



**Comptroller General
of the United States**

Washington, D.C. 20548



B-226708

September 6, 1988

The Honorable David Pryor, Chairman
Subcommittee on Federal Services,
Post Office, and Civil Service
Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

This is in partial response to your letter of August 14, 1987, which requested the General Accounting Office to undertake a follow-up to our April 1987 fact sheet on Federal Pay--Executive Salaries in Government-Related Banking Organizations, GGD-87-68FS. Among other things, you asked us to review the legality of the Federal Home Loan Bank Board's actions in establishing and placing certain of its functions in entities that consider themselves not subject to the salary limitations in title 5 of the United States Code. This letter and its enclosure address the legality of the Bank Board's actions. The following is a summary of our conclusions with respect to the five entities that we reviewed.

We conclude that the employees of the Office of Regulatory Policy, Oversight and Supervision (ORPOS) (now known as "the Office of Regulatory Activities") and the Office of Finance should be regarded as Bank Board employees and, thus, federal employees. These two entities are organized fundamentally as extensions of the Board itself. They are subject to plenary control by the Board, which appoints their principal officers, prescribes their functions, and formulates their budgets.

We also conclude that the employees of the Federal Asset Disposition Association (FADA) should be regarded as federal employees. While FADA was chartered as a federal savings and loan association, it does not perform any of the basic functions of such an association. Instead, it is wholly owned and controlled by the Bank Board and the Federal Savings and Loan Insurance Corporation (FSLIC), and its sole purpose is to assist FSLIC in carrying out its asset management and disposition functions. Even if FADA is a legitimate federal savings and loan association, it is also, in fact, a wholly owned government corporation. As such, its employees should be regarded as federal employees.

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Therefore, we believe that the Bank Board acted improperly in creating ORPOS, the Office of Finance and FADA as entities whose employees are not subject to the salary limitations of title 5, United States Code. Of equal if not greater concern is the fact that the employees of these entities are not considered subject to the conflict-of-interest provisions of title 18.

We agree with the Bank Board that the Federal Home Loan Bank System Publication Corporation and the Bank System Office of Education are entities separate from the Board itself whose employees should not be regarded as federal employees.

The enclosure presents in detail our analysis of each of these entities. We will respond separately to the other issues raised in your August 14 letter.

Sincerely yours,

Milton J. Fowler
for Comptroller General
of the United States

Enclosure

B-226708

ANALYSIS OF THE LEGAL STATUS
OF CERTAIN FEDERAL HOME LOAN
BANK SYSTEM ENTITIES

BACKGROUND

An April 1987 fact sheet issued by the General Accounting Office, Federal Pay -- Executive Salaries in Government-Related Banking Organizations, GAO/GGD-87-68FS, identified several organizations within the Federal Home Loan Bank System which operate under the direction of the Federal Home Loan Bank Board (FHLBB) but which, unlike the FHLBB itself, do not regard their employees as federal employees subject to the salary limitations of title 5, United States Code. These organizations include the Office of Regulatory Policy, Oversight and Supervision (ORPOS), the Office of Finance, and the Federal Asset Disposition Association (FADA). The Chairman of the Subcommittee on Federal Services, Post Office and Civil Service, Senate Committee on Governmental Affairs has submitted a follow-up request to the fact sheet which asks, among other questions, "whether the FHLBB's actions in divesting itself of certain functions in favor of establishing entities that consider themselves not subject to the Title 5 salary limitations are lawful and appropriate."

The following analysis addresses this question with respect to ORPOS, the Office of Finance, and FADA, as well as two other entities within the Federal Home Loan Bank System: the Office of Education and the Publication Corporation.

