



## Federal Housing Finance Board

October 20, 1992

TO: Sylvia C. Martinez, Director  
Housing Finance Directorate

THROUGH: Renie Y. Grohl *Ryg*  
Deputy General Counsel -

FROM: Jon E. Boustany, Attorney-Advisor and *JB*  
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SUBJECT: Applicability of OMB Circular A-133 to the  
Affordable Housing Program and Community Investment  
Program

ISSUE:

Whether, by virtue of receiving Federal Home Loan Bank ("FHLBank") Affordable Housing Program ("AHP") or Community Investment Program ("CIP") funds, nonprofit organizations are subject to the uniform audit requirements that generally apply to nonprofit institutions receiving Federal awards found in Office of Management and Budget ("OMB") Circular A-133.

CONCLUSION:

The OMB Circular A-133 audit requirements are applicable only when a nonprofit institution receives Federal funds (i.e. Federal tax dollars) to carry out a program. FHLBank AHP and CIP funds are not Federal funds. Thus, nonprofit institutions are not subject to the audit requirements of OMB Circular A-133 by virtue of receiving FHLBank AHP and CIP funds.

DISCUSSION:

I) THE AUDIT REQUIREMENTS OF OMB CIRCULAR A-133 ARE APPLICABLE ONLY WHEN A NONPROFIT INSTITUTION RECEIVES FEDERAL FUNDS TO CARRY OUT A PROGRAM

Section 2 of OMB Circular A-133 provides generally that nonprofit institutions that receive \$100,000 or more a year in Federal awards shall be audited in accordance with the circular. (See attachment.) A Federal award is defined as Federal financial assistance received by primary recipients directly from Federal agencies or indirectly when sub-recipients receive funds identified as Federal funds by primary recipients. Such Federal financial assistance may be in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, direct appropriations, or other non-cash

assistance. Thus, the audit requirements of OMB Circular A-133 appear applicable only when nonprofit institutions receive Federal funds to carry out a program. Support for this conclusion is found in legislative history pertinent to OMB Circular A-133's promulgation.

OMB Circular A-133 is modeled after OMB Circular A-128, "Audit of State and Local Governments," which was issued by OMB to implement the Single Audit Act of 1984. See Pub. L. No. 98-502, 98 Stat. 2327 (Oct. 19, 1984); codified at 31 U.S.C. § 7501 et seq. During Congressional consideration of the Single Audit Act, Congress agreed to exclude most colleges and universities from coverage under the Single Audit Act. In return, OMB agreed to develop an audit policy for these organizations and other nonprofit organizations not covered by the Single Audit Act or OMB Circular A-128. OMB Circular A-133 was promulgated to establish an audit policy for colleges, universities, and other nonprofit entities. Since OMB Circular A-133 is modeled after the Single Audit Act and OMB Circular A-128, the Act's legislative history is relevant in determining the coverage of OMB Circular A-133's audit requirements.

The legislative history of the Single Audit Act supports the proposition that the audit requirements of OMB Circular A-133 apply only when Federal funds are used by recipients to carry out a program. Congress ultimately passed the House's version of the Single Audit Act (H.R. 4821). The House Report on H.R. 4821 referred to Federal financial assistance as follows:

The expenditure of Federal financial assistance by State and local governments has traditionally been audited through separate reviews of individual programs. However, numerous studies conducted over the past several years have clearly shown that this grant-by-grant audit approach is an inefficient use of scarce audit resources, and an ineffective means of assuring accountability in the use of Federal tax dollars. As a result, Federal, State and local officials have recommended that the myriad of overlapping, inconsistent, and duplicative Federal requirements for audits of individual assistance programs be replaced by a uniform requirement for organization-wide audits of Federal grant recipients. . . .

H.R. Rep. No. 708, 98th Cong., 2d Sess., at 1 (1984) (emphasis added).

