FHLBank
PITTSBURGH

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VIA FEDERAL EXPRESS AND E-MAIL

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Federal Housing Finance Agency
Fourth Floor
1700 G Street, N.W.
Washington, DC 20552

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 Pittsburgh (the "Bank") with respect to the Rule. We thank you for the opportunity to comment on this important rulemaking.

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, the 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 other 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 questions set forth in the Rule.

I. The Regulations

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

- Exclude Advances from Section 1229.6(a)(4) Quarterly Asset Growth Cap. 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 safety of advance assets and their generally self-capitalizing nature, we believe that this cap on quarterly asset growth should not restrict growth in advance balances, as such growth generally results in an improvement (not a worsening) of an FHLBank's capital position. This is true even if the ratio of tangible equity to such an FHLBank's total assets is not then increasing at a rate sufficient to enable the FHLBank to become adequately capitalized within a reasonable time (as Section 1229.6(a)(4)(ii)(B) requires). Furthermore, advances are the FHLBanks' primary business and are central to the fulfillment of the FHLBanks' public purposes and their mission to provide liquidity to their members.[1] We request that the FHFA modify Section 1229.6(a)(4) to exclude advance assets 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 capital-enhancing 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 business days to formulate and submit the plan,[2] 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 30 calendar days. Furthermore, we believe that the FHLBanks should receive a longer period than the Enterprises as a result of the different capital structures of the FHLBanks and the Enterprises. To implement a capital restoration plan, the FHLBanks may need to amend their capital plans or take other actions that would not be applicable to the Enterprises.

- 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 [emphasis added]" unless certain requirements are met. Please clarify that this prohibition would not prohibit an FHLBank from conducting ordinary course transactions, such as making advances, acquiring member assets, providing AHP or CICA funding, issuing standby letters of credit or purchasing 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 (3)(i) of the definition should be modified to include only those individuals in charge of a principal business unit, division or function who have been

[1] 12 U.S.C. § 4513(f)(1)(B).

[2] 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 five business days to develop and propose the plan.

notified in advance by the FHFA that they constitute "executive officers" for purposes of the Regulations (this is consistent with the treatment of the Enterprises);

- Clause (3)(ii) of the definition should be modified by changing "chief operating officer" to "chief executive officer"; and

- Clause (3)(ii) of the definition should provide a carve-out 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 concerns, employment agreements entered into prior to the effective date of the Rule are subject to the restrictions set forth in Section 1229.8(e) and (f) of the Regulations.

II. Questions Set Forth in the Rule

We offer the following comments on questions posed by the 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 requires an FHLBank to decrease its leverage thereby reducing its earning assets and net income. A definition of well capitalized that is based on increases in retained earnings as a percentage of capital requires 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 there are clear market benefits that enable it 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. As we do not believe that market benefits will accrue to the FHLBanks (and correspondingly to their members) from a

well-capitalized category we do not support the creation of such a category for the FHLBanks.

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

The Housing and Economic Recovery Act of 2008 ("HERA") established four capital classifications which do not include a well-capitalized category. Therefore, we do not think it is appropriate for there to be restrictions on an FHLBank that is adequately capitalized.

3. 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 FHLBanks 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?

Use of MVE/PVCS targets does not provide a sound basis for defining required capital levels, in part, because such measurements look to liquidation values rather than going concern values. Recent market conditions show the distortions that can result from using MVE as a measurement of capital adequacy.

These problems are illustrated by current events in which MVEs have been driven lower by discounts in securities prices that do not reflect real interest rate risk and that overstate credit risk.

Any element of retained earnings that is used to define a capital category should be based on clearly articulated risk factors and how increased retained earnings mitigate those risk factors.

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

For the reasons mentioned above regarding MVE, we believe the FHFA 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 percent of its book value of total capital.

We believe the FHFA should revisit the operations risk capital requirement which is an amount equal to 30 percent of the sum of an 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). The operations risk requirement should be determined 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 consistent with the approaches developed under Basel II.

Thank you for your consideration of our comments.

Sincerely,

Dana A. Yealy