APPLICABILITY OF SALARY LIMITATIONS

Salary limitations for federal employees are contained in the so-called "Classification Act," 5 U.S.C. §§ 5101 et seq. The Classification Act provides in 5 U.S.C. § 5102(b):

"Except as provided by subsections (c) and (d) of this section, this chapter applies to all civilian positions and employees in or under an agency"

The term "agency" is defined to include "an Executive agency" and the term "employee" is defined to mean "an

individual employed in or under an agency." 5 U.S.C. § 5102(a)(1)(A) and (2). For purposes of title 5 of the United States Code, including the Classification Act, the term "Executive agency" is defined to mean "an Executive department, a Government corporation, and an independent establishment." 5 U.S.C. § 105.

Section 17(b) of the Federal Home Loan Bank Act, as amended, 12 U.S.C. § 1437(b), provides that the FHLBB "shall be an independent agency (including the Federal Savings and Loan Insurance Corporation) in the executive branch of the Government" Therefore, the Board clearly is an "agency" within the scope of the Classification Act. Over the years, however, the Board has urged the Civil Service Commission and later the Office of Personnel Management (OPM) to exempt its employees from the Classification Act, based on both legal and policy arguments. These arguments have been unavailing. As recently as May 30, 1986, OPM reaffirmed its position that FHLBB employees are subject to the Classification Act. While the FHLBB and its employees thus clearly are subject to the Classification Act, the status of the other Federal Home Loan Bank System entities and their employees is less certain. Each of these entities is discussed separately hereafter.

OFFICE OF REGULATORY POLICY, OVERSIGHT
AND SUPERVISION (ORPOS)^{1/}

Created in 1986, ORPOS performs functions previously vested in the FHLBB's Office of Examinations and Supervision (OES)--providing policy guidance, oversight and supervision for the field examinations of member institutions of the Federal Home Loan Banks, non-member borrowers from the Banks, and institutions insured by the Federal Savings and Loan Insurance Corporation (FSLIC). In 1985 the FHLBB delegated to the Federal Home Loan Banks (or, more precisely, the Board's Principal Supervisory Agent in each Bank) all such field examination functions, which had previously been performed by FHLBB employees. The creation of ORPOS was a follow-up to this delegation of the field examination functions to the Banks and was designed to--

"enable the Board to exercise more efficient oversight and control of the examination/supervision functions as performed by

^{1/} The Bank Board has redesignated ORPOS as "the Office of Regulatory Activities." This redesignation was not accompanied by basic organizational or functional changes that would affect the analysis herein.

the Principal Supervisory Agents and their staffs at the Federal Home Loan Banks" 51 Fed. Reg. 27165 (July 30, 1986).

The organization and functions of ORPOS, as established by the FHLBB, are described in 12 C.F.R. § 522.90 (1987). ORPOS is headed by a Director who is appointed and whose compensation is fixed by the FHLBB; the Director selects senior officials of ORPOS with the consent of the Board. Id., § 522.90(a)(2). The principal functions of ORPOS are as follows:

"ORPOS shall advise and assist the Principal Supervisory Agents and the Board with respect to the activities of officers or employees of the Banks as agents of the Board and the Federal Savings and Loan Insurance Corporation. ORPOS shall assist in the process of examination and supervision and advise as to any necessary or appropriate improvement or standardization of such processes. ORPOS shall advise and assist the Principal Agents and Board with respect to matters of policy, legislation, or regulation relating to functions as the Board may request. ORPOS shall perform directly for the Board any monitoring, evaluation, post-audit review, processing of applications, or other functions deemed necessary or appropriate by the Board to insure the integrity and efficiency of the examination and supervisory activities. . . . " Id., § 522.90(b)(1).

ORPOS is financed by assessments against the Banks and operates under a budget approved by the FHLBB. Id., § 522.90(b)(2) and (c).

In a letter dated March 14, 1988, the FHLBB General Counsel provided GAO with the Board's views concerning the legal authority for the creation and operation of ORPOS. The General Counsel stated that ORPOS was established pursuant to section 17(a) of the Federal Home Loan Bank Act, as amended, 12 U.S.C. § 1437(a) (Supp. IV 1986), which provides in part:

"Notwithstanding any other provision of law, the Board may from time to time make such provision as it deems appropriate authorizing the performance by any officer, employee, agent, or administrative unit thereof of any function of the Board (including any function of the Federal Savings and Loan Insurance Corporation), except with regard to

the promulgation of rules and regulations in accordance with section 553 of title 5, and adjudications subject to section 554 of such title."

