

Federal Housing Finance Board

Memorandum

April 10, 1991

TO: Patrick Pizzella
Director, Office of Administration

FROM: Beth L. Climo
General Counsel

SUBJECT: Authority to Set Salaries of
Federal Home Loan Bank Officials

This office has been requested to provide guidance on the Finance Board's authority to establish salaries of Federal Home Loan Bank ("FHLBank") officers in connection with our recent study of FHLBank presidents' salaries. This memorandum confirms that, as a matter of law, the Finance Board has broad discretionary authority to control FHLBank officer and employee salaries.

DISCUSSION

Congress gave each FHLBank the power to set salaries and other compensation for its officers. Federal Home Loan Bank Act ("Bank Act") section 12(a) states that a FHLBank "shall have power to select, employ and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary for the transaction of its business" 12 U.S.C.A. § 1432(a) (West Supp. 1991) (emphasis added). This authority, however, was specifically made 'subject to the approval of the [Finance] Board.' Id.

In addition, the Finance Board has extensive supervisory control over FHLBank affairs.¹ The Finance Board is responsible for supervising FHLBanks. Id. at § 1422a(s)(3)(A). It is empowered to promulgate and enforce rules or regulations applicable to FHLBanks. Id. at § 1422b(a)(1).

1. Congress gave the Federal Home Loan Bank Board "the broadest kind of federal control over the . . . powers of these purely legislative creatures." Fahey v. O'Melveny & Myers, 200 F.2d 420, 443 (9th Cir. 1952) cert. denied 345 U.S. 952 (1953). The Finance Board succeeds to its authority vis-a-vis the FHLBanks. See 12 U.S.C.A. § 1422a(s)(1) (West Supp. 1991).

Both the former Federal Home Loan Bank Board and the Finance Board have used this authority to control salaries of FHLBank presidents and senior officers. See 12 C.F.R. § 932.41 (1990); see also FHLBanks Policy Man. (April 1989). The Finance Board has authority to amend its policy on FHLBank officer salaries to exercise either more or less control, in its discretion as the regulator of the FHLBanks.² Accordingly, it may implement the study on FHLBank presidents' salaries through resolution, regulation or through policy.



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2. The authority to control FHLBank salaries should not be confused with actual payment of salaries. That management function is granted to each FHLBank's board of directors. 12 U.S.C.A. § 1427(a) West Supp. 1991) ("The management of each [FHLBank] shall be vested in a board of fourteen directors . . . "); see also *id.* at § 1427(j) ("Such board of directors shall administer the affairs of the bank"). Moreover, payment of salaries is an indicia of an employer-employee relationship. The Bank Act, as amended, makes clear that FHLBank employees are not federal employees. See *id.* at § 1422a(a)(2) (West Supp. 1991).