



REGULATORY INTERPRETATION 1999-RI-22

Date: December 21, 1999

Subject: Applicability of Newly Enacted Statutory Annual Director Compensation Caps in 1999

Request Summary:

Several Federal Home Loan Banks (FHLBanks) have submitted requests that Federal Housing Finance Board (Finance Board) staff agree not to recommend taking any action¹ against the FHLBanks if the FHLBanks make payments to their directors after November 12, 1999 pursuant to director compensation plans (Plans) adopted by the FHLBanks for calendar year 1999 (Plans) in accordance with Finance Board regulations at 12 C.F.R. § 932.17, given the recent amendment to the Federal Home Loan Bank Act (Bank Act). The amendment provides that the annual salaries of directors of an FHLBank may not exceed certain statutorily specified limits.

Background:

The FHLBanks each adopted their Plans in accordance with the Finance Board director compensation regulation at 12 C.F.R. § 932.17. The FHLBanks state in their requests that payments to be made to the FHLBank directors pursuant to their Plans would in most cases cause the compensation of those directors for calendar year 1999 to exceed the annual director compensation caps set forth in title VI of the Gramm-Leach-Bliley Act, the Federal Home Loan Bank System Modernization Act of 1999 (Modernization Act), which was enacted on November 12, 1999. *See* Pub. L. No. 106-102, sec. 606(b) (1999). Under the Modernization Act, annual FHLBank director compensation is capped at \$25,000 for the Chairperson, \$20,000 for the Vice Chairperson, and \$15,000 for all other directors.

The FHLBanks believe that applying the new director compensation caps prior to January 1, 2000 would interfere with existing annual compensation systems that were established in accordance with the law existing at that time and when statutory changes were not and could not reasonably have been expected, particularly given the late date of enactment of the amendments (*i.e.*, two months before the end of the annual period). Therefore, the FHLBanks argue that the best, simplest, fairest and most logical and reasonable way to address the matter of FHLBank director compensation for the remainder of 1999 would be to allow payments to FHLBank directors for 1999 to be made in accordance with the Plans and operate on the assumption that the caps shall apply for the annual period beginning January 1, 2000.

Analysis or Discussion:

¹ For the reasons set forth in the Analysis, we have determined that a Regulatory Interpretation rather than a No-Action Letter is the appropriate response to the FHLBanks' requests.

Former Section 7(i) of the Bank Act permitted each FHLBank, with the approval of the Finance Board, to 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. See 12 U.S.C. § 1427(i) (1994). Former section 7(i) is implemented by section 932.17, the Finance Board director compensation regulation, which permits each FHLBank, within certain standards of reasonableness set forth in the regulation, to implement its own policy on director compensation and allows each FHLBank to pay its directors for such expenses as are payable by the FHLBank to its senior officers. See 12 C.F.R. § 932.17 (1999). The Finance Board soon will be amending this regulation to conform to and incorporate the provisions of the Modernization Act.

Section 606(b) of the Modernization Act substantially revised section 7(i) of the Bank Act by imposing specific limits on annual compensation for the Chairperson, Vice Chairperson and other members of an FHLBank board of directors. As amended, section 7(i) includes the following limitation:

(2) Limitation. (A) In General. The annual salary of each of the following members of the board of directors of a Federal home loan bank may not exceed the amount specified:

In the case of the	the annual compensation may not exceed
Chairperson	\$25,000
Vice Chairperson	\$20,000
All other members	\$15,000

(B) Adjustment. Beginning January 1, 2001, each dollar amount referred to in the table in subparagraph (A) shall be adjusted annually by the Finance Board, based on the annual percentage increase, if any, in the Consumer Price Index for all urban consumers, as published by the Department of Labor.

(C) Expenses. Subparagraph (A) shall not be construed as prohibiting the reimbursement of expenses incurred by members of the board of directors of any Federal home loan bank in connection with service on the board of directors.”

The President signed the Modernization Act on November 12, 1999 and, with certain exceptions, it took effect on that date.² Notwithstanding the effective date of the legislation, the amendments clearly apply to the “annual” compensation of Bank directors. Previously, section 7(i) did not include the concept of “annual compensation,” but spoke only of compensation in general. The first annual period during which the new director compensation caps are to apply is not clearly evident from the text of section 7(i). The Modernization Act does not expressly defer the effective date of the annual director compensation limits until the start of the next annual period, *i.e.*, January 1, 2000, nor does it expressly apply it retroactively to the annual period beginning

² Sutherland Stat. Const. § 33.06 (5th Ed.) (a statute takes effect on the date of its passage, unless otherwise provided by the constitution, other laws, or the statute itself). Title VI of the Modernization Act – the Bank provisions – includes specific effective dates only for two amendments: one which abolishes the mandatory membership requirement for federal savings associations (sec. 603), and one which revises the Resolution Funding Corporation payment formula (sec. 607(b)).

January 1, 1999, nor does it specify that the annual period must begin on the date of enactment. This provision was enacted without any explanation from the Conference Committee.³

Where a statute is ambiguous with respect to a specific issue, a court will give controlling weight to a reasonable interpretation by the agency charged with the statute's enforcement, particularly when the agency has special expertise. *See Smiley v. Citibank*, 517 U.S. (1997); *Chevron, U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 843, 844 (1984). A court also will uphold an agency's "permissible interpretation" of a statute that the agency administers if, using traditional rules of statutory construction, the court determines that "Congress has not directly addressed the precise question at issue" in the statute or its legislative history. *See Chevron* at 843 & n.9. Accordingly, as the agency charged with the administration and enforcement of the Bank Act, *see* 12 U.S.C. § 1422b(a)(1), the Finance Board has discretion to determine when the FHLBanks must begin applying the caps, so long as the Finance Board's interpretation is reasonable. *See Chevron* at 844.

Although, as discussed above, there is no express indication of when the caps should first apply either in the statute or the legislative history, there is some evidence that Congress may have intended the director compensation caps to take effect at the start of the annual period beginning January 1, 2000, which can be found in the "Adjustments" paragraph. That paragraph provides that beginning January 1, 2001, the director compensation limits referenced in the statutory table shall be adjusted annually for increases in the Consumer Price Index (CPI). *See* Pub. L. No. 106-102, sec. 606(b). Had Congress intended the caps to apply to Bank directors' compensation for calendar year 1999, it likely would have directed the Finance Board to make the first CPI adjustment beginning January 1, 2000, rather than in 2001. Moreover, to apply the caps to calendar year 1999 compensation would place all FHLBanks that have paid amounts in excess of the caps in immediate violation of the Bank Act, which Congress is unlikely to have done without any explanation. Further, in its consultations with Congress, Finance Board staff generally has found concurrence from Congressional staff with the interpretation that the director compensation caps should apply beginning January 1, 2000, the first annual period commencing after enactment.

Conclusion:

The newly-enacted annual director compensation caps provided in section 7(i) of the Bank Act shall apply to annual periods beginning January 1, 2000.

A Regulatory Interpretation applies only to the particular transaction or activity proposed by the requestor, may be relied upon only by the requestor, and is subject to modification or rescission by action of the Board of Directors of the Finance Board. 64 Fed. Reg. 30880 (June 9, 1999), *to be codified at* 12 C.F.R. part 903.

³ The Manager's Statement that accompanied the Modernization Act offers little guidance as to when the director compensation caps should go into effect, stating simply that "[t]he annual salaries of FHLBank directors may not exceed specified amounts plus reimbursement of expenses. The maximum amounts are: Chairperson -- \$25,000; Vice Chairperson -- \$20,000; and other directors -- \$15,000." Cong. Rec. H11300 (Nov. 2, 1999)