

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.*

[FR Doc. 95-2805 Filed 2-3-95; 8:45 am]

BILLING CODE 6705-01-P

## 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

Corporation, with the approval of the Board of Directors of the [FDIC], shall assess against each Savings Association Insurance Fund member an assessment (in the same manner as assessments are assessed against such members by the [FDIC] under section 7 of the FDI Act \* \* \*.

12 U.S.C. 1441(f)(2) (emphasis added).

Section 21(k)(1) of the FHLB Act defines the term "Savings Association Insurance Fund member" as "a savings association which is a Savings Association Insurance Fund member as defined by section 7(l) of the FDI Act." 12 U.S.C. 1441(k)(1).

Thus, with the approval of the FDIC Board of Directors, FICO has the statutory authority to levy assessments against each "savings association which is a (SAIF) member." Read together, these statutory provisions limit FICO's assessment authority to an institution which is both a savings association and a SAIF member as defined in section 7(l) of the FDI Act.

## II. An Oakar Bank Is Neither a Savings Association Nor a SAIF Member and Thus Is Not Subject to FICO Draws

### A. An Oakar Bank Is Not a "Savings Association"

The term "savings association" is defined in the FHLB Act by reference to section 3 of the FDI Act. 12 U.S.C. 1422(9). In turn, section 3(b) of the FDI Act provides:

(b) *Definition of Savings Associations and Related Terms.*

(1) Savings Association.—The term "savings association" means—  
(A) any Federal savings association;  
(B) any State savings association; and  
(C) any corporation (other than a bank) that the [FDIC] Board of Directors and the Director of the Office of Thrift Supervision jointly determine to be operating in substantially the same manner as a savings association.

(2) Federal Savings Association.—The term "Federal savings association" means any Federal savings association or Federal savings bank which is chartered under section 5 of the Home Owners' Loan Act.

(3) State Savings Association.—The term "State savings association" means—

(A) any building and loan association, savings and loan association, or homestead association; or

(B) any cooperative bank (other than a cooperative bank which is a State bank as defined in subsection (a)(2)), which is organized and operating according to the laws of the State \* \* \* in which it is chartered or organized.

12 U.S.C. 1813(b).

Pursuant to section 3 of the FDI Act, the term "bank" means any national bank, State bank, District bank, and any Federal branch and insured branch.

Although the FDI Act does not further define the term "bank," the FDIC,

throughout its history, has required that a State-chartered financial institution be chartered by its State of incorporation as a bank if that institution is to be regarded as a bank by the FDIC. In determining a financial institution's status as a bank rather than a savings association, the FDIC will generally look to the characterization of the institution by the laws under which the institution is created. An Oakar bank is an institution that pre-existed the merger or assumption in which it gained Oakar-bank status and, prior to that merger or assumption, it was a "bank" in every way.

Whether or not the limitations contained in the moratorium provision (12 U.S.C. 1815(d)(2)) or the Oakar provision apply in any given situation depends solely on the fund membership of the participating institutions; neither provision specifically refers to the charter of a covered institution. Thus, the statutory language of the moratorium and the Oakar provisions does not provide any basis for concluding that a bank participating in an Oakar transaction thereby forfeits its bank charter and somehow becomes a savings association. In this regard, we note that the sponsor of the Oakar Amendment emphasized that the Amendment had been drafted with great care and further emphasized that the Amendment would benefit the SAIF. Rep. Oakar commented:

I am exceedingly proud of this language as it is and always was intended to utilize private capital from the bank holding companies to bolster the SAIF fund \* \* \* [A]s we briefed staffs of the Senate Banking and House Banking Committees and they in turn, briefed their members, support for the amendment grew. This was due to the benefit to taxpayer[s] and to the SAIF fund. But also to [the] care with which the amendment had been drafted.

135 Cong. Rec. H4970 (daily ed. Aug. 3, 1989) (statement of Rep. Oakar).

The Oakar provision was added to the pending legislation, for the first time, at the Committee of Conference level.

Both the Oakar provision and the provision governing FICO's assessment authority were before the Committee of Conference, and the Committee had available to it alternative language that would have extended FICO's authority to the assessments paid to SAIF by BIF-member Oakar banks. The Committee chose to adopt language that limits FICO's assessment authority to savings associations that are SAIF members.<sup>1</sup>

<sup>1</sup> Earlier drafts of the legislation governing FICO's assessment authority did not restrict FICO's assessment authority to a "savings association" which is a SAIF member. Specifically, the House and Senate versions sent to the Committee of

Since FICO was granted the authority to assess savings associations but not banks, and a bank that acquires SAIF deposits pursuant to section 5(d)(3) of the FDI Act does not thereby relinquish or modify its bank charter to become a "savings association," we conclude that SAIF assessments paid by Oakar banks should remain in the SAIF and are not subject to draws by FICO.

