

No.: 98-51
Date: October 28, 1998

FEDERAL HOUSING FINANCE BOARD

Procedures for Requests and Applications

WHEREAS, the Federal Housing Finance Board (Finance Board) considers it appropriate to adopt a policy that provides procedures governing requests for No-Action Letters and Regulatory Interpretations and Applications for Waivers and Approvals;

NOW THEREFORE BE IT RESOLVED THAT, the Finance Board hereby adopts the Procedures for Requests and Applications attached hereto.

By the Board of Directors of the
Federal Housing Finance Board

A handwritten signature in dark ink, appearing to read "B A Morrison". The signature is written in a cursive style with a large initial "B" and "A".

Bruce A. Morrison, Chairman

PROCEDURES FOR REQUESTS AND APPLICATIONS

Introduction

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, consistent with that duty, the Finance Board supervises the Banks, ensures that they carry out their housing finance mission, and ensures that they remain adequately capitalized. 12 U.S.C. § 1422a(a)(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).

Reason for Adopting the Procedures

The Finance Board has determined that it is in the public interest to establish uniform procedural rules governing requests by Banks, their Members, and other parties for issuance by agency staff of written interpretations of the Bank Act and Finance Board rules, regulations, policies, and orders. "Procedures for Adjudications by the Finance Board of Issues Other Than the Review of Disputed Supervisory Determinations," "Procedures for Disputed Supervisory Determinations," and "Pilot Procedures and Pilot Proposal Initial Submission Guidelines," are excluded from these procedures.

The procedures identify two forms through which the agency can respond to requests for such guidance: "No-Action Letters," which can be issued only to Banks and the Office of Finance, and "Regulatory Interpretations," which can be issued to other entities as well. To ensure a focused presentation of the guidance sought, the issues raised thereby, and relevant precedent, and to minimize the expenditure of staff resources, the procedures include requirements designed to elicit the information that Finance Board staff will need to evaluate a request, and provide that the agency will normally respond to requests only in the context of a particular proposed transaction or activity. The procedures include other requirements to ensure that requests receive expeditious and appropriate consideration.

The Finance Board has determined that similar purposes will be served by making these procedures applicable as well to applications to the Board of Directors for Waivers of regulatory

provisions, as provided for by 12 C.F.R. § 902.6, and for regulatory approvals that may require action by the Board of Directors.

These procedures govern requests and applications for such interpretations, waivers, and approvals, in order to promote clarity and consistency in the agency's governing standards and waivers and approvals pursuant thereto. These procedures are intended to apply to instances where the need for waiver, approval, guidance, or clarification of a rule's applicability arises from relatively routine circumstances. If the facts are fairly covered by existing law and policy, these procedures will apply; if not, the issue shall be subject to rulemaking or adjudication.

These Procedures are adopted pursuant to U.S.C. § 1422a(b)(1) and 12 C.F.R. § 900.5.

I. Definitions

- A. The term Finance Board shall have the same meaning as the term "Board" defined in 12 U.S.C. § 1422(1).
- B. The term Bank shall have the same meaning as defined in 12 U.S.C. § 1422(2)(A).
- C. The term Member shall have the same meaning as defined in 12 C.F.R. § 933.1(s).
- D. The term Managing Director shall have the same meaning as defined in 12 C.F.R. § 900.12(a).
- E. The term Office of General Counsel shall have the same meaning as defined in 12 C.F.R. § 900.15.
- F. The term Office of Supervision shall have the same meaning as defined in 12 C.F.R. § 900.14.
- G. The term Office of Policy shall have the same meaning as defined in 12 C.F.R. § 900.13.
- H. The term Executive Secretariat shall have the same meaning as defined in 12 C.F.R. § 900.12(b).
- I. The term Board of Directors shall have the same meaning as defined in 12 C.F.R. § 900.10.
- J. The term Submission shall mean an "application" for waiver or approval or a "request" for a regulatory Interpretation or No-Action Letter.
- K. The term Waiver shall mean a written statement issued to a Bank, a Member, or the Office of Finance, in connection with a particular transaction or activity, in which the Finance Board waives a provision, restriction, or requirement of a Finance Board rule, regulation, policy, or order, or any required submission of information, as described by 12 C.F.R. § 902.6.
- L. The term Approval shall mean a written statement issued to a Bank or the Office of Finance in which Finance Board approval of a transaction, activity, or item is required by the Bank Act or Finance Board regulations.
- M. The term No-Action Letter shall mean a written statement issued to a Bank and signed by the Managing Director stating that the staff of the Finance Board will neither take nor recommend that the Board of Directors take supervisory or other action for possible failure to comply with a specific provision of the Act or of a Finance Board rule, regulation, policy, or order, if a proposed transaction or activity is undertaken by the Bank as requested in such Letter.
- N. The term Regulatory Interpretation shall mean written advice or guidance with respect to the application of a Finance Board rule, regulation, policy, or order, in the context of a proposed transaction or activity.

