

Federal Housing Finance Board

October 30, 1991

TO: Philip L. Conover, Director
District Banks Directorate

FROM: Beth L. Climo
General Counsel

SUBJECT: Treatment of Home Equity Loans as "Residential Mortgage Loans"

The Federal Home Loan Bank of Pittsburgh ("FHLBank-Pittsburgh") has requested our opinion as to whether home equity loans are included within the definition of "residential mortgage loans" for purposes of subparagraph 4(a)(2)(A) of the Federal Home Loan Bank Act ("Bank Act").

ISSUE: Whether an institution may use home equity loans to satisfy the requirement that an institution have at least 10 percent of its total assets in "residential mortgage loans" to be eligible to become a member of the Federal Home Loan Bank System ("FHLBank System").

CONCLUSION: An institution applying for membership in the FHLBank System may use home equity loans to satisfy the requirement that it have at least 10 percent of its total assets in "residential mortgage loans."

DISCUSSION:

1) Introduction

Section 704(a) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") amended section 4 of the Bank Act by adding subparagraph 4(a)(2)(A), which provides *inter alia* that "an insured depository institution that is not a member on January 1, 1989, may become a member of a (FHLBank) only if . . . the insured depository institution has at least 10 percent of its total assets in residential mortgage loans" (the "10 percent requirement"). See FIRREA, Pub. L. No. 101-73, § 704(a), 103 Stat. 183, 416 (1989); 12 U.S.C. § 1424(a)(2)(A) (Supp. I 1989). Neither the Bank Act nor any existing implementing regulations

define the phrase "residential mortgage loans." Thus, the plain meaning of the provision and its legislative history must be looked to.¹

II) HOME EQUITY LOANS MAY BE INCLUDED WITHIN THE MEANING OF THE TERM "RESIDENTIAL MORTGAGE LOANS"

A) The Plain Meaning of "Residential Mortgage Loans"

The term "residential mortgage loans" is not defined in the Bank Act. However, if a word is not defined in a statute, then its commonly accepted meaning is applied. Sutherland, supra § 47.07, at 133. Generally, a home equity loan is an open end line of credit or term loan secured by a first or second mortgage on a consumer's principal dwelling. These loans have been used by homeowners for a variety of purposes related to the mortgaged property, including improvements to their residences. However, homeowners also have used the proceeds from home equity loans for non-residential purposes such as financing educational expenses, purchasing automobiles and consolidating outstanding consumer loans.

The plain meaning of the term "residential mortgage loans" could be interpreted to include home equity loans, since a home equity loan is a loan secured by a mortgage on a residence. However, since home equity loans may be used for non-residential purposes, an examination of the legislative history is necessary in order to better ascertain whether Congress considered home equity loans as "residential mortgage loans" for purposes of the 10 percent requirement.

B) The Legislative History of the 10 Percent Requirement

Prior to FIRREA, the term "residential mortgage loans" did not appear as a standard in the Bank Act. Although the Bank Act, as amended by FIRREA, does not define the term "residential mortgage loans," the Conference Report accompanying FIRREA provides some guidance on what Congress intended. The Conference Report states that, in order to qualify for membership in a FHLBank, insured depository institutions "must have at least 10 percent of their assets in residential mortgage loans, including

1. To ascertain the meaning of a statutory provision, the principles of statutory construction must be applied. The starting point of statutory construction is the plain meaning of the text. If the meaning of the statute cannot be ascertained with complete certainty, then an examination of the intent underlying the statute may prove instructive. Finally, the construction of related statutes or prior versions of the same statute can prove to be relevant. Sutherland, Statutes and Statutory Construction, § 46.01 (4th ed. 1984). Each of these principles will be used in the analysis herein.

1-4 family, multifamily and funded residential construction loans, to qualify for membership.” Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. 222, 101st Cong. 1st Sess. 424 (1989). The use of the term “including” in the sentence appears to reflect a non-exclusive, merely illustrative, list. Therefore, a more in depth analysis of legislative history is necessary.

A review of the legislative history of FIRREA indicates that the 10 percent requirement is a product of a compromise between the Senate and the House of Representatives. Originally, the bill passed by the Senate, S. 774, required a commercial bank to meet the Qualified Thrift Lender (“QTL”) test in section 10(m) of the Home Owners’ Loan Act (“HOLA”) in order to be eligible for FHLBank membership. The QTL test requires a Savings association to maintain at least 70 percent of its assets in “qualified thrift investments,” which the Conference Report describes as “housing finance and related activities.” H.R. Conf. Rep. No. 101-222, 101st Cong., 1st Sess. 407 (1989).

The bill passed by the House of Representatives, H.R. 1278, did not require commercial banks to meet any quantitative asset test before being eligible for FHLBank membership. In conference, the agreed upon compromise was a reduction of the Senate’s QTL, threshold test to the 10 percent requirement.²

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2. In connection with the enactment of the 10 percent requirement, Chairman Riegle stated in pertinent part:

Originally, the Senate bill required a bank or credit union to pass the qualified thrift lender (QTL) test in order to gain access to advances from a Federal Home Loan Bank. This would have required a bank to fund 100 percent of its new single family mortgage lending without any help from a Federal Home Loan Bank. Once it reached the QTL plateau, it could use advances from the Federal Home Loan Bank for additional residential mortgage lending....

We thought it made sense to give banks and credit unions that plan to increase their mortgage lending some help along the way. But first, the bank or credit union must take a small step on its own. Thus, under the Conference Report, any such institutions that have 10 percent of their total assets in residential mortgage loans will have access to Federal Home Loan Bank advances (emphasis added]....

135 Cong. Rec. S. 10206 (daily ed. Aug. 4, 1989)
(statement of Sen. Riegle).

Under the 10 percent requirement, an institution must have at least 10 percent of its total assets in "residential mortgage loans." The compromise, therefore, reduced the required asset composition from 70 percent of assets in "qualified thrift investments," (described in the Conference Report as "housing finance and related activities") to 10 percent of assets in "residential mortgage loans." Congress, in FIRREA, defined by statute the categories of assets that meet what they consider "housing finance and related activities." In contrast, Congress did not define in FIRREA "residential mortgage loans" for purposes of the 10 percent requirement. Since Congress in effect reduced its threshold of commitment to residential mortgage lending for commercial banks and credit unions from the QTL test to the 10 percent requirement, it is reasonable to look at the types of loans that qualify for the QTL test in determining the types of loans that qualify for the 10 percent requirement.

C) Types of Loans That Appear to Qualify as "Residential Mortgage Loans"

The QTL test mandates that an institution hold 70 percent of its assets in "qualified thrift investments." The statute specifically defines "qualified thrift investments" to include home-equity loans. See 12 U.S.C. § 1467a(m)(4)(C)(ii)(II) (supp. I 1989). Since Congress included home-equity loans as a "qualified thrift investment" for purposes of the QTL test and since the 10 percent test is derived from the QTL test, it is reasonable to allow home-equity loans to be used to satisfy the 10 percent requirement.

III) CONCLUSION

Based on the foregoing, it is the opinion of the Office of the General Counsel that home equity loans are "residential mortgage loans*" for purposes of the 10 percent requirement set forth in subparagraph 4(a)(2)(B) of the Bank Act.



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