



April 29, 2005

Federal Housing Finance Board
1777 F Street
Washington, DC 20006
Attention: Public Comments

***Re: Federal Housing Finance Board. Proposed Rule: Data Reporting Requirements for the Federal Home Loan Banks.
RIN Number 3069-AB28; Docket Number 2005-04.***

Ladies and Gentlemen:

On February 28, 2005, the Federal Housing Finance Board (“Finance Board”) published a proposal to reorganize the way reporting requirements are imposed on the Federal Home Loan Banks (the “FHLBanks”). The majority of these requirements would now be contained in a reporting manual, to be titled the “Data Reporting Manual” (the “DRM”), which, when issued, would constitute an “enforceable order” issued pursuant to the Finance Board’s investigatory powers. The Finance Board is also proposing to add a new Part 914, which would address an FHLBank’s obligation with respect to reporting requirements and make its books and records available to the Finance Board. Lastly, the Finance Board is proposing to add a new section to Part 917, which would impose on each FHLBank’s board of directors the obligation to establish policies and procedures with respect to regulatory reporting.

The Federal Home Loan Bank of Atlanta (“FHLBank Atlanta”) supports the Finance Board’s goal of reorganizing its reporting requirements to make it easier for interested parties to locate such requirements and to enhance the timeliness, accuracy, and completeness of data reporting by the FHLBanks. The development of a DRM that provides instruction and guidance regarding data definitions, data elements, record retention, and reporting procedures would be helpful to the FHLBanks and beneficial to the Finance Board in performing its important supervisory duties. FHLBank Atlanta looks forward to working with the Finance Board to develop the DRM and having the opportunity to provide further input as the reporting requirements are being finalized. While such goals and objectives with respect to the DRM are certainly worthwhile, FHLBank Atlanta has some serious concerns with certain aspects of the proposed rule, and provides the following comments:

1. The proposed rule appears to raise significant questions of conformity with general principles of administrative law. Under the proposed rule, all requests for information in the DRM would be “enforceable orders” issued pursuant to the

Finance Board's investigatory powers. Accordingly, failure by an FHLBank to comply with the requirements of the DRM would constitute an *immediate* violation of a Finance Board order and potentially give rise to *automatic* sanctions against the FHLBank.

FHLBank Atlanta has reviewed the cases cited in the Supplementary Information section of the proposed rule and agrees that such cases stand for the proposition that a federal regulator may request information or reports from regulated entities pursuant to the regulator's investigatory powers. However, in these cases, the issuance of the request and the failure of the regulated entity to comply did not alone suffice to cause an immediate violation resulting in sanctions. Rather, the matter moved to a judicial forum to determine whether the agency was entitled to the information it was seeking.

2. The proposed rule is inconsistent with the prevailing approach of regulatory agencies in issuing orders. Orders are normally issued during an adjudicatory or investigatory proceeding that is specific to a particular entity and in which the subject of the order has had, or will have, an adequate opportunity to present evidence and otherwise contest the imposition of the order. FHLBank Atlanta questions whether applicable law permits the Finance Board, as part of the regulatory process, to grant itself the power to issue an enforceable order preemptively and with application to all the FHLBanks, particularly in view of the fact that the FHLBanks have the right to challenge a request for privileged and confidential legal advice, and in view of other principles of constitutional and administrative law that safeguard due process.
3. Although FHLBank Atlanta acknowledges the procedural effectiveness of consolidating and standardizing the majority of data reporting requirements in one manual, establishing the DRM as an enforceable order is also inconsistent with the approach taken by other federal bank regulators with respect to information gathering. For example, the Office of the Comptroller of the Currency *Comptroller's Handbook, Bank Supervision Process* expressly provides that in the event a disagreement between examiners and a bank arises during the supervisory process, it is OCC policy to resolve the dispute fairly and expeditiously in an informal, amicable manner. Similarly, the Office of Thrift Supervision *Compliance Activities* manual Section 140 – "Enforcement Actions" states that: "Generally, OTS expects its examiners and supervisors to exhaust informal means of obtaining information before requesting formal investigation.... When these avenues are exhausted, formal investigations can do several things including: (1) enhance regular examinations when necessary to compel uncooperative sources to produce documents or statements and (2) enhance special examinations where subpoena power is necessary to determine whether enforcement action is warranted."

The Finance Board's goal of improving data reporting by the FHLBanks could be achieved as effectively if the DRM were issued as guidance to the FHLBanks, rather than as an enforceable order.

4. There are several potential practical difficulties with the implementation of the proposed rule. For instance, through issuance of Advisory Bulletins and other supervisory guidance, the Finance Board has already established a process by which regulatory reporting requirements are clarified. Nothing in the proposed rule states that the Finance Board will stop issuing Advisory Bulletins or other supervisory letters apart from the DRM. This situation creates the potential for discrepancies between the DRM and other supervisory guidance. The Finance Board should revise the proposed rule to ensure that no such discrepancies or ambiguities in the reporting requirements are created.

Not all data reporting requirements will be contained in the DRM. FHLBank Atlanta suggests that the DRM include an appendix clearly describing which reporting requirements are not in the DRM, and where such reporting requirements are located. Without guidance as to when the DRM applies and when to consult the regulations, the data reporting requirements may, in practice, become more confusing for the FHLBanks.

5. With respect to the new Section 914.3, the time periods in which the FHLBanks must comply with requests for documents may be too short based on the facts and circumstances of a specific request. Several factors that need to be considered in determining a reasonable time period in which to respond include: (a) whether all data is available and finalized; (b) whether there are any information technology issues affecting the ability to respond or analyze the response (on either the FHLBank's or the Finance Board's part); (c) whether the applicable business units are able to concentrate on these requests exclusively; (d) whether the applicable committees are available to review and approve the responses; and (e) whether any of the information requested is privileged. In consideration of the foregoing, FHLBank Atlanta asks that the final two sentences of Section 914.3 be deleted from the final regulation.
6. With respect to the new section in Part 917, the requirement to be imposed on the FHLBanks' boards of directors to have in place policies and procedures to ensure compliance with reporting requirements would seem to be redundant, given the other requirements currently applicable to the boards of the FHLBanks to ensure compliance generally with the regulatory requirements mandated by the Finance Board (*see e.g.* 12 CFR § 917.2).
7. FHLBank Atlanta greatly values the opportunity to receive notice and provide comments on proposed regulations regarding data reporting requirements. To that end, FHLBank Atlanta requests that the final rule contain language that describes the procedure and situations in which the FHLBanks will be provided notice and an opportunity to comment regarding the substance of the DRM and any amendments thereto. Similarly, FHLBank Atlanta suggests that the DRM contain a list of reporting requirements that are required to be published in the Federal Register pursuant to the Paperwork Reduction Act.

8. The above comments are limited, in that the proposed rule does not address the form or substance of the DRM itself, apart from noting which of the current requirements found in the regulations will be relocated to the DRM. We reserve the right to make subsequent comments once the contents of the DRM are available for review.

We appreciate the Finance Board's consideration of our comments and concerns. Should you have any questions with respect to the foregoing, please do not hesitate to contact Greg Mayfield, General Counsel, at (404) 888-5319.

Sincerely,

A handwritten signature in black ink, appearing to read 'Raymond R. Christman', with a long horizontal flourish extending to the right.

Raymond R. Christman
President and Chief Executive Officer