

No.: 98-52

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Federal Housing Finance Board

Adoption of Procedures for Adjudications By the Finance Board of Issues  
Other Than the Review of Disputed Supervisory Determinations

WHEREAS, under section 2A of the Federal Home Loan Bank Act, as amended (Bank Act) (12 U.S.C.A. § 1422a, the Federal Housing Finance Board (Finance Board) shall ensure that the Federal Home Loan Banks (FHLBanks) operate in a safe and sound manner, and consistent with that primary duty, the Finance Board also must supervise the FHLBanks, ensure that the FHLBanks carry out their housing finance mission, and ensure that the FHLBanks remain adequately capitalized and able to raise funds in the capital markets:

WHEREAS, under section 2B of the Bank Act (12 U.S.C. § 1422b), the Finance Board is empowered to supervise the Banks and to "promulgate and enforce such regulations and orders as are necessary from time to time to carry out the provisions of' the Bank Act;

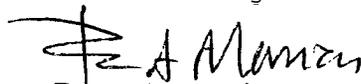
WHEREAS, many provisions of the Bank Act require determinations, findings, or approvals to be made by the Finance Board;

WHEREAS, the Finance Board has determined that under the Bank Act and applicable regulations, the Finance Board may be called upon to make determinations, findings or approvals that may affect only a limited number of parties, which the Finance Board in its judgment determines can best be addressed on a case-by-case basis prior to or in lieu of promulgating System-wide standards; and

WHEREAS, the Finance Board has determined that it is in the best interest of the Finance Board and the FHLBanks to establish a uniform process for the FHLBanks to request and the Finance Board to make such determinations, findings, or approvals as the Finance Board may define as Issues under the attached Procedures;

NOW, THEREFORE, BE IT RESOLVED, that the attached Procedures are adopted by the Finance Board as the mandatory and exclusive administrative remedy available to the FHLBanks under the Bank Act to address "Issues" as defined in the Procedures.

By the Board of Directors of the  
Federal Housing Finance Board



**Bruce A. Morrison**  
Chairperson

PROCEDURES FOR ADJUDICATIONS BY THE FINANCE BOARD OF ISSUES OTHER  
THAN THE REVIEW OF DISPUTED SUPERVISORY DETERMINATIONS

Introduction

I. Background.

The Federal Housing Finance Board (Finance Board) was established pursuant to the Federal Home Loan Bank Act, as amended, codified at 12 U.S.C. §§ 1421, et seq., (1994) (Bank Act). The Finance Board is an independent agency in the executive branch of the federal government. 12 U.S.C § 1422a(a). The Finance Board's primary duty is to ensure that the Federal Home Loan Banks (Banks) operate in a safe and sound manner. 12 U.S.C. § 1422a(a)(3)(A). Additionally, and consistent with that duty, the Finance Board supervises the Banks, ensures that they carry out their housing finance mission, and ensures that the Banks remain adequately capitalized. 12 U.S.C. § 1422a(s)(3)(B)(i)-(iii). The Finance Board is empowered to supervise the Banks and to "promulgate and enforce such regulations and orders as are necessary from time to time to carry out the provisions of' the Bank Act. 12 U.S.C. § 1422b(a)(1).

Many provisions of the Bank Act require determinations, findings or approvals to be made by the Finance Board. Most provisions requiring Finance Board determinations, findings or approvals have been dealt with in policies or through rulemakings.. However, there are matters that require the Finance Board to make determinations, findings or approvals and that may affect only a limited number of parties, which the Finance Board in its judgment determines can best be addressed by developin standards on a case by case basis prior to or in lieu of promulgating System-wide standards.<sup>1</sup> These procedures are intended to serve as a viable alternative to rulemaking in matters that require the Finance Board to make determinations, findings or approvals under the Bank Act. See, generally and without limitation, 12 U.S.C. §§ 1424, 1426, 1427, 1429, 1430, and 1431.

