



REGULATORY INTERPRETATION 1999-RI-13

Date: July 21, 1999

Subject: Redesignation of Principal Place of Business

Request Summary:

As part of a merger between two members, the surviving member relocated its main office from a state in one Federal Home Loan Bank (FHLBank) district to a different state in an adjoining FHLBank district. The member sought an interpretation that the centralized record-keeping structure used by its holding company was consistent with 12 CF.R § 933.18(c), which allows a member to redesignate its principal place of business to a state other than the one in which it maintains its main office, if certain conditions are met.

Background:

The requesting member (Bank) is the surviving institution resulting from a merger involving two national banks. Prior to the merger, the Bank and the disappearing institution each had its main office in a different state and each was a member of a different FHLBank. As part of the merger the surviving bank relocated its main office from its existing location, in State A, to the state in which the disappearing institution formerly had maintained its home office, State B, though the surviving bank retained much of its operations in State A. As a consequence of the relocation of its main office, the Bank no longer maintains its principal place of business within the district of the FHLBank of which it is a member.

Notwithstanding the relocation of its main office to State B, the Bank retains substantial business operations in State A. All of its executive officers (including the five highest paid officers) are employed in State A, and all of the meetings of the board of directors and of its committees are held in State A. Copies of the Bank's accounting books, records, and ledgers are maintained at its offices in State A. The original records are maintained at the offices of the Bank's holding company, as part of a centralized records system for the holding company, which is located in a third state. The copies maintained at the Bank's offices in State A are the same as those maintained at the holding company, are used by the management of the Bank in conducting the business of the Bank, and are used by the Office of the Comptroller of the Currency during its examinations of the Bank.

The Bank wishes to redesignate its principal place of business from State B to State A, based on 12 CFR § 933.18(c), which allows such redesignation if three conditions are met. The Bank represents that it meets two of those conditions and requests an interpretation that the centralized recordkeeping structure established by its holding company is consistent with the remaining requirement that certain records of the Bank must be maintained in the state that it seeks to designate as its principal place of business.

Analysis or Discussion:

The Federal Home Loan Bank Act (Bank Act) provides that the location of a member's principal place of business generally determines the FHLBank in which it may be a member and from which it may obtain advances. Section 4(b) of the Bank Act provides in part that an institution eligible for membership "may become a member only of, or secure advances from, the Federal Home Loan Bank of the district in which is located the institution's principal place of business." 12 U.S.C. § 1424(b).¹ The term "principal place of business" is defined to mean the state where an institution "maintains its home office established as such in conformity with the laws under which the institution is organized". 12 C.F.R. § 933.18(b). With respect to a national bank, its chartering documents must indicate the location of the bank's main office, which would be the bank's principal place of business for purposes of FHLBank membership.

Finance Board regulations recognize that in certain circumstances the location of an institution's home office may not necessarily be the same as the location from which the institution conducts its principal business operations. Accordingly, a member or an applicant for membership may request that a state other than that in which it maintains its home office be designated as its principal place of business, if it can demonstrate that: (i) at least 80% of its accounting books, records, and ledgers are maintained, located, or held in the state that it seeks to have designated as its principal place of business; (ii) it holds a majority of the meetings of its board of directors and its committees in that state; and (iii) a majority of its five highest paid executive officers are employed in that state. 12 C.F.R. § 933.18(c)(1).

The Bank has represented that it satisfies the criteria of 12 C.F.R. § 933.18(c)(1)(ii)-(iii), *i.e.*, that all of its executive officers (including the five highest paid officers) are located in State A, and that all of the meetings of the board of directors and of its committees are held in State A. The Bank believes that the centralized recordkeeping arrangement established by its holding company is consistent with the remaining criterion, *i.e.*, that at least 80% of its accounting books, records, and ledgers are "maintained, located, or held" in State A, and requests an interpretation of 12 C.F.R. § 933.18(c)(1)(i) to that effect.

The regulation does not distinguish between "original" records and copies of the accounting records. It states only that the records must be "maintained, located, or held" at the proposed principal place of business. That language suggests that the provision need not be so narrowly construed as to preclude a record sharing arrangement between a member and its parent company. Where such an arrangement exists, the relevant inquiry is at which of the offices *of the member* are the accounting records maintained. That reading is consistent with the intent of the regulation, which uses the location of the records to aid in determining the offices (other than its home office) from which a member principally conducts its business.

In this case, the accounting records are in fact "maintained, located, or held" in the offices located in State A, albeit in the form of copies, which is all that the regulation requires. The corporate practice of keeping the original records at the holding company offers little, if any, guidance as to the location from which the Bank principally conducts its business, and thus should have no bearing on whether the Bank has complied with the regulatory requirements.

¹ Section 4(b) of the Bank Act also would allow an institution to become a member of any FHLBank whose district adjoins the district in which the institution's principal place of business is located, but only if demanded by convenience and approved by the Finance Board. That provision is not at issue in this instance.

Conclusion:

It is the opinion of Finance Board staff that the records maintained by the Bank at its offices in State A satisfy the requirements of 12 C.F.R. § 933.18(c)(1)(i) and the Bank is entitled to have the FHLBank for the district in which its main office is located redesignate its principal place of business to State A.

A Regulatory Interpretation applies only to the particular transaction or activity proposed by the requestor, may be relied upon only by the requestor, and is subject to modification or rescission by action of the Board of Directors of the Finance Board. 64 Fed. Reg. 30880 (June 9, 1999), *to be codified at* 12 C.F.R. part 903.