

CURRENT LEGISLATION

BANKING

SAVINGS AND LOAN ASSOCIATION LEGISLATION

In August, 1964, Senator John Sparkman of Alabama declared that "savings and loans associations have reached the point at which they feel the necessity of reaching out and making loans on activities other than merely home mortgages."¹ The Congress subsequently enacted two sections of the Housing Act of 1964² which amended the Home Owners Loan Act of 1933. The amendments grant to federal savings and loan associations broader investment powers than they had ever previously possessed. The new legislation, passed pursuant to requests of the Federal Home Loan Bank Board,³ the governing body for federal associations, will, in the opinion of its proponents, significantly increase the effectiveness of the associations.⁴

Perhaps the best method of assessing this view is to look briefly at the history and development of savings and loan associations. Originating in the middle years of the nineteenth century, the associations were devised exclusively to meet the need then existing for building societies, groups which could lend money for the purchase and construction of private homes.⁵ As the associations have developed and their facilities grown, their emphasis has remained on encouraging savings accounts and making home loans.⁶ They remain true "associations" in the sense that, unlike banks, they are owned by their depositors, not outside investors.⁷

The developing associations, however, suffered from a lack of central organization.

There was no organized credit facility for enabling mortgage lending institutions to meet seasonal or other unanticipated changes in mortgage loan demands or in savings withdrawals. Means for transferring funds for home financing from capital-surplus to capital-deficit areas were highly inadequate. Local institutions had no access to the national security markets when their service to the community required additional funds to supplement available local savings. Mortgage loans could not easily be shifted from one holder to another.⁸

¹ 110 Cong. Rec. 19743 (daily ed. Aug. 19, 1964).

² National Housing Act, §§ 903, 910, 78 Stat. 769 (1964), amending Home Owners Loan Act of 1933, 48 Stat. 132 (1933), as amended, 12 U.S.C. § 1464(c) (1958).

³ See 110 Cong. Rec., supra note 1, at 19744.

⁴ See Cong. Rec. 18685 (daily ed. Aug. 13, 1964) (remarks of Representative Patman).

⁵ Federal Home Loan Bank Board, *The Federal Home Loan Bank System* 18 (1961).

⁶ *Id.* at 19.

⁷ *Id.* at 19-20.

⁸ *Id.* at 21.

These difficulties were corrected by the Home Owners Loan Act of 1933,⁹ which Congress enacted to

meet the long existing need for adequate thrift and home financing facilities by providing for local institutions throughout the country that would operate on a uniform plan incorporating the soundest and most advanced principles and practices of mutual thrift and home financing institutions.¹⁰

Specifically, the act authorized the Federal Home Loan Bank Board to charter federal savings and loan associations and to prescribe rules providing for the organization, incorporation, examination, operation and regulation of the associations.¹¹ The associations chartered under the act are, together with certain other institutions, the present members of the Home Loan Bank system, an organization which provides the central authority which was lacking earlier.¹² This organization has been able to correct the weaknesses attributable to the prior lack of coordination.

The success of the Board in solving problems of fragmentation, combined with the general expansion of the economy, have supplied a powerful impetus to the growth of the associations. Current statistics indicate their prosperous condition. For instance, the Federal Home Loan Bank of Boston reports that the gross income of its members rose to \$8.3 million in 1963 from \$6.5 million in 1962 and \$5.2 million in 1961.¹³ On a national scale, the net inflow of savings in all member institutions climbed nearly one and one-half billion dollars—from \$9.3 billion to \$10.7 billion—between 1962 and 1963.¹⁴ Another indicator of the system's rapid expansion is the total of combined assets of all members—approximately \$6.7 billion on January 31, 1965¹⁵—a significant increase from \$6.2 billion reported eight months earlier.¹⁶

This rapid growth has led the associations to problems of a different nature in recent years. The nationwide demand for housing is decreasing and promises to remain at a relatively low level in the foreseeable future.¹⁷ As previously noted, the range of investment opportunities for federal savings and loan associations is narrow. They are limited by statute to making loans "only on the security of their shares or on the security of first liens upon homes or combination homes and business property," located within a specified geographical lending area.¹⁸ These factors force associations to the ex-

⁹ 48 Stat. 128-35 (1933), as amended 12 U.S.C. §§ 1461-68 (1958).

¹⁰ Federal Home Loan Bank Board Ann. Rep. for 1959, 49 (1960).

¹¹ Section 5(a), 48 Stat. 132 (1933), 12 U.S.C. § 1464(a) (1958).

¹² The Federal Home Loan Bank System, *supra* note 5, at 25.

¹³ Federal Home Loan Bank of Boston Ann. Rep. for 1963, 5 (1964).