Since the legislative history describes Federal financial assistance in terms of Federal tax dollars, Congress apparently intended the audit requirements under the Single Audit Act to apply only when Federal funds (i.e., Federal tax dollars) are received to carry out a program. This Congressional intent may be imputed to the audit requirements in OMB Circular A-133, since the

requirements in OMB Circular A-133 are modeled after the Single Audit Act. Accordingly, the issue becomes whether FHLBank AHP and CIP funds are Federal funds.

**II) FHLBANK AHP AND CIP FUNDS ARE NOT FEDERAL FUNDS**

Determining whether FHLBank AHP and CIP funds are Federal funds requires analysis of the sources for funding such programs. The FHLBanks do not receive appropriated funds from Congress and their budgets are not part of the Federal budget. Their operations are funded by member deposits, the sale of consolidated obligations, and the issuance of capital stock to members. See 31 U.S.C.A. §§ 9103 and 9104 (West 1990); see also 12 U.S.C. §§ 1426(b), 1430, and 1431 (Supp. I 1989).

The FHLBanks are authorized under section 11(e)(1) of the Federal Home Loan Bank Act ("Bank Act") to accept deposits from their members. 12 U.S.C. § 1431(e) (Supp. I 1989). Member deposits do not emanate from a Federal source. The FHLBanks, member institutions - generally, thrifts, commercial banks, and credit unions - are not Federal Government entities. See 12 U.S.C. § 1424 (Supp. I 1989). Accordingly, the proceeds from member deposits are not "Federal funds."

There are several reasons why the proceeds from the sale of the consolidated obligations are not "Federal funds." First, the consolidated obligations are not obligations of the United States. See 12 U.S.C. § 1435 (Supp. I 1989). Instead, they are joint and several obligations of, and are backed solely by the credit of, the twelve FHLBanks. See 12 U.S.C. § 1431(b). Second, the consolidated obligations are purchased by private, non-Governmental entities such as commercial banks, savings associations, insurance companies, trustees, and other fiduciaries.

An additional principal source of funds to the FHLBanks are the proceeds from the issuance of capital stock to members. The FHLBanks are wholly owned by their members, and may sell stock only to their members. See 12 U.S.C. §§ 1424, 1426 (Supp. I 1989). Since the FHLBanks' members are not Federal Government entities, the funds from the sale of FHLBank stock to members are not "Federal funds."

The Internal Revenue Service ("IRS") addressed the question of whether AHP and CIP funds are Federal funds for purposes of low-income housing credits ("LIHC") in section 42 of the Internal Revenue Code. The IRS examined, among other things, the sources for funding the FHLBanks' AHP and CIP and concluded that such funds are not Federal funds. The IRS's decision was based on the fact that FHLBank AHP and CIP funds are not United States Treasury funds (i.e., taxpayer dollars). See 56 Fed. Reg. 48733 (Sept. 26, 1991). As discussed above, OMB Circular A-133 and the legislative history of the Single Audit Act indicate that the circular's audit requirements apply only when a nonprofit organization receives

funds from the United States Treasury. Accordingly, the IRS's decision is consistent with and supports the conclusion that FHLBank AHP and CIP funds are not Federal funds for purposes of OMB Circular A-133.

None of the sources of funding of the FHLBanks' AHP or CIP are Federal funds. Similarly, nonprofit institutions receiving AHP or CIP funds are not receiving Federal funds to carry out those programs. Therefore, because of the private nature of such funding, nonprofit institutions are not subject to the audit requirements of OMB Circular A-133 by virtue of receiving FHLBank AHP and CIP funds.

**III) CONCLUSION**

OMB Circular A-133's audit requirements are applicable only when a nonprofit institution receives Federal funds (i.e. Federal tax dollars) to carry out a specific program. FHLBank A-6 and CIP funds are derived from private funding sources and, therefore are not Federal funds. Accordingly, nonprofit institutions are not subject to the audit requirements of OMB Circular A-133 by virtue of receiving FHLBank AHP and CIP funds.

cc: Beth L. Climo  
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