

DECISION MEMORANDUM OF THE FINANCE BOARD

ACTING WITHOUT A QUORUM

Date: May 19, 1995

No.: DM-95-34

ISSUE: Whether the Finance Board should adopt procedures for bringing unresolved examination issues to the Board, and for seeking reconsideration of examiner findings.

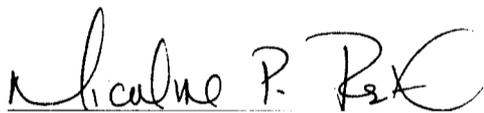
FACTORS CONSIDERED:.

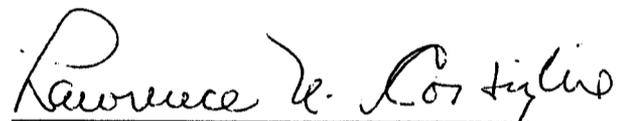
The Finance Board has identified a need to give the Federal Home Loan Banks (FHLBanks) clear direction on how disputed or unresolved examination findings will be considered by the Board. The Finance Board wishes to delineate procedures to resolve these and other issues that may arise as a result of the examination process.

The Finance Board is responsible for ensuring the safety and soundness of the FHLBanks' and for the examination, monitoring, and enforcement of FHLBank compliance with laws, Finance Board regulations and policies. In fulfilling this mission, it is the Finance Board's policy to maintain open and ongoing communication with a FHLBank to resolve issues informally during the course of an examination whenever possible, and to foster the fair and equitable administration of the examination process.

The Finance Board believes there is a need to adopt procedures to facilitate resolution of significant unresolved issues identified in reports of examination and to allow the FHLBanks to seek Board consideration of examination findings.

DECISION: To adopt the procedures attached as Exhibit I. The procedures shall apply to examination reports issued after the date of this memorandum.


Nicolas P. Retsinas


Lawrence U. Costiglio

Attachment

PROCEDURES FOR BRINGING UNRESOLVED ISSUES TO THE BOARD
AND FOR SEEKING RECONSIDERATION OF EXAMINATION FINDINGS

I. Purpose

During the course of an examination, the Office of Examination and Regulatory Oversight (OERO) identifies issues and consults with agency program or legal staff, as appropriate. OERO and the Federal Home Loan Bank (FHLBank) may disagree on issues identified during the examination. OERO strives to resolve as many issues as possible on an informal basis through the course of the examination process or by voluntary agreement with the FHLBank. In fact, most issues are resolved in this way.

Nevertheless, there will be issues that OERO and the FHLBank will be unable to resolve informally. In those cases, both OERO and the FHLBank have the opportunity to seek Federal Housing Finance Board (Board) consideration of the disputed issues.

Following are procedures designed to facilitate resolution by the Board of significant unresolved issues identified by OERO in its Report of Examination (Report), and any other significant issues raised by the FHLBanks.

II. Identifying Issues for Resolution by the Board

A. Issues Identified by OERO

1. Significant issues that remain unresolved at the end of an examination shall be listed in a separate section of the Report. Significant issues include both those matters on which OERO and the FHLBank disagree, and matters which OERO and the FHLBank agree are policy issues for the FHLBank. The Report shall be provided to the Managing Director no later than the date on which it is presented to the Board of Directors of the FHLBank. The Managing Director's copy of the Report shall be accompanied by a memorandum from the Director of OERO requesting that each unresolved significant issue be scheduled for consideration by the Board as soon as practicable after appropriate staff analysis and/or receipt of any FHLBank petition described below. The OERO Director's memorandum shall recommend to the Managing Director the appropriate office(s) to assign the responsibility of preparing a Board case on the issue.
2. If the FHLBank wishes to comment to the Board on any unresolved significant issue identified in the Report, in

lieu of a response to the Director of OERO,¹ the FHLBank shall petition the Board via the Executive Secretariat (Petition).

B. Issues Identified by the FHLBanks

In addition to a FHLBank's right to petition the Board on issues identified by OERO in the Report, a FHLBank also may petition the Board to: 1) consider any other significant issues raised by the examination identified by the FHLBank, or 2) reconsider any finding or supervisory directive made in, or any action taken by the FHLBank in response to, the Report.

