



OFFICE OF GENERAL COUNSEL

March 11, 2005

TO: Federal Home Loan Bank General Counsel

FROM: Thomas P. Jennings /s/
Senior Attorney-Advisor

SUBJECT: 2005-GC-01: Putable Advances and Replacement Funding

I am responding to the issue you raised about replacement funding. The relevant facts, as I understand them, are as follows: the Federal Home Loan Bank (Bank) has a former member with whom it has established, pursuant to section 950.15 (12 C.F.R. § 950.15), an orderly schedule for the liquidation of advances; that schedule does not require the former member to repay any advances prior to the original maturity date, notwithstanding the termination of its membership; subsequent to the establishment of that schedule, a particular putable advance became subject to call prior to its maturity date due to interest rate changes; and the Bank wishes to offer to provide replacement funding to the former member, which it would be required to do pursuant to section 950.5(d) (12 C.F.R. § 950.5(d)) if the institution were still a member. You have inquired whether the Bank is required to, or may, offer replacement funding under section 950.5(d).

For the following reasons, it is my opinion that the Bank neither is required, nor has the discretion, to offer replacement funding to a former member pursuant to section 950.5(d), under the circumstances described above. I have discussed this with General Counsel Mark Tenhundfeld and Deputy General Counsel Neil Crowley, who concur in my assessment.

Liquidity.

One goal of section 950.5(d) is for the Banks to be a source of liquidity, as you note. Prior to its adoption, the regulation made no explicit mention of putable advances, and the Federal Housing Finance Board (Finance Board) believed that the explicit authorization of a putable advance product would make the Banks more of a source of liquidity. It was the addition of section 950.5(d) as a whole, not clause (2) by itself, which the Finance Board was referring to in the context of its comments about liquidity.

Moreover, the Banks are not intended to act as sources of liquidity in general, but as liquidity sources for their members. The institution that had obtained the putable advance is no longer a member of your Bank, but is a member of another Bank. As such, that institution should look to the other Bank, not your Bank, to meet its liquidity needs. We note that even if the former member were no longer a member of any Bank, our views would be the same, *i.e.*, the Banks are not intended to serve as sources of liquidity for nonmembers.

Prior “Conversion” Provision.

The sentence on “Conversion” to which you refer in your request for advice was added to section 950.5(d) by the Finance Board in 1996 and deleted from the section by the Finance Board in 2000. The language initially appeared in the preamble to the proposed regulation in 1996, and it was moved from the preamble to the regulation when the Finance Board adopted the regulation in final form. In moving this language to the regulation itself, the Finance Board did not intend to change the meaning of section 950.5(d). It did so because a commenter was concerned that all of section 950.4 might be read to apply to the requirement to provide replacement funding, and the Finance Board wanted to make it clear that such was not the case.

Nothing in that change, however, suggests an intent on the part of the Finance Board that replacement funding must be made available to former members. Moreover, this language was deleted by the Finance Board in 2000. Thus, whatever bearing, if any, that language may have had prior to 2000 on the offering of replacement funding to former members is no longer relevant to the issue of replacement funding today.

Application of Section 950.15.

Section 950.15 gives the Bank some flexibility in establishing a schedule for the liquidation of advances when an institution ceases to be a member of the Bank, *i.e.*, the Bank may allow an advance to run off in the normal course, notwithstanding the termination of membership. One cannot infer from this section, however, that a former member also has a right to obtain replacement funding for any putable advances that are called after the termination of membership. The purpose of that provision is to allow a Bank the discretion to determine whether to call an advance or let it remain outstanding when an institution terminates its membership.

Conclusion.

For the above reasons, we are unable to concur with your conclusion that the Bank is required to offer replacement funding to a former member when a putable advance is terminated prior to its stated maturity date. Nor do we believe that the Bank has the discretion to offer or not offer replacement funding to a former member when the Bank terminates an advance in accordance with its terms prior to its stated maturity date. That former member should look to the Bank of which it is a present member for its continuing liquidity needs.

This memorandum is for the purpose of providing you with guidance and does not express necessarily the views of the Board of Directors. Board action on this matter could modify or supersede the guidance given herein.

If you would like to discuss any aspect of this guidance, please call me at 202-408-2553.