



REGULATORY INTERPRETATION 2007-RI-01

January 19, 2007

Subject:

Electronic Distribution of the Combined Annual and Quarterly Financial Reports of the Federal Home Loan Bank (Bank) System.

Issue:

Federal Housing Finance Board (Finance Board) staff is supplementing its existing Regulatory Interpretation 2002-RI-04 on the application of 12 C.F.R. § 985.6(b). Section 985.6(b) requires the Office of Finance (OF) to file the Bank System combined annual and quarterly reports with the Finance Board and to “distribute” them to each Bank and Bank member within specified periods. This interpretation provides guidance as to what actions taken by the OF via an electronic means may satisfy the requirement that it “distribute” the combined reports to the Banks and their members. To the extent that this guidance contradicts certain provisions of Regulatory Interpretation 2002-RI-04, this guidance will supersede and replace the guidance contained in Regulatory Interpretation 2002-RI-04.

Conclusion:

The OF may satisfy the requirement in section 985.6(b) that it distribute the combined reports by providing the Banks and their members with combined reports in electronic format if the following conditions are met:

1. The OF must post each combined report on its website when it files the combined report with the Finance Board.
2. Simultaneously with its website posting, the OF must issue a press release stating that its combined report has been filed with the Finance Board and specifying the address of the OF website at which the combined report is available.
3. Within 7 business days of filing a combined report with the Finance Board, the OF must distribute to each Bank and Bank member by electronic mail a notice that the combined report has been posted on the OF website.¹ The notice must include a hyperlink to the combined report on the OF website that allows Banks and Bank members, with a reasonable investment in technology, to download, save, and print the combined report.
4. The OF must provide any reasonable technical assistance to Banks and Bank members, if requested, to ensure that the Bank or Bank member is able to use the OF hyperlink to download, save, and print the combined report.

¹ The OF may contract with a third party to distribute this e-mail.

5. The OF press release and each e-mail notice announcing a combined report posting must inform Banks and Bank members that a paper copy of the combined report will be provided to a Bank or Bank member free of charge, upon request, within a reasonable period of time. A Bank or Bank member may elect to receive copies of the combined reports in paper form.
6. If the OF is unable to distribute an e-mail notice to a Bank or Bank member, the OF must mail a paper copy of the combined report to the Bank or Bank member.

Analysis and Discussion:

Finance Board regulation section 985.6(b)(4) requires the OF to “distribute” Bank System combined reports to the Banks and Bank members within certain time periods after their completion. The Finance Board historically has interpreted this requirement to mean that the OF must mail or arrange to be mailed a printed copy of each combined report to the Banks and Bank members.

Regulatory Interpretation 2002-RI-04 permitted electronic distribution because Finance Board staff accepted the Securities and Exchange Commission (SEC) position that the “delivery of information through an electronic medium generally could satisfy delivery or transmission obligations under federal securities laws ... if such distribution results in the delivery to the intended recipients of substantially equivalent information as these recipients would have had if the information were delivered to them in paper form.”²

Finance Board staff has decided to modify certain aspects of Regulatory Interpretation 2002-RI-04 by this guidance to better enable the OF to electronically distribute the combined reports. The principal modification is that the OF will not be required to obtain the prior written approval of the Bank or Bank member before it electronically distributes the combined report. Pre-approval is unnecessary to ensure that Banks and Bank members receive information that is substantially equivalent to a paper distribution. In reaching its conclusion, staff notes that all Banks and Bank members are commercial financial institutions that are sophisticated enough to determine whether their respective needs for the combined reports are met by electronic distribution. The SEC guidance on which Regulatory Interpretation 2002-RI-04 rested, by contrast, contemplated the distribution of information to individuals, as well as to commercial investors.

This guidance and Regulatory Interpretation 2002-RI-04 interpret rather than alter the distribution requirement imposed by section 985.6(b). Moreover, this guidance is elective not mandatory, meaning that the OF may continue to distribute the combined reports to Banks and Bank members exclusively in paper form if it so chooses. Finally, this guidance does not significantly differ from the guidance provided in Regulatory Interpretation 2002-RI-04. Both regulatory interpretations interpreted section 985.6(b) to authorize compliance with the substantive requirement that combined reports be distributed to members through the medium of electronic distribution.

A Regulatory Interpretation is subject to modification or rescission by action of the Board of Directors of the Finance Board. 12 C.F.R. part 907.
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² SEC Release No. 33-7288 dated May 9, 1996.