employee, or agent thereof, also may disclose unpublished information to a consultant under this paragraph if the consultant is under a written contract to provide services to the supervised entity or Bank member and the consultant has agreed in writing:

(1) To abide by the prohibition on the disclosure of unpublished information contained in this section; and

(2) That it will not to use the unpublished information for any purposes other than those stated in its contract to provide services to the supervised entity or Bank member.

(e) *Government agencies.* The Finance Board may make reports of examination, supervisory correspondence, and other unpublished information available to another federal agency or a state agency for use where necessary in the performance of the agency's official duties. As used in this paragraph, the term agency does not include a grand jury.

[64 FR 44106, Aug. 13, 1999, as amended at 65 FR 8258, Feb. 18, 2000; 67 FR 12844, Mar. 20, 2002]

§ 911.4 Requests for unpublished information by document or testimony.

(a) *Form of requests.* A request for unpublished information must be submitted to the Finance Board in writing and include a detailed description of the basis for the request. At a minimum, the request must demonstrate that:

(1) The requested information is highly relevant to the purpose for which it is sought;

(2) The requested information is not available from any other source;

(3) The need for the information clearly outweighs the need to maintain its confidentiality; and

(4) The need for the information clearly outweighs the burden on the Finance Board to produce it.

(b) *Requests for documents.* If the request is for unpublished information by document, the request must include the elements in paragraph (a) of this section and also must adequately describe the record or records sought by type and date.

(c) *Requests for testimony.* (1) If the request is for unpublished information by testimony, the request must include the elements in paragraph (a) of this section and also must set forth the intended use of the testimony, a summary of the scope of the testimony requested, and a showing that no document or the testimony of other non-Finance Board persons, including retained experts, could be provided and used in lieu of the testimony.

(2) Upon submitting a request to the Finance Board for unpublished information by testimony, the requester must notify all other parties to the matter at issue of the request.

(3) After receipt of a request for unpublished information by testimony but before the requested testimony occurs, a party to the matter at issue who did not join in the request and who wishes to question the witness beyond the scope of the testimony sought by the request, must timely submit its own request for unpublished information pursuant to this part.

(d) *Requests in connection with legal proceedings.* If the request for unpublished information arises out of a legal proceeding, the Finance Board generally will require that the legal proceeding already be filed before it will consider the request. In addition to the elements in paragraph (a) of this section, requests in connection with legal proceedings must include the caption and docket number of the case; the forum; the name, address, phone number, and electronic mail address, if available, of counsel to all other parties to the legal proceeding; the requester's interest in the case; a summary of the issues in litigation; and the reasons for the request, including the relevance of the unpublished information and how the requested information will contribute substantially to the resolution of one or more specifically identified issues in the legal proceeding.

(e) *Expedited requests.* If a requester seeks a response in less than 60 days, the request must explain why the request was not submitted earlier and why the Finance Board should expedite the request.

(f) *Where to submit requests.* Send requests for unpublished information to the Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

(g) *Additional information*—(1) *From the requester*. The Office of General Counsel may consult with the requester to refine and limit the scope of the request to make compliance less burdensome or to obtain information necessary to make an informed determination on the request. A requester's failure to cooperate in good faith with the Office of General Counsel may serve as the basis for a determination not to grant the request.

(2) *From others*. The Office of General Counsel may inquire into the facts and circumstances underlying a request for unpublished information and rely on sources of information other than the requester, including other parties to the matter at issue.

§ 911.5 Consideration of requests.

(a) *Discretion*. Each decision concerning the availability of unpublished information is at the sole discretion of the Finance Board based on a weighing of all appropriate factors. The decision is a final agency action that exhausts administrative remedies for disclosure of the information.

(b) *Time to respond*. The Finance Board generally will respond in writing to a request for unpublished information within 60 days of receipt absent exigent or unusual circumstances and dependent upon the scope and completeness of the request.

(c) *Factors the Finance Board may consider*. The factors the Finance Board may consider in making a determination regarding the availability of unpublished information include:

(1) Whether and how the requested information is relevant to the purpose for which it is sought;

(2) Whether information reasonably suited to the requester's needs other than the requested information is available from another source;

(3) Whether the requested information is privileged;

(4) If the request is in connection with a legal proceeding, whether the proceeding has been filed;

(5) The burden placed on the Finance Board to respond to the request;

(6) Whether production of the information would be contrary to the public interest; and

(7) Whether the need for the information clearly outweighs the need to maintain the confidentiality of the information.

(d) *Disclosure of unpublished information by others*. When a person or entity other than the Finance Board has a claim of privilege regarding unpublished information and the information is in the possession or control of that person or entity, the Finance Board, at its sole discretion, may respond to a request for the information by authorizing the person or entity to disclose the information to the requester pursuant to an appropriate confidentiality order. Finance Board authorization to disclose information under this paragraph does not preclude the person or entity in possession of the unpublished information from asserting its own privilege, arguing that the information is not relevant, or asserting any other argument to protect the information from disclosure.

(e) *Notice to supervised entities and Bank members*. The Finance Board generally will notify a supervised entity or Bank member that it is the subject of a request, unless the Finance Board, in its sole discretion, determines that to do so would advantage or prejudice any of the parties to the matter at issue.

[64 FR 44106, Aug. 13, 1999, as amended at 65 FR 8258, Feb. 18, 2000]

§ 911.6 Persons and entities with access to unpublished information.

(a) *Notice to Finance Board*. Any person, including a current or former Finance Board employee or agent, or any entity, including a supervised entity, Bank member, or government agency that receives a request for, or is served with a subpoena, order, or other legal process to disclose unpublished information by document or testimony, must immediately notify the Office of General Counsel.

(b) *Response of person or entity served with request*. Unless the Finance Board has authorized in writing disclosure of the requested information:

(1) A current or former Finance Board employee or agent or a supervised entity that must respond to a subpoena, order, or other legal process, must decline to disclose the requested