



Federal Housing Finance Board

February 11, 1993

MEMORANDUM

TO: K. Scott Baker
Deputy Director
Congressional Affairs

THROUGH: Renie Y. Grohl *RYG*
Deputy General Counsel

FROM: David A. Guy *DAG*
Associate General Counsel

SUBJECT: Lobbyists and Registration

RECEIVED

FEB 17 1993

EXECUTIVE DEPT.
FHLB ATLANTA

ISSUE:

Whether the Federal Home Loan Bank (FHLBank) Presidents or members of their staffs assigned additional responsibility as points of contact for legislative matters are required to register as lobbyists in accordance with provisions of the Federal Regulation of Lobbying Act (FRLA), 2 U.S.C. § 261 et seq.

CONCLUSION:

Based on our understanding of their intended legislative activities, it appears that neither the FHLBank Presidents nor members of their staffs are required to register under the FRLA.

DISCUSSION:

Section 308 of the FRLA requires a "person" engaged in lobbying activities described under the Act to register as a lobbyist with the Secretary of the Senate and Clerk of the House. 2 U.S.C. § 267 (1988). FRLA is generally considered as not applicable to the legislative activities of Federal, State, and local government agencies. See Comp. Gen. Dec. B-164497(5) (unpub. Mar. 10, 1977) and Comp. Gen. Dec. B-129874 (unpub. Aug. 15, 1978); Bradley v. Saxbe, 388 F. Supp. 53 (1953); see also H.R. Rep. No. 3239, 81st Cong., 2d Sess. 35 (1951). The statute and its legislative history are not clear on whether Government Sponsored Enterprises (GSEs) are subject to its registration requirements. The Comptroller General of the United States has suggested in dicta that the provisions of the FRLA are inapplicable to mixed-ownership corporations. See Comp. Gen. Dec. B-129874 (unpub. Aug. 15, 1978).

Even assuming that the FHLBanks are subject to the FRLA, however, their legislative activities do not appear to fall within the purview of the statute. Section 307 of the FRLA states that the registration requirements are limited to those persons who solicit, collect, or receive contributions of money or other things of value, and then only if "the principal purpose" of either the persons or the contributions is to influence, directly or indirectly, the passage or defeat of any legislation by Congress. 2 U.S.C. § 266 (1988). The legislative history of FRLA indicates that the term "principal" was adopted to exclude from the scope of the Act those contributions and persons having only an "incidental" purpose of influencing legislation. See S. Rep. No. 1400, 79th Cong., 2d Sess., 27, 32 (1946) (Statement by Representative Monroney on Legislative Reorganization Act of 1946).

Based on this legislative history, the United States Supreme Court has ruled that the registration requirements are applicable only if the following prerequisites are satisfied:

- (1) the "person" must have solicited, collected, or received contributions;
- (2) one of the main purposes of such "person" or one of the main purposes of such contributions, must have been to influence the passage or defeat of legislation by Congress; and
- (3) the intended method of accomplishing this purpose must have been through direct communication with members of Congress.

See U.S. v. Harriss, 347 U.S. 612 (1954).

The FHLBank presidents do not solicit, collect, or receive money the main purpose of which is to influence legislation. The FHLBank presidents are primarily responsible for managing the day-to-day operations of their FHLBanks. Any legislative or lobbying activities are only incidental responsibilities. Accordingly, the FHLBank presidents do not appear to be subject to the registration requirements.

The staff members of the FHLBanks that are assigned as points of contact probably need not register as lobbyists under the FRLA. It is our understanding that such individuals do not solicit, collect, or receive money the main purpose of which to influence legislation. In addition, we assume that acting as points of contact with Congressional staffers will not be the main job responsibility of these employees of the FHLBanks.

The views expressed herein are based on our understanding of the intended legislative activities of FHLBank employees and a quick review of the statutes and other legal sources. It should

be noted that the FRLA is a criminal statute. Each FHLBank should examine the activities of their employees in this area to determine whether their legislative activities might bring them within the scope of the Act. If there is any question, the FHLBank should seek advice from its counsel.

cc: Beth L. Climo
Jon E. Boustany