The General Counsel stated that, in his view, the authority of section 17(a) is sufficiently broad to permit the delegation of any Board function other than those specifically made nondelegable under the terms of that subsection (i.e., rulemaking and adjudication). Further, he stated that this authority permits delegations to officers and employees of the Federal Home Loan Banks who have been designated as agents of the Board and of the FSLIC pursuant to 12 C.F.R. §§ 501.10 and 501.11.

The precise organizational location of ORPOS is uncertain. It is not formally part of the FHLBB; it is not affiliated with any Federal Home Loan Bank; and it has no corporate status or other form of independent existence. ORPOS is described only as an "office," listed in a part of the Code of Federal Regulations captioned "Organization of the Banks." On the other hand, it is clear that from a functional and practical viewpoint ORPOS is an extension of the FHLBB itself. The Board created ORPOS and prescribed its structure and functions. The Board appoints and fixes the compensation of the Director who heads ORPOS and approves the appointment of its other senior officials. Thus, the Board exercises plenary control over ORPOS.

Documents provided to us by the Board's General Counsel discussing the formation of ORPOS confirm that the Board deliberately chose to retain complete control over this entity. Five potential organizational models for ORPOS were considered. These ranged from one model which provided the Federal Home Loan Banks with virtually complete control over ORPOS, to several models which featured joint control by the Banks and the Board, to a fifth model, described as an Office of Finance prototype, under which ORPOS reported only to the Board and was subject to the Board's control in all respects. The actual structure of ORPOS follows the fifth model, vesting in the Board complete control over ORPOS. This approach is understandable since the basic purpose of ORPOS is to assist the Board in carrying out its responsibility to exercise oversight and control over the conduct of bank examinations. Prior to the creation of ORPOS, the Board carried out this responsibility through its own employees in its own OES office. Indeed, we understand that most ORPOS employees are former employees of the Board who worked in OES.

The Board cites section 17(a) of the Federal Home Loan Bank Act, supra, as its authority for creating ORPOS. As noted previously, this provision authorizes the Board to delegate the performance of its functions to "any officer, employee, agent, or administrative unit thereof," i.e., of the Board. We do not question that the Board has considerable authority under section 17(a) to delegate functions within the FHLBB itself; nor do we necessarily dispute its authority to delegate functions to Federal Home Loan Bank officials who have been designated as its agents. However, we do not believe that section 17(a) is broad enough to enable the Board to create an entirely new entity, delegate Board functions to such an entity, retain complete control over the entity, and then claim that this entity and its employees are not part of the Board.

Therefore, we conclude that ORPOS should be regarded as a part of the Board and its employees should be treated as Board employees.

OFFICE OF FINANCE

The Office of Finance serves as fiscal agent for the Federal Home Loan Banks, the FHLBB, the FSLIC, the Federal Home Loan Mortgage Corporation, and the Office of Neighborhood Reinvestment. As such, it (1) conducts negotiations relating to the public or private offering and sale of consolidated FHLBB obligations; (2) conducts negotiations for the purchase and sale of securities on behalf of a Federal Home Loan Bank; (3) performs other related services as requested by a Federal Home Loan Bank or by the FHLBB; and (4) performs functions for the other entities mentioned above. See 12 C.F.R. § 522.81 (1987). The FHLBB appoints the Director who heads the Office of Finance, as well as its Deputy Directors and Assistant Directors. 12 C.F.R. § 522.80. The expenses of the Office of Finance are funded by assessments against the Federal Home Loan Banks and the Office operates under a budget approved by the FHLBB. 12 C.F.R. § 522.82.

