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August 4, 2009

Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
1700 G Street, NW, fourth floor
Washington, DC 20052

Attn: Comments/RIN 2590-AA12

Dear Mr. Pollard:

I am writing on behalf of the members of the American Bankers Association (ABA) [1] regarding the notice of proposed rulemaking request for comments on executive compensation at the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan Mortgage Corporation ("Freddie Mac"), the Federal Home Loan Banks ("FHLBs") and the Office of Finance of the Federal Home Loan Bank System ("OF"). ABA appreciates this opportunity to submit comments.

The purpose of the proposed rule, as detailed in Sec. 1230.1, is to implement requirements relating to the supervisory authority of the FHFA under Sections 1113 and 1117 of the Housing and Economic Recovery Act of 2008 ("HERA") with respect to compensation provided by the regulated entities (Fannie Mae, Freddie Mac, and the FHLBs) and the Office of Finance to their executive officers.

HERA was signed into law on July 30, 2008. The law combines the regulation of Fannie Mae, Freddie Mac and the FHLBs under one regulatory agency, the FHFA. Together, Sections 1113 and 1117 specifically give the FHFA the authority to review compensation paid by the regulated entities to their executives, and to prohibit excessive compensation or to modify such compensation.

On September 7, 2008, FHFA placed Fannie Mae and Freddie Mac into conservatorship, effectively transferring authority over the day to day operations of these two entities to the FHFA. The conservatorship status of Fannie Mae and Freddie Mac gives broad operational discretion to the FHFA, including not only the compensation of such officers, but also the appointment and/or dismissal of

[1] ABA brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members - the majority of which are banks with less than $125 million in assets - represent over 95 percent of the industry's $13.3 trillion in assets and employ over 2 million men and women.

officers. Conservatorship of Fannie Mae and Freddie Mac is likely to continue until Congress acts to reform or restructure the two entities. Therefore, we shall limit our comments to those parts of the proposed rule dealing with the FHLBs, anticipating that rules for compensation at Fannie Mae and Freddie Mac will be revisited when the future structure of those entities is considered by lawmakers. In the unlikely event that one (or more) of the FHLBs is placed under conservatorship (or other form of regulatory control), compensation policies might be further affected by the FHFA. Absent such a situation, our comments reflect how we believe compensation should be treated under normal operating conditions.

Our primary concern with the proposed rule, as it relates to the FHLBs, is that it does not adequately take into consideration the cooperative structure of the FHLB System. As the proposal notes, Section 1201 of HERA requires the FHFA to consider the differences between the FHLBs and Fannie Mae and Freddie Mac when promulgating regulations – including the cooperative ownership structure, mission of providing liquidity to members, affordable housing and community development mission, capital structure, and joint and several liability. The proposal states that the Director considered these differences in promulgating the pending rule, but we do not believe the differences were captured in the proposal.

The FHLBs are member owned, and member governed with joint and several liability. As such, each of the FHLBs 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 FHLB is limited to eligible financial institutions that are located within a defined geographic district. Each FHLB 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.

Members clearly have an interest in ensuring that their Bank's executive officers are fairly compensated reflective of the markets in which they operate. Compensation is a significant component of the non-interest expenses of the Banks. Members join the System to provide for their liquidity needs and, in many cases, to achieve dividends paid by their investment in the System. Because the boards of directors of each FHLB come from member institutions, they are careful to take these important factors into account in their decisions on executive compensation, ensuring that compensation does not detrimentally affect expenses, and thus the income of the FHLB. It is also essential that the FHLBs pay sufficient compensation to their executive officers in order to allow the FHLBs to attract and retain the talent necessary to manage complex financial institutions. Again, the boards of directors of each FHLB calculates this into their decision making process regarding compensation levels.

Further, we are very concerned with the statement included in the preamble to the rule indicating that the FHFA "may consider the Federal Reserve Banks and the Farm Credit Banks as examples of appropriate comparators to assess the reasonableness and comparability of executive compensation provided by the Banks." The preamble goes on to state that "FHFA will address such differences (between the FHLB and Fannie and Freddie) through an establishment of policies for appropriate compensation packages and termination benefits…" These two statements suggest that the FHFA is considering establishing a formula for setting compensation packages based upon specific comparator institutions (which themselves differ dramatically from the FHLBs). Further, the establishment of "appropriate compensation packages" suggests that FHFA is considering some set level of compensation which would in effect cap individual FHLBs. Substituting such a formula for the discretion of the independent boards of each FHLB would undermine the interests of FHLB member institutions by arbitrarily limiting the ability of any individual FHLB to design compensation packages necessary for its strategic plan in its unique market.

Moreover, the implication that the FHFA may establish "appropriate compensation packages" runs counter to the express prohibition in HERA (codified at 12 U.S.C. Sec. 4518(d)), which prohibits FHFA from prescribing or setting a specific level or range of compensation for FHLB executives.

In conclusion, we strongly urge the FHFA to revise the proposed rule to better reflect the stated intention of HERA: to allow for regulatory review of compensation to ensure it is comparable with that of other similar businesses. The final rule should not contemplate the setting of specific compensation packages, nor should it compare the FHLBs to the Federal Reserve Banks or Farm Credit Banks exclusively – but should look more broadly to other institutions whose executives share similar duties and responsibilities, including other financial service companies of similar size and sophistication.

Again, we appreciate this opportunity to comment on this important matter. If you have questions or concerns, or wish to discuss any of these comment in greater detail, please do not hesitate to contact ABA Vice President and Senior Counsel, Joseph Pigg at 202-663-5480 or JPigg@aba.com.

Sincerely,

Robert R. Davis