

No.: 97-89  
Date: December 30, 1997

FEDERAL HOUSING FINANCE BOARD

Waiver of Six-Month Waiting Period for Members Seeking Withdrawal From  
Membership in the Federal Home Loan Bank of Des Moines

WHEREAS, U.S. Bancorp, the holding company for U.S. Bank N.A., a member of the Federal Home Loan Bank of Des Moines (FHLBank-Des Moines), recently acquired Zappco, Inc.; and

WHEREAS, Zappco, Inc. is the holding company for three banks, First National Bank of Little Falls, Melrose State Bank, and Zapp National Bank (collectively, the Zapp Banks), all of which are members of, and have advances outstanding from, the FHLBank-Des Moines; and

WHEREAS, the Zapp Banks' charters will remain outstanding and the Zapp Banks will operate as subsidiaries of U.S. Bancorp until the first quarter of 1999 when U.S. Bancorp intends to consolidate the three Zapp Banks into a subsidiary bank; and

WHEREAS, by letter dated December 11, 1997, U.S. Bancorp has requested that the FHLBank-Des Moines approve the transfer of the Zapp Banks' outstanding advances to U.S. Bank N.A. prior to December 31, 1997; and

WHEREAS, the FHLBank-Des Moines intends to approve the transfer of the Zapp Banks' outstanding advances to U.S. Bank N.A. pursuant to section 935.17(a) of the Finance Board's regulations (12 C.F.R. § 935.17(a)); and

WHEREAS, U.S. Bancorp has stated its intent to withdraw the Zapp Banks from membership in the FHLBank-Des Moines, and by letter dated December 12, 1997 to the Federal Housing Finance Board (Finance Board), the FHLBank-Des Moines has stated that for business purposes, U.S. Bancorp wishes to have the FHLBank-Des Moines stock owned by the Zapp Banks redeemed by December 31, 1997; and

WHEREAS, under the Federal Home Loan Bank Act (Bank Act), a member institution's FHLBank capital stock that is not in excess of the minimum amount required to be held by the Bank Act may be redeemed by the FHLBank only after termination of the institution's membership in the FHLBank and completion of the orderly liquidation of any advances from the FHLBank held by such institution (see 12 U.S.C. §§ 1426(b)(1), (e); 12 C.F.R. §§ 933.20(a), 933.29); and

WHEREAS, section 6(e) of the Bank Act provides that "[a]ny member other than a Federal savings and loan association may withdraw from membership in a [FHLBank] six months after filing with the [Finance] Board written notice of intention so to do . . . ." (six-month waiting period) (see 12 U.S.C. § 1426(e)); and

WHEREAS, section 933.26(a) of the Finance Board's regulations repeats the statutory requirement in section 6(e) of the Bank Act and further requires that the member provide its FHLBank at least six months written notice of the member's intention to withdraw from membership; and

WHEREAS, in order to be able to redeem the FHLBank-Des Moines stock owned by the Zapp Banks by December 31, 1997, the FHLBank-Des Moines has requested that the Finance Board treat U.S. Bancorp's request as a voluntary request for withdrawal of the Zapp Banks from membership in the FHLBank-Des Moines, and further has requested that the Finance Board waive the statutory six-month waiting period for the withdrawal of the Zapp Banks from membership; and

WHEREAS, the Finance Board's Office of General Counsel has previously opined that the Finance Board has authority, as a matter of law, to waive the statutory six-month waiting period provided that the waiver would not: (1) endanger the financial stability of the FHLBank from which the member is withdrawing; (2) endanger the safety and soundness of the FHLBank System as a whole; and (3) frustrate the purposes of the statutory provision; and

WHEREAS, the instant transaction is unique in that, unlike a typical membership withdrawal request where the institution no longer will have a relationship with the FHLBank System, U.S. Bank N.A. will continue as a FHLBank member and borrower; and

WHEREAS, both the FHLBank-Des Moines in particular and the FHLBank System as a whole are overcapitalized and, therefore, neither the financial stability of the FHLBank-Des Moines nor the safety and soundness of the FHLBank System would be endangered if the FHLBank-Des Moines stock owned by the Zapp Banks were to be redeemed immediately; and

WHEREAS, the underlying purposes of the statutory six-month waiting period would not be frustrated because: (1) the transaction would not endanger the financial stability or safety and soundness of either the FHLBank-Des Moines or the FHLBank System as a whole; (2) the withdrawal request is not motivated by temporary conditions, but by a desire on the part of the holding company acquirer of the withdrawing institutions to achieve economic and operational efficiencies, and the ten-year moratorium on reacquisition of membership for the withdrawing members required by section 6(h) of the Bank Act (12 U.S.C. § 1426(h)) serves to deter members generally from seeking withdrawal as a result of temporary conditions; and (3) waiver of the six-month waiting period will not impede the ability of the FHLBank-Des Moines to collect all debts owed by the withdrawing members; and

WHEREAS, the FHLBank-Des Moines' request for a waiver of the statutory six-month waiting period also would require waiver of the corresponding provision in section 933.26(a) of the Finance Board's regulations (12 C.F.R. § 933.26(a)); and

WHEREAS, the Finance Board's waiver regulation (12 C.F.R. § 902.6) authorizes the Finance Board to waive any provision, restriction, or requirement of its regulations not otherwise required by law if such waiver is not inconsistent with the law and does not adversely affect any substantial existing rights, upon a determination by the Finance Board that application of the provision, restriction, or requirement would adversely affect achievement of the purposes of the Bank Act, or upon a showing of good cause; and

WHEREAS, for the reasons described in the above WHEREAS clauses, waiver of the regulatory six-month waiting period would not adversely affect any substantial existing rights of the FHLBank or the FHLBank System; and

WHEREAS, requiring the regulatory six-month waiting period before redemption of the stock would adversely affect achievement of the purposes of the Bank Act to allow members to withdraw from membership and receive their capital stock redemptions if such withdrawal will not endanger the financial stability of the FHLBank from which the member is withdrawing or endanger the safety and soundness of the FHLBank System as a whole;

NOW, THEREFORE, BE IT RESOLVED, that the Finance Board hereby waives the six-month waiting period provisions of section 6(e) of the Bank Act (12 U.S.C. § 1426(e)) and section 933.26(a) of the Finance Board's regulations (12 C.F.R. § 933.26(a)), respectively, in connection with the request for withdrawal by the Zapp Banks from membership in the FHLBank-Des Moines; and

BE IT FURTHER RESOLVED, that the Zapp Banks' membership in the FHLBank-Des Moines shall be terminated effective as of the date of this Resolution, and the FHLBank-Des Moines stock owned by the Zapp Banks may be redeemed upon the completion of the transfer of any outstanding advances from the FHLBank-Des Moines held by the Zapp Banks to U.S. Bank N.A.; and

BE IT FURTHER RESOLVED, that pursuant to section 6(h) of the Bank Act (see 12 U.S.C. § 1426(h)), upon withdrawal from membership in the FHLBank-Des Moines, the Zapp Banks may re-acquire membership in a FHLBank only after the expiration of a period of ten years.

By the Board of Directors of the  
Federal Housing Finance Board



Bruce A. Morrison, Chairman