Between 1932 (when the Federal Home Loan Bank System was created) and 1948 the Banks, with the approval of the FHLBB, collectively employed a fiscal agent on a contractual basis. This arrangement was based on 12 U.S.C. § 1432(a), which authorizes the Banks--

"to select, employ, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary for the transaction of its business, subject to the approval of the board"

In 1948 the FHLBB, in the exercise of its supervisory authority over the Banks (see, e.g., 12 U.S.C. § 1437(a)), issued regulations bringing the fiscal agent's activities within the System in the form of the Office of Fiscal Agent. The presidents of the Banks appointed and fixed the compensation of the Fiscal Agent, formally designated the "Fiscal Agent of the Banks," subject to the approval of the Board. See 24 C.F.R. § 122.80 (1949). The Fiscal Agent's budget was formulated by a budget committee consisting of three Bank presidents, was then adopted by the Banks, and finally was forwarded for approval by the Board. Id., § 122.82.

The Office of Fiscal Agent was renamed the Office of Finance in 1972. Initially the new Office of Finance retained the basic structure of the predecessor Office of Fiscal Agent. That is, the presidents of the Banks, subject to Board approval, appointed and fixed the compensation of the director and other senior officials of the Office of Finance and also prepared the Office's budget. See 12 C.F.R. §§ 522.80 and 522.82 (January 1, 1974). However, in early 1974 the Bank Board assumed sole responsibility for appointment of senior Office of Finance officials and for approval of the Office's budget. It was determined that the procedures involving participation by the Bank presidents were "unwieldy and unnecessarily protracted" and that, in the interest of efficient administration, the authority of the Bank presidents with regard to appointments, compensation and budgetary matters for the Office of Finance should be "delegated" to the Board. See 39 Fed. Reg. 5626 (February 14, 1974). With these changes the Office of Finance took on its present structure.

The Office of Finance and ORPOS have essentially the same organizational structure. In fact, as noted previously, the Office of Finance served as the prototype for ORPOS. The Board appoints the principal directors of the Office of Finance, prescribes its functions, and determines its funding. Like ORPOS, the Office of Finance is simply designated as an "office" within the Federal Home Loan Bank System; it has no more specific locus and no formal, independent existence.

We recognize that there are some contrasts between ORPOS and the Office of Finance. The Office of Finance does perform substantial services for the Federal Home Loan Banks, which the Banks once obtained without control or direct involvement on the part of the Board. Thus, the Office of Finance does not represent an instance of the Board delegating what

are essentially its functions to another entity. Nevertheless, the Board decided to assume control of these functions through an office that it created and over which it exercises complete authority. In this crucial respect, the Office of Finance is essentially an extension of the Board no less than ORPOS. Accordingly, we conclude that, like ORPOS, the Office of Finance should be regarded as a unit of the FHLBB whose employees are federal employees subject to title 5.

FEDERAL ASSET DISPOSITION ASSOCIATION
(FADA)

The FHLBB, acting as the head of the FSLIC, chartered FADA in 1985 as a federal savings and loan association to liquidate and dispose of the assets of failed thrift institutions which were insured by FSLIC. It is a stock association having a duration of 10 years. FADA is a wholly owned subsidiary of FSLIC, which holds all of FADA's stock, and operates under a board of directors appointed by the FHLBB. FADA does not accept deposits or issue accounts.

The authority cited for the creation of FADA is section 406 of the National Housing Act (NHA), as amended, 12 U.S.C. § 1729, *infra*. In an opinion to the President of FADA dated July 22, 1986,^{2/} the Acting General Counsel of the FHLBB supported FADA's status as a federal savings and loan association as follows:

" The defining characteristics of a Federal savings and loan association are set forth in section 5 of the Home Owner's Loan Act of 1933, as amended ('HOLA'), 12 U.S.C. 1464 (1982); and the charter of FADA, issued pursuant to Resolution No. 85-980, appropriately provides for the new association the powers granted by section 5 of the HOLA. The charter was not issued under section 5, however, but under section 406 of NHA, and the Bank Board has limited FADA, in view of the specific purpose for which it was formed, namely to facilitate the liquidation of insured institutions, by issuing a charter that allows FADA to accept deposits only with the express consent of the Bank Board.

