

# Office of Regulatory Activities

RB 11 was rescinded 12/4/97. Incorporated into Applications Processing Guidelines, 12 CFR Part 516)

**Handbook:** Application Processing  
**Subjects:** Establishment or Relocation of a Branch;  
De Novo/PTO/IOA

**Section:** 110; 430  
**RB 11**  
March 6, 1989

## Protest and Oral Argument Procedures

# RESCINDED

*Summary:* This Bulletin provides clarification of the regulations and outlines internal procedures and guidelines to conduct a protest and an oral argument.

**FHLBB Identification:**  
AP Memo No. 018  
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**For Further Information Contact:**  
The appropriate FHLBank or the Office of District Banks, Federal Home Loan Bank Board, Washington, DC, (202) 906-7492.

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Due to the increasing number of protests being filed in connection with applications, several District Banks have asked ODB to provide guidance relative to the protest procedures. This memorandum provides clarification of the regulations as well as the procedures and guidelines to conduct a protest and an oral argument.

At all times, the District Banks should encourage serious negotiations to resolve protests between Applicants and Protestants. However, these negotiations should be accomplished within reasonable timeframes.

### Pertinent Regulations

12 C.F.R.:

§ 510.1 - Ex Parte Communications  
§ 543.2 (d) - Public notice and inspection  
§ 543.2 (e) - Protest  
§ 543.2 (f) - Oral argument  
§ 556.5 (d) - Protest and Oral argument

### Applications

Applications for which protest procedures are applicable under 12 C.F.R. § 543.2 (e) include:

- Change of Office Location
- Establishment of Branch Office
- Permission to Organize
- Insurance of Accounts
- Conversion from a State-Chartered Institution to a Federally Chartered Institution
- Merger
- Purchase of Branch Office/ Transfer of Savings Accounts

Holding Company applications and Change of Control notices are not subject to any specific protest and oral argument procedures. However, 12 C.F.R. § 574.6 (e), requires comments in favor of or in protest of the application or notice to be submitted within 20 calendar days of the date of publication or 40 calendar days from that date if an extension is requested in writing within the initial 20 calendar day period.

### Timeframes

**Protest:**

Anyone can file a protest of an application under 12 C.F.R. § 543.2 (e) by furnishing 3 copies of the protest or intent to protest to the Supervisory Agent ("SA") within 10 days of the date of publication or 17 days from that date if an extension is requested in writing within the initial 10 day period.

The PSA will advise the Protestant and the Applicant in writing whether or not the protest is deemed "substantial" within 10 days of receipt of the protest (see exhibit A). The applicant may submit a rebuttal to any protest until 10 days after the last date for filing a protest to the application.

**Oral Argument:**

A request to hold an oral argument may be made by the applicant or anyone who has filed a substantial protest. The request must be made within 10 days of the date of publication or 17 days if an extension is requested in writing within the 10 day period.

The oral argument is to take place no sooner than 10 days and no later than 60 days (unless serious negotiations are in process) after the SA has mailed notice to all interested parties that an oral argument will be held (see exhibit B). Oral arguments are generally conducted at or near the Federal Home Loan Bank in which the application is filed. However, if requested, the SA will attempt to schedule the oral argument at a time and location that is reasonably convenient to all parties.

### Procedures

**Protest:**

A protest is to be considered "substantial" only if: (1) it is written and filed within the appropriate time-

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frames outlined above; and (2) the reason for the protest is consistent with at least one of the regulatory criteria established for denying the application pursuant to 12 C.F.R. § 543.2 (e). In addition, the protest should contain the following:

1. A summary of the reasons for the protest;
2. The specific items in the application to which the Protestant objects and the reasons for each objection;
3. Facts supporting the protest, including economic or financial data; and
4. Any adverse effects on the Protestant which may result from approval of the application.

The Principal Supervisory Agent's decision on whether a protest is considered "substantial" is final. All applications involving "substantial" protests must be forwarded to the Board for action.

The Supervisory Agent should ensure that the Applicant is copied on any protests and the Protestant(s) on any rebuttals.

A protest that has been deemed "unsubstantial" is treated as an "unprotested" application. It should be mentioned in the Supervisory Digest and a copy of all correspondence should be kept in the file. Even though a protest is deemed "unsubstantial" the District Bank should send a copy of the protest to the applicant informing the applicant that it was not deemed "substantial" and that a response is not necessary.

## Oral Argument:

An oral argument will be heard if: (a) a request for an oral argument is made by the applicant or anyone

who has filed a substantial protest; or (b) the SA, after reviewing the application and other information, decides it would assist the Board in its evaluation of the application.

