

An Inside Look

FHLBANK SYSTEM AT 100 | FOCUSING ON THE FUTURE



PROPOSED RULE ON

FHLBANK SYSTEM BOARDS OF DIRECTORS AND EXECUTIVE MANAGEMENT

October 30, 2024 | 2 p.m.

FHLBANK SYSTEM AT 100 | FOCUSING ON THE FUTURE



JOSHUA STALLINGS

Deputy Director, Division of Bank Regulation, FHFA



FHLBANK SYSTEM AT 100 | FOCUSING ON THE FUTURE



ERIC RAUDENBUSH

Managing Associate General Counsel, FHFA



Agenda

Introduction

Requirements for Directors and Nominees

Other Corporate Governance Issues

Next Steps



Introduction

- The proposed revisions stem from a variety of sources, including: the 2023 FHLBank System at 100 report; comments in response to FHFA's 2023 Notice of Regulatory Review; requests from FHLBanks for greater clarity and transparency; and conclusions drawn from FHFA's general supervision of the FHLBanks.
- Many revisions to part 1261, as well as discussions in the rule preamble, are meant only to provide greater clarity on existing requirements, processes, and authorities pertaining to FHLBank directors (without substantive change), particularly on the annual designation of directorships, director eligibility, the director nomination and election processes, and the filling of vacant directorships.
- Other revisions codify existing guidance (both formal and informal) or practices.
- A minority of revisions add substantive requirements or establish new authorities or flexibilities.





FHLBANK SYSTEM AT 100 | FOCUSING ON THE FUTURE

Requirements for Directors and Nominees

PROPOSED RULE | AN INSIDE LOOK

Representation of the Public Interest

1261.5(c)(2) – Clarify that public interest independent directors' four years of experience "representing" consumer or community interests must have been:

- (1) On behalf, or for direct benefit of consumers or the community;
- (2) Direct and substantial in commitment and responsibility

1261.14(a)(4) – Expressly require Bank consultation with Advisory Council when filling an independent directorship vacancy

1261.14(a)(3)(ii) – Expressly permit a Bank to re-designate a regular independent director as a public interest independent director, if qualified, when filling a vacancy



Coverage of Critical Areas of Knowledge and Expertise

1261.5(c)(1) – Add new areas to list of qualifying knowledge or experience for regular independent directors: Artificial intelligence, CDFI business models, Climate-related risk, Information technology and security, Modeling, other areas identified by FHFA Director

1261.5(c)(3) – Require special consideration of potential independent director nominees who gained experience or knowledge through full-time paid executive, management, or senior positions (as opposed to volunteer, or other board, experience)

1261.9(a) – Require Banks to annually assess board's existing and needed skills and experience (S&E assessment) (currently optional)



Coverage of Critical Areas of Knowledge and Expertise (*cont.*)

1261.7(a) – Require Banks to list in their election announcements: (1) the number of independent directorships designated by the Bank as public interest independent directorships for the following calendar year; (2) the member directorships, regular independent directorships, and public interest independent directorships for which the Bank will hold an election in the current year; (3) sought-after skills and experience (as per the S&E assessment)

1261.8(a) – Require Banks to include on election ballots: (1) Results of the annual S&E assessment; (2) Summary of member director nominees' skills and experience (already required for independent director nominees)



Director Independence

1261.5(b), .10 – Prohibit independent director *nominees* (in addition to seated directors, as currently) from serving as an officer, employee, or director of a Bank member or recipient of advances from the Bank, or as officer of any Bank

1261.10(c) – For purposes of determining compliance with independence requirements, attribute to the independent director any officer position, employee position, or directorship of the director's or nominee's immediate family members (in addition to the director's spouse, as currently)



Director Independence (*cont.*)

1261.10(d) – Require two-year cooling-off period before a former member director may be seated as an independent director

1261.10(a)(2) – Establish definition of “advances” for purposes of prohibition against an independent director being employed by a “recipient of advances,” to prevent use of bespoke lending terms to skirt independence requirements but preserve ability of Bank to support housing associates through debt securities purchases



Fitness to Serve in a Fiduciary Role with the Bank

1261.7(e) – Require background check for independent and member director nominees and vacancy electees (currently in guidance for independent directors only)

1261.8(e)(4) – Authorize and require Bank boards to decline nomination, seating, or election of anyone known to be unfit to serve in a fiduciary capacity

1261.13(b) – Authorize removal of directors for cause by two-thirds vote of remaining directors (“cause” includes code of ethics or policy violation; violation of law; reputational risk; impaired oversight ability; poor performance)



Director Compensation

1261.21 – Expressly assert FHFA’s authority to establish and provide notice of an annual amount of director compensation

1261.22 – Require Bank boards to annually assess director performance and participation, and reduce pay (as currently provided) or remove poor performers



Director Terms and Limits

1261.4(e)(2) – Expressly assert FHFA’s continuing authority to truncate board director terms as needed to maintain even staggering of terms

1261.5(d)(2) – Clarify that truncated terms are not full terms for purposes of statutory term limit provisions, and that full terms on either side of a truncated terms are counted as consecutive terms





FHLBANK SYSTEM AT 100 | FOCUSING ON THE FUTURE

Other Corporate Governance Issues

PROPOSED RULE | AN INSIDE LOOK

Meeting Requirements

1261.24, .21 (Banks); 1273.8 (OF) – Authorize Bank and OF boards to satisfy minimum meeting requirements through video, tele-conference, or hybrid meetings



Conflicts of Interest

1239.31 – Require Banks to adopt conflicts of interest policies that: (1) address outside positions and financial interests of Bank employees, close family members, and associates; (2) prohibit Bank executive officers and senior management from holding paid positions at potential and existing members, housing associates, or their affiliates

1261.11(f)(2) – Revise definition of “financial interest” to exclude more arm’s-length transactions from Bank director conflict-of-interest prohibitions (would also apply to Bank employees)



Records Retention

1261.7(f), .8(f) – Extend record retention requirements for nominations, elections, and directors from two years to seven years



Office of Finance

Division of Duties Between Board and Management

1273.5(b)(1)(ii) – Authorize expanded methods for disbursing OF operating funds and permit CEO to subdelegate authorization

1273.8(d)(4) – Revise requirement for OF board review and approval of contracts to encompass only contracts specified in OF governance documents (current requirement covers all contracts)





Proposed Rule on FHLBank System Boards of Directors and Executive Management

FHLBANK SYSTEM AT 100 | FOCUSING ON THE FUTURE

NEXT STEPS

Submit comments on the proposed rule by scanning the QR Code



OR VISIT [FHFA.GOV](https://www.fhfa.gov) AND FOLLOW THESE STEPS:

- About
- Rulemaking and Federal Register
- Open for Public Comment
- Submit Comment