

cc: Hill  
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# Federal Housing Finance Board

1777 F Street, N.W., Washington, D.C. 20006  
Telephone: (202) 408-2500 Facsimile: (202) 408-1435

January 5, 1996

**RECEIVED**  
JAN 10 1996

Mr. Martin D. Eakes  
Chief Executive Officer  
Self-Help Credit Union  
Post Office Box 3619  
Durham, NC 27702-3619

JAN 10 1996  
FHLBANK OF ATLANTA

LEGAL DEPT.  
FHLBANK OF ATLANTA

Re: Pledge of Collateral By Non-Member on FHLBank Advance

Dear Mr. Eakes:

I apologize for the delay in responding to correspondence from you and Eric Stein of your staff dated October 5 and November 16, 1995 on behalf of your financial institution, Self-Help Credit Union. Those letters, as well as supplemental telephone conversations with Mr. Stein, were seeking advice on whether an institution that is not a member of a Federal Home Loan Bank (FHLBank) may pledge collateral to support a FHLBank advance to a member either as pledgor or co-borrower. More specifically, the letters ask whether non-member Self-Help Ventures Fund may pledge collateral to support a FHLBank advance received by Self-Help Credit Union, which is an affiliate of the Ventures Fund and a member of the FHLBank of Atlanta.

First, let me say that the staff of the Federal Housing Finance Board (Finance Board) welcomes the efforts of financial institutions such as yours in seeking innovative approaches through the FHLBank System to promote affordable housing and community development lending. As you know, FHLBank advances generally are governed by the Federal Home Loan Bank Act (Bank Act) and the Finance Board's regulation on advances (Advances regulation). Decisions on the specifics of whether and under what terms and conditions to extend credit to members of a FHLBank are within the discretion of each FHLBank, subject to the Bank Act, Finance Board regulation and policy, and the FHLBank's own policy guidelines, including safety and soundness considerations. See id. 12 U.S.C. 4 1429; 12 C.F.R 5 935.3, 935.5(a). The Bank Act and Advances regulation provide that a FHLBank may make advances to its members; that members applying for advances must enter into a primary and unconditional obligation to repay the advance; and that advances must be fully secured by eligible collateral. See id. 12 C.F.R. 935.4(a), (c), (d); id. 935.4(a), (b), (c), 935.9. Therefore, as a general matter, Self-Help Credit Union should contact the FHLBank of Atlanta to discuss the particulars of any advance and collateral structure contemplated, so that the FHLBank and Self-Help Credit Union can work together to determine whether and how to make such an advance, subject to satisfaction of the requirements of applicable law, regulation and policies.

Aside from the specific credit issues presented, your communications also raised questions of interpretation of the Bank Act and Advances regulation. As mentioned above, the Bank Act and Advances regulation provide that a FHLBank “is authorized to make secured advances to its members upon collateral sufficient, in the judgment of the Bank, to fully secure advances obtained from the Bank. . . .” See *id.* § 1430(a); *id.* §§ 9354(c), 935.9. Neither the statute nor the regulation requires that the collateral for an advance come solely from the member receiving the advance. In fact, the Bank Act and Advances regulation, in setting forth the priority for certain secured interests, refer to a security interest granted to a FHLBank by any member of any FHLBank “or any affiliate of any such member.” See *id.* § 1430(e); *id.* § 93510(a). These provisions suggest that a non-member affiliate could pledge collateral to support a FHLBank advance to a member.

Your letters also ask whether a non-member may pledge collateral as a “co-borrower” on the advance to a member. As mentioned above, the Bank Act and Advances regulation authorize the FHLBanks to make advances only to their members, and require that members applying for advances must enter into a primary and unconditional obligation to repay the advance. See *id.* § 1430(d) *Id.* § 935.4(b)(1). Thus, as long as the member receiving the advance is primarily and unconditionally liable for repayment of the advance, it would not appear to be impermissible under the Bank Act and Advances regulation for a non-member to be a party to the advances note, either without assuming liability, or assuming secondary or joint and several liability with the member.<sup>2</sup> In addition, by requiring the member receiving an advance to be primarily obligated for repayment of the advance, the language of the Bank Act appears to contemplate the existence of secondary obligors on advances, sources other than the member. The Bank Act does not expressly prohibit a non-member third party from guaranteeing repayment of an advance made to a member upon a default of the member.

We would encourage you to discuss these and other options with the FHLBank of Atlanta, which will work with you to determine if there is a structure that will satisfy both your needs and the applicable statutory, regulatory and policy requirements.

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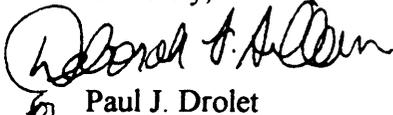
<sup>1</sup> The term “affiliate” is defined in 12 C.F.R. § 93 1.14 for purposes of FHLBank director eligibility determinations, but not for advances purposes.

<sup>2</sup> In your October 5, 1995 letter, you requested approval of a proposal for Self-Help Ventures Fund to be a “full recourse co-borrower,” i.e., 100 percent liable for repayment, on an advance from the FHLBank of Atlanta to Self-Help Credit Union. As acknowledged in the November 16, 1995 letter, that proposal would not have satisfied the Bank Act and Advances regulation, since under that arrangement the member applying for the advance, Self-Help Credit Union, would not have had a primary and unconditional obligation to repay the advance.

Mr. Martin D. Eakes  
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Please feel free to call me, or Sharon Like at (202) 408-2930, if you have any additional questions.

Sincerely,



Paul J. Drolet  
General Counsel

SBL/DFS/kmr

cc: Rita I. Fair  
Eric Stein  
Carroll F. Bray, Jr.