



## REGULATORY INTERPRETATION 2000-RI-02

**Date:** April 10, 2000

**Subject:** Bank Small Business Grant Program Under the Community Investment Cash Advance (CICA) Regulation

### ***Request Summary:***

A Federal Home Loan Bank (Bank) has requested Federal Housing Finance Board (Finance Board) approval of a small business grant program, under the Finance Board CICA Regulation.

### ***Background:***

The Bank is proposing to implement a program under which it would provide grants to members that, in turn, would provide grants, low-interest loans or recoverable grants to small businesses for start-up and expansion purposes. In 2000, the Bank would contribute up to \$5 million to the program. In subsequent years, the Bank's board of directors would determine the amount of subsidy to be set aside for the program. "Small businesses" are defined under the program as businesses with less than 50 employees and the lesser of: (i) \$10 million in annual receipts or (ii) the annual receipts limits set forth in the Small Business Administration (SBA) Regulations applicable to the particular businesses. Preferences in funding would be given as follows: first, to small businesses located in low-income areas or other targeted areas such as Enterprise Communities and Empowerment Zones; second, to member consortia; third, to partnerships with local economic development organizations; and fourth, to projects that promote community stability, innovation and leveraging of funds. In addition to providing the Bank funds to an eligible small business, a member would be required to make a loan with its own funds to that small business with no requirement on the loan amount. The member also must demonstrate to the Bank that the loans would not have been extended absent the assistance requested of the Bank.

### ***Analysis:***

Section 10(j)(10) of the Federal Home Loan Bank Act (Bank Act) authorizes the Banks to establish CICA programs in addition to the Affordable Housing Program (AHP) and the Community Investment Program (CIP). *See* 12 U.S.C. § 1430(j)(10). Part 952 of the Finance Board Regulations (CICA Regulation) establishes uniform standards for all section 10(j)(10) CICA programs, defining the kinds of housing and economic development projects and activities, targeted beneficiaries and targeted income levels that would constitute "community investment" eligible to be financed under section 10(j)(10). *See* 12 C.F.R. part 952.<sup>1</sup>

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<sup>1</sup> The Finance Board recently reorganized and redesignated all of its regulations. *See* 65 Fed. Reg. 8253 (Feb. 18, 2000). The CICA Regulation, which formerly was part 970 of the Finance Board Regulations, 12 C.F.R. part 970 (1999), has been redesignated as part 952. Other regulatory references in this Regulatory Interpretation also make use of the newly redesignated regulatory cites.

A. The Bank Has Authority to Make Grants Under RDA Programs and UDA Programs, Without Finance Board Approval

Section 952.3 of the CICA Regulation defines a “CICA program” as:

- (1) A Bank’s AHP;
- (2) A Bank’s CIP;
- (3) A Bank’s RDA program or UDA program using any combination of the targeted beneficiaries and targeted income levels specified in § 952.3 ...; and
- (4) Any other program offered by a Bank using targeted beneficiaries and targeted income levels other than those established by the Bank with the prior approval of the Finance Board.

12 C.F.R. § 952.3 (emphasis added). Section 952.5(a) of the CICA Regulation further provides that:

- (1) Each Bank shall offer an AHP in accordance with [12 C.F.R part 951].
- (2) Each Bank shall offer a CIP to provide financing for housing projects and for eligible community lending at the appropriate targeted income levels.
- (3) Each Bank may offer RDA programs or UDA programs, or both, for community lending using the targeted beneficiaries or targeted income levels specified in section 952.3 ..., without prior Finance Board approval.
- (4) Each Bank may offer CICA programs for community lending using targeted beneficiaries and targeted income levels other than those specified in section 952.3 ..., established by the Bank with the prior approval of the Finance Board.

12 C.F.R. § 952.5(a)(1) through (4). The CICA Regulation defines an “RDA program or Rural Development Advance program” and a “UDA program or Urban Development Advance program” as “a program offered by a Bank” for “community lending” in “rural” or “urban” areas, respectively. 12 C.F.R. § 952.3. Even though the programs are styled as “advance” programs, the definitions do not specify the types of financing, such as advances or grants, that a Bank may offer under such programs nor do they limit financing to advances. Therefore, the definition provisions may be interpreted to mean programs under which a Bank offers advances or grants. Since this grant authority derives from the authority under section 952.5(a)(3), Finance Board approval is not required for the Bank to make CICA grants *per se* under RDA or UDA programs.

B. The Bank’s Program Qualifies As Both an RDA Program and a UDA Program Using Targeted Beneficiaries Specified in Section 952.3

The Bank’s program has features that qualify it as both an RDA program and a UDA program using targeted beneficiaries specified in section 952.3. Under the regulatory definitions of “RDA program” and “UDA program,” the program must be for “community lending” in “rural areas” or “urban areas,” respectively. 12 C.F.R. § 952.3.

1. “Community lending.”

Section 952.3 defines “community lending” as “providing financing” for “economic development projects” for “targeted beneficiaries.”

- a. “Providing financing.” “Providing financing” is defined in section 952.3 to include originating loans. Under the Bank’s program, in addition to providing Bank funds to eligible small businesses, members would be required to make loans with their own funds to such small businesses. Therefore, the Bank’s program meets the “providing financing” component of the “community lending” definition.
- b. “Economic development projects.” “Economic development projects” are defined in section 952.3 to include commercial projects and activities. Under the Bank’s program, Bank grants would be provided through members to small businesses, which clearly qualify as commercial projects and activities. Therefore, the Bank’s program meets the “economic development projects” component of the “community lending” definition.
- c. “Targeted beneficiaries.” “Targeted beneficiaries” are defined in section 952.3 to include small businesses. Section 952.3 defines a “small business” by reference to section 3(a) of the Small Business Act, 15 U.S.C. § 632(a), as implemented by the SBA Regulations, 13 C.F.R. part 121. The SBA Regulations define “small business” according to size standards established for types of economic activity or industry, generally under the Standard Industrial Classification (SIC) System. 13 C.F.R. § 121.101. The size standards are expressed either in terms of number of employees or annual receipts in millions of dollars, unless otherwise specified, with such limits indicating the maximum allowed for a concern and its affiliates to be considered small. 13 C.F.R. § 121.201. The Bank’s program defines “small business” as a business with less than 50 employees and the lesser of: (i) \$10 million in annual receipts or (ii) the annual receipts limits set by SBA’s size standards applicable to the particular businesses. The Bank’s definition of “small business” falls within the broader SBA definition of “small business” incorporated in section 952.3 of the CICA Regulation and, therefore, qualifies as a “targeted beneficiary” under the CICA Regulation.

2. In “Rural Areas” or “Urban Areas”

As discussed above, under the regulatory definitions of “RDA program” and “UDA program,” the Bank’s program must be for community lending in “rural areas” or “urban areas,” respectively. *See* 12 C.F.R. § 952.3. A “rural area” generally is defined in section 952.3 by reference to population centers of 25,000 or less. An “urban area” generally is defined in section 952.3 as an area that does not meet the definition of a “rural area.”

Under the Bank’s program, small businesses eligible for funding under the Bank’s program may be located in either rural areas or urban areas. Therefore, the Bank’s program meets the “rural area” or “urban area” components of the “community lending” definition in section 952.3.

In short, the Bank’s program qualifies under the CICA Regulation as both an “RDA program” and a “UDA program” for “community lending” using “targeted beneficiaries” specified in section 952.3.

### C. Finance Board Approval of the Bank's Program Is Not Required

As discussed above, the Bank's program qualifies under the CICA Regulation as both an "RDA program" and a "UDA program" for "community lending" using "targeted beneficiaries" specified in section 952.3. Therefore, under section 952.5(a)(3) of the CICA Regulation, Finance Board approval of the program is not required. *See* 12 C.F.R. § 952.5(a)(3).

#### ***Interpretation:***

The Bank has authority to make grants under RDA programs and UDA programs, without Finance Board approval. The Bank's program qualifies as both an RDA program and a UDA program using targeted beneficiaries specified in the CICA Regulation. Therefore, Finance Board approval of the Bank's program is not required.

The Bank has stated that the member must demonstrate to the Bank that a loan would not have been extended absent the assistance requested by the Bank. The Bank will be expected to develop and adopt policies and procedures to adequately document and ensure that the funds are conveyed to the intended beneficiaries. The Finance Board staff will examine the Bank's small business grant program on an ongoing basis to ensure that it is operated in accordance with their policies and procedures and with Finance Board regulations.

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 staff of the Finance Board. 12 C.F.R. part 907).