

February 23, 2009

Marc Godino, Esq.
Glancy Binkow & Goldberg LLP
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Re: Clarification of Revised FOIA Request and Final Response

Dear Mr. Godino:

This is our final response concerning your Freedom of Information Act (FOIA) appeal dated September 25, 2008. We issued an interim response to your appeal on October 16, 2008; after discussion with my staff and staff from NCUA's Asset Management and Assistance Center, you limited your request to three items and we agreed to continue to process your request for these three items on the appeal level. Each of the three items and an explanation of how it was handled appear below.

1. A list of the street addresses, city and state for all properties noted in Linda Dent's response of September 9, 2008 and referred to in her response of September 10th.

On February 2, 2009, we provided the requested information for the approximately 300 properties owned by NCUA along with an explanation as to why the other addresses were withheld and your appeal rights for the withheld information. On February 9, 2009, you requested the following three points of clarification on the information provided:

- a) if the list of properties noted in Linda Dent's response included the properties on the list provided to you on February 2nd;
- b) whether the list of properties sent to you on February 2nd includes all of the properties responsive to your request that NCUA has ever owned or only those owned on a certain date; and
- c) at what point during the foreclosure process a property is considered owned by NCUA. You note two properties that were quit-claimed to NCUA in November 2008 were not included on the list.

Although a response to your request for clarification is not required pursuant to the FOIA, we provide the following information. The list of addresses maintained by NCUA is updated and reflects property currently owned by NCUA. Newly obtained properties are added to the list and properties sold are deleted from the list.

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However, changes to the list are not made instantaneously upon acquisition or sale of a property. The list is updated on a flow basis. A reasonable period of time (perhaps several weeks) may elapse before a newly acquired property is added to the list or a sold property is deleted from the list.

In answer to your specific questions:

a) The listing of properties (county and city only) provided to you on September 9, 2008, included the properties (street address, county, city and state) sent to you on February 2, 2009, if they were owned by NCUA and had been added to the list when provided by Ms. Dent;

b) the properties listed in our February 2, 2009 letter include only those properties owned on a date sometime prior to December 4, 2008, the date the list was generated; and

c) NCUA owns a property once it obtains legal title. The two properties you note as being quit-claimed to NCUA in November 2008 had not yet been added to the December 4, 2008 generated list.

2. Any records concerning any material loss review being done by the NCUA concerning the three named credit unions (Norlarco Credit Union, Huron River Credit Union and New Horizons Community Credit Union), including any such review being done by the NCUA's Office of Inspector General.

We forwarded this item to NCUA's Office of Inspector General for their direct response. The Inspector General directed you to responsive information on NCUA's website and advised you to contact them for further information.

3. Any documentation of agreements (or any discussion leading to agreements) between the NCUA, the three above-mentioned credit unions and Hovnanian (including K. Hovnanian or Hovnanian Builders) concerning the above noted properties (including property transfer and property insurance and documentation or agreements concerning interest payments on loans for the referenced properties) both before and after liquidation of the three credit unions, but only up until January 1, 2008. Request includes formal agreements and correspondence, but not e-mails.

We sent out a submitter's notice on January 23, 2009 in regard to this item. There are approximately seventeen pages of responsive records consisting of an agreement and a term sheet for the agreement. All of the records are withheld pursuant to exemption 4 of the FOIA. Exemption 4 protects, in part, commercial or financial information obtained from a person that is privileged or confidential. 5 U.S.C. §552(b)(4). The term "commercial" has been broadly interpreted to include anything "pertaining or relating to or dealing with commerce." American

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Airlines, Inc. v. National Mediation Board, 588 F.2d 863, 870 (2d Cir. 1978). All information being withheld meets this standard of commercial/financial information. Information “obtained from a person” has been held to include information obtained from a wide range of entities including individuals, associations, corporations and public and private entities, other than agencies. Nadler v. FDIC, 92 F.3d 93, 95 (2nd Cir. 1996). All of the commercial/financial information withheld pursuant to exemption 4 meets the standard of obtained “from a person” under Nadler.

In Critical Mass Energy Project v. NRC, 975 F.2d 871 (D.C. Cir. 1992), cert. denied, 507 U.S. 984 (1993), the court established two distinct standards to be used in determining whether commercial/financial information submitted to an agency is “confidential” under exemption 4. According to Critical Mass, information that is voluntarily submitted is categorically protected provided it is not customarily disclosed to the public by the submitter. Information required to be submitted to an agency is confidential if its release would (1) impair the Government’s ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. See National Parks & Conservation Association v. Morton, 498 F.2d 765 (D.C. Cir. 1974). The information here was voluntarily submitted and would not customarily be disclosed to the public by the submitter. Hence the Critical Mass standard for voluntarily submitted information has been met. We also believe the stricter National Parks standard has been met because release of the commercial/financial information would impair NCUA’s authority to obtain necessary information in the future. The commercial/financial information is withheld pursuant to exemption 4.

Pursuant to 5 U.S.C. 552(a)(4)(B) of the FOIA, you may seek judicial review of this determination by filing suit against the NCUA. Such a suit may be filed in the United States District Court where you reside, where your principal place of business is located, the District of Columbia, or where the documents are located (the Eastern District of Virginia).

Sincerely,

Robert M. Fenner
General Counsel

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