

**Federal Home Loan
Bank Seattle**

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September 7, 2010

Alfred M. Pollard, General Counsel
Federal Housing Finance Agency, Fourth Floor
1700 G Street, NW
Washington, DC 20552

**Re: Comments on Proposed Rulemaking: Office of the Ombudsman; RIN
2590-AA20**

Dear Mr. Pollard:

The Federal Home Loan Bank of Seattle ("Bank") appreciates this opportunity to comment on the Federal Housing Finance Agency ("Finance Agency") proposed rule on the Office of the Ombudsman ("Ombudsman").

1213.1 Purpose and Scope

Beginning with the Purpose and Scope section and throughout the proposed rule, the Finance Agency quotes the statutory language "any matter relating to the regulation and supervision of the regulated entity" found in Section 1105 of the Housing and Economic Recovery Act of 2008 ("HERA"). The Bank believes that the phrase should be added to the definitions section and clarified as focusing on complaints dealing only with the "regulation and supervision" of the Bank. In this way, complaints by a person dealing solely with an internal Bank business matter, such as a contract dispute between a Bank and a vendor, would not be within the purview of the Ombudsman. The Bank suggests that the Finance Agency add the phrase "any matter relating to the regulation and supervision of the regulated entity" to the definitions section.

1213.2 Definitions

Business Relationship

The Bank requests that the Finance Agency narrow the definition of "business relationship" to exclude "potential relationships," or in the alternative, provide further clarification on what a potential relationship is and what it is not. Absent additional guidance, the proposed definition is overly broad.

The Bank believes that the statute supports the narrower definition of "Business Relationship." Under HERA, the Finance Agency is required to create the Ombudsman to consider complaints and appeals from "any person that *has* a business relationship with a regulated entity" (emphasis added). The plain reading of the statute argues that Congress chose to permit access to the Ombudsman for a person who has a business relationship, rather than to include a person who may have a potential relationship. In addition, the term

“business relationship” has been defined by other US financial regulators to identify those persons who have a relationship based on “a financial contract..., the purchase, rental or lease of goods and services..., or an inquiry or application ...regarding a product or service offered by that person during a three-month period immediately preceding the date on which ...a solicitation [is sent].” 12 C.F.R. §41.20 (Comptroller of the Currency defining a pre-existing business relationship); 12 C.F.R. §222.20 (Board of Governors of the Federal Reserve defining a pre-existing business relationship); 12 C.F.R. §334.20 (Federal Deposit Insurance Corporation defining a pre-existing business relationship); 12 C.F.R. §571.20 (Office of Thrift Supervision defining a pre-existing business relationship); and 12 C.F.R. §717.20 (National Credit Union Administration defining a pre-existing business relationship).

Person

The Bank asks the Finance Agency to either narrow the definition of “person” to exclude those who indirectly represent the interests of a person having a business relationship with a regulated entity, or to provide additional guidance on the meaning of “indirectly.” The Bank is concerned that any person could claim to indirectly represent another’s interests, resulting in a definition that is so broad as to include everyone. Should the Finance Agency resolve to retain “indirectly” within the definition of “person,” the Bank requests clarification regarding what is considered to be permissible indirect representation.

In addition, the Bank asks that the Finance Agency exclude employees of the Federal Home Loan Banks from the definition of “person.” The Bank is permitted under the Federal Home Loan Bank Act to terminate employees “at pleasure,” and the courts have disallowed any interference with this right. See Inglis v. Feinerman, 701 F.2d 97 (9th Cir., 1983); Walleri v. Federal Home Loan Bank of Seattle, 83 F.3d 1575 (9th Cir., 1996); Kispert v. Federal Home Loan Bank of Cincinnati, 778 F.Supp. 950 (S.D. Ohio, 1991); and Ewing v. Federal Home Loan Bank of Des Moines, (S.D. Iowa, 2009). The Ombudsman provisions of HERA do not alter the Bank’s rights with regards to employees, and therefore, the Ombudsman would be an inappropriate forum to handle employee disputes.¹ As the Finance Agency is aware, as an SEC registrant, the Bank (like other SEC registrants) has created a robust framework for employees to file complaints about or to notify the Bank regarding potential issues and concerns. The framework includes employee training on when and how to file a complaint, access to an anonymous whistleblower hotline, and twenty-four hour seven day a week ethics reporting via the internet. To the extent that the Ombudsman has any contact with employees, the Bank must be notified of such contacts in order to quickly address any sensitive issues.

1213.4(b)(1) Complaints

The Bank requests that the Finance Agency, either in the preamble or in the regulation itself, clarify that a Director or an employee of a Federal Home Loan Bank be permitted to file a complaint against the Finance Agency with the Ombudsman. Directors and certain employees are directly affected by certain Finance Agency rules, including the golden parachute and indemnification payments regulation, as well as the Finance Agency’s authority to withhold executive compensation payments under the Safety and Soundness Act. Rather than requiring the Bank to file a complaint on behalf of the Director or employee, the Bank believes that allowing a Director or executive the ability to work directly with the Ombudsman on this matter would be more efficient and encourage a faster resolution of the issues.

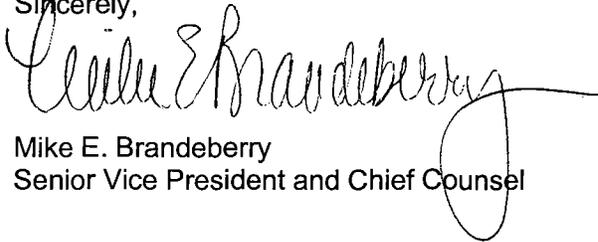
¹ The FHLBanks are subject to applicable anti-discrimination laws.

1213.4(c)(3) Matters not subject to appeal

The Bank requests that the Finance Agency modify this section to remove limitations on the Bank's ability to appeal to the Ombudsman. Consistent with the language of the statute, Congress permits the Ombudsman to consider "complaints and appeals, from any regulated entity...regarding *any matter* relating to the regulation and supervision of such regulated entity by the Agency." Congress did not limit appeals to the Ombudsman based on whether another forum exists, nor did Congress limit appeals of certain actions. The Bank believes that this section creates limitations in contravention of the law, and therefore must be removed and this section revised in the final regulation. The Bank does support a limitation on the Ombudsman becoming involved in pending matters, similar to the limitations adopted by the FDIC's ombudsman. Therefore, the Bank recommends that Finance Agency adopt the FDIC ombudsman's approach against intervening in matters currently in litigation, arbitration or mediation, unless there is a process breakdown.²

On behalf of the Federal Home Loan Bank of Seattle, we thank the Finance Agency for its consideration of these comments.

Sincerely,

A handwritten signature in black ink that reads "Mike E. Brandeberry". The signature is written in a cursive style with a long, sweeping tail that loops back under the name.

Mike E. Brandeberry
Senior Vice President and Chief Counsel

² FDIC Office of the Ombudsman, <http://www.fdic.gov/regulations/resources/ombudsman/cannot.html>
(visited 08/25/2010)