



Federal Housing Finance Board

February 15, 1996

MEMORANDUM

TO: Rita I. Fair
Managing Director

THROUGH: Paul J. Drolet
General Counsel

FROM: Janice A. Kaye
Attorney-Advisor

SUBJECT: Compensation of Appointed, Acting, or Former
Federal Loan Bank (FHLBank) Chairpersons

ISSUES:

1. Whether a vice chairperson of a FHLBank who acts as chairperson in the absence of an appointed chairperson, may be compensated at the rate prescribed for the chairperson.

2. Whether, in the absence of a newly appointed chairperson, the previous chairperson whose term has expired may continue to be compensated at the rate prescribed for the chairperson.

CONCLUSIONS:

1. Under the FHLBank **System** Directors Fees and Allowances Policy (Policy), the vice chairperson of a FHLBank's board of directors may be compensated at the rate prescribed for the chairperson when: (1) the vice chairperson presides for the chairperson at more than two meetings of the board of directors **or** executive committee throughout the year; **or** (2) the chairperson will be indisposed for three consecutive months, the vice chairperson presided at meetings during the period of the chairperson's absence, and the board of **directors of** the FHLBank gives its prior approval. In all other instances, the maximum compensation that may be paid to a FHLBank vice chairperson is the amount available **to** FHLBank **directors** other than the chairperson.

2. A FHLBank director who is appointed as chairperson of the FHLBank's board of directors for a term of one year may not serve in that capacity beyond the expiration of the term. Thus, once the term of appointment as chairperson has expired, the FHLBank director is no longer the chairperson and may not be compensated at the rate prescribed for the chairperson.

DISCUSSION:

I. Compensation of Acting or Appointed FHLBank Chairperson

Section 7(g) of the Federal Home Loan Bank Act (Bank Act) requires the Board of Directors (Board) of the Federal Housing Finance Board (Finance Board) to "designate one of the directors of each [FHL]Bank to be chairman, and one to be vice chairman, of the board of directors of such (FHL)Bank," 12 U.S.C. § 1427(g). In the absence of a designated chairperson, the designated vice chairperson assumes the duties and responsibilities of the chairperson, such as presiding over meetings of the FHLBank board of directors. See letter from Board Chairperson to FHLBank vice chairpersons, dated January 26, 1996.

Regarding compensation of FHLBank directors, section 7(i) of the Bank Act provides that:

[e]ach [FHL]Bank may pay its directors reasonable compensation for the time required of them, and their necessary expenses, in the performance of their duties, in accordance with the resolutions adopted by such directors, subject to the approval of the Board,

12 U.S.C. § 1427(i). The Finance Board's implementing regulation states that "[FHL]Bank directors' fees shall be established by each [FHL]Bank within limits set by the Board." 12 C.F.R. § 932.27.

In February 1993, the Board adopted the Policy by notational vote. See Board Res. No. 93-12 (Feb. 23, 1993), published at FHLBank System Policy Manual (June 1993), Vol. 1, § G-4. Among other things, the Policy sets limits on the payment of fees to FHLBank directors. See Policy §§ I, III(B), (D). The Policy provides that the the maximum fee that may be paid to FHLBank directors other than the chairperson for attending meetings called by the Finance Board, or board of directors, committee, or annual stockholders' meetings, is \$650 per day, Id. §§ I(A)(1), III(B), (D). It provides also that the maximum fee that may be paid to the chairperson is \$1,200 per day for presiding over annual stockholders', board of directors, or executive committee meetings, and \$650 per day for attending other committee meetings' or meetings called by the-Finance Board; Id, §§ I(B)(1), [III(B)(3) (D).

Except in specified circumstances, the compensation of a FHLBank vice chairperson is limited to the amount available to FHLBank directors other than the chairperson. See id. § I(B)(2). A FHLBank vice chairperson is eligible to be compensated at the rate prescribed for the chairperson if the vice chairperson presides over more than two board of director or executive committee meetings during the year. The Policy provides that:

[I]n instances where the Vice Chairman presides for the Chairman at one or two meetings of the [FHLBank] Board of Directors or the Executive Committee throughout the year, the Vice Chairman's fee will continue to be based on the maximum permissible fee [for FHLBank directors] of \$650 per day.

Id. (emphasis added). This provision limits a vice chairperson's fees for presiding at board of directors or executive committee meetings one or two times during the year regardless of the reason for the chairperson's absence. The Policy does not address specifically compensation for a vice chairperson who presides at meetings for the chairperson more than two times a year. However, by negative implication, if a FHLBank vice chairperson presides at at least two board of directors or executive committee meetings throughout the year, a FHLBank may compensate a vice chairperson at the rates prescribed for the chairperson for the third and each subsequent meeting at which he/she presides during the year.

The Policy permits a FHLBank vice chairperson to be compensated at the rate prescribed for the chairperson in one other instance. The policy provides that:

[I]n the situation where the Chairman will be indisposed for three or more consecutive months, a FHLBank is permitted to pay the Vice Chairman a fee up to \$1,200 per day for presiding at meetings during that period, with prior approval of the Board of Directors.

Id. (emphasis added). By its terms, this provision applies only

1. Fees for a vice chairperson who presides at an annual stockholders' **meeting** for the chairperson are not addressed in the Policy. However, since the Policy provides that a chairperson who presides at such meeting is entitled to receive the maximum fee prescribed **for** chairpersons, see **Policy** § III(B)(3), it would be reasonable to interpret this provision to permit a vice chairperson who performs those duties to receive the same compensation.

when: (1) the chairperson will be "indisposed, if² i.e. unavailable to perform his/her duties for three consecutive months; (2) the vice chairperson presides at meetings during the period of the chairperson's absence; and (3) the board of directors of the FHLBank gives its prior approval. Since this determination is made prospectively, the vice chairperson is eligible to be paid at the Chairperson's rate for each meeting at which he/she presides. In all other instance, the maximum compensation that may be paid to a FHLBank vice chairperson is that available to FHLBank directors other than the chairperson.

II. COMPENSATION OF FORMER FHLBANK CHAIRPERSONS

In a previous memorandum, the Office of General Counsel concluded that a FHLBank director who is appointed as chairperson of the FHLBank's board of directors for a term of one year may not serve in that capacity beyond the expiration of the term. See memorandum from D. Silberman to P. Drolet, dated Oct. 20, 1995. Thus, once the term of appointment as chairperson has expired, the FHLBank director is no longer the chairperson and may not be compensated at the rate prescribed for the chairperson.

cc: David Guy

2. Although the ordinary dictionary meaning of the term "indisposed" is "slightly ill," see Webster's Ninth New Collegiate Dictionary 614 (1990), it would be unreasonable to conclude that the Board intended to make a vice chairperson's compensation dependent upon the nature of the chairperson's illness. The more reasonable interpretation is that the Board intended this provision to reach every circumstance in which the chairperson would be unavailable to perform his/her duties for three or more consecutive months.