II. Reason for and Purpose for Adopting Procedures.

The Finance Board has determined it is in the interest of the Banks and the agency to establish these procedures. The purpose of these procedures is to provide the Banks with a uniform process for the prompt review and adjudication of matters that require the Finance Board to make determinations, findings or approvals. Matters governed by other procedures adopted by the Board of Directors of the Finance Board, such as the review of disputed supervisory determinations, or the review of pilot programs, are not covered by these procedures. Specifically, these procedures also are not applicable to routine requests for guidance or requests

<sup>1</sup> NLRB v. Bell Aerospace Co., 416 US 267 (1974).

to staff for interpretations of existing policy, applications for waivers, routine approval requests, requests for no-action letters, or to removal proceedings under 12 U.S.C. § 1422b(a)(2). These procedures are adopted pursuant to 12 U.S.C. §1422b(a)(1) and 12 C.F.R. § 900.50. These procedures do not, and should not be construed to, create any rights in any Bank or third party to require the Finance Board to consider a matter or to issue any determination, finding or approval. The Finance Board expressly reserves to itself the discretion to administer its obligations under the Bank Act including, without limitation, inviting public comment on any Issue presented to the Finance Board under these procedures.

PROCEDURES FOR ADJUDICATIONS BY THE FINANCE BOARD OF ISSUES  
OTHER THAN THE REVIEW OF DISPUTED SUPERVISORY DETERMINATIONS

I. Definitions

As used in these procedures-

(A) Finance Board

The term Finance Board shall have the same meaning as the term "Board" defined in 12 U.S.C. § 1422(1).

(B) Bank

The term Bank shall have the same meaning as defined in 12. U.S.C. § 1422(2)(A).

(C) Bank System

The term Bank System shall have the same meaning as defined in 12 U.S.C. § 1422(2)(B).

(D) Chairperson

The term Chairperson or Chair shall have the same meaning as defined in 12 U.S.C. § 1422(10) and 12 C.F.R. § 900.11.

(E) Managing Director

The term Managing Director shall have the same meaning as the term Executive Director defined in 12 C.F.R. § 900.12.

(F) Office of General Counsel

The term Office of General Counsel shall have the same meaning as defined in 12 C.F.R. § 900.15.

(G) Office of Policy

The term Office of Policy shall have the same meaning as defined in 12 C.F.R. § 900.13.

(H) Executive Secretariat

The term Executive Secretariat shall have the same meaning as defined in 12 C.F.R. § 900.12(b).

(I) Board of Directors

The term Board of Directors shall have the same meaning as defined in 12 C.F.R. § 900.10.

(J) Party

For purposes of these procedures, the term party shall include: (1) a Bank that has filed a petition or been granted leave to intervene, in accordance with these procedures; (2) the Finance Board; and (3) a member institution or an institution eligible to become a member whose request for leave to intervene filed pursuant to these procedures has been granted. The term party may be used in these procedures in the singular or plural form, as the context requires.

(K) Issue

For purposes of these procedures, the term Issue shall mean any matter that in the judgment of the Finance Board requires a determination, finding or approval under Bank Act or Finance Board regulation to be rendered by the Board of Directors of the Finance Board, and for which no controlling statutory, regulatory or other agency standard previously has been established. The term Issue expressly excludes the following matters: petitions for review of disputed supervisory determinations, routine requests for guidance or staff interpretations of existing policy, applications for waivers, routine approval requests, requests for approval of pilot programs, requests for "no-action letters," or removal proceedings under 12 U.S.C. § 1422b(a)(2).

(L) Adjudication

For purposes of these procedures, an Adjudication shall be an informal process, other than a rulemaking, for the formulation by the Finance Board of a Final Decision on an Issue as defined herein at subsection I(K).

II. Responsibilities of Finance Board Offices.

A. Office of the Managing Director.

1. The Managing Director, in consultation with any appropriate Finance Board Office and the Chair, shall review a Bank's petition filed pursuant to these procedures and undertake

such actions as are provided for in section IV of these procedures to ensure that the Issues as defined herein are ripe for consideration by the Board of Directors. Notice of a Bank's petition filed pursuant to these procedures promptly shall be published in the Federal Register for informational purposes.

