

4. The charters of the Federal Land Bank of Jackson and the Federal Land Bank Association of Jackson are hereby cancelled.

5. The foregoing FCA Board action shall be effective at 5:00 p.m. Eastern Standard Time on January 30, 1995.

Signed by Marsha Martin, Chairman, Farm Credit Administration Board, on January 26, 1995.

Dated: February 1, 1995.

Floyd Fithian,

Acting Secretary, Farm Credit Administration Board.

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FEDERAL DEPOSIT INSURANCE CORPORATION

General Counsel's Opinion No. 7; Treatment of Assessments Paid by "Oakar" Banks and "Sasser" Banks on SAIF-Insured Deposits

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of FDIC General Counsel's Opinion No. 7.

SUMMARY: The FDIC Legal Division has received inquiries concerning the opinion it expressed in a letter sent to the United States General Accounting Office on April 23, 1992. In the 1992 letter, the Legal Division concluded that assessments paid on deposits acquired from members of the Savings Association Insurance Fund (SAIF) by banks through a transaction under section 5(d)(3) of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1815(d)(3)) should remain in the SAIF and are not required to be allocated among the Financing Corporation, the Resolution Funding Corporation, or the FSLIC Resolution Fund. This General Counsel Opinion confirms the opinion expressed by the Legal Division in the 1992 letter and describes in greater detail the reasoning underlying that opinion. In addition, this General Counsel Opinion sets forth the Legal Division's position that assessments paid to the SAIF by any former savings association that (i) has converted from a savings association charter to a bank charter, and (ii) remains a SAIF member pursuant to section 5(d)(2)(G) of the FDI Act, are likewise not available to the Financing Corporation.

FOR FURTHER INFORMATION CONTACT: Valerie Jean Best, Counsel, Legal Division (202/898-3812), Federal Deposit Insurance Corporation, Washington, D.C. 20429.

Text

Opinion

The FDIC Legal Division has received inquiries concerning the opinion it expressed in a letter sent to the United States General Accounting Office (GAO) on April 23, 1992. This General Counsel Opinion confirms the opinion expressed by the Legal Division in the 1992 letter and sets out in greater detail the reasoning underlying that opinion. In addition, this General Counsel Opinion sets forth the Legal Division's position that assessments paid to the Savings Association Insurance Fund (SAIF) by any former savings association that has converted from a savings association charter to a bank charter but remains a SAIF member pursuant to section 5(d)(2)(G) of the Federal Deposit Insurance Act (FDI Act), are not available to the Financing Corporation (FICO).

In the 1992 letter, the Legal Division advised the GAO that assessments paid on deposits acquired by banks from SAIF members under section 5(d)(3) of the FDI Act (12 U.S.C. 1815(d)(3)), the so-called "Oakar" provision, should remain in the SAIF, retroactive to the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), and were not required to be allocated among the FICO, the Resolution Funding Corporation (REFCORP), or the FSLIC Resolution Fund (FRF). The GAO described this conclusion as "reasonable" in a letter dated May 11, 1992, from Charles A. Bowsher, Comptroller General of the United States, to the FDIC Board of Directors. Comptroller General Bowsher wrote: "Based on our review of the applicable statutory provisions and information FDIC provided, we believe its conclusion and treatment of Oakar assessments are reasonable." The relevant financial statements were restated and prepared in reliance on the Legal Division's opinion, and the GAO subsequently cited the Legal Division's conclusion in its audits of the 1990, 1991, and 1992 financial statements of SAIF and FRF.

The principal reason stated in the 1992 letter for this conclusion was that Oakar banks (i.e., banks that had acquired deposits from SAIF members pursuant to section 5(d)(3) of the FDI Act) are members of the Bank Insurance Fund (BIF), not SAIF; thus, assessments paid by such BIF members are not subject to FICO, REFCORP or FRF draws because the applicable statutory provisions (12 U.S.C. 1441(f)(2), 1441b(e)(7), and 1821a(b)(4)) require contributions only from SAIF members.

An additional basis for the Legal Division's conclusion, although not expressly stated, was that FICO's assessment authority extends only to savings associations which are SAIF members and therefore does not extend to Oakar banks since Oakar banks are not savings associations.

Conclusion

The express statutory language of FICO's enabling legislation grants assessment authority to FICO only over insured depository institutions which are both (1) savings associations and (2) SAIF members. Even if Oakar banks could be regarded as members of both BIF and SAIF rather than just BIF (which we do not think is the correct view), they are not savings associations. Where, as here, the relevant statutory language (which, in this case, limits FICO's assessment authority to savings associations that are SAIF members) is clear and unambiguous, well-established principles of statutory construction dictate that the plain meaning of the statute must be given effect. The Legal Division concludes that the opinion expressed in the 1992 letter—that SAIF assessments paid by Oakar banks should remain in the SAIF and are not subject to FICO, REFCORP, or FRF draws—remains correct.

Further, the Legal Division concludes that SAIF assessments paid by any former savings association that (i) has converted from a savings association charter to a bank charter, and (ii) remains a SAIF member pursuant to section 5(d)(2)(G) of the FDI Act (a so-called "Sasser" bank), are likewise not subject to draws by FICO. The FDI Act expressly provides that any such institution is a bank. Since FICO's assessment authority extends only to savings associations which are SAIF members, and since Sasser banks are not savings associations, SAIF assessments paid by Sasser banks are not subject to draws by FICO.

Discussion

I. FICO's Assessment Authority

In relevant part, section 21(f)(2) of the Federal Home Loan Bank Act (FHLB Act) provides,

(f) Sources of funds for interest payments; Financing Corporation assessment authority. The Financing Corporation shall obtain funds for anticipated interest payments, issuance costs, and custodial fees on obligations issued hereunder from the following sources:

* * * * *

(2) New assessment authority. To the extent the amounts available pursuant to paragraph (1) are insufficient to cover the amount of interest payments, issuance costs, and custodial fees, the Financing