

Federal Housing Finance Board

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information, citing this part as authority.

(2) A non-Finance Board person or entity may not disclose unpublished information unless:

(i) The requester has sought the information from the Finance Board under this part; and

(ii) After the Finance Board or the Department of Justice has had the opportunity to appear and oppose disclosure, a Federal court has ordered the person or entity to disclose the information.

(c) *Finance Board response.* If the Finance Board does not authorize in writing disclosure of the requested information, the Finance Board will provide a copy of this part to the person or entity at whose instance the process was issued and advise that person or entity or the court or other body that the Finance Board has prohibited disclosure of the information under this part. The Finance Board or the Department of Justice may intervene in the matter at issue, attempt to have the compulsory process withdrawn, or register other appropriate objections.

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

§911.7 Availability of unpublished information by testimony.

(a) *Scope.* (1) The scope of permissible testimony is limited to that set forth in the written authorization granted by the Finance Board. The Finance Board may act to ensure that the scope of testimony provided is consistent with the written authorization.

(2) A party to the matter at issue that did not join in a request for unpublished information who wishes to question a witness beyond the authorized scope must request expanded authorization under this part. The Finance Board will attempt to render decisions on such requests in an expedited manner.

(3) The Finance Board generally will not authorize a current employee or agent to provide expert or opinion testimony for a private party.

(b) *Manner in which testimony is given.*

(1) The Finance Board ordinarily will make the authorized testimony of a former or current employee or agent available only through written inter-

rogatories or deposition. The Finance Board will not authorize testimony at a trial or hearing unless the requester shows that properly developed deposition testimony could not be used or would be inadequate at the trial or hearing.

(2) If the Finance Board has authorized testimony in connection with a legal proceeding, the requester must cause a subpoena to be served on the employee in accordance with applicable rules of procedure, with a copy by registered or certified mail to the Office of General Counsel.

(3) If the authorized testimony is through deposition, the deposition ordinarily will take place at the Finance Board's offices at a time that will avoid substantial interference with the performance of the employee's official duties.

(4) The requester is responsible for all costs associated with an employee's appearance, including provision of a copy of a transcript of the deposition at the request of the Office of General Counsel. The person whose deposition was transcribed does not waive his or her right to review the transcript and note errors.

(c) *Restrictions on use and disclosure.* The Finance Board may condition its authorization of deposition testimony on an agreement of the parties to appropriate limitations, such as an agreement to keep the transcript of the testimony under seal or to make the transcript available only to the parties, the court or other body, or the jury. Upon request made pursuant to this part or on its own initiative, the Finance Board may authorize use of a deposition transcript in another legal proceeding or non-adversarial matter.

(d) *Responsibility of litigants.* If the testimony is disclosed in connection with a legal proceeding, the requester is responsible for:

(1) Promptly notifying all other parties to the legal proceeding of the disclosure, and, after entry of a protective order, providing copies of the testimony to the other parties who are signatories and subject to the protective order; and

(2) At the conclusion of the legal proceeding, retrieving the testimony from the court or other body's file as soon as

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it is no longer required and certifying to the Finance Board that every party covered by the protective order has destroyed the unpublished information.

§911.8 Availability of unpublished information by document.

(a) *Scope.* The scope of permissible document disclosure is limited to that set forth in the written authorization granted by the Finance Board. The Finance Board may act to ensure that the scope of documents provided is consistent with the written authorization.

(b) *Restrictions on use and disclosure.* The Finance Board may condition a decision to disclose unpublished information by document on entry of a protective order satisfactory to the Finance Board by the court or other body presiding in a legal proceeding or, in non-adversarial matters, on a written agreement of confidentiality that limits access of third parties to the unpublished information. In a legal proceeding in which a protective order already has been entered, the Finance Board may condition a decision to disclose unpublished information upon inclusion of additional or amended provisions in the protective order. Upon request made pursuant to this part or on its own initiative, the Finance Board may authorize use of the documents in another legal proceeding or non-adversarial matter.

(c) *Responsibility of litigants.* If the documents are disclosed in connection with a legal proceeding, the requester is responsible for:

(1) Promptly notifying all other parties to the legal proceeding of the disclosure, and, after entry of a protective order, providing copies of the documents to the other parties that are signatories and subject to the protective order; and

(2) At the conclusion of the legal proceeding, retrieving the documents from the court or other body's file as soon as they are no longer required and certifying to the Finance Board that every party covered by the protective order has destroyed the unpublished information.

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(d) *Certification or authentication.* If the Finance Board has authorized disclosure of unpublished information by document, it will provide certified or authenticated copies of the document upon request.

§911.9 Fees.

(a) *Fees for records search, copying, and certification.* Unless waived or reduced, a requester must pay a fee to the Finance Board for the costs of searching, copying, authenticating, or certifying unpublished information in accordance with 12 CFR 910.9. The Office of Resource Management generally will bill a requester upon completion of the production, but, in certain instances, may require a requester to remit payment prior to providing the requested information. To pay fees assessed under this section, a requester must deliver to the Office of Resource Management, located at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, a check or money order made payable to the "Federal Housing Finance Board."

(b) *Witness fees and mileage—(1) Current Finance Board or federal employees.* If the Finance Board authorizes disclosure of unpublished information by testimony of a current Finance Board employee or agent or a former Finance Board employee or agent who is still in the employ of the United States, upon completion of the testimonial appearance the requester must remit promptly to the Office of Resource Management payment for witness fees and mileage computed in accordance with 28 U.S.C. 1821.

(2) *Former employees or agents.* If the Finance Board authorizes disclosure of unpublished information by testimony of a former Finance Board employee or agent who is not currently employed by the United States, upon completion of the testimonial appearance the requester must remit promptly to the witness any witness fees or mileage due in accordance with 28 U.S.C. 1821.

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