### B. An Oakar Bank Is Not a SAIF Member

1. *Definition of the Term "SAIF Member."* As noted above, FICO has the statutory authority to levy assessments against each savings association which is a "Savings Association Insurance Fund member as defined by section 7(l)." The term "Savings Association Insurance Fund member" means "any depository institution the deposits of which are insured by the Savings Association Insurance Fund." 12 U.S.C. 1817(l)(5). The term "Bank Insurance Fund member" means "any depository institution the deposits of which are insured by the Bank Insurance Fund." 12 U.S.C. 1817(l)(4).

With regard to fund membership, section 7(l) of the FDI Act provides as follows:

*Designation of fund membership for newly insured depository institutions; definitions.* For purposes of this section:

(1) *Bank insurance fund.* Any institution which—

(A) becomes an insured depository institution; and

(B) does not become a Savings Association Insurance Fund member pursuant to paragraph (2),

shall be a Bank Insurance Fund member.

(2) *Savings association insurance fund.* Any savings association, other than any

Conference provided that FICO had assessment authority over each "Savings Association Insurance Fund member." H.R. 1278, 101st Cong., 1st Sess. § 503 at p. 400 (passed by the House June 1, 1989); S. 774, 101st Cong., 1st Sess., § 503, 135 Cong. Rec. S4350 (April 19, 1989). While these earlier versions defined the term "savings association," neither version contained a definition for "SAIF member." If either provision had been enacted as drafted at that time, FICO's assessment authority would have extended to all SAIF members, regardless of charter. In fact, the definition of the term "SAIF member" elsewhere in the Senate bill included "any other financial institution that is required to pay assessments into the [SAIF]." Id. 135 Cong. Rec. at S4311. The House version defined SAIF member to mean "any financial institution the deposits of which are insured by the [SAIF]." H.R. 1278, 101st Cong., 1st Sess. § 207 at p. 71 (passed by the House June 1, 1989). Had the Senate definition of SAIF member been adopted, FICO would have had the authority to draw on assessments paid to SAIF by BIF-member Oakar banks. The Committee of Conference did not adhere to either version, however. Instead, the Committee chose to add the current SAIF-member definition to the FICO provision, thereby limiting FICO's authority to savings associations which are SAIF members. H.R. Conf. Rep. No. 1278, 101st Cong., 1st Sess. § 512 at p. 240 and § 206 at p. 19-21 (1989).

Federal savings bank chartered pursuant to section 5(o) of the Home Owners' Loan Act, which becomes an insured depository institution shall be a Savings Association Insurance Fund member.

(3) *Transition provision.*

(A) *Bank insurance fund.* Any depository institution the deposits of which were insured by the [FDIC] on the day before [August 9, 1989], including—

(i) any Federal savings bank chartered pursuant to section 5(o) of the Home Owners' Loan Act; and

(ii) any cooperative bank,

shall be a Bank Insurance Fund member as of [August 9, 1989].

(B) *Savings association insurance fund.*

Any savings association which is an insured depository institution by operation of section 4(a)(2) shall be a Savings Association Insurance Fund member as of [August 9, 1989].

12 U.S.C. 1817(l)(1)–(3).

The FDI Act does not explicitly state that a depository institution cannot be a member of both SAIF and BIF at the same time, but the FDI Act implies that this is so. By designating any newly insured depository institution that does not become a SAIF member to be a BIF member, the FDI Act indicates that membership in one fund necessarily excludes membership in the other fund. The designation of depository institutions insured prior to the enactment of FIRREA as either SAIF members or BIF members, lends further support to the view that a depository institution cannot belong to both funds at the same time. Since the SAIF and the BIF were first established by FIRREA the FDIC has treated an insured depository institution as either a SAIF member or a BIF member but not both.

