INTERPRETIVE LETTER 93-011 (JULY 15, 1993)

Tax increment financing bonds are not general obligations of the issuing municipality and are subject to Section 33 investment limits.

This is in reply to your letter dated *, and addressed to District Supervisor * of this Agency. You inquired whether * ("Bank") had the authority to purchase Tax Increment Financing ("TIF") bonds in an aggregate amount that exceeds the Bank's basic lending and investment limit of $*. The TIF bonds would be issued by the Village of * ("Village"). Under the circumstances described in your letter and in the documents that accompanied your letter, the Bank would not have the authority to purchase the TIF bonds in an amount that exceeds its basic lending and investment limit.

According to the documents that accompanied your letter, the Village has decided to implement an economic development plan involving the use of increased real estate tax revenue to encourage the creation of a new subdivision, to extend water and sewer lines to the subdivision and to fund, at least in part, a new water tower and improved water lines in the Village. The Village has determined that it should establish a "redevelopment project area" and provide for TIF financing under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq. (1992) [Ill. Rev. Stat. ch. 24, par. 11-74.4-1].

The TIF bonds that the Village proposes to issue and that the Village would like the Bank to purchase will apparently be similar to a TIF bond utilized by another municipality, a copy of which accompanied your letter. Under the terms of that TIF bond, the municipality promised to make payment "only from the limited and special sources and as herein provided," referring to pledged tax revenues to be derived by the municipality from the redevelopment project. The bond also included a disclaimer stating that it was not a general obligation of the issuing municipality and that the full faith and credit and the taxing power of the municipality were not being pledged to the payment of principal or interest on the bond.

The authority for the Bank to purchase bonds or other investment securities is found in Sections 33, 34 and 35 of the Illinois Banking Act, 205 ILCS 5/33-35 (1992) [Ill. Rev. Stat. ch. 17, pars. 341-343]. Section 33 authorizes the Bank to invest up to 20% of its unimpaired capital and surplus in marketable investment securities issued by a particular obligor. Marketable investment securities are defined as "marketable obligations evidencing indebtedness of any person in the form of bonds, notes, or debentures commonly known as investment securities," as well as certificates of participation in mutual or money market funds if those funds invest in the same types of investment instruments that the Bank is authorized to invest in directly. Sections 34 and 35 provide exceptions and exemptions to the basic investment limit (20% of unimpaired capital and surplus) set forth in Section 33. The exceptions or exemptions are based on the specified types and amounts of collateral, as well as the existence of a public agency as a direct obligor, insurer or guarantor. Section 35(4) provides an absolute exemption from the basic investment limit of Section 33 if the investment instrument is a general obligation of a municipality located in the county in which the Bank is located. No exception or exemption from the basic investment limit exists, however, if the investment instrument is in the nature of a revenue bond or other type of debt instrument that is not supported by the full faith and credit of the issuing municipality, including the municipality's taxing powers.

The TIF bond that accompanied your letter clearly states that it is not a general obligation of the issuing municipality and that it is not supported by the full faith and credit, including the taxing powers, of that municipality. Rather, it is in the nature of a revenue bond that is to be repaid exclusively from a portion of the tax revenues that the municipality realizes from the redevelopment project. Because such a TIF bond would fail to qualify as a "general obligation" for purposes of the basic investment limit exemption found in Section 35(4), the Bank would be subject to Section 33's limit of 20% of unimpaired capital and surplus if the Bank chooses to invest in the TIF bonds.

The conclusion stated herein is based on the circumstances described in your inquiry letter and the documents that accompanied your letter. If the circumstances surrounding the proposed issuance of the TIF bonds by the Village, including the terms of the TIF bonds with respect to their possible status as general obligations of the Village, should change or should be different than the circumstances described in your letter and the documents that accompanied your letter, the conclusion stated herein might be subject to change.