



Federal Housing Finance Board

MEMORANDUM

TO: Mitchell Berns
Director of Supervision

FROM: Deborah Silberman
General Counsel

DATE: November 3, 1999

RE: Proposal to Establish an Economic Development Program

This is in response to your request that the Office of General Counsel provide an opinion regarding the legal obligations to which the Federal Home Loan Banks (Banks) would be subject under the financing arrangement contained in the draft Economic Development Program legislative proposal (Proposal), a copy of which is attached.

The Proposal requires each Bank to establish a program through which it would provide financing for targeted economic development projects. Ultimately, each Bank would contribute 8 percent of its annual net earnings to the program, beginning in the year after the Banks complete their obligation to contribute toward interest owed to the Resolution Trust Corporation (RefCorp) bonds. Until that date, Refcorp would annually disburse monies directly to Program recipients, in accordance with designations made by the Banks, in an amount equal to 8 percent of the net earnings of the Bank, using monies borrowed from the Department of Treasury (Treasury). After the RefCorp bonds have been repaid, Treasury would begin to assess the Banks annually, in an amount equal to 10.1 percent of their net earnings, until it has recouped the amounts lent to RefCorp, with interest.

Under the proposal, it is RefCorp that is legally obligated to repay Treasury for the funds Treasury will provide RefCorp for program disbursements. This arrangement will be reflected in the loan agreement, which will be between RefCorp and Treasury. The Banks will not receive loan proceeds, as all monies loaned by Treasury to RefCorp would flow directly from Refcorp to the targeted recipients. It is RefCorp, therefore, that will be contractually obligated to repay this debt to Treasury. Under this arrangement, the Banks would not be liable to Treasury for the amounts Treasury loans to Refcorp. The fact that the Proposal will make Banks subject to an earnings-based assessment in future years to pay off RefCorp's obligation does not change this legal result.

The assessments to which the Banks would be subject extend only to the Banks' future earnings and no farther. For example, in the event that Banks are placed in receivership and liquidated, Treasury would not be among the creditors with a legal claim against the remaining assets of the Banks. Further, since the assessments, when made, will be computed on the basis of future earnings and a Bank's total assessment may be more or less than the amounts disbursed for its program (depending on its level of future earnings in relation to those of other Banks), an individual Bank's ultimate contribution cannot presently be determined.

Accordingly, it is our opinion that the Proposal does not create a legal obligation for the Banks to pay Treasury on the RefCorp debt.

cc: Steve Hudak
Neil Crowley
Joe McKenzie
Gerry Schober
Eric Berg