2. *A Bank Retains its Status as a BIF Member When it Acquires Deposits from A Savings Association Pursuant to Oakar.* Nothing in 5(d)(3) of the FDI Act indicates that an institution forfeits its fund-designation by virtue of participating in an Oakar transaction. Rather, section 5(d)(3) provides that in the case of any "acquiring, assuming, or resulting depository institution which is a Bank Insurance Fund member," that portion of the deposits of such member attributable to the former SAIF member "shall be treated as" deposits which are SAIF-insured for purposes of calculating the assessment to be paid to SAIF, and for purposes of allocating costs in the event of default.<sup>2</sup> The fact that section 5(d)(3) refers to the acquiring, assuming, or resulting depository institution as a

<sup>2</sup>The deposits that are attributable to the former SAIF member are calculated under a formula prescribed at FDI Act section 5(d)(3)(C). The dollar amount resulting from the statutorily prescribed formula is the "adjusted attributable deposit amount" or "AADA".

BIF member, and the use of the phrase "treated as" SAIF deposits—as opposed to "are" SAIF deposits—indicates that a BIF member acquiring deposits from a SAIF member pursuant to section 5(d)(3) retains its status as a BIF member.

Since FICO's assessment authority extends only to "a savings association which is a [SAIF] member," and (1) a depository institution cannot be a member of BIF and SAIF at the same time, and (2) a BIF member that acquires deposits from a SAIF member pursuant to section 5(d)(3) of the FDI Act retains its status as a BIF member, it is our opinion that SAIF assessments paid by BIF-member Oakar banks should remain in the SAIF and are not subject to draws by FICO. Moreover, neither REFCORP nor FRF are permitted to assess BIF-member Oakar banks since their assessment authority extends only to "Savings Association Insurance Fund members."<sup>3</sup>

C. *BIF-Member Oakar Banks Are Not Subject to FICO Draws*

Nothing in the legislative history of section 21 of the FHLB Act indicates that Congress intended a result other than that required by the plain language of the statute. There is no specific evidence to suggest that Congress intended the phrase "a savings association which is a [SAIF] member", as used in that Act, to have any meaning other than the normal meaning of the words. The best, if not the only, manifestation of congressional intent in this instance is the language of the statute; we cannot base our interpretation on a supposed intent that is not spelled out in the statutory text or the legislative history.

The conclusion that an Oakar bank is not subject to FICO draws because it is neither a savings association nor a SAIF member finds ample support in the relevant statutory text. A contrary interpretation would disregard the explicit statutory language which grants assessment powers to FICO only over savings associations that are SAIF members.<sup>4</sup> Moreover, the conclusion

<sup>3</sup>With regard to REFCORP's assessment authority, see 12 U.S.C. 1441b(e)(7), 1441b(k)(8), 1817(l). With regard to FRF's assessment authority, see 12 U.S.C. 1821a(b)(4), 1817(l).

<sup>4</sup>At the urging of the Federal Housing Finance Board (the "FHF-Board"), the Office of Thrift Supervision has decided not to require Oakar banks and "Sasser" banks (SAIF-member savings associations that convert to bank charters but remain SAIF members) to maintain Federal Home Loan Bank membership. 58 FR 14510, 14512 (March 18, 1993). The FHF-Board concluded that it had no authority to prohibit a savings association that converts to a commercial bank or state savings bank charter from withdrawing from membership. The FHLB Act prohibits Federal savings

that an Oakar bank is not subject to REFCORP or FRF draws because an Oakar bank is not a SAIF member finds ample support in the relevant statutory text.

It is consistent with the purposes of the legislation to retain these SAIF assessments in SAIF. Under section 5(d)(3), the SAIF, rather than the Resolution Trust Corporation (RTC), is required to bear the cost of any loss attributable to the SAIF-insured deposits held by an Oakar bank. Thus, SAIF was and is responsible for losses attributable to resolving the SAIF-insured part of BIF-member Oakar banks. In the absence of the 1992 letter, SAIF would have had no funding to cover insurance losses for which it was and is responsible by statute. The FDIC and Federal Government agencies have relied on the views expressed in the 1992 letter to allocate the cost of resolving failed institutions between the SAIF and the RTC. The FDIC has relied on the letter to allocate assessments between the SAIF and the FRF.

III. *A Sasser Bank is Not a "Savings Association" and Thus is not Subject to FICO Draws*

Likewise, it is our opinion 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, are not subject to FICO draws. As explained above with regard to Oakar banks, FICO's assessment authority extends only to savings associations which are SAIF members. Sasser institutions are not savings associations. Rather, the FDI Act expressly provides that Sasser institutions are banks. More specifically, section 3(a)(1) of the FDI Act provides:

(a) Definition of Bank and Related Terms.

(1) Bank.—The term "bank"—

(A) means any national bank, State bank, and District bank, and any Federal branch and insured branch;

(B) includes any former savings association that—

(i) has converted from a savings association charter; and

(ii) is a Savings Association Insurance Fund member.

