Federal Housing Finance Board

Memorandum

August 29, 1991

TO: Philip L. Conover
Director, District Banks Directorate

FROM: Beth L. Climo
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SUBJECT: Effect of Participations Between Federal Home Loan Banks (FHLBanks) on: (1) the 30 Percent Limit on Advances to Non-Qualified Thrift Lender Members; and (2) the Stock Subscription Requirements for Members of the FHLBank System.

ISSUES:

I. Whether subsection 10(e)(2) of the Federal Home Loan Bank Act (Bank Act), which limits the amount of advances a FHLBank can make to non-qualified thrift lender (non-QTL) members to 30 percent of the FHLBank's total advances, prohibits a FHLBank from transferring participation interests in its non-QTL advances under the participation authority in subsection 10(d) of the Bank Act.

II. Whether the participation of non-QTL advances violates the capital stock subscription requirements of subsections 6(b)(l) and 10(e)(l) of the Bank Act.

CONCLUSIONS:

I. Subsection 10(e)(2) of the Bank Act does not prohibit a FHLBank from participating its non-QTL advances pursuant to subsection 10(d).

II. The participation of non-QTL advances does not violate the capital stock subscription requirements of subsections 6(b)(l) and 10(e)(l) of the Bank Act.

DISCUSSION:

1. Subsection 10(e)(2) of the Bank Act Does Not Prohibit a FHLBank from Participating Its Non-QTL Advances Pursuant to Subsection 10(d)

A. Subsection 10(d)

The Bank Act authorizes any FHLBank to transfer its advances to any other FHLBank, subject to the Federal Housing Finance Board's approval. See 12 U.S.C.A. § 1430(d). Under subsection 10(d), the transfer- an advance between FHLBanks can take the form of a sale, with or without recourse, or the transferring FHLBank can "allow [the transferee FHLBank) a participation [in the advance.]" Id.; see also Spec. Couns. Mem. of Dec. 11, 1981, Doc. No. 2498 (Westlaw Private Library) at 8 n.1 (stating that since subsection 10(d) authorizes FHLBanks to participate in advances, it is clear that a FHLBank is not prohibited from holding advances that are outstanding to members of other FHLBanks). In participating in another FHLBank's advance, the FHLBank that accepts the participation must receive "an appropriate assignment of security therefor." 12 U.S.C.A. § 1430(d).

8. Subsection 10(e)(2)

Bank Act subsection 10(e)(2) states that "[t]he aggregate amount of any Bank's advances to members that are not qualified thrift lenders shall not exceed 30 percent of a Bank's total advances." 12 U.S.C.A. § 1430(e)(2). Subsection 10(e)(2) does not address specifically the FHLBanks' authority to participate advances under subsection 10(d). See id.

However, one possible interpretation of subsection 10(e)(2) is that it limits the amount of advances that non-QTL members in each FHLBank district can receive to 30 percent of their district FHLBank's total advances. Interpreted in this way, subsection 10(e)(2) could be seen as an implied repeal or limitation on the FHLBanks' authority to participate advances under subsection 10(d), because participation of non-QTL advances could result in the non-QTL members of one district receiving an amount of advances in excess of 30 percent of their district FHLBank's total advances. To determine whether the 30 percent cap limits the participation of non-QTL advances, the rules of statutory construction must be applied to subsection lO(e)(2).[1]

1. We have found no cases interpreting subsection 10(e)(2) of the Bank Act.

1. The Plain Meaning of Subsection 10(e)(2)

The foremost principle Of statutory interpretation is examination of the plain meaning of statutory language. See 2A N. Singer, Sutherland, Principles-of Statutory Construction § 46.01, at 73 (Sands 4th ed. 1984). In addition to the significance of the words contained in a statute, their grammatical arrangement dictates the statute's plain meaning, unless the legislative intent behind the statute indicates a different interpretation. See E. Crawford, Statutory Construction, § 196 (1940).

When a word representing a person or thing with an attributive genitive ending (an apostrophe followed by an "s") precedes another word representing a person or thing, the two words together indicate possession or ownership of the second thing by the first. See G. Curme, English Grammar § 57.C (1957). The attributive genitive, or possessive, ending of the word "Bank's" indicates that subsection 10(e)(2) uses that word to express a relationship of possession or ownership between a FHLBank and its advances. See 12 U.S.C.A § 1430(e)(2) (West Supp. 1990). Read as a whole, the subsection prohibits a FHLBank's ownership of advances to non-QTL members in excess of 30 percent of that FHLBank's total advances. See id.

2. The Legislative History of Subsection 10(e)(2)

The legislative history of subsection 10(e)(2) does not indicate an interpretation that is contrary to the subsection's plain meaning and grammatical construction. The Conference Report of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 (FIRREA), which added subsection 10(e)(2) to the Bank Act, merely restates the requirement that "[t]he Board, by regulation, must also establish a priority for advances to members who are qualified thrift lenders and each Bank's advances to members that are not qualified thrift lenders cannot exceed 30% of the Bank's total advances." Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 222, 1Olst Cong., 1st Sess. 428 (1989).

Absent a contradictory intent by Congress, the plain meaning and grammatical construction of subsection 10(e)(2) dictate that a FHLBank cannot own advances to non-QTL members in excess of the 30 percent cap. Thus, the 30 percent cap of subsection 10(e)(2) does not appear to be a limit on the amount of advances that a FHLBank's non-QTL members can receive or, even, that can be generated by any individual FHLBank. Instead, it is a limit on the amount of advances to non-QTL members that can be owned at any one time by any individual FHLBank. Therefore, participation of advances pursuant to subsection 10(d) to enable non-QTL members in a particular district to receive advances in-excess of 30 percent of their district FHLBank's total advances is not barred by the plain meaning of subsection 10(e)(2).

