



## Federal Housing Finance Board

July 6, 1993

### MEMORANDUM

TO: Gary B. Townsend  
Deputy Director,  
Examination and Regulatory Oversight Division, DBD

THROUGH: Renie Y. Grohl *RYG*  
Deputy General Counsel

FROM: Brandon B. Straus *BBS*  
Attorney-Advisor

SUBJECT: Interpretation of the requirement that home mortgages on-which a director, officer, employee, attorney, or agent of a Federal Home Loan Bank ("FHLBank") or the borrowing institution is personally liable ("insider home mortgages") must be specifically approved by the board of a FHLBank in order to be accepted as collateral for an advance

We have been asked to address the following issue concerning the acceptance of home mortgages by a FHLBank as collateral for an advance.

#### ISSUE:

Whether a blanket resolution of the board of a FHLBank authorizing the acceptance as collateral of any insider home mortgage meets the requirement set forth in section 10(b) of the Federal Home Loan Bank Act ("Bank Act"), see 12 U.S.C. § 1430(b), and § 935.9(e) of the Finance Board's regulations, see 58 Fed. Reg. 29472 (May 20, 1993), that acceptance of such home mortgages as collateral must be "specifically approved by formal resolution" of the FHLBank's board.

#### CONCLUSION:

A blanket resolution approving the acceptance of all insider home mortgages, as a class, as collateral for advances does not meet the requirement of section 10(b) and § 935.9(e) that such mortgages be specifically approved by formal resolution. Section 10(b) and § 935.9(e) require that a FHLBank board

approve the acceptance of insider home mortgages by a formal resolution that identifies one or more specific insider home mortgages to be accepted as collateral.

DISCUSSION:

The final sentence of section 10(b) of the Bank Act states that:

No home mortgage otherwise eligible to be accepted as collateral security for an advance by a Federal Home Loan Bank shall be accepted if any director, officer, employee, attorney, or agent of the [FHLBank] or of the borrowing institution is personally liable thereon, unless the Board has specifically approved by formal resolution such acceptance.<sup>1</sup>

It is not clear from the underscored language whether a FHLBank board<sup>2</sup> may approve the acceptance of insider home mortgages as collateral by a formal resolution that applies to

1. 12 U.S.C. § 1430(b) (Supp. III 1993) (emphasis added); see also 58 Fed. Reg. 29472 (section 935.9(e) of the Federal Housing Finance Board ("Finance Board") regulation on advances, requiring that insider home mortgages be specifically approved by formal resolution of the FHLBank board and that such resolution be endorsed by the Finance Board).

2. Although section 10(b) contains the capitalized word, "Board, which is defined in the Bank Act as the Federal Housing Finance Board, see id. § 1422, we are interpreting the requirement of specific approval by formal resolution to apply to the board of a FHLBank. This position is supported by the history of section 10(b). Prior to the enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), Pub. L. No. 101-73, 103 Stat. 83 (1989), the final sentence of section 10(b) contained the word "board" in place of "Board." In the most recent version of the United States Code, the capitalized "Board" appears. See 12 U.S.C. § 1430(b) (Supp. III 1993). However, neither ~~FIRREA~~ nor any other law has amended the last sentence of section 10(b) since enactment of the original Bank Act in 1932. See Pub. L. No. 72-304, 47 Stat. 725. Therefore, we believe that the word "Board" in the final sentence of section 10(b) should be read to refer to a board of a FHLBank. The Finance Board has implicitly adopted this interpretation in § 935.9(e) of its regulation on advances, which requires that the board of directors of a FHLBank specifically approve the acceptance of insider home mortgages as collateral by formal resolution.

all otherwise eligible insider home mortgages, as a class. The term "specifically" in section 10(b) could be read to refer to the word "approved," requiring that board approval be specific to one or more insider home mortgages identified by the formal resolution. In contrast, "specifically" could be read to refer to the phrase "by formal resolution," requiring that approval of the acceptance of insider home mortgages be done specifically by means of a formal resolution, whether the resolution approves specific insider home mortgages or insider home mortgages as a class.

We believe that the better reading of section 10(b) and § 935.9(e) requires that the term "specifically" be read to refer to the word "approved," so that a formal board resolution must identify one or more specific insider home mortgages in order to approve the acceptance of those mortgages as collateral.

Section 10(b) and § 935.9(e) carve out insider home mortgages as a separate class of home mortgages, the acceptance of which as collateral is conditioned upon the performance by the board of an extra step in the approval process. The requirement of specific board approval reflects a policy of requiring higher scrutiny of FHLBank transactions involving interests of insiders. If a FHLBank could, by resolution, approve the acceptance of all otherwise eligible insider home mortgages as a class, the board would no longer have to examine the acceptance of each insider home mortgage on a case-by-case basis. The FHLBank could thus eliminate the requirement of heightened scrutiny imposed on the acceptance of insider home mortgages as collateral under section 10(b) and § 935.9(e). Accordingly, the final sentence of section 10(b) and § 935.9(e) would be rendered without effect.<sup>3</sup>

3. The requirement of specific board approval in section 10(b) and § 935.9(e) is analogous to the requirement of prior board approval of insider loan transactions contained in section 22(h) of the Federal Reserve Act, see 12 U.S.C. § 375b(3) (Supp. III 1993) and § 215.4(b) of Regulation O, see 12 C.F.R. § 215.4(b) (1993). Section 22(h) and Regulation O requires that extensions of credit from a member bank in the Federal Reserve System to an insider be approved in advance by a majority of the bank's board of directors, excluding the interested party. See id. The purpose of the prior approval requirement is to "assure that a board knows how much insiders are borrowing and that they can fulfill their fiduciary responsibility to the institution." H.R. Rep. No. 95-1383, 95th Cong., 1st Sess. at 16 (1978). The higher level of scrutiny applied to the acceptance of insider home mortgages under Bank Act section 10(b) and § 935.9(e) parallels the heightened scrutiny of insider loan transactions required by the Federal Reserve Act and Regulation O. Therefore, it is reasonable to conclude that the Bank Act's requirement of specific board approval of

It is a fundamental rule of statutory construction that a statute should be construed so that no part will be inoperative, superfluous, void, or insignificant. See 2A N. Singer, Sutherland Statutory Construction § 46.06 (Sands 4th ed. 1984). in interpretation that produces an unreasonable result or eviscerates a provision of a statute is not preferred. See id. § 45.12. Therefore, in order to construe the requirement of specific board approval in section 10(b) consistent with applicable rules of statutory construction, section 10(b) should be read to require that a formal board resolution must identify one or more specific insider home mortgages in order to approve the acceptance of those mortgages as collateral for an advance.

CONCLUSION:

Based on the foregoing, we believe that a blanket resolution approving the acceptance of all insider home mortgages, as a class, as collateral for advances does not meet the requirements of section 10(b) and § 935.9(e) that such mortgages be specifically approved by formal resolution. We believe the better interpretation is that section 10(b) and § 935.9(e) require that a FHLBank board approve the acceptance of insider home mortgages by a formal resolution that identifies one or more specific insider home mortgages to be accepted as collateral.

cc: Beth L. Climo

(Footnote 3 continued from previous page)  
insider home mortgages must be satisfied on a case-by-case basis, as is the prior approval requirement under the Federal