

April 14, 2010

The Honorable Karen G. Mills
Administrator
U.S. Small Business Administration
409 Third Street, SW
Washington, DC 20416

Dear Administrator Mills:

As our nation works toward economic recovery, it is important that we bring available tools to bear. It is for this reason that I am writing to you to raise an issue which has been the source of ongoing discussion among bankers, the SBA and the Federal Home Loan Banks for some time. Specifically, the issue is the current impediments posed by SBA regulations which prevent SBA guaranteed loans from being pledged as collateral to the Federal Home Loan Banks (FHLBs).

As you may know, the Federal Home Loan Banks are authorized to extend advances to member institutions in return for specified forms of collateral. Loans guaranteed by the Federal government, including SBA guaranteed loans, are among the acceptable forms of collateral. However, a number of legal and contractual issues presented by SBA's regulations have prevented the Federal Home Loan Banks from accepting these loans as collateral. This inability to reconcile SBA's regulations with the regulatory and collateral policy limitations of the Federal Home Loan Banks is preventing significant amounts of liquidity from being made available to small businesses and communities across the nation – and limiting potential economic recovery.

The ABA, in addition to a number of Federal Home Loan Banks, has sought solutions to this problem, thus far to no avail.

Given the pressing need to increase capital available to small business owners, we would like to address these issues with the SBA as soon as possible.

From discussions with our members and several of the Federal Home Loan Banks, we have identified the following as specific problems which need to be addressed:

- While SBA regulations allow SBA guaranteed loans to be pledged to a FHLB, those same regulations do not allow the FHLB to fully exercise its rights as a secured creditor.
- SBA regulations and/or contractual requirements require a Federal Home Loan Bank to match specific collateral with advances and monitor the SBA lender for compliance with SBA rules – a requirement which runs counter to the longstanding practices and procedures of the FHLB, and one which would severely restrict FHLB flexibility in lending to their members.

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- SBA regulations restrict the ability of the FHLBs to perfect their security interest in the collateral by taking possession of the original note.
- SBA requires that there be an automatic release of any pledged note in the event of sale of the underlying loan.

Additional questions remain over whether a non-SBA lender (such as a FHLB) is authorized to own the collateral as a result of a foreclosure following a member's default on a FHLB advance, and which entity (the SBA or the FHLB) would control collection of the underlying loan in the event of a default on a FHLB advance following a borrower default on the underlying loan.

While these regulatory conflicts and questions are not insignificant, we firmly believe that they can and should be resolved, and that time is of the essence.

The ABA is prepared to assist in any way that we can to resolve these issues. Please have your staff contact ABA's Vice President and Sr. Counsel, Joseph Pigg at 202-663-5480 or JPigg@aba.com if you require additional information or wish to discuss how we may proceed.

Thank you for your attention to this important matter.

Sincerely,



Edward L. Yingling