



Federal Housing Finance Board

March 7, 1995

MEMORANDUM

TO: Nicolas P. Retsinas
HUD Secretary's Designee to the Board

Lawrence U. Costiglio
Director

FROM: James H. Gray Jr. JHG
Associate General Counsel

Janice A. Kaye JAK
Attorney-Advisor

SUBJECT: Eligibility of Indian Housing Authorities
to Receive FHLBank Advances

ISSUES:

1. Whether Indian Housing Authorities (IHAs) are eligible to be certified as Federal Home Loan Bank (FHLBank) nonmember mortgagees under section 10b of the Federal Home Loan Bank Act (Bank Act) and section 935.22 (nonmember mortgagee regulation) of the Federal Housing Finance Board's (Finance Board) regulations.
2. If yes, what categories of collateral may IHAs pledge to secure FHLBank advances.

CONCLUSIONS:

1. IHAs may be eligible for certification as nonmember mortgagees.
2. If certified as nonmember mortgagees, tribal chartered IHAs can pledge Federal Housing Administration (FHA) insured mortgage loans and securities representing an interest in a pool of FHA insured mortgage loans as security for FHLBank advances. State chartered IHAs that are certified as state housing finance agency (SHFA) nonmember mortgagees also can pledge most types of

B . General Collateral Requirements For Advances to Members.

Four categories of collateral eligible to secure advances to members are identified in section 10(a) of the Bank Act. See 12 U.S.C. § 1430(a). They are: (1) fully disbursed, whole first mortgage loans on improved residential real property or securities representing a whole interest in such mortgages; (2) securities issued, insured, or guaranteed by the U.S. government or any agency thereof; (3) deposits of a FHLBank; and (4) other real estate related collateral if such collateral has a readily ascertainable value and the FHLBank can perfect its interest in such collateral.

c . Eligible Collateral for Advances to Nonmember Mortgagees.

Advances to nonmember mortgagees are not subject to the general collateral requirements of section 10 of the Bank Act. See 12 U.S.C. § 1430b(a). Instead, an entity that has been certified by the Finance Board as a nonmember mortgagee may seek FHLBank advances only on the security of mortgages insured by the FHA under title II of the National Housing Act or of securities representing an interest in the principal and interest payments due on a pool of FHA insured mortgages. See *id.*; 12 C.F.R. § 935.22(d)(1). The amount of any advance not exceed 90 percent of the unpaid principal of the collateral pledged as security for the advance. See 12 U.S.C. § 1430b(a); 12 C.F.R. § 935.22(e)(3).

D. Special Provisions for State Housing Finance Agency Nonmember Mortgagees.

To qualify as a SHFA, a nonmember mortgagee must be a public agency, authority or publicly sponsored corporation that serves as an instrumentality of any state or any political subdivision of any state and functions as a source of residential mortgage loan financing in that state. See 12 U.S.C. § 1430b; 12 C.F.R. § 935.1. For purposes of the nonmember mortgagee regulation, "state" is defined as a state of the United States, the District of Columbia, Guam, Puerto Rico, or the U.S. Virgin Islands. See 12 U.S.C. § 1422(3); 12 C.F.R. § 935.1.

1. See *id.* § 1430(a)(1)-(4); 12 C.F.R. §§ 935.22(d)(2), 935.9(a). Other acceptable real estate related collateral includes, but is not limited to: privately issued mortgage-backed securities other than those eligible under category 1; second mortgage loans, including home equity loans; and mortgage loan participations. See *id.* § 935.9(a)(4)(ii). The aggregate amount of outstanding advances secured by such collateral may not exceed 30 percent of the member's capital. See 12 U.S.C. § 1430(a)(4); 12 C.F.R. § 925.9(a)(4)(iii).

that are converted into acceptable collateral by investing in Government National Mortgage Association securities.

See § I(B) supra; 12 U.S.C. § 1430b(a); 12 C.F.R. § 935.22(d)(1).

As long as advances are used for mortgage lending to low- and moderate-income individuals and families, certified state chartered IHAs may pledge as security for FHLBank advances, in addition to FHA insured mortgage loans, most types of collateral available to FHLBank members, including loans guaranteed by the federal government under ONAP's "section 184" program.

III. OPTIONS FOR FUTURE ACTION

A. Options For FHLBanks Seeking to Lend to IHAs.

The options presented below assume current law, that is, no enhancement of FHLBank nonmember mortgagee lending authority.

- 1) FHLBanks should encourage IHAs established under tribal law to pursue FHA approved mortgagee status and then apply for certification as a FHLBank nonmember mortgagee. Only FHA insured mortgage loans and securities representing an interest in pools of FHA insured mortgage loans will be eligible collateral for tribal chartered IHAs.
- 2) FHLBanks should encourage IHAs established under state law to pursue FHA approved mortgagee status and then apply for certification as a FHLBank SHFA nonmember mortgagee. The FHLBank will be able to accept additional classes of collateral to secure advances to state chartered IHAs to support low- and moderate-income lending, including most types available to FHLBank members.

8. See § I(D) supra; 12 U.S.C. 1430b(b); 12 C.F.R. § 935.22(d)(2). Authorized by the Housing and Community Development Act of 1992, the section 184 program, see 12 U.S.C. § 1715z-13a, is not limited to low-income borrowers. Under the program, HUD guarantees 100% of qualifying mortgages to Native American families or IHAs for the purchase, construction, or rehabilitation of 1 to 4 family residences on reservations and trust lands. Before an individual or IHA can borrow under this program, the tribal government must certify to HUD that it has procedures for eviction, foreclosure, and establishing lien priority. All borrowers and properties must meet federal mortgage credit and underwriting standards. See *id.* The guarantee fund is subject to annual appropriations. For fiscal year 1995, section 184 is limited to \$21 million.

- 4) Identify a FHLBank(s) that is willing to pursue collateral substitution and other innovative interim measures that address the collateral capacity problem facing IHAs.

Attachment

cc: Rita I. Fair
Beth L. Climo
Deborah F. Silberman