2. The Managing Director may waive any of the requirements of or deadlines contained in these procedures as she/he deems appropriate and in the best interest of the Finance Board or any Party or for good cause shown. A waiver of any provision(s) shall be limited to such provision(s) as stated and shall not be considered to be a general Waiver or waiver of any other provision(s). The Managing Director promptly shall notify the Board of Directors of any waiver granted.

3. The Managing Director may determine that additional information is needed before a decision can be reached as to whether the Issue(s) are ripe for the Board of Directors' consideration. Any member of the Board of Directors may request that the Managing Director request further information from any Party, The Managing Director may refer the matter to staff for further development or direct staff to request further information from any [Party] in writing. (Information Request).

4. The Managing Director, in consultation with any appropriate Finance Board Office, the Chair, and members of the Board of Directors, may determine that all information necessary for the Board of Directors to adjudicate the Issue(s) presented has been provided in accordance with these procedures and may deem the record to be complete and the matter ripe for review and action by the Board of Directors. The Managing Director shall ensure that the members of the Board of Directors are promptly provided with each portion of the petition as it is filed or transmitted, and shall ensure that each member of the Board of Directors has a complete record of the petition.

5. Any objection raised by a member of the Board of Directors to any action taken by the Managing Director under these procedures may be considered at the next meeting of the Board of Directors, unless such objection has been withdrawn prior to the meeting.

B. Office of the Executive Secretary.

1. The Executive Secretary, in consultation with the Managing Director and the Office of General Counsel, shall implement notice and tracking procedures for the handling and disposition of such petitions and requests for leave to intervene as may be received at the Finance Board from time to time (tracking procedures).

2. The Executive Secretary's tracking procedures shall provide for the logging in and prompt transmittal of petitions, requests for leave to intervene, and any related documents to the Members of the Board of Directors, the Managing Director, and other Finance Board Offices, as appropriate.

3. The Executive Secretary shall provide written notice(s) to a Party that files a petition concerning receipt of such petition and other notices as provided in these procedures.

### III. Federal Home Loan Banks or Other Affected Parties.

#### A. Banks

1. A Bank seeking adjudication of an Issue by the Board of Directors shall file a Petition in the manner prescribed in the Petition Process, below. Failure to conform a petition to these requirements may result in delay.

2. A Bank shall promptly and fully respond to any Information Request.

#### B. Other Parties.

1. A member institution or other Bank that believes its rights may be affected by any petition for adjudication of an Issue filed by a Bank pursuant to these procedures may file a request for leave to intervene in the adjudication.

2. Any request for leave to intervene shall be filed in the manner prescribed in the Petition Process, below.

### IV. The Petition Process.

#### A. Procedures to be Followed by a Bank Filing a Petition.

1. A Bank shall file a petition with the Executive Secretary.

2. A petition shall include:

(a) a brief statement of the Issue(s);

(b) a statement of any relevant background circumstances;

(c) a summary of the steps taken to date by the Bank to address the Issue(s);

(d) the Bank's argument in support of its position, including citation to any supporting legal opinions, policy statements or other relevant precedent and supporting documentation, if any;

(e) a concise statement of the determination or relief requested; and

(f) any non-duplicative, relevant supporting documentation. (Voluminous submissions are discouraged; if necessary, the terms of such submissions shall be determined in consultation with the Managing Director or Finance Board staff.)

3. The Bank's petition may contain a request that Bank staff or an agent of the Bank be permitted to make a personal appearance before the Board of Directors at any meeting convened to adjudicate the Issue pursuant to these procedures (request to appear). A request to appear must be accompanied by a statement of the reasons a written presentation would not suffice. The statement must specifically identify any questions of fact that are in dispute concerning the Issue(s) presented, summarize the evidence that would be presented at the adjudication, identify all witnesses the Bank expects to present, if any, and state the substance of their anticipated testimony.

4. The Bank's petition shall be accompanied by a resolution of the Bank's board of directors concurring in the substance of the petition and authorizing the filing of the petition.

5. Upon good cause shown, the Managing Director may grant permission to a Party to submit supplemental written information pertaining to a Bank's petition.