¹⁴ Federal Home Loan Bank Board, Fifty-ninth Meeting of Federal Savings and Loan Advisory Council, Exhibit II, 1 (1964).

¹⁵ Federal Home Loan Bank Board, Federal Home Loan Banks, Statement of Condition as of January 31, 1965 (1965).

¹⁶ Federal Home Loan Bank Board, Federal Home Loan Banks, Statement of Condition as of May 31, 1964 (1964).

¹⁷ Fifty-ninth Meeting of Federal Savings and Loan Advisory Council, *supra* note 14, at Exhibit VII.

¹⁸ Section 5(c), 48 Stat. 132 (1933), as amended, 12 U.S.C. § 1464(c) (1958).

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tremities of their statutory authority to locate borrowers, in an effort to keep their money active. In doing so, they have often liberalized terms to a degree which many financial authorities consider dangerous.¹⁹ The purpose of the present amendments is to provide additional outlets for money held by savings and loan associations in excess of that which may wisely be used for their primary objectives.

Section 903 of the Housing Act²⁰ amends Section 5(c) of the Home Owners Loan Act of 1933²¹ by allowing a federal association to invest up to two percent of its assets in the purchase of full or partial ownership of houses and apartment buildings located in urban renewal areas, and up to five percent in loans secured by first mortgage liens on such property. But an association may use no more than five percent of its assets for its total investment under the section. Under the law as previously written, such associations could invest up to five percent of their assets in certificates of beneficial interest by urban renewal trusts. An urban renewal investment trust was defined as

an unincorporated trust established by written agreement between the authorized officers of two or more savings institutions the savings or share accounts of which are insured by an agency of the federal government.²²

The statute expressly limited the use of the trusts to urban renewal projects and the beneficial ownership to savings and loan associations or the holders of their shares, and limited the certificates issued to first claims on the assets of the trust.²³ It will be observed that the extensive web of statutory regulation could easily serve as a deterrent to formation of investment trusts that the section authorizes.

The House Committee on Banking and Currency suggests that the new law provides a broader base for safe investments by the associations and will make urban renewal investment "more attractive to Federal associations."²⁴ This result may be expected now that an association is free to act on its own, without cumbersome regulatory requirements to hamper it, in the field of urban renewal investment. If the associations take advantage of this opportunity, substantial amounts of available private capital will be channelled into an area of the community in which they are badly needed. Additionally, the new investment power is specifically subject to the regulation of the Federal Home Loan Bank Board, which should provide a check on any speculative use of a member's funds.

Section 910 of the Housing Act²⁵ presents an even more decisive break with the traditional concept of the savings and loan associations' scope of

¹⁹ Wall Street Journal, May 26, 1964, p. 1, col. 8.

²⁰ 78 Stat. 769, 12 U.S.C.A. § 1464(c) (Supp. V, 1964).

²¹ 48 Stat. 132 (1933), as amended, 12 U.S.C. § 1464(c) (1958).

²² 75 Stat. 190 (1961).

²³ Ibid.

²⁴ H. Rep. No. 1703, 88th Cong., 2d Sess. (1964), in U.S. Code Cong. & Admin. News 3976, 4003 (1964).

²⁵ 78 Stat. 769 (1964), 12 U.S.C.A. § 1464(c) (Supp. 1964).

investment power. It authorizes the investment of up to five percent of an association's funds in loans for the payment of expenses of a college or university education. The regulations promulgated by the Federal Home Loan Bank Board under this section provide that loans may be secured, partially secured, or unsecured, and the lender may require a co-maker, insurance, or other guaranty against contingencies.²⁶ Further, "college or university education" is defined as

education at an institution which provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree.²⁷

This legislation represents the first advance in the powers of federal associations beyond the area for which they were originally formed, and the first authorization to make loans except in direct connection with real estate.²⁸ The growth of the associations justifies this expansion.

The amendment's sponsor, former Representative Taft, expressed the hope that the authority it granted would be supplemented by state legislation to create state-guaranteed college loan plans serving as adjuncts and supplements to such federal programs as the National Defense Education Act.²⁹

Both amendments indicate a continuing awareness on the part of Congress of the growing prosperity of federally chartered savings and loan associations and of the increasing role which they are capable of playing in the community. Both sections, if properly administered, will substantially encourage the implementation of state and local government programs in education and urban renewal, and, as Representative Taft has noted, those of the federal government as well. They will also allow the associations to act with greater latitude to benefit themselves, their shareholders and the community at large. The legislation, consequently, should have a beneficial effect on all whom it reaches.

DENNIS J. ROBERTS II

²⁶ 29 Fed. Reg. 16856 (1964).

²⁷ *Ibid.*

²⁸ See 20 Bus. Law. 457 (1965).

²⁹ 110 Cong. Rec. 18721 (daily ed. Aug. 13, 1964).