The SA will mail a notice of the date, time, and place of the oral argument to the applicant and all parties who have filed comments. An SA designated by the PSA or another Bank Board appointed person will preside at the oral argument and determine all matters relating to the conduct of the oral argument (see exhibit C).

Prior to the date of the oral argument, the SA will review all the data offered by the respective parties. If any of the material requires clarification or additional information, a request for this information should be sent to the appropriate parties. The respective party will have 10 days to submit the additional information to the SA. The SA will also send a copy of the information request to all other participants. Upon receipt of the data requested, the SA will send copies to all interested parties and they will have 10 days to respond.

Immediately before the opening of the oral argument, a discussion will be held concerning the guidelines on the proceeding (see exhibit D). The order of the proceeding and the time allotted to the presentation and rebuttal portions of the oral argument will be determined at that time. An appropriate division of time will be determined if there is more than one Protestant.

The SA will determine all matters relating to the conduct of the oral argument. The oral argument should be based on written information which has been filed in connection with the application. During the oral argument, the participants should outline salient features of their respective presentations, clar-

ify any points of issue, and summarize their cases. The information can be presented by the actual parties or an authorized representative. Legal representation is not required. The participants can voice objections to statements made by others as well as make motions. If these actions are not ruled upon by the SA, they will be reserved for review by the Board. Any motion for consideration by the Board, whether made by one of the parties or by the SA, should be entered into the record of the oral argument. The District Bank should include a discussion of the motion in its digest. There will not be any examination or cross examination of the participants or of any new information presented (see exhibit E).

Occasionally, a party may seek to introduce new information to the oral argument. If a party seeks to introduce substantive new information, it should be submitted by written memorandum at least five business days before the oral argument, and copies should be given to all participants. In the event that a written rebuttal is filed in reply, copies should be given to all interested parties. At the pre-argument discussion, the SA will consider any offer to submit the new information and will make a ruling on it during the oral argument. If it appears to the SA that there is substantive new matter, the additional data should be accepted. The parties will be permitted to comment on it during the argument, and the opposing participants will be permitted to file a written rebuttal within 10 days after the close of the argument.

No briefs are to be filed after the close of the oral argument unless one of the parties requests permission to file supplementary material. If the opposition objects, a written rebuttal can be submitted within 10 days of receipt of the supplementary material. The applicant then has 5 days to submit a response.

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Any other communication, written or oral after the close of the oral argument and prior to the final decision by the Board, on the merits of an application, to members of the Board, and its staff, including the SA and others in the decision process, is expressly forbidden and will be considered as ex parte. Exceptions to the prohibition are inquiries as to the status of an application or agency procedures, as well as certain other communications described in 12 C.F.R. § 510.1 (c).

A transcript must be made of every oral argument. This transcript constitutes part of the record and must be reviewed with all other information submitted for processing the application. The application and its

filing is confidential until publication of notice. Once notice is published, any person can inspect the application and all related communications at the SA's office during regular working hours. However, it is possible that some of the application information may be exempted from public disclosure under 12 C.F.R. § 505.5.

## Policies and Procedures for Rescheduling Oral Argument

1. Except in the case of an extreme emergency, there will be no changes in the schedule of an oral argument after the order has been issued.

2. An oral argument will not be scheduled for any date that a party notifies the District Bank, in writing, that it has a conflict with the proposed date due to a good cause. All such notices, however, must be received by the Supervisory Agent on or before the last date allowed for the applicant to file its response to the protests.

3. If, due to an emergency, a party requests that an oral argument be rescheduled, the requesting party will be required to obtain the agreement of all other participants as to a date on which all will be available for the argument.

Attachments



— Patrick G. Berbakos, Director, Office of District Banks

**Memo Deeming Protest Substantial**

FEDERAL HOME LOAN BANK OF \_\_\_\_\_  
INTEROFFICE COMMUNICATION  
(Date)

TO: Principal Supervisory Agent  
FROM: Supervisory Agent  
SUBJECT: (Type of Application)  
(Name of Applicant) \_\_\_\_\_  
FHLBB No.

A communication in protest of the above referenced application, filed by  
(Name of Protestant)

was received in this office on (Date of receipt).

The communications has been reviewed for compliance with the provisions of 12 C.F.R. § 543.2(e) and is deemed to be a “substantial” protest.

\_\_\_\_\_  
Reviewed for Compliance  
(Name of Analyst)

\_\_\_\_\_  
Supervisory Agent

\_\_\_\_\_  
Supervisory Agent

The subject protest is substantial.

\_\_\_\_\_  
Principal Supervisory Agent

**Order For Oral Argument**

(Date)

Oral Argument No.

It is hereby ordered that an oral argument shall be held at (Place of Oral Argument) on:

(Day, Date)

at (time), before the Supervisory Agent or nominee, upon the application of:

(Name of Applicant)

for permission to (Type of Application).