6. No later than twenty (20) calendar days from the date of any Information Request made by the Finance Board, the Bank shall provide to the Executive Secretary any and all such information requested.

B. Procedures to be Followed by a Party Seeking Leave to Intervene.

1. A request to intervene shall be filed with the Executive Secretary not later than 45 days from the date a petition is filed by a Bank seeking adjudication of an Issue.

2. A request to intervene shall be in writing and shall include the information required by paragraph IV.A.2, above. In addition, a request to intervene shall include a concise statement of the grounds for the proposed intervention and the position and interest of the intervenor, as well as a statement of the requested relief

3. A request to intervene may include a request to appear before the Board of Directors in any meeting conducted under these procedures concerning a petition. A request to appear at a meeting must set forth the likely impact that intervention will have on the expeditious progress of the meeting, and must be filed with the Executive Secretary either with the request to intervene or at least twenty (20) days prior to the meeting scheduled to consider the petition, unless good cause is shown for a delay in filing.

4. Any request to intervene shall include a statement that, if such leave to intervene is granted, the intervenor-party shall be bound expressly by the outcome of the adjudication and by the Final Decision, as defined herein, of the Board of Directors, subject only to the obtaining of judicial review as otherwise provided by law.

5. The Executive Secretary, in accordance with section II.B of these procedures, promptly shall forward such requests for leave to intervene to the members of the Board of Directors and to all other parties to the proceeding.

6. The Managing Director may grant leave to intervene only if the requestor demonstrates the following: (a) that the requestor has expressly agreed to be bound by the outcome of the proceeding and by the Final Decision, as defined herein, of the Board of Directors, subject only to the obtaining of judicial review as otherwise-provided by law; (b) that the request includes the information required by paragraphs IV.A.2, and IV.B.2 above; (c) that the requestor's presence at the adjudication would not unduly prolong or otherwise prejudice the adjudication of the rights of the original parties; and (d) that the requestor may be adversely affected by a Final Decision, as defined herein.

C. Procedures to be Followed by the Finance Board.

1. The Executive Secretary shall send a written Notice of Receipt of Petition to the Bank not later than three (3) business days following receipt of a petition and shall immediately forward the petition to the Managing Director.

2. In accordance with the applicable delegated authority and subject to the provisions stated in these procedures, the Managing Director shall have thirty (30) calendar days from the date the petition was received in the Office of the Executive Secretary in which to review such petition for compliance with the requirements set forth in these procedures. Upon completion of his or her review, the Managing Director shall either:

- (a) reject any petitions found not to be in compliance with the requirements;
- (b) afford the Bank submitting a petition that is not in compliance with these procedures a reasonable opportunity to cure such defects as may be noted or request additional information from the Bank filing the petition (Information Request) or any appropriate office or division of the Finance Board; or
- (c) deem the petition to be complete if the Managing Director determines that the petition is in compliance with the requirements.

3. The Board of Directors may adjudicate the Issues presented and render a decision based solely on the written record before the Board of Directors (summary decision). If the Issues are to be adjudicated on the basis of the written record, a summary decision shall be rendered within one-hundred twenty (120) calendar days of receipt of a petition that has been determined by the Managing Director to be in compliance with these procedures and complete. A summary decision shall be in writing, promptly provided to the parties and shall be determinative as to such Issues as may be presented in the Bank's petition or an intervenor's request for leave to intervene. A summary decision shall be a Final Decision.

4. If a meeting is to be held to adjudicate the Issue(s) presented in the petition, within thirty (30) calendar days of receipt of a petition that has been determined by the Managing Director to be in compliance with these procedures and complete, the Managing Director shall issue through the Executive Secretary to the Bank a written notice of the date, time and place of the meeting of the Board of Directors at which the Issues shall be adjudicated, the Issues accepted for review by the Board of Directors, and a decision as to any request to appear (Notice

of Meeting). Where a meeting has been scheduled and the Bank's request to appear is granted, the Executive Secretary additionally shall attach to the Notice of Meeting a copy of these procedures, and the Procedures for Review of Disputed Supervisory -Determinations, Finance Board Res. No. 98-35 (July 10, 1998), with an instruction that they are controlling as to the conduct of the meeting.

