



## PUERTO RICO BANKERS ASSOCIATION

July 31, 2009

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

Alfred M. Pollard, Esq.  
General Counsel  
Federal Housing Finance Agency  
Fourth Floor  
1700 G Street, N.W.  
Washington, D.C. 20552  
Attention: Comments/RIN 2590-AA12

### **RE: PROPOSED RULE ON EXECUTIVE COMPENSATION**

Dear Mr. Pollard:

We are writing to comment on the Federal Housing Finance Agency's ("FHFA") proposed rule on Executive Compensation published on June 5, 2009 (the "Proposal"). The Proposal contains proposed regulations on executive compensation that would implement sections 1113 and 1117 of the Housing and Economic Recovery Act of 2008 ("HERA") with respect to the Federal Home Loan Banks ("FHLBanks"). As a trade association whose membership includes stockholders of the Federal Home Loan Bank of New York ("Bank"), we appreciate this opportunity to comment on the Proposal.

We are concerned that the Proposal fails to take into account the unique cooperative ownership structure at the FHLBanks and its impact on FHLBank executive compensation. We are also concerned that the Proposal would, in effect, substitute an FHFA determined formula for setting executive compensation (by apparently specifying particular institutions – the Federal Reserve Banks and the Farm Credit Banks – as comparator institutions and by establishing a presumptive median compensation level cap) at each of the FHLBanks for the discretion of the member-controlled independent boards of directors of the FHLBanks.

Our view is that the FHLBanks, including the Bank, already have in place a robust and transparent process for establishing competitive and reasonable

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market compensation that prevents the payment of excessive compensation to FHLBank executives.

Each of the FHLBanks is a separate legal entity, owned by its member financial institutions, with its own board of directors and management. By law, membership at each of the FHLBanks is limited to eligible financial institutions that are located within an FHLBank's geographic district. Each FHLBank operates under control of a board of directors elected by member institutions. A majority of these directors are individuals who are directors or officers of member institutions. The remainder of the directors are independent directors who either are public interest directors, who have a background in representing consumer interests, or other independent directors, who have specified financial, accounting or risk management experience. None of the directors are members of management of the Bank. The decisions regarding executive compensation at the Bank are made by the compensation committee of the board of directors and the board of directors.

In our view, the board of directors of the Bank are aligned in interest with the interests of the member institutions. Like other member institutions, we have a strong interest in having the Bank pay sufficient compensation to the Bank's executive officers in order to allow the Bank to attract and retain the most qualified executives to ensure that the Bank has the executive talent necessary to manage the complex financial decisions that are inherent in its operations.

At the same time, the member representatives on the board of directors clearly have an interest in ensuring that the Bank's executive officers are not overcompensated. Compensation is a significant component of the non-interest expenses of the Bank. As a consequence, compensation has an important impact on the results of operations of the Bank and, in turn, on the dividends member institutions receive from the Bank and the rates that the Bank offers on its products and services. We are confident that the member representatives on the board of directors are careful to take this important factor into account into their decisions on executive compensation. We also believe that the independent directors who have a strong interest in the effectiveness of the Bank's community support programs, including the Affordable Housing Program and the Community Investment Program, and in



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the overall efficient operation of the Bank, are vigilant in evaluating and setting executive compensation levels.

Member institutions of the Bank and the other FHLBanks receive extensive information regarding the compensation philosophy, practices and compensation outcomes at their FHLBank through the information provided by the FHLBanks in the Compensation Discussion and Analysis sections of their annual Form 10-K filed with the Securities and Exchange Commission. This includes information on the institutions that the Bank uses as competitor institutions for purposes of determining whether executive compensation at the Bank is reasonable and comparable with compensation offered to individuals with similar responsibilities at competitor institutions.

We note that in the preamble to the Proposal, the FHFA has specifically identified the Federal Reserve Banks and the Farm Credit Banks as examples of what it considers to be appropriate comparators to assess the reasonableness and comparability of executive compensation provided by each of the FHLBanks, and has specified that comparable means compensation that is "at or below the median" compensation for a given position at such institutions. In our view, the selection of appropriate comparator institutions and the establishment of benchmark pay levels should be left to the discretion of the board of directors and the compensation committees of the individual FHLBanks. The Proposal appears to preempt these decisions and take over the authority and responsibility of the compensation committees and boards of directors of the FHLBanks to establish appropriate compensation arrangements for executives at the FHLBanks.

The Proposal would undermine the interests of member institutions by arbitrarily limiting the flexibility of any individual FHLBank to design compensation packages necessary to allow it to execute its particular strategic plan in its unique market. Moreover, by displacing the business judgment of the twelve individual FHLBanks' boards of directors and compensation committees, the Proposal ignores the statutory prohibition contained in HERA, which is codified at 12 U.S.C. § 4518(d), that expressly prohibits the FHFA from prescribing or setting a specific level or range of compensation for executives at the FHLBanks.

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We urge that the FHFA revise the approach taken in the Proposal when it adopts a final rule so that the FHFA neither establishes specific comparator institutions nor establishes a presumptive compensation cap. We believe that the FHFA should limit its role to reviewing the executive compensation determinations of the individual FHLBanks to ensure that FHLBank executive compensation is comparable with that at other similar businesses (including other publicly held financial institutions or major financial services companies) involving similar duties and responsibilities. This is the approach that the Office of Federal Housing Enterprise Oversight took in its executive compensation regulations, which are codified at 12 C.F.R. part 1710, and which we believe that the FHFA should take in its final rule on executive compensation.

In conclusion, we feel that the FHLBanks work well today, providing liquidity and affordable housing programs to members, in part because they have the right management talent required to make their operations work. This success should not be impaired by the placement of onerous compensation restrictions on the FHLBanks

We appreciate your consideration of our comments.

Cordially,



Arturo L. Carrión<sup>o</sup>  
Executive Vice President