O. The term requester shall mean the entity or person submitting an application for an Approval or Waiver, or a request for No-Action Letter, or Regulatory Interpretation.

II. Submission Requirements

A. Each submission must be in writing and signed. The original and three copies must be filed with the Executive Secretariat, Federal Housing Finance Board, 1777 F Street NW, Washington, D.C. 20006.

B. Each submission must contain: a) the name of the requester, and the name, title, address and telephone number of the official filing the submission on its behalf; b) the name, address, and telephone number of a contact person from whom Finance Board staff may seek additional information if necessary.

C. The section numbers of the particular provisions of the Bank Act or Finance Board rules, regulations, policies, or orders to which the submission relates must be set forth prominently before the text of the submission.

D. The submission must identify the type of relief requested and must clearly state why such relief is needed, including alternative relief if the primary relief is denied.

E. The submission must set forth as completely as possible the particular facts and circumstances giving rise to the submission and identify all relevant legal and factual issues.

F. The submission must contain references to all relevant authorities, including the Bank Act, Finance Board rules, regulations, policies, and orders, judicial decisions, administrative decisions, relevant statutory interpretations and policy statements.

G. The submission must identify any prior Waivers, No-Action Letters, Approvals, or Regulatory Interpretations, issued to the requester in the past in response to circumstances similar to those surrounding the request or application.

H. Any submission involving interpretation of the Act or Finance Board regulations must contain or be accompanied by a reasoned opinion of counsel supporting the relief or interpretation sought and distinguishing any adverse authority.

I. Each submission must contain or be accompanied by a certification by a person with knowledge of the facts that the representations made in the request are accurate and complete. The following factual form of certification is sufficient for this purpose: "I hereby certify that the statements contained in the submission are true and complete as to the facts to the best of my knowledge." --- Name and Title.

J. Once filed, a submission may be withdrawn only upon written request.

- K. Requests for withdrawal will not be considered after a response has been transmitted in final form to the requester by the Executive Secretariat.

III. Finance Board Responses

- A. Waivers, Approvals, No-Action Letters and Regulatory Interpretations are applicable only to the requester and the specific matter addressed.
- B. The Finance Board positions contained in No-Action Letters and Regulatory Interpretations may be modified or superceded by action of the Board of Directors.
- C. Waivers, Approvals, No-Action Letters, or Regulatory Interpretation are not effective unless they have been transmitted in final form to the requester by the Executive Secretariat. Failure by the Finance Board to respond does not constitute approval of a request or application.
- D. The Finance Board may respond to a submission in an abbreviated form, consisting of a concise statement of the nature of the response, without restatement of the underlying facts.

IV. Applications for Waivers and Approvals

- A. A Waiver may be issued only to a requesting Bank, Member, or the Office of Finance.
- B. An approval may be issued only to a requesting Bank or the Office of Finance.
- C. Applications must be signed by an official with authority to make such requests on behalf of the applicant and approved prior to filing by the applicant's board of directors.
- D. Waivers are entirely within the discretion of the Board of Directors. An application for waivers may be denied, or the Board of Directors may decline to consider or respond to an application.
- E. Applications for approval must be granted or denied, with or without conditions, based on the governing standard in the Bank Act or Finance Board regulations or policies.
- F. Waivers and Approvals shall not be issued to the requester less than three (3) days after being issued to all members of the Board of Directors.

V. Requests for No-Action Letters and Regulatory Interpretations

- A. A No-Action Letter may be issued only to a requesting Bank or the Office of Finance.
- B. A Regulatory Interpretation may be issued to a requesting Bank, Member, official of a Bank or Member, or any other entity or person.

C. Each request for a No-Action Letter must be signed by the Bank president or by the chair of the Board of Directors of the Office of Finance.

D. Each request for a Regulatory Interpretation must be signed by the requester or an authorized representative of the requester.

E. Each request for a No-Action Letter or Regulatory Interpretation must relate to a proposed transaction or activity. Finance Board staff will not issue a No-Action Letter or Regulatory Interpretation based upon hypothetical situations.

F. No-Action Letters and Regulatory Interpretations shall not be issued to the requester less than three (3) days after being issued to all members of the Board of Directors.