

**Federal Home Loan  
Bank Seattle**

1501 Fourth Ave., Ste. 1800  
Seattle, WA 98101-1693  
206.340.2300 tel  
206.340.2485 fax  
www.fhlbsea.com

November 20, 2008

Federal Housing Finance Agency  
1625 Eye Street, NW  
Washington, DC 20006  
Attention: Public Comments/RIN 2590-AA03

RE: Federal Housing Finance Agency Interim Final Regulation with Request for Comments:  
Federal Home Loan Bank Boards of Directors – Eligibility and Elections

Ladies and Gentlemen:

The Federal Housing Finance Agency (FHFA) has issued an interim final rule (the Interim Final Rule) with respect to the eligibility and election of Federal Home Loan Bank directors. This letter sets forth the comments of the Federal Home Loan Bank of Seattle (the Bank) with respect to the Interim Final Rule and is based on analysis and discussion among the Federal Home Loan Banks (FHLBanks). We appreciate the FHFA's effort to expedite its rulemaking on this topic, and we thank you for the opportunity to comment on this important matter.

The Bank shares the FHFA's goal of promoting safety and soundness and believes that the election of qualified and accountable directors is a critical element in achieving that goal. With that shared goal in mind, we offer the following comments for your consideration:

- Permit the FHLBank Boards to Establish the Number of Public Interest Directorships. The FHFA requests comment on whether the FHFA Director or the FHLBank boards should establish the number of public interest directorships for each FHLBank. We believe that FHLBank directors should designate the number of public interest directorships because the directors are in the best position to identify the skills and experience needed by the board as a whole. Depending on the particular skills of incumbent directors and other considerations, such as the FHLBank's strategic goals or risk profile, a board may determine that oversight is enhanced by having a greater number of individuals with the qualifications of public interest directors. At other times, depending on such considerations, a board may determine that its shareholders are better served by having no more than the number of public interest directors required by statute and a greater number of independent directors with skills and experience in other areas that address the FHLBank's needs at that time. Of course, a board could reduce the number of public interest directors only as terms of incumbent public interest directors expire, but the flexibility to make this determination enhances the board's ability to ensure that the board as a whole possesses the optimum combination of skills and experience.

- Clarify the Interim Final Rule's Application of the Statutory Term Limitation. The FHFA seeks comment on the Interim Final Rule's application of the consecutive full-term limitation in section 7(d) of the Federal Home Loan Bank Act (Bank Act). The Bank Act, as amended by HERA, limits the service of directors chosen by election to three consecutive full terms; directors are then eligible for re-election two years after the end of the last full term. We believe the approach taken by the Federal Housing Finance Board pre-HERA is the correct approach and should be continued. A full term means a term equal to that allowed under the Bank Act at the time the term began. Any term shorter than that allowed at the time the term began is a shortened term and does not constitute a full term for purposes of term limits. Also, if a director serves one or two full terms followed by a shortened term, the shortened term does not constitute a break in service allowing a director to serve three additional full terms.
- Retain the Consultative Role of the Advisory Council. The FHFA seeks comment on whether it should require the Advisory Council to play any specific role in consulting with the board regarding independent director nominees and whether the FHFA should prescribe procedures on how the consultation should take place. We believe that the nomination of independent directors implicates the board's fiduciary duties and that boards should have flexibility to specify the role of the Advisory Council and design a process that, in the board's judgment, best assist it in fulfilling those duties. The form, content, and timing of advice that each FHLBank needs from its Advisory Council will differ depending on the background and experience of the FHLBank's board and the FHLBank's process for identifying nominees. A regulatorily prescribed process may not meet the unique requirements of each FHLBank. The Interim Final Rule provides flexibility for each FHLBank to establish a process that will meaningfully assist the board in fulfilling its statutory mandate to nominate independent directors.
- Deem Existing Public Interest Directors to be Public Interest Directors under HERA. The FHFA has asked whether it should apply HERA's requirement of four years of relevant experience to current public interest directors. We believe that the immediate benefit of continuity of service warrants such action given the current economic environment.
- Retain the Rule Permitting the Board to Nominate a Minimum of One Nominee for Each Independent Directorship. The FHFA has asked whether FHLBank boards should be required to nominate more candidates for independent directorships than there are positions to be filled, if the board determines that there are sufficient applicants who are both eligible and qualified. As stated previously, the nomination of independent directors implicates the board's fiduciary duties. Boards should be free to nominate the candidates who are most qualified and who will contribute experience and skills that enhance board oversight. A rule requiring more nominees than directorships to be filled may force boards to nominate candidates who meet the minimum requirements for eligibility and qualifications, but who are not the most qualified considering the board's particular needs at the time. Such a rule potentially limits the board's role to that of a conduit, merely placing eligible, qualified candidates' names on the ballot. Given that independent directors are elected at large, shareholders may not be familiar with candidates who are not from their states, and they should be able to rely on the board's judgment in identifying the most highly qualified candidates.
- Clarify that the Board May Immediately Elect a Member Director if the Number of Nominees Is Insufficient. The preamble to the Interim Final Rule states that the board

must wait until January 1 of the year following an election to elect a member director to fill a vacancy resulting from insufficient nominees. However, sections 1261.7(c) and 1261.14(a) together require the board to fill such a vacancy "as soon as practicable after any vacancy occurs." We believe that these sections of the Interim Final Rule correctly permit the board to fill such a vacancy immediately, so that the member director can begin service on January 1. To delay such action until January 1 may cause a board to violate the statutory board composition requirements and may prolong the length of a vacancy.

- Do Not Require 20 Percent of Eligible Votes Cast to Elect Independent Directors. The Bank requests that this requirement be deleted, or, in the alternative, that the minimum percentage be lowered to 10 percent. The Bank understands the concern the requirement is designed