



John R. Price
President,
Chief Executive Officer

RegComments@fhfa.gov
Via Electronic Mail

September 7, 2010

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

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

Dear Mr. Pollard:

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

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 the Housing and Economic Recovery Act of 2008 ("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 supports the position 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 the federal banking regulators in their similar ombudsman regulations 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].” See 12 C.F.R. §41.20; 12 C.F.R. §222.20; 12 C.F.R. §334.20; 12 C.F.R. §571.20; and 12 C.F.R. §717.20.

Person

The Bank requests that the Finance Agency in its final regulation 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 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 determine 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 has created a robust framework for employees to file complaints about or to notify the Bank regarding potential ethical issues and other 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 days 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.

Section 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 executive officer of a Federal Home Loan Bank be permitted to file a complaint against the Finance Agency with the Ombudsman. Directors and executive officers are directly affected by certain Finance Agency rules, including the golden parachute and indemnification payments regulations, as well as the Finance Agency’s statutory authority to withhold executive compensation payments under certain circumstances. Rather than requiring the Bank to file a complaint on behalf of the director or executive officer in such a case, the Bank believes that allowing a director or executive officer 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.

Section 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 that are inconsistent with the statutory language which should be removed 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 the 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 Pittsburgh, we thank the Finance Agency for its consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. O'Neil". The signature is written in a cursive style with a large, looping initial "J".

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