12 U.S.C. 1813(a)(1).

Although a Sasser bank is a SAIF member, it is classified as a "bank" by the FDI Act. As a result, such an institution is not subject to draws by FICO. In contrast to BIF-member Oakar banks, however, Sasser banks are

associations from withdrawing from Federal Home Loan Bank membership, but does not apply to institutions with other types of charters.

subject to draws by REFCORP and FRF. This is because REFCORP and FRF have statutory authority to assess SAIF members regardless of the SAIF-member's charter.

Based on the foregoing, the Legal Division concludes that the opinion expressed in the 1992 letter remains correct, and further concludes that assessments paid to SAIF by any former savings association that (i) has converted from a savings association charter, and (ii) is a SAIF member, are likewise not subject to FICO draws.

Dated: January 31, 1995.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Acting Executive Secretary.*

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BILLING CODE 6714-01-P

## FEDERAL HOUSING FINANCE BOARD

[No. 95-N-02]

### Monthly Survey of Rates and Terms On Conventional, 1-Family, Nonfarm Mortgage Loans

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Notice.

**SUMMARY:** The Federal Housing Finance Board (Housing Finance Board) hereby gives notice that it has submitted to the Office of Management and Budget (OMB) a request for review and approval of an extension of a currently approved information collection titled "Monthly Survey of Rates and Terms on Conventional, 1-Family, Nonfarm Mortgage Loans," in accordance with the requirements of the Paperwork Reduction Act of 1980.

**DATES:** Interested persons are invited to submit comments on or before April 7, 1995.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Milo Sunderhof, Desk Officer, Federal Housing Finance Board,

726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the information collection and supporting documentation should be addressed to Elaine L. Baker, (202) 408-2837, Executive Secretariat, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Joseph A. McKenzie, Associate Director, Housing Finance Directorate, (202) 408-2845; Eric M. Raudenbush, Attorney-Advisor, Office of General Counsel, (202) 408-2932, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:** The information collection described below has been submitted to OMB for review in order to obtain a renewal of OMB approval prior to expiration of the currently assigned OMB control number (3069-0001) on March 31, 1995.

*Title of Information Collection:* Monthly Survey of Rates and Terms on Conventional, 1-Family, Nonfarm Mortgage Loans

*Form Number:* FHFB 10-91

*OMB Number:* 3069-0001

*Expiration Date of Clearance:* March 31, 1995

*Frequency of Response:* Monthly

*Respondents:* A sample of savings associations, mortgage companies, commercial banks, and savings banks.

*Need For and Use of Information Collection:* The Housing Finance Board uses the results of the information collection to maintain a monthly survey of mortgage interest rates. The Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) use the average single-family house price from the survey to determine the maximum size of single-family loans that they can purchase or guarantee, pursuant to 12 U.S.C. 1454(a)(2) and 1717(b)(2).

Furthermore, Section 402(e)(3) of the Financial Institutions, Reform,

Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 (1989), requires the Chairman of the Housing Finance Board to take whatever action as may be necessary to ensure that adjustable-rate mortgage (ARM) indexes formerly published by the Federal Home Loan Bank Board (FHLBB) or the Federal Savings and Loan Insurance Corporation (FSLIC) continue to be published. An ARM index—the National Average Contract Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders—is derived from the survey data.

More recently, the 1994 HUD appropriation act linked the "high-cost area limits" for Federal Housing Administration (FHA)-insured mortgages to the purchase-price limitations of Fannie Mae and Freddie Mac. See Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, Pub. L. 103-327, 108 Stat. 2298 (1994). In addition, the Internal Revenue Service (IRS) uses the data from this survey to determine the "safe-harbor" limits for mortgages purchased with the proceeds of mortgage revenue bond issues. See 26 CFR Section 6a.103A-2(f)(5).

The information is also used for general statistical purposes and program evaluation, and by economic policy makers to determine trends in the mortgage markets, including interest rates, down payments, terms to maturity, terms on ARMs, and initial fees and charges on mortgage loans. The data may be provided to Federal banking agencies for research purposes. Information from the survey is regularly published in the popular and trade press, in Housing Finance Board releases, and in several publications of other Federal agencies.

The survey provides the only consistent source of information on mortgage interest rates and terms and house prices for areas smaller than the entire country.

### ESTIMATED ANNUAL REPORTING BURDEN

Annual No. respondents	x	Annual No. responses per respondent	=	Total annual responses	x	Avg. hrs. per response	=	Total annual hours
550		12		6,600		1.0		6,600