Further, Congress is presumed to know existing law when it legislates. See Singer, supra § 23.10. Subsection 10(d) was part of the Bank Act as originally enacted. See Federal Home Loan Bank Act, ch. 522, § 10(d), 47 Stat. 725, 732.1932). The current subsection 10(e)(2) was made part of the Bank Act in 1989 by FIRREA, Pub. L. No. 101-73, § 714, 103 Stat. 183, 420. Because the FHLBanks have had the authority to participate advances under subsection 10(d) since enactment of the Bank Act, Congress is presumed to have been aware of that authority when it amended subsection 10(e). The absence in subsection 10(e)(2) of any mention of the FHLBanks' participation authority indicates that Congress did not intend to limit that authority as it is set forth in subsection 10(d). Therefore, subsection 10(e)(2), read according to its plain meaning and in conjunction with subsection 10(d), does not limit a FHLBank's authority to participate all or part of a non-QTL advance to another FHLBank in order to avoid exceeding the 30 percent cap.

II. The Participation of Non-QTL Advances Does Not Violate the Capital stock Subscription Requirements of Subsections 6(b)(l) and 10(e)(l) of the Bank Act

A. Subsection 6(b)(l) Does Not Require a Member to Hold Stock in a Participating FHLBank that Owns an Interest in that Member's Advance

Subsection 6(b)(l) of the Bank Act states in pertinent part:

> [t]he original stock subscription of each institution eligible to become a member . . . shall be an amount equal to 1 per centum of the subscriber's aggregate unpaid loan principal, but not less than $500. . . . The bank shall annually adjust the amount of stock held by each member so that such member shall have invested in the stock of the Federal Home Loan Bank at least the amount calculated in the manner provided in the next preceding sentence . . . .

12 U.S.C.A. § 1426(b)(l) (West Supp. 1990).

The requirement in subsection 6(b)(l) that a member's original subscription be based on the member's "aggregate unpaid loan principal" indicates the quantity of stock an eligible institution must purchase in order to become a member. The requirement, however, does not dictate from whom that stock must be purchased.

The second sentence of subsection 6(b)(l) states only that a member must have stock in "the Federal Home Loan Bank." Id. It is an established rule of statutory construction that when the meaning of a statute is unclear, the meaning of doubtful words may be determined by reference to their relationship with other

associated words and phrases. See Singer, supra § 47:16, at 161. The phrase "the Federal Home Loan Bank" thus should be interpreted with reference to the word "bank" used in the same sentence. It is clear from the plain meaning of subsection 6(b)(l) that the word “bank” refers-to the FHLBank of which the subscribing institution is a member, because each "bank" is required to adjust annually the amount of stock held by each of its members. See 12 U.S.C.A. § 1426(b)(l). Therefore, the phrase “the Federal Home Loan Bank" refers to the FHLBank of which the subscribing institution is a member. Because subsection 6(b)(l) requires a subscribing institution to hold stock only in the FHLBank of which it is a member, subsection 6(b)(l) would not seem to prohibit the participation of advances to FHLBanks in which the borrowing member does not own stock.

8. Subsection 10(e)(l) Does Not Require a Non-QTL Member to Hold Stock in a Participating FHLBank that Owns an Interest in that Member's Advance

Subsection 10(e)(l) of the Bank Act states in pertinent part:

> A member that is not a qualified thrift lender member may only receive an advance if it holds stock in its Federal Home Loan Bank at the time it receives that advance in an amount equal to at least-
>
> (A) 5 percent of that member’s total advances, divided by
>
> (B) such member’s actual thrift investment percentage

12 U.S.C.A. § 1430(e)(1) (West Supp. 1990).

Subsection 10(e)(1) makes receipt of advances by a non-QTL member contingent upon the member holding additional stock in the FHLBank in which it is a member, but does not require a non-QTL member to hold stock in a FHLBank that has participated in a portion of the member’s advance. Therefore, so long as the non-QTL member holds sufficient stock in its FHLBank as required by subsection 10(e)(1) to support all outstanding advances originated by its FHLBank, whether or not participated to other FHLBanks, the participation of non-QTL advances to FHLBanks in which the borrowing member does not hold stock is consistent with subsection 10(e)(1).

III. CONCLUSION

The 30 percent cap contained in Bank Act subsection 10(e)(2) does not prohibit’ the participation of non-QTL advances under subsection 10(d) because subsection 10(e)(2) is a limit on the amount of non-QTL advances an individual FHLBank can own, rather

than a limit on the amount of advances a FHLBank can extend to its non-QTL members. Therefore, a FHLBank that makes advances to its non-QTL members in an amount that would otherwise exceed 30 percent of its total advances does not violate subsection 10(e)(l) as long as it transfers ownership of its non-QTL advances through participations to other FHLBanks.

The participation of non-QTL advances does not violate the capital stock subscription requirements of subsections 6(b)(1) and 10(e)(1) of the Bank Act because those subsections require that a member of the FHLBank System hold stock only in the FHLBank of which it is a member. A member of the FHLBank System is not required to hold stock in a FHLBank that owns a participation in that member's advance.

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