr. John F. Kinney
Chief Executive Officer
Electric Boat Community FCU
32 Chicago Avenue
Groton, Connecticut 06340

Re: FCU Investment in Stock of the Federal Home Loan
Banks (Your August 23, 1989, Letter)

Dear Mr. Kinney:

You have asked whether it is permissible for a Federal credit union ("FCU") to invest in stock of a Federal Home Loan Bank ("FHLB"). The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") authorized this investment for FCU's. However, the investment is limited by FIRREA to the minimum amount of stock required for FHLB membership or to secure an advance from a FHLB.

ANALYSIS

Section 704 of FIRREA amended Section 4(a) of the Federal Home Loan Bank Act (12 U.S.C. 1424(a)) by expanding membership in the FHLB's to include federally-insured credit unions that engage in mortgage lending and that meet certain other requirements. The purpose of the FIRREA amendment was to strengthen the FHLB's and their ability to support the home mortgage market.

Sections 6(b) and 10(e) of the Federal Home Loan Bank Act (12 U.S.C. 1426(b) and 1430(e)), as amended by Sections 706 and

Mr. John F. Kinney
November 1, 1989
Page 2

714 of FIRREA, set forth the minimum stock purchase required for membership in a FHLB. Section 10(e) may also require the purchase of stock above this minimum when an FCU seeks an advance from a FHLB.

FIRREA did not amend the FCU Act to expressly provide for FCU investment in stock of an FHLB. Section 107(7)(E) of the FCU Act (12 U.S.C. 1757(7)(E)) authorizes FCU investment in obligations issued by FHLB's. It is not clear from the legislative history whether the term "obligations" was intended to include stock. However, it is our opinion that FIRREA establishes the authority for FCU investment in stock of an FHLB. Since there is no express authority in the FCU Act for FCU investment in FHLB stock, the investment must be limited to the minimum amount of stock required for membership in an FHLB, as established in Sections 6(b) and 10(e) of the Federal Home Loan Bank Act (12 U.S.C. 1426(b) and 1430(e)), as amended by FIRREA, plus any additional stock purchase required by Section 10(e) to obtain an advance from an FHLB.

While FHLB stock is a permissible investment for an FCU pursuant to the changes made by FIRREA, it is the responsibility of each FCU to make the determination as to whether the investment is advisable for the FCU, and whether an FHLB is an appropriate source of funds for an FCU. An FCU should consult with the FHLB in determining whether it qualifies for membership in the FHLB and the amount of the required stock purchase.

Finally, an FCU should be aware that Section 719 of FIRREA requires the NCUA to make available to an FHLB any examinations, reports, records, or other available information about the condition of an FHLB-member credit union.

Sincerely,

Hattie M. Ulan

HATTIE M. ULAN
Assistant General Counsel