^{2/} This opinion addressed the question of whether the establishment of FADA violated section 304(a) of the Government Corporation Control Act, 31 U.S.C. § 9103(a) (1982), which prohibits the creation of a government corporation except pursuant to specific statutory authority.

"Section 406(a) of the NHA authorizes the Corporation [FSLIC] 'to provide for the organization of a new Federal savings and loan association' for the purpose of facilitating the liquidation of institutions the accounts of which are insured by the Corporation ('insured institutions'). The corporation as receiver of an insured institution or institutions in default is also authorized pursuant to subsections (b) and (c) of section 406 to organize a new Federal savings and loan association to 'take over' the assets of such insured institution or institutions. The cited authority has been employed on numerous occasions by the Corporation to organize new Federal associations to take over and carry on the business of insured institutions in default and to provide for the payment of insured accounts in an institution in default by making available accounts in a new Federal savings and loan association. The terms of the statute, however, do not require that all of the purposes for which a new Federal association may be organized under subsections (a), (b), or (c) of section 406 of the NHA must be implemented by every new Federal savings and loan association that is so organized. Nor does the section's legislative history contain any indication that it should be so construed." (Footnotes omitted.)

We do not agree that FADA represents a proper exercise of section 406(a) of the NHA. Section 406(a) provides as follows:

"In order to facilitate the liquidation of insured institutions, the Corporation [FSLIC] is authorized (1) to contract with any insured institution with respect to the making available of insured accounts to the insured members of any insured institution in default, or (2) to provide for the organization of a new Federal savings and loan association for such purpose subject to the approval of the Federal Home Loan Bank Board."

The General Counsel's opinion refers only to instances of section 406(a) being used to organize new federal savings and loan associations which, in effect, replace failed institutions by making available accounts and carrying on the business of a savings and loan association. However, he maintains that the "purpose" for which a new federal savings and loan association may be organized under section 406(a)

is simply "to facilitate the liquidation of insured institutions" Thus, he seems to suggest that section 406(a) may be used to create an entity which serves this general purpose in any way even if it does not perform the usual functions of a federal savings and loan association, such as issuing accounts.

We do not believe that this expansive interpretation of section 406(a) is supportable. In our view, the "purpose" for organizing a new federal savings and loan association under paragraph (2) of section 406(a) is to make available insured accounts to the members of a failed institution, as an alternative to contracting with an existing institution under paragraph (1) to make available such accounts. In other words, the new association is to carry on the business of the failed institution.

The legislative history of section 406(a) tends to support this more limited interpretation. The language of section 406(a) has remained unchanged since the original enactment of the NHA in 1934. See 48 Stat. 1259. The House-passed version of the bill (H.R. 9620, 73d Cong.) that was eventually enacted in 1934 contained the following provision as section 307(a):

"In order to facilitate the liquidation of insured institutions the Insurance Corporation may negotiate with and contract for an insured institution to issue new insured accounts to the insured members of any insured institution in default, or the Insurance Corporation may cause the organization and charter of a new Federal savings and loan association subject to the approval of the Board to issue shares to the insured members of such insured institution in default."

This language clearly envisioned the creation of a new federal savings and loan association to issue shares to the members of the failed institution. The enacted version is substantially the same as the above-quoted language, with only minor editorial changes.

