

December 9, 2009

William J. Donovan, Esq.
Venable LLP
575 7th Street, N.W.
Washington, D.C. 20004-1601

Re: Residential Mortgage Processing and Servicing as an Incidental Power.

Dear Mr. Donovan:

You have asked if a federal credit union (FCU) can provide residential mortgage loan processing and servicing to credit unions as a correspondent service under the incidental powers rule where the credit union receiving the service would fund the loan and the loan would close in the funding credit union's name. 12 C.F.R. §721.3(b). We conclude this would be permissible as a correspondent service and note, as required for all incidental powers activities, FCUs must comply with any applicable NCUA regulations, policies, and legal opinions, as well as state and federal law applicable to the activity. 12 C.F.R. §721.5.

Your inquiry concerns a large FCU that would like to enter into agreements with smaller state and federal credit unions to process and underwrite residential loans to members of those smaller credit unions. You state the loans would be in compliance with Freddie Mac and any applicable mortgage insurer guidelines. Also, you state the smaller credit unions would fund the loans for their members, and the loans would close in the name of the smaller credit unions. The agreement would also provide that, upon a loan closing, the FCU would purchase the loan from the smaller credit union and sell it to Freddie Mac with the FCU retaining the servicing rights.

Under NCUA's incidental powers rule, correspondent services are a preapproved incidental powers activity and include loan processing and loan servicing. 12 C.F.R. §721.3(b). Generally, correspondent services are those services that an FCU is authorized to perform for its members or as a part of its operation and that an FCU may provide to other credit unions. Activities preapproved under Part 721 must also comply with any applicable NCUA regulations, policies, and legal opinions, as well as, any applicable state and federal law. 12 C.F.R. §721.5. We have previously issued a legal opinion concluding the use of correspondent service agreements to facilitate an FCU providing mortgage processing services to aid smaller credit unions is permissible. See Legal Op. 95-0805 (Aug. 9, 1995). Key to our conclusion is the fact that, while the FCU will provide processing and servicing, the smaller credit unions will fund the loans and the loans will close in their names.

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Page Two

Regarding the FCU's intention to purchase the loans from the smaller credit unions for sale in the secondary market, we note the eligible obligations rule generally regulates an FCU's purchase of eligible obligations. 12 C.F.R. §701.23. This rule authorizes an FCU to purchase its members' obligations from any source but also allows an FCU to purchase nonmember, real estate secured loans from any source if certain criteria are met. The FCU must be granting real estate secured loans on an ongoing basis and the purchase of the nonmember loans is undertaken to facilitate the packaging of loan pools for sale in the secondary mortgage market. Further, a pool must include a substantial portion of the FCU's loans to its own members and must be sold promptly. 12 C.F.R. §701.23(b)(1)(iv).

If you have any questions, please contact Staff Attorney Linda Dent or me.

Sincerely,

/S/

Sheila A. Albin
Associate General Counsel

GC/LKD/SAA:bhs
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