



VIA EMAIL TO [REGCOMMENTS@FHFA.GOV](mailto:REGCOMMENTS@FHFA.GOV)

October 5, 2009

Alfred M. Pollard, General Counsel  
Federal Housing Finance Agency  
Fourth Floor  
1700 G Street, N.W.  
Washington, DC 20552  
Attention: Comments/RIN 2590-AA10

**RE: Proposed Rule for Records Retention**

Dear Mr. Pollard:

The Federal Housing Finance Agency (the “*Finance Agency*”) has issued a proposed rulemaking with respect to records retention (12 CFR Part 1235, the “*Proposed Rule*”). This letter sets forth the comments of the Federal Home Loan Bank of Boston (the “*Bank*”) with respect to the Proposed Rule. We thank you for the opportunity to be heard on this matter.

The Bank shares the Finance Agency’s views that an appropriate records retention program both facilitates the Finance Agency’s examination process and is a tool for a Federal Home Loan Bank (an “*FHLBank*”) to manage more effectively its business and detect improper behavior that may be harmful to it. We also believe that any rule regarding an FHLBank’s records retention program be defined by appropriate parameters to maximize its benefits.

It is in light of the above – what we believe to be our shared policy goals – that we offer the following comments regarding the Proposed Rule.

**I. Definitions and the Scope of the Proposed Rule (Section 1235.2)**

- The definition of “records” should be narrowed. Section 1235.2 of the Proposed Rule defines “record” to mean “any information, whether generated internally or received from outside sources...maintained in connection with a [Federal Home Loan Bank’s] ... business” regardless of form, method of creation, place of storage, or whether the information is active or inactive. The practical impact of this definition is that the Proposed Rule has a very broad scope. Complying with such a broad scope would entail tremendous cost with little benefit at some point. To better balance the costs and benefits, we suggest the following revisions to the definition of “record” to best achieve the goals of the Proposed Rule.
  - Narrow the definition of “record” by adding criteria to the definition that a record is information maintained in connection with a regulated entity’s (or the Office of Finance’s) business need or regulatory requirements. Such a revised definition may read “[r]ecord means any information, whether generated internally or received from outside sources by a regulated entity or the Office of Finance or employee, maintained in connection with a regulated entity’s **business needs or regulatory requirements or the Office of Finance’s business needs or regulatory**

**requirements...**<sup>1</sup> Such a change would require each FHLBank to implement an appropriate records retention program that ensured the retention of, and prompt access, to the types of information that would be beneficial to the Finance Agency in its examination process as well as benefiting the FHLBank while avoiding the excessive costs that would be incurred in implementing a compliant records retention program that did not include such limitations on what is a “record”.

- **Exclude voicemails from the definition of record.** The Bank does not currently employ the technology to retain and archive voicemails. As a practical matter, the Bank does not transact business over voicemail. However, the Bank does transact some business over recorded telephone lines which may be considered an electronic record, as appropriate.

## **II. Establishment and Evaluation of Records Retention Program (Section 1235.3)**

- **Provide for a one year implementation period.** Section 1235.3(a) of the Proposed Regulation provides for a 120 day period from the date of the effectiveness of the final regulation in which a Regulated Entity must establish a written record retention program. Although the Bank has had a records retention policy since June 2006, the requirements of the Proposed Regulation will require the Bank to commit additional and significant monetary and human resources to update its current records retention program. A one year implementation period will provide the Bank with additional time to ensure it can satisfy the requirements of the final rule.
- **Clarify the Proposed Regulation by providing for appropriate qualifications on management’s evaluation of its records retention program.** If implemented as proposed, each of the Bank’s employees will be required to comply with the Proposed Regulation’s requirements however the officer certifying on behalf of management will not be able to test each employee’s compliance as a practical matter and so will have to rely on the assertions of each employee as to such employee’s compliance. Accordingly, the certifier will not be able to make any certification without the qualifications that such certification is limited to the best of the certifier’s knowledge following due inquiry.

## **III. Record Hold (Section 1235.5)**

- **Revise the Proposed Regulation to provide that notification of any record hold by the Finance Agency will be provided by the Finance Agency to the chief executive officer and the general counsel.** This will ensure each regulated entity’s receipt and prompt compliance with a record hold because the chief executive officer and the general counsel are best situated to ensure information of the record hold is promptly disseminated to the appropriate persons.

## **IV. Access to Records (Section 1235.6)**

- **Revise the Proposed Regulation to specify certain factors that may impact the determination of what is a reasonable period.** Section 1235.6(a) of the Proposed Regulation provides that records requested by the Finance Agency must be provided

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<sup>1</sup> The new text is double-underscored and in bold text. For the avoidance of confusion, the remainder of the definition would be retained following the ellipse except that the reference to voicemail as a record would be struck in accordance with the next comment.

within a reasonable period. Section 1235.6(b) provides that for requests made during the course of an on-site examination and pursuant to an examination's scope, a reasonable period is presumed to be no longer than one business day, and requests for other documents is presumed to be three business days. In certain instances, it would be appropriate for the presumptions to be rebutted, for example, in the case of a particularly voluminous request. The Proposed Regulation should specify a non-exclusive list of factors that may be considered in rebutting the presumption.

**V. Supervisory Action (Section 1235.7)**

- Revise Section 1235.7 to remove references to enforcement actions against a regulated entity's board members, officers, and employees in the absence of willful and wrongful conduct directly resulting in the regulated entity's determination not to comply with the requirements of the rule. A rule that would otherwise impose individual liability may subject individuals to liability even in instances where sincere efforts to comply have been made.

Thank you for your consideration of our comments.

Sincerely,



Ellen McLaughlin  
Senior Vice President/General Counsel  
Federal Home Loan Bank of Boston