Further, while the report on H.R. 9620 by the House Committee on Banking and Currency does not discuss this specific language, it does state generally: "Adequate provision is made for the liquidation of insured institutions somewhat similar to the plan for the liquidation of banks which are under Federal deposit insurance." H.R. Rep. No. 1922, 73d Cong., 2d Sess., at 4 (1934). We note in this regard that the provisions relating to closed banks insured by the Federal Deposit Insurance Corporation which had been

enacted 1 year earlier in the Banking Act of 1933 included the following language with respect to different categories of closed banks:

"As soon as possible thereafter [after a bank closing] the [Federal Deposit Insurance] Corporation shall organize a new national bank to assume the insured deposit liabilities of such closed bank, to receive new bank deposits and otherwise to perform temporarily the functions provided for in this paragraph." See 48 Stat. 172-173, 174-175.^{3/}

Thus, in view of its language and legislative history, we conclude that section 406 of NHA authorizes the organization of a federal savings and loan association for the purpose of accepting deposits, issuing accounts and carrying on the usual business of such an association. This conclusion is further supported by reference to section 5 of the Home Owner's Loan Act (HOLA), 12 U.S.C. § 1464, which, as the General Counsel acknowledges, sets forth the "defining characteristics" of a federal savings and loan association. Section 5(a) of HOLA, captioned "chartering and purpose," describes the basic attributes of such associations as follows:

"In order to provide thrift institutions for the deposit or investment of funds and for the extension of credit for homes and other goods and services, the Board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as Federal savings and loan associations, or Federal Savings Banks, and to

3/ The current version of this language, contained in 12 U.S.C. § 1821(h), provides:

"As soon as possible after the closing of an insured bank, the Corporation, if it finds that it is advisable and in the interest of the depositors of the closed bank or the public, shall organize a new national bank to assume the insured deposits of such closed bank and otherwise to perform temporarily the functions hereinafter provided for. The new bank shall have its place of business in the same community as the closed bank."

issue charters therefor, giving primary consideration to the best practices of thrift institutions in the United States. The lending and investment authorities are conferred by this section to provide such institutions the flexibility necessary to maintain their role of providing credit for housing." 12 U.S.C. § 1464(a). (Emphases supplied.)

Under this subsection the basic functions of a savings and loan association are to accept deposits and make loans. FADA does not carry out either of these basic functions.^{4/} On the contrary, a FADA publication states that:

"The sole purpose of the Federal Asset Disposition Association is to assist in strengthening the financial health of the FSLIC by using private sector management and marketing techniques to manage assets in the FSLIC system at the lowest cost consistent with sound operations and to sell these assets as fast as is consistent with obtaining the best possible return for the FSLIC and its receiverships."

The organization of FADA is also fundamentally different from that of any other federal savings and loan. All of FADA's stock is owned by FSLIC and is voted for FSLIC by the Board. The charter prohibits FADA from issuing additional stock without the express consent of the Board; it also prohibits FADA from transferring stock to any person or entity other than FADA or FSLIC without the express consent of the Board. FADA is under the direction of a Board of Directors consisting of 11 voting directors and 3 ex officio directors, all of whom are appointed by the Board.

The charter granted to FADA literally authorizes it to "pursue any and all of the lawful objectives of a Federal association chartered under section 5 of the Home Owners' Loan Act ('HOLA'), and with respect to both section 406 of the NHA and section 5 of the HOLA, to exercise all of the express, implied, and incidental powers conferred thereby and by all acts amendatory thereof and supplemental thereto" However, it is clear that FADA is a federal savings and loan association in name only. It does

^{4/} Indeed, FADA's charter and the Board resolution approving it specifically prohibit FADA from accepting funds for deposit or issuing accounts except with the express approval of the Board.

not perform the functions of a federal savings and loan association and is not organized or operated in the manner of a federal savings and loan association. Instead, FADA is wholly owned and controlled by federal agencies (FSLIC and the FHLBB) and its sole purpose is to assist them in the performance of federal functions. Therefore, we conclude that FADA cannot legitimately be regarded as a federal savings and loan association under section 406(a) of the NHA or otherwise.