III. FHLBank Petition Process

A. Procedures

1. Any FHLBank Petition shall be due within 45 days of the FHLBank's first scheduled board of directors' meeting after delivery of the Report.
2. A FHLBank shall submit its Petition in writing to the Executive Secretariat.
3. Any FHLBank Petition should include the following information:
 - a. A concise statement of the issue, why it is material, and the nature of the dispute.
 - b. A summary of OERO's findings and recommendations, and their financial impact.
 - c. A statement of points of agreement between the FHLBank and OERO on the disputed issue.
 - d. A brief analysis of the points of disagreement between the FHLBank and OERO on the disputed issue.
 - e. The FHLBank's proposal to resolve the dispute.
 - f. A summary of steps taken to resolve the issue with OERO.
 - g. Citation to any applicable statutes, regulations, policies, or procedures on which the FHLBank relies.

1. If the Report does not include any issues on which the FHLBank wishes to petition the Board, the FHLBank shall transmit its Report response to the Director of OERO.

- h. In the case of a dispute on a safety or soundness issue, a summary of steps that the FHLBank has taken, in the interim, to comply with OERO's recommendations.
 - i. Copies of any relevant excerpts from the Report or other documents about OERO's findings and/or recommendations.
 - j. Statement of whether the FHLBank requests to make an in-person presentation to the Board.
4. A Petition shall be accompanied by a resolution of the FHLBank's board of directors concurring in and authorizing the Petition.
 5. Within 2 business days of receiving a Petition, the Executive Secretariat shall acknowledge receipt of the Petition.
 6. The Managing Director shall: a) review the issues and, in consultation with the Board, identify those issues the Board wishes to consider and b) determine, on a case-by-case basis, whether to grant the FHLBank's request for an in-person presentation, if requested.
 7. Within 30 calendar days of receiving a Petition, the Executive Secretariat shall notify the FHLBank of the issues to be considered by the Board, of the schedule for action, and of the grant or denial of the FHLBank's request to make an in-person presentation (Notice).
 8. The FHLBank shall have 30 calendar days from the date of the Notice to submit to the Executive Secretariat any additional information it may wish to present in support of its position for the Board's consideration.
 9. Issues to be considered by the Board shall be scheduled for action no later than 90 days from the date of the Notice (unless extended, in the discretion of the Managing Director or a Member of the Board). The Managing Director shall assign issues promptly to appropriate program staff for analysis and preparation of a Board case.
 10. The Managing Director or other FHLBank staff may request in writing any supplemental information necessary to resolve the issues presented in the Petition (Information Request). Staff Information Requests shall be made within 15 days from the date of the Notice. The Board may make Information Requests at any time.
 11. No later than 20 days from the date of any Information Request, the FHLBank shall furnish to the Executive Secretariat any supplemental information requested.

B. Additional Guidance

1. The FHLBanks are encouraged to minimize the cost of these matters by preparing Petitions in-house to the extent possible, rather than retaining outside attorneys, accountants or other consultants.
2. The timeframes provided in the procedures may be extended in the Managing Director's discretion at the request of the FHLBank or FHFB staff for good cause shown, or by the Board. The Executive Secretariat shall notify FHLBank and FHFB staff of extensions of time and of the general reason(s) therefor.
3. All findings and supervisory directives in the Report shall remain in effect while those matters are under consideration. A FHLBank Petition shall not affect any examination or other regulatory or enforcement action taken or entitled to be taken by the FHFB. The FHFB retains the right to take any action and to apply any standards deemed appropriate to ensure the safety and soundness of a FHLBank.
4. The Finance Board's staff analysis of a FHLBank Petition is not subject to FHLBank review, unless the Board decides that making certain staff analysis available to the FHLBank will facilitate resolution in a particular case.
5. Matters brought to the Board under these procedures that arise under existing statute, FHFB regulations or policy may be heard by and resolved by the Board notwithstanding the absence of a quorum.
6. Determinations made under these procedures are final.
7. These procedures are designed to foster communication and constructive discussion among the FHLBanks, examination staff and the Board on significant issues raised during the examination process.
8. These procedures shall not apply to, and shall not be used to challenge, preliminary examination conclusions conveyed to the FHLBank prior to the issuance of the Report, or any enforcement-related actions or decisions.

References:

Federal Home Loan Bank Board Regulatory Bulletin 4, Informal Review Process (Nov. 30, 1988 superseded).

Office of Thrift Supervision Regulatory Bulletin 4a, Supervisory Review Process (Sept. 20, 1993).

Office of the Comptroller of the Currency, Independent Regulatory Appeals Process, 59 Fed. Reg. 66067 (Dec. 22, 1994).