This order, the application and supporting information, and any protests and information in support of any protests shall be made available at the Office of the Supervisory Agent, Federal Home Loan Bank of \_\_\_\_\_, for inspection during regular working hours and copies thereof may be obtained from said office.

\_\_\_\_\_  
Supervisory Agent

cc: All protestants  
Applicant  
Correspondence file  
Presiding Officer  
Analyst

**Designation Of Presiding Officer For Oral Argument**

(Date)

Oral Argument No.

(Name of Supervisory Agent) is hereby designated as Presiding Officer to conduct the oral argument to be held at the Federal Home Loan Bank of \_\_\_\_\_ on (Date), at (Time) upon the application of:

(Name of Applicant)

for permission to (Type of Application).

\_\_\_\_\_  
Supervisory Agent

cc: Correspondence file  
Presiding Officer  
Analyst

### Preliminary Clearance

1. Introduce self. "My name is \_\_\_\_\_ and I have been appointed as Supervisory Agent ("SA")\Presiding Officer for the purpose of presiding over this Oral Argument ("O.A."). During the Oral Argument, you may address me as "Mr./Ms. \_\_\_\_\_" or "Mr./Ms. Presiding Officer."
2. Make corrections to appearance notices if party is represented by an authorized representative. Chart people at table using last name.
3. Ask if everyone is familiar with the procedures of an O.A.
  - (1) Customary order of presentation: Applicant, Protestant, Rebuttals.
  - (2) Length of time: Both the Applicant and the Protestant have one hour to make their presentations. The Applicant will have to apportion his time between opening remarks and the closing rebuttal. After going on record, each party is asked to waive any unused time. Any additional time needed beyond one hour is at the discretion of the SA.
  - (3) This is not an adversary hearing. The purpose of the O.A. is not to reach a final decision, but to give each party the opportunity to highlight the important features, clarify any points at issue, and summarize respective positions.
4. Ask who will be making the presentation for each party, and estimate the length of time each will take. Fill out the time stipulated on the appropriate form.
5. Determine if any new information is substantive to the application and whether it was submitted within the established timeframes. The SA will determine whether or not it will be permitted. However, if denied, the new information can be submitted for the record. If permitted, opposition must be given reasonable time to file a written response which is 10 days after the closing of the O.A.
6. Explain that the preceding is informal but participants are requested to be courteous to the person speaking so as not to distract the presentation.
7. Introduce the court reporter. Explain that a transcript of the O.A. will be made as part of the record. Also, indicate that if any party has a written presentation, it would be helpful if the copy were submitted to the court reporter for the preparation of the transcript.
8. Ask if a recess is needed before going on record and also prior to rebuttal (more often, if necessary).
9. Begin Oral Argument.

## Guidelines for Conducting The Oral Argument

The Oral Argument (“O.A.”) is based on written information which has been filed in connection with the application.

The O.A. is held to give the participants the opportunity to highlight salient features in the application or protest briefs, clarify any points of issue, and summarize their respective positions.

1. Order of presentation: Applicant, Protestant, Rebuttal.
2. This is not an adversary hearing. No witnesses and no questions of the speakers are permitted. The participants can voice objections to statements made by others, as well as make motions. Such actions, if not ruled upon by the Supervisory Agent (“S.A.”) will be reserved for the FHLBB.
3. TIME: Each participant has at least an hour to make their presentation. Before O.A. begins, ask each party to stipulate the time to be used and ask each group to waive any portion of time allocated that will not be utilized.
4. New Material: If permitted, leave will be granted to other participants to file a written response within 10 days after the close of the O.A.
5. Court Reporter: A transcript of O.A. is made which is part of the record. It will be reviewed together with all other information regarding the application. A copy of the transcript can be purchased from the court reporter. If desired, leave name and address with the court reporter.
6. When speaking during O.A., participants should speak up and face the reporter (it is not necessary to stand). If the speakers have a written copy of the presentation, it should be given to the court reporter to assist in preparing the transcript.
7. No briefs will be filed after the O.A. unless the parties request permission to file supplementary materials during the O.A. The opposing party can submit a written rebuttal within 10 days of receipt of the submission. The applicant then has 5 days to submit a response. Any other communication, written or oral, subsequent to the close of the O.A. and prior to the final decision of the FHLBB, to the Board and its staff, including SA’s and others in the decisional process, is not permitted and will be considered EX PARTE.

EXCEPTIONS: Inquiries as to status of application or to agency procedures.

8. O.A., once scheduled, cannot be canceled. However, parties can re-schedule the oral argument or agree to not appear. If this happens, remember to cancel the court reporter.