



HOUSING FINANCE & LAND DEVELOPMENT

DAVID L. LEDFORD
SENIOR STAFF VICE PRESIDENT

November 25, 2008

Federal Housing Finance Agency
1625 Eye Street, NW
Washington, D.C. 20006
ATTN: Public Comments

Re: Federal Home Loan Bank Boards of Directors: Eligibility and Elections
RIN 2590-AA03

Dear Sir or Madam:

On behalf of the 235,000 member firms of the National Association of Home Builders (NAHB), I welcome the opportunity to respond to your request for comments on the Federal Housing Finance Agency's (FHFA's) Interim Final Rule for Federal Home Loan Bank (FHLBank) director eligibility and elections. The Interim Final Rule sets forth the procedures and processes FHLBanks are to employ in nominating and electing persons to their board of directors.

NAHB is a national trade association representing individuals and companies involved in the production of housing and related activities. Each year, NAHB's builder members construct about 80 percent of all new housing in America. NAHB's builder members are mostly small businesses with limited capital of their own. These small businesses depend almost entirely upon commercial banks and thrifts for housing production credit. Our surveys show that 90 percent of all loans for residential land acquisition, development and construction (AD&C) come from commercial banks and thrifts, many of whom are members of the FHLBank System. Therefore, NAHB views the FHLBanks as crucial components of the housing finance system. A number of NAHB members serve, or have served, on FHLBank boards.

Background

Effective July 30, 2008, the Federal Housing Finance Regulatory Reform Act (the Act) of 2008, Division A of the Housing and Economic Recovery Act (HERA) of 2008, transferred the supervisory and oversight responsibilities of the Federal Housing Finance Board (FHFB) over the FHLBanks to FHFA. The FHLBanks continue to operate under regulations promulgated by FHFB until FHFA issues its own regulations.

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Section 1101 of the Act revised Section 7 of the FHLBank Act. The FHFBA regulation implementing Section 7 is codified at 12 CFR part 915. Part 915 governed the nomination and election only of those directors who are chosen from among the officers and directors of members of the FHLBanks, which this Interim Final Rule refers to as member directors. The Act amended parts of the FHLBank Act, to give the members the right to also elect all of the other directors on the boards of directors of the FHLBanks. These non-member directors are referred to in this Interim Final Rule as independent directors. Previously, non-member directors of FHLBanks were appointed by FHFBA.

The FHFA has kept the basic process of elections that exists in part 915 as it applies to member directorships, making changes as necessary to comply with the amendments to Section 7 of the FHLBank Act. FHFA has added provisions to govern the process for nominating individuals for independent directorships and for conducting the election of independent directors in conjunction with the election of member directors. NAHB offers the following comments on eligibility, nomination and election of independent directors.

NAHB Position

Conflicts of Interest

Section 7(a) of the FHLBank Act prohibits an independent director from serving as an officer of any FHLBank and from serving as a director, officer, or employee of any member of the FHLBank on whose board the director sits. Housing Finance Agencies (HFAs) are members of the FHLBank System, therefore directors/officers of these HFAs will not be eligible to serve as independent FHLBank directors. HFAs received a relatively recent carve-out in the law that allowed them to become members without purchasing FHLBank stock. The HFAs became members to secure liquidity lines from FHLBanks. These members are not like bank members as they do not purchase stock in the FHLBanks and are not otherwise part of the cooperative FHLBank System.

As a director or officer of a member HFA, one can maintain independence as a FHLBank independent director because of these differences from traditional members. When Section 7(a) of the FHLBank Act was written, it was not anticipated that non-stock holding members would emerge. The talent, knowledge and experience gained as an HFA director/officer would be a great asset to the FHLBanks. This benefit would be lost if such individuals are not eligible to stand for independent FHLBank director positions. Therefore, the regulations for Section 7(a) should be amended to specify that directors, officers and employees of FHLBank members that do not hold FHLBank stock are eligible to serve as independent FHLBank directors.

Partial Terms

HERA limits the service of elected directors to three consecutive terms. NAHB recommends that only elected 4-year terms should be considered full terms under the new regulations. Any term beginning after July 30, 2008 that is shortened to implement staggering should not be considered a full term. In addition, 3-year or shorter terms prior to enactment of HERA should not be considered full terms.

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20 Percent of Eligible Votes Required to Elect Independent Directors

Under the interim regulations, independent director nominees must receive at least 20 percent of the number of votes eligible to be cast in order to be declared a winner. NAHB urges FHFA to revise this provision. All FHLBank members have the opportunity to vote for the directors of their district FHLBank. Nominees receiving a plurality of the votes cast should be elected accordingly.

Affordable Housing Advisory Council

HERA requires that a FHLBank's board consult with their Affordable Housing Advisory Council before nominating independent directors. FHFA has requested comments on whether the Advisory Council's role in this consultation process should be more explicitly defined and whether it should prescribe procedures on this process. NAHB strongly opposes prescriptive rules related to the Advisory Council's consultative role. The FHLBanks should have the flexibility to determine the role of their Advisory Council. The Advisory Council's role will differ depending on the background and experience of the FHLBank's board and a regulatory prescribed process may not recognize and accommodate the unique characteristics of each FHLBank district.

Number of Public Interest Directors (PIDs)

Under HERA, at least two independent directors must be PIDs. FHFA has requested comment on whether the FHFA or the FHLBanks should establish a specific number of PID positions. NAHB strongly advises against the FHFA establishing the number of PIDs. By statute, two are required and beyond that the FHLBanks should determine for themselves what skills and experiences are needed on their board to best manage the institution. Again, each FHLBank district has unique characteristics and the mix of independent directors and PIDs could vary widely among FHLBanks. The FHLBank boards are in the best position to identify the skills needed to govern their operations.

Candidates vs. Positions to be Filled

FHFA has requested comment on whether the board of directors of a FHLBank should be required to nominate more candidates for independent directorships than there are positions to be filled. Again, NAHB believes this decision should be left to the FHLBanks. Boards should be allowed to nominate the candidates who are most qualified and can best enhance the oversight of the board.

Independent Director Experience

FHFA is seeking comment on whether it should apply the revised PID experience requirements to existing PIDs and, if so, should it require a FHLBank that does not have PIDs who meet the revised requirements to nominate candidates who do meet those requirements. NAHB believes that experience is extremely important no matter what the qualifications are that an individual brings to the board. The rigid approach of this proposed requirement could result in the loss of individuals who have made substantial contributions to their FHLBank.

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Total Number of Directors

Currently no FHLBank has more than 17 directors. The FHFA has eliminated directorships at some of the FHLBanks and could potentially cut directorships down to the statutory minimum of 13. NAHB urges the FHFA to allow the FHLBanks to maintain directorships beyond the statutory minimum.

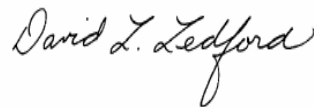
For example, for a 5 state region, it is difficult to get adequate representation of elected and independent directorships with fewer positions. Committees are often difficult to staff and lack the diversity of expertise needed to function as directed by the board. It is hoped that in the future, FHFA would consider more directorships for the FHLBanks rather than moving toward the required minimum.

Conclusion

We appreciate this opportunity to comment. NAHB supports the efforts of FHFA to improve the director nomination and election process and therefore improve the governance of the FHLBank System. NAHB does urge FHFA to give the FHLBanks the most flexibility possible to develop these processes. The unique characteristics and needs of each FHLBank district cannot be adequately accommodated with an overly prescriptive approach.

We are happy to discuss any questions you may have regarding our comments.

Sincerely,



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Housing Finance & Land Development