



REGULATORY INTERPRETATION 2001-RI-04

Date: April 30, 2001

Subject: Status as Core Mission Activities of FHA/VA Loans Acquired Under a Commitment Initiated on or Before April 12, 2000, if the Commitment is Extended Beyond Its Original One Year Term

Request Summary:

A Federal Home Loan Bank (Bank) has requested the Federal Housing Finance Board (Finance Board) to determine that any acquired member assets (AMA) acquired by the Bank under 12-month commitments to acquire a fixed amount of those AMA entered into on or before April 12, 2000, would continue to qualify as core mission activities (CMA) under section 940.3(b) of the Finance Board's regulations if the commitments were renewed or extended for an additional six months. 12 C.F.R. § 940.3(b).

Background:

Section 940.3 of the Finance Board's regulations, 12 C.F.R. § 940.3 (CMA regulation), enumerates authorized activities of the Banks that qualify as CMA - that is, those activities that the Finance Board has determined are most central to the fulfillment of the Banks' statutory mission and upon which the Banks must focus when preparing their strategic business plans as required by section 917.5 of the Finance Board's regulations. 12 C.F.R. § 917.5. While most AMA qualify as CMA under section 940.3(b), the regulation provides that:

United States government-insured or guaranteed whole single-family residential mortgage loans acquired under a commitment entered into after April 12, 2000 shall qualify [as CMA] only in a cumulative dollar amount up to 33 percent of: The cumulative dollar amount of AMA acquired by a Bank after April 12, 2000, less the cumulative dollar amount of United States government-insured or guaranteed whole single-family residential mortgage loans acquired after April 12, 2000 under commitments entered into on or before April 12, 2000

12 C.F.R. § 940.3(b). By the terms of the CMA regulation, all AMA that are United States government-insured or guaranteed whole single-family residential mortgage loans (referred to hereinafter as "FHA/VA loans" although this category could also include types of mortgages other than those that are FHA-insured or VA-guaranteed) acquired under commitments entered into on or before April 12, 2000 qualify as CMA.

The Bank has indicated that on or before April 12, 2000, it executed two 12-month master commitments with a member of the Bank, under which the Bank agreed to acquire from the member up to \$40 billion in FHA/VA loans. The Bank has acquired approximately \$4 billion in FHA/VA loans under these master commitments, leaving approximately \$36 billion of the commitments unused. The Bank cites several factors, some of which it indicates were beyond the control of either of the parties, as reasons for their inability to acquire a greater volume of loans under the commitments prior to the April 12, 2001 expiration date.

The Bank and the member have negotiated revisions to the master commitments whereby the commitments would be extended for an additional six-month period. The Bank has requested that the Finance Board allow the Bank to treat all FHA/VA loans acquired after April 12, 2001 under the extended commitment as CMA, rather than requiring that such loans be subject to the 33 percent cap set forth in the CMA regulation.

Discussion:

As mentioned above, under the scheme set forth in section 940.3(b), all FHA/VA loans acquired by a Bank under a commitment entered into on or before April 12, 2000 would qualify as CMA. Thus, for example, if a Bank had in place on or before April 12, 2000 a commitment with a term of 18 months for a fixed dollar limit, all FHA/VA loans acquired within those 18 months and within the fixed dollar limit of the commitment would qualify as CMA. Nothing in the regulation, nor in the Supplemental Information sections of the proposing or adopting releases for the proposed or final rules pursuant to which the regulation was adopted, *see* 65 Fed. Reg. 25676 (May 3, 2000) (proposed rule), 65 Fed. Reg. 43969 (July 17, 2000) (final rule), placed any restrictions on the length of commitments to acquire AMA that could be entered into on or before the April 12, 2000 “grandfather” date.

In this case, the Bank intends merely to extend by 6 months the terms of the two existing 12-month commitments under which all acquired FHA/VA loans otherwise clearly would qualify as CMA. The result – two 18-month commitments originally executed on or before April 12, 2000 — is one that, had it been so drafted from the start, would have allowed the Bank to consider as CMA all FHA/VA loans acquired thereunder according to the terms of section 940.3(b) of the CMA regulation. In fact, the Bank indicates in its submission that it issued 18-month master commitments to other members to deliver FHA/VA loans to the Bank at the same time it executed its commitments with the member in this case; the only reason the commitments in this case were 12 months in duration was because, at that time, the member would only commit for 12 month periods.

By extending the existing commitments, rather than executing new commitments, the Bank seeks to gain the benefit of the “grandfather” provision of section 940.3(b) for all FHA/VA loans acquired during the extension period. For all of the reasons described above, and because the Bank proposes to remain within the dollar limit of the original master commitments, as agreed upon on or before April 12, 2000, and in the absence of any evidence that the Bank is attempting to subvert the intent of the CMA regulation, the staff finds this approach unobjectionable.

Conclusion:

If the Bank, which has in place two master commitments (entered into on or before April 12, 2000) to acquire from a member up to \$40 billion in FHA/VA loans over a term of 12 months, extends the term of these commitments for an additional six month period for up to \$3 billion in additional AMA (which will not cause the cumulative transactions under the extended agreements to exceed the original \$40 billion limit agreed upon on or before April 12, 2000), all FHA/VA loans acquired by the Bank under the commitments during the additional six month period will continue to qualify as CMA under § 940.3(b) of the CMA regulation. 12 C.F.R. § 940.3(b).

A Regulatory Interpretation applies only to the particular transaction or activity proposed by the requestor, may be relied upon only by the requestor, and is subject to modification or rescission by action of the Board of Directors of the Finance Board. 12 C.F.R. part 907.