

Federal Housing Finance Board

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June 6, 1990

Mr. Thurman C. Connell, President
Federal Home Loan Bank of Des Moines
906 Walnut Street
Des Moines, Iowa 50309

Dear Sam,

Mary Bush has requested that I respond to your letter dated April 9, 1990 concerning the funding of the Affordable Housing Program by the Federal Home Loan Banks. More specifically, you have asked whether the costs incurred in supporting the Affordable Housing Program could be deducted from the fund established for the Program.

It is my opinion that such expenses may not be deducted from the fund established for the Affordable Housing Program and, therefore, must be borne directly by the Federal Home Loan Bank.

Section 721 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) amended section 10 of the Federal Home Loan Bank Act (12 U.S.C. Sec. 1430) and contains the Affordable Housing Program. Subsection (j)(5) states "...Each Bank shall annually contribute the percentage of its annual net earnings prescribed in the following subparagraphs to support subsidized advances through the Affordable Housing Program..." In the same section of FIRREA as the Affordable Housing Program, Congress specifically mentioned and provided for "reasonable administrative costs" of the Banks for Community Investment Program advances. 12 U.S.C. Sec. 1430 (i)(1). Thus, Congress, was aware of the issue of expenses in regards to the programs it enacted to help finance affordable housing in this country. Statutory construction under the "doctrine of the last antecedent" would apply this phrase to the Community Investment Program and not to the Affordable Housing Program. See Quindlen v. Prudential Insurance Company of America, 487 F. 2d, 876, (1973 Sutherland Stat. Const. Sc 47.33 (4th ed)).

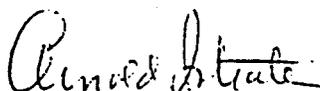
Congress also specifically required the Federal Housing Finance Board to promulgate regulations that "(d) ensure that a preponderance of assistance provided under this subsection is ultimately received by low- and moderate-income households; (e) ensure that subsidies provided by Banks to member institutions under this program are passed on to the ultimate borrowers..." 12 U.S.C. Sec. 1430(j)(9)(d) and (e). It would appear from the language of the statute that the intent of Congress is that all of the annual assessment go directly to the subsidy, and not to the administrative expenses of the Federal Home Loan Bank.

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In addition, 12 C.F.R. 960.1(k) defines "Subsidy" as "the direct cash payment to the [Affordable Housing Program] or the net present value of the foregone cash flows to the Bank from making funds available under the Program at rates below the cost of funds." 12 C.F.R. Sec. 960.10(a) states that: "[e]ach Bank shall fund its Program in accordance with the following formula: . . .(i)s present of the Bank's net income from the previous year..." The regulations make no mention of using Affordable Housing Program funds for expenses. In fact, the only mention of expenses in the Regulation pertaining to the Affordable Housing Program is a direct statement that the Banks should pay expenses of council members. "Council members shall be paid travel expenses by the Banks, including transportation and subsistence, for each day devoted to attending meetings." 12 C.F.R. Sec. 960.15(e).

For the reasons set forth above, it is the opinion of Counsel that to charge administrative expenses of the Affordable Housing Program directly to the Program's fund would not be consistent with the statutory scheme under which the Program is created. Therefore, all such expenses shall be borne directly by the Banks.

Sincerely,


Arnold Intrater
General Counsel

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