5. The Notice of Meeting shall provide not less than thirty (30) calendar days notice of said meeting unless otherwise stated.

6. The offices of the Finance Board promptly shall provide any requested information, comments, assistance, or support to assist the Board of Directors in their consideration of a petition or a request for leave to intervene.

7. Consolidation and Severance.

(a) Consolidation. The Managing Director may consolidate any or all matters at issue in two or more meetings on petitions where (a) there exist common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues; and (c) consolidation would not adversely affect the rights of parties engaged in otherwise separate proceedings.

(b) Severance. The Managing Director may order any meetings and issues severed with respect to any or all parties or issues.

V. Provisions to Regulate the Course of a Meeting of the Board of Directors to Adjudicate Issues under these Procedures

Meetings held to adjudicate Issues shall be conducted in accordance with all applicable provisions of Section V of the Finance Board's "Procedures for Review of Disputed Supervisory Determinations," Fin. Bd. Res. No. 98-35 (July 10, 1998).

VI. General Provisions Governing These Procedures.

A. Withdrawal of Petition or Request for Leave to Intervene.

At any time during the course of proceedings under these procedures, an authorized representative of a Bank having submitted a petition or of an intervenor having submitted a request for leave to intervene may make a written request directed to the Office of the Executive Secretary to withdraw the petition or the request for leave to intervene. Unless otherwise agreed, withdrawal of a petition or of a request for leave to intervene shall not be deemed to foreclose a Bank from resubmitting a petition or an intervenor from resubmitting a request for leave to intervene on the same or similar Issue (i.e., such withdrawal may be "without prejudice"). The Board of Directors promptly shall be notified of a withdrawal of a petition or of a request for leave to intervene under these procedures.

B. No Rights Created; No Prohibition on Actions of the Finance Board.

Nothing in these procedures shall be deemed to create any substantive or discovery rights in any Party or third party. These procedures shall not preclude any proceeding under any section of the laws or regulations applicable to the Finance Board. Nothing in these procedures limits in any manner the right of the Finance Board to conduct any examination or inspection of any Bank, or to take any action with respect to a Bank, or its directors, officers, employees, agents, or member(s) otherwise authorized by law. These procedures do not, and should not be construed to, create any rights in any Bank or third party to require the Finance Board to consider a matter or to issue any determination, finding or approval.

C. Exhaustion Requirement.

A party seeking adjudication of any Issue as defined herein by the Board of Directors shall follow these procedures as a prerequisite to seeking judicial review. Failure to do so shall be deemed to be a failure to exhaust the available administrative remedies.

D. Improper Conduct Prohibited.

These procedures are intended to provide a process for the fair and expeditious presentation of Issues as defined herein. No party shall, by act or omission, unduly burden or frustrate the efforts of the Board of Directors to carry out its duties under the laws and regulations of the Finance Board. A Bank shall confine its communications with the Board of Directors, or any individual member thereof, concerning any Issue(s) raised in a petition filed pursuant to these procedures, to written communications for inclusion in the record of the proceeding under these procedures, and provide such communications to the Office of the Executive Secretary for appropriate action as provided for in section II.B..

E. Decisions of the Board of Directors and Summary Decisions.

The parties shall be bound by the terms and conditions of the' decision of the Board of Directors or summary decision for purposes of the issue(s) presented in a petition or a request for leave to intervene, and the decision of the Board of Directors or summary decision shall be a Final Decision for purposes of obtaining judicial review as otherwise provided by law.

F. Costs.

A Party is encouraged to contain costs associated with the preparation and filing of petitions for review and related personal appearances, if any, at any meeting held by the Board of Directors under these procedures. A Party shall be solely responsible for all costs associated with any such petitions and appearances.

G. Procedures are Exclusive.

All adjudications of Issues as defined herein at section I(K) are to be raised exclusively through these procedures. These procedures shall not apply to proceedings under the Bank Act

to suspend or remove for cause a director, officer, employee or agent of a Bank or joint office of the Banks pursuant to 12 U.S.C. § 1422b(a)(2).

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