We note that several provisions of the recently-enacted Competitive Equality Banking Act of 1987, approved August 10, 1987, Pub. L. No. 100-86, 101 Stat. 552, specifically refer to FADA. Section 306(i) of Pub. L. No. 100-86, 101 Stat. 603, amends the National Housing Act to require that FSLIC include in its quarterly reports and budgets the activities, receipts, and expenditures of FADA. Section 403 of Pub. L. No. 100-86, 101 Stat. 609, amends a provision of the Government Corporation Control Act (31 U.S.C. § 9105(a)) to require the Comptroller General to conduct financial audits of FADA. This amendment describes FADA as--

"the savings and loan association established by the Federal Savings and Loan Insurance Corporation under section 406 of the National Housing Act to manage and liquidate nonperforming assets on behalf of such corporations in accordance with such section."

Finally, section 415 of Pub. L. No. 100-86, 101 Stat. 622, refers to FADA several times as a "related entity" of the FHLBB in requiring certain reports to the congressional banking committees on the Board's operations.

In our view, these provisions of Pub. L. No. 100-86 do not ratify FADA's creation. They merely recognize the fact that FADA exists and impose some oversight requirements with respect to it.

Even if we were to conclude that FADA was properly established under section ~~406~~ of the National Housing Act or that Congress has ratified the creation of FADA, we still believe that FADA employees should be regarded as federal employees for purposes of title 5 of the United States Code. As discussed at the outset of this analysis, the Classification Act applies to the employees of "an Executive agency," which is defined in 5 U.S.C. § 105 to mean "an Executive department, a Government corporation, and an independent establishment." Section 103(1) of title 5 defines "Government corporation" for purposes of that title to mean "a

corporation owned or controlled by the Government of the United States" Whatever other status it may have, FADA clearly meets this definition. As a federally chartered stock savings and loan association it is, in fact, a corporation and, as discussed previously, it is both owned and controlled by the government of the United States.

FEDERAL HOME LOAN BANK SYSTEM PUBLICATION CORPORATION

In response to our inquiry, the FHLBB General Counsel provided the following information concerning the origin and nature of the Publication Corporation:

"The Publication Corporation was a result of a proposal to the Board to establish the Journal of the Federal Home Loan Bank System ('Journal') encompassing the joint efforts of the twelve banks and the Board. This is not a delegation or assignment of a Board function. The Banks are specifically authorized by 12 U.S.C. § 1428 to conduct studies of such subjects as they deem useful for the general guidance of their policies and operations. The Banks are also authorized to undertake other activities beneficial to themselves and their members and others. 12 U.S.C. § 1421 et seq. The publication of the Journal clearly fits under these powers, and the Board was not required to, and did not, invoke 12 U.S.C. § 1437(a) in approving the proposal on May 4, 1984. The Publication Corporation was incorporated in the District of Columbia on August 27, 1984, pursuant to the District of Columbia Nonprofit Corporation Act."

Based on this explanation, we agree that the Publication Corporation does not represent an instance of the Board placing its functions in an entity that is nothing more than its alter ego. Since the Corporation has one class of voting members, consisting of each of the 12 Federal Home Loan Banks, the Banks do control the Corporation. Moreover, the Corporation clearly provides services for the Banks. Therefore, we conclude that the Publication Corporation is not a mere extension of the FHLBB and its employees should not be regarded as federal employees.

THE BANK SYSTEM OFFICE OF EDUCATION

The FHLBB General Counsel has described the Bank System Office of Education (BSOE) as follows:

"The BSOE was the result of a proposal to the Board by the Bank Presidents, acting collectively, to establish a single entity to coordinate the training efforts of the twelve Banks. The BSOE is under the general direction and control of the Banks and acts legally under the corporate auspices of the Federal Home Loan Bank of Dallas. The proposal to create the BSOE was considered and approved by the Board on November 30, 1983. The Board was not required to, and did not, invoke 12 U.S.C. § 1437(a) in approving the proposal."

Based on this explanation, we would not question the legal status of the BSOE as an entity within the Federal Home Loan Bank System which is not a mere extension of the FHLBB. The General Counsel indicates that the BSOE is part of the Federal Home Loan Bank of Dallas, is controlled by the Federal Home Loan Banks, and performs services for the Banks.