

Federal Housing Finance Board

DECISION MEMORANDUM OF THE BOARD OF DIRECTORS
ACTING WITHOUT A QUORUM

Date: October 20, 1994

No. 94-DM- 43

ISSUE: Blanket consent, pursuant to 12 C.F.R. § 932.40, for the Federal Home Loan Bank of Indianapolis (Indianapolis Bank) to employ outside counsel that also represents Federal Home Loan Bank (FHLBank) member institutions.

FACTORS CONSIDERED:

Section 932.40 of the Federal Housing Finance Board's (Finance Board) regulations provides generally that counsel to the FHLBanks "shall not act in any capacity for a member . . . under any understanding providing for continuous or repeated services, or act in any capacity for any such institution in any matter requiring action by the [FHL]Bank or any of its directors . . ." See 12 C.F.R. § 932.40. The regulation provides for an exception to the regulatory prohibitions where the employment is with the prior consent of the Finance Board, and to the extent of such consent. See id.

The Indianapolis Bank has recommended that the Finance Board consider revising the regulation in a future rulemaking to permit the FHLBanks to retain outside counsel that also represents FHLBank member institutions.

Until such time as the Finance Board revises the regulation, the Indianapolis Bank has requested: (1) clarification that the regulatory prohibitions do not apply to outside counsel employed by the FHLBanks; or (2) if it is determined that the regulatory prohibitions do apply to outside counsel, consent of the Finance Board that the FHLBanks may employ outside counsel that also represents FHLBank member institutions.

The Finance Board interprets the regulatory language as applying to outside counsel employed by the FHLBanks. See id.

The regulation most likely was intended to address potential conflict of interest situations that could arise due to the FHLBanks' roles as agent for the former Federal Home Loan

Bank Board (FHLBB) in examining, regulating and insuring thrift institutions, as well as in providing wholesale credit to member institutions. The Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) abolished the FHLBB, transferred all insurance functions to the Federal Deposit Insurance Corporation, and eliminated the FHLBanks' examination and regulatory functions. Accordingly, the potential for conflicts of interest arising out of the former examination, regulatory and insurance roles of the Indianapolis Bank no longer exists.

In addition, the Finance Board has determined that existing standards of conduct and procedures applicable to the legal profession already provide adequate protection to the Indianapolis Bank against potential conflicts of interest that could arise due to its role as provider of wholesale credit to member institutions.

Accordingly, the Indianapolis Bank should be able to employ outside counsel that also represents FHLBank member institutions, without first having to obtain prior consent, on a case-by-case basis, from the Finance Board. The Finance Board has determined that this can be effected by providing consent for the Indianapolis Bank to employ such outside counsel, on a blanket basis.

DECISION: To provide blanket consent, pursuant to 12 C.F.R. § 932.40, for the Indianapolis Bank to employ outside counsel that also represents FHLBank member institutions.


Nicolas P. Retsinas


Lawrence U. Costiglio

Attachment