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Alfred M. Pollard, General Counsel and
Christopher T. Curtis, Senior Deputy General Counsel
Federal Housing Finance Agency
Fourth Floor
1700 G Street, N.W.
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Attention: Comments/RIN 2590-AA21

RE: Capital Classifications and Critical Capital Levels for the Federal Home Loan Banks

Gentlemen:

On January 30, 2009, the Federal Housing Finance Agency (FHFA) issued an interim final rule (the Rule) with respect to capital classifications and critical capital levels for the Federal Home Loan Banks (FHLBanks). This letter sets forth the comments of the Federal Home Loan Bank of Dallas (the Bank) with respect to the Rule. We thank you for the opportunity to be heard on this important matter.

The Rule established new capital classification and prompt corrective action regulations set forth in 12 C.F.R. Part 1229 (the Regulations). In the preamble to the Rule, FHFA also discussed the possibility that the agency might issue additional regulations relating to a potential fifth "well capitalized" capital classification, and solicited specific comment on both that possibility and a series of related questions.

Following the structure of the Rule, this comment letter is divided into two parts. The first sets forth comments on the Regulations as promulgated, while the second addresses the potential "well capitalized" category and related issues.

I. The Regulations

We offer the following comments, suggestions, and requests for clarification in respect of the Regulations:

- <u>Exclude Self-Capitalizing Advances from Section 1229.6(a)(4) Quarterly Asset Growth Cap</u>. Section 1229.6(a)(4) of the Regulations provides that an undercapitalized FHLBank may not permit its average total assets in any calendar quarter to exceed its average total assets during the preceding quarter, unless certain

- requirements are met. In light of both the credit quality of advance assets and the fact that they are often self-capitalizing, we believe that this cap on quarterly asset growth should not restrict growth in advance balances, to the extent that any new advances are self-capitalizing in an amount at least equal to the Bank's minimum total capital requirement (i.e., 4.0 percent of any new advances). We request that FHFA modify Section 1229.6(a)(4) to exclude advance assets that are self-capitalizing from the quarterly asset growth cap, or, in the alternative, otherwise amend the cap requirement in a way that does not limit the making of self-capitalizing advances.

- Increase Time Period for Submission of Capital Restoration Plan. Section 1229.11(b) of the Regulations requires an FHLBank to submit a proposed capital restoration plan no later than 10 calendar days after receiving notice from the Director of the FHFA. Depending on when the notice is received, the FHLBank could have as few as 5 or 6 business days to formulate and submit the plan,[1] and that is likely not a long enough period of time to permit an FHLBank to create a truly effective capital restoration plan. We ask that Section 1229.11(b) be amended to extend this time period from 10 calendar days to 10 business days.

- Clarify Scope of Section 1229.6(a)(5) Prohibition on Acquisitions. Section 1229.6(a)(5) of the Regulations provides that an undercapitalized FHLBank may not "acquire, directly or indirectly, any interest in any entity" unless certain requirements are met. Since a FHLBank's ability to acquire an interest in any other entity would presumably require FHFA approval under existing regulations, please clarify how this prohibition would operate in the context of an FHLBank's business and in particular confirm that it would not interfere with an FHLBank's exercise of its authority to make advances, acquire member assets, provide AHP or CICA funding, issue standby letters of credit, or purchase authorized investments.

- Modify Definition of "Executive Officer". In order to provide both more clarity as to which employees constitute "executive officers" and a more appropriate scope to that definition, we ask that the definition of "executive officer" under Section 1229.1 be amended to reflect the following three comments:

    - clause (2) of the definition should be modified to clarify that the definition of Executive officer includes only those individuals with the designated titles who are truly executive officers;

    - clause 3(i) of the definition should likewise be modified to clarify that the definition includes only those individuals who are in charge of a principal business unit, division or major function who are truly executive officers;

    - clause (3)(ii) of the definition should be modified by changing "chief operating officer" to "chief executive officer" clause (3)(ii) of the definition should provide

[1] For example, if the FHLBank received the notice on Friday, May 15, 2009, the submission would be due no later than Monday, May 25, 2009. However, since that latter date is a federal holiday, Friday, May 22 would be the last business day prior to the deadline, effectively giving the FHLBank only 5 business days to develop and propose the plan.

an exclusion for administrative support staff reporting to the chairman of the board of directors, the vice chairman of the board of directors, the president, or the chief executive officer.

- Clarify Application of Executive Compensation Limits to Pre-existing Contracts. Please clarify whether, in light of contractual and constitutional considerations, the mandatory restrictions on increasing executive compensation set forth in Section 1229.8(e) and (f) of the Regulations apply to the provisions regarding compensation in employment agreements entered into prior to the effective date of the Rule.

II. Potential "Well Capitalized" Classification and Related Issues

We offer the following comments on the six specific questions posed by FHFA in the preamble to the Rule:

1. Would a well-capitalized classification category provide incentives to the Banks to hold more than the minimum amounts of capital and increase retained earnings as a percentage of capital?

Your question suggests two methods for defining well capitalized. The first goes to the amount of capital while the second goes to the mix of capital. We believe that the FHLBanks have sufficient total capital under the current regulatory framework and do not believe that the FHFA should implement a well capitalized category that will have the practical effect of raising the minimum capital standards for the FHLBanks above the amounts provided for under current regulations.

A definition of well capitalized based on holding more than the minimum levels of capital may require an FHLBank to either decrease its leverage thereby reducing its earnings assets and net income, or require its member institutions to purchase additional capital stock without a commensurate increase in earnings assets, thereby reducing the FHLBank's return on equity. A definition of well capitalized that is based on increases in retained earnings as a percentage of capital may require an FHLBank to pay less in dividends than it might otherwise pay. In either case, FHLBanks are unlikely to seek such well capitalized status unless offered clear incentives that enable them to offset the lost earnings from decreased leverage or to forego the benefits of higher dividends.

We are doubtful that either higher capital levels or the accumulation of more retained earnings will provide any market benefits for individual FHLBanks in their dealings with capital market counterparties (e.g., swap counterparties and fed funds counterparties). We believe these counterparties rely significantly on external credit ratings and, in the case of interest rate swaps documented on ISDA forms, on the collateral provided by counterparties, including FHLBanks.

Examples of the types of regulatory incentives that might sufficiently motivate FHLBanks to become well capitalized are discussed below under question 4.

2. What criteria may be appropriate to define such a category?

As noted above, we believe the FHLBanks have sufficient total capital under the current regulations to support their businesses and ensure they are able to service the consolidated obligations for which they are the primary obligors. Therefore, we believe that any definition of well capitalized should focus on the composition of capital rather than higher levels of total capital.

We suggest two possible formulations to implement this approach. Under the first approach, a well capitalized FHLBank would be any FHLBank that is adequately capitalized and has at least a specified percentage (e.g., 10%) of its total regulatory capital in the form of retained earnings. Under the second approach, well capitalized would be defined as a capital ratio above the 4% total capital ratio (e.g., 4.5%) but with retained earnings computed in such calculation as a multiple (e.g., 2.0 times) of actual retained earning. Under this second approach, an FHLBank with modest retained earnings that did not wish to sharply accelerate its accumulation of retained earnings could still meet the well capitalized standard simply by having a higher amount of capital stock.

If retained earnings were used as an element of the definition of well capitalized, the Rule should confirm that accumulated other comprehensive income (OCI) would not be added to or subtracted from retained earnings for the purpose of determining well capitalized status.

3. Would a MVE/PVCS or a retained earnings target be appropriate in defining a well-capitalized category, and if so, what should the targets be?

As discussed above, some element of retained earnings might be an appropriate component of the definition of a well capitalized FHLBank. Any such element, however, should be developed in the context of an incentive for an FHLBank to become well capitalized rather than as effectively an additional requirement to be adequately capitalized.

While MVE/PVCS targets have a certain surface appeal, they do not provide a sound basis for measures of capital adequacy, including definitions of well capitalized, in part because such measurements look to liquidation values rather than going concern values. In that way, such measures would subject the measurement of an FHLBank's capital adequacy to market volatility that may or may not reflect long term economic gains or losses. Recent market conditions show the distortions that can result from using MVE as a measurement of capital adequacy.

4. What restrictions on adequately capitalized Banks may be appropriate to create an incentive to Banks to achieve and maintain a well-capitalized rating?

The HER Act established four capital classifications which do not include a well capitalized category. Therefore, we do not think it is appropriate to use restrictions on an adequately capitalized FHLBank as a lever to force or entice it to comply with a higher capital standard not contemplated by the statute. Rather, implementation of a well capitalized category should be driven by incentives that encourage and reward an FHLBank for achieving that status.

As noted above, we do not believe that any market benefits will accrue to individual well capitalized FHLBanks. Thus financial incentives would likely have to be in the areas of expanded investment authority. For example, the Rule might make permanent the recent temporarily expanded MBS authority; explicitly expand the scope of authorized MBS investments to include, for instance, private-label MBS currently trading at substantial discounts; or add new permitted investment categories such as certain government-guaranteed student loans.

In the same vein, the Rule might offer regulatory incentives for an FHLBank to become well capitalized. For example, a well capitalized FHLBank might receive expedited consideration of a new business activity notice or a waiver of the requirement to file such a notice with respect to specified activities that are new for the well capitalized FHLBank but that have previously been approved for other FHLBanks. Certain aspects of the annual examination of a well capitalized FHLBank might be more limited in scope (either in every year or in alternate years) or less intrusive than is the case with an FHLBank that is only adequately capitalized.

5. Alternatively, should the FHFA adopt a MVE/PVCS and/or retained earnings requirement as a separate risk-based capital rule that would be applied to the Banks in addition to the current risk-based capital requirement in 12 CFR 932.3, and incorporate this new requirement into the criteria for defining either the adequately capitalized category or a new well-capitalized category? Should MVE/PVCS or retained-earnings targets be adopted other than as part of the risk-based capital structure?

As noted above, using MVE measures to establish any capital adequacy requirement is problematic. These problems are illustrated by current events in which MVEs have been driven lower by discounts in securities prices that do not reflect changes in interest rates and that appear to overstate actual credit risk.

Any element of retained earnings that is used to define a capital category or to provide an incentive to achieve well capitalized status should be independent of the risk-based capital requirements. Any new retained earnings requirement applied to the FHLBanks should also be separate from risk-based capital requirements, but should be based on clearly articulated risk factors and how increased retained earnings mitigate those risk factors.

6. Are there any changes that should be made to the RBC framework?

For the reasons mentioned above regarding MVE, we believe the Finance Agency should eliminate the incremental market risk capital requirement imposed by 12 C.F.R. §932.5(a)(ii) to the extent that an FHLBank's MVE is less than 85% of its book value of total capital. Adjustments to the credit risk capital requirement may be appropriate to more adequately capture the credit risk of certain private label mortgage-backed securities.

We also believe the FHFA should revisit the operations risk capital requirement which is an amount equal to 30% of the sum of the FHLBank's credit risk capital requirement and

market risk capital requirement. At a minimum, the operations risk capital requirement should be decoupled from the component of the market risk requirement generated by the MVE deficit (if that component is retained).

Preferably, the operations risk requirement should be determined independently based on some measurement of actual risks arising from operational failures rather than expressed as merely a function of credit and market risks. One potential alternative would be an internal assessment process that takes into account a Bank's actual historical operations risk loss experience and current exposure. Such a methodology should allow the operations risk capital requirement to be less than 10 percent of the sum of the market and credit risk capital requirements as currently provided.

Thank you for your consideration of our comments.

Sincerely,

Terry Smith
President and CEO