



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

February 1, 2001

Interpretive Letter #907

May 2001

12 USC 24(7)

12 CFR 1

12 CFR 3

Subject: Housing Mortgage Finance Program Bonds of the
Connecticut Housing Finance Authority

Dear []:

This is in response to your December 5, 2000 letter requesting a legal opinion regarding the risk-based capital requirements for Housing Mortgage Finance Program Bonds (“Bonds”) of the Connecticut Housing Finance Authority. We conclude that the Bonds qualify as Type I securities under the OCC’s investment securities regulation. The Bonds would have a 20 percent risk-weight under the OCC’s risk-based capital regulation.

Facts

The Connecticut Housing Finance Authority (the “Authority”) is issuing and has issued tax exempt and taxable Bonds pursuant to Chapter 134 of the General Statutes of Connecticut, as amended (the “Act”). The Authority is a public instrumentality and political subdivision of the State of Connecticut created in 1969 for the purpose of increasing the supply of and encouraging and assisting in the purchase, development, and construction of housing for low and moderate income individuals and families in the State. The Bonds are used to finance the purchase of permanent home mortgage loans for owner occupied housing consisting of not more than four household units, to make certain construction and permanent loans for multi-family residential housing, and to fund certain reserves. In addition, the Bonds may be issued to fund a capital reserve fund, to replace and refund current and future maturities of outstanding bonds, and to pay

certain costs of issuance. The Bonds are payable from revenues derived from mortgage loans financed by the Authority and from other funds, including the Authority's capital reserve fund.

The Bonds are general obligations of the Authority for which the Authority has pledged its full faith and credit. The Authority has no taxing power. The Bonds do not constitute a debt or liability of the State or a pledge of its full faith and credit or taxing power. The Act requires the State to provide sufficient money from its general fund to restore the Authority's capital reserve fund to required minimum levels, however.

Pursuant to the Act, the Authority is required to establish a "Housing Mortgage Capital Reserve Fund" ("capital reserve fund"). The capital reserve fund must be maintained in an amount at least equal the principal and interest becoming due on the bonds in the next calendar year.¹ In the event the Authority is required to withdraw moneys from the capital reserve fund for the payment of the Bonds, the Act provides that the State shall appropriate from its general funds the amount necessary to restore the capital reserve fund to minimum required levels. This appropriation does not require further legislative approval.²

Amounts paid by the State to restore the capital reserve fund to the minimum requirement are required by the Act to be repaid to the State by the Authority and credited to the State's general fund, as soon as possible, from any moneys available therefor in excess of the amounts that the Authority determines will keep it self supporting.³

Legal Analysis

A. Indirect General Obligations Qualify as Type I Securities

National banks may purchase investment securities for their own account "under such limitations and restrictions as the Comptroller of the Currency may by regulation provide."⁴ Section 24(Seventh) states that the limitations on bank purchases of securities do not apply to "general obligations of any State or political subdivision thereof."⁵ OCC regulations implementing 12 U.S.C. § 24(Seventh) define Type I securities as "general obligations of a State of the United

¹ Conn. Gen. Stat. § 8-258(a) (1999).

² Specifically, the Act requires that:

On or before December first of each year, there is deemed to be appropriated from the state general fund such sums, if any, as shall be certified by the chairman of the authority, to the Secretary of the Office of Policy and Management, as necessary to restore said fund to an amount equal to the required minimum capital reserve, and such amounts shall be allotted and paid to the authority.

Conn. Gen. Stat. § 8-258(a)(1) (1999).

³ *Id.*

⁴ 12 U.S.C. § 24(Seventh).

⁵ *Id.*

States or any political subdivision.”⁶ The OCC further defines “general obligation of a State or political subdivision” to include:

An obligation payable from a special fund or by an obligor not possessing general powers of taxation, when an obligor possessing general powers of taxation, including property taxation, has unconditionally promised to make payments into the fund or otherwise provide funds to cover all required payments on the obligation.⁷

Pursuant to that definition, the OCC has determined that a State’s commitment to provide funds to maintain a reserve fund may qualify as a general obligation of the State under certain circumstances.⁸ The reserve fund must at least equal the amount necessary to meet the annual payment of interest on, and principal of, the obligation as required by applicable law.⁹ The maintenance of a refillable reserve fund may be provided, for instance, by statutory direction for an appropriation or by statutory automatic apportionment and payment from the State funds of amounts necessary to restore the fund to the required level.¹⁰

In this instance, the State’s commitment to provide funds to maintain the Authority’s capital reserve fund qualifies as an indirect general obligation of the State and therefore constitutes a general obligation under the OCC’s investment securities regulation. Under Connecticut law, the State is required to withdraw from its general funds the amount necessary to restore the Authority’s capital reserve fund to an amount equal to the next year’s debt service on all outstanding bonds in the event the Authority is required to withdraw moneys from the capital reserve fund for the payment of the Bonds. This statutory commitment represents the State’s unconditional promise to provide funds to restore the capital reserve fund to the required level. Thus, the Bonds qualify as Type I securities under the OCC’s investment securities regulation.

B. Risk-Based Capital Treatment

OCC risk-based capital regulations contain four risk weights for national bank assets and off-balance sheet items, ranging from zero to 100 percent.¹¹ The 20 percent risk-weight category includes “claims representing general obligations of any public sector entity in any OECD country and that portion of any claim guaranteed by any such public sector entity.”¹² In the U.S., these obligations must qualify as general obligations of a State or political subdivision

⁶ 12 C.F.R. § 1.2(i).

⁷ 12 C.F.R. § 1.2(b)(2). *See also* 12 C.F.R. § 1.100(a).

⁸ 12 C.F.R. § 1.100(b)(3).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *See* 12 C.F.R. Part 3, Appendix A, Section 3.

¹² 12 C.F.R. Part 3, Appendix A, Section 3(a)(2)(ix).

under the OCC's investment securities regulation.¹³ Because the Bonds would meet the requirements under 12 C.F.R. § 1.2(b)(2) for a general obligation of a state or political subdivision, they would qualify for a 20 percent risk-weight under the OCC's risk-based capital regulations. The Bonds are "obligations of any public sector entity in an OECD country," since the Authority constitutes an entity established by Connecticut and the Bonds are ultimately supported by payments from the State's general revenues.

Conclusion

National banks may purchase the Bonds as Type I securities and should treat them as having a 20 percent risk weight under Part 3. The OCC does not endorse specific investments and this letter should not be used in a manner that suggests otherwise. If you have any questions, please do not hesitate to contact Beth Kirby, Senior Attorney, or me at (202) 874-5210.

Sincerely,

-signed-

Ellen Broadman
Director
Securities and Corporate Practices

¹³ *See Id.*, which establishes a 20 percent risk weight for "claims representing general obligations of any public sector entity in an OECD country, and that portion of any claims guaranteed by any such public-sector entity. Section 3(a)(2)(ix) further provides that "[i]n the U.S., these obligations must meet the requirements of 12 C.F.R. 1.3(g)." The reference to 12 C.F.R. § 1.3(g) is to a prior version of the regulation. Section 1.3(g), which appears at section 1.2(b) in the revised regulation, is the definition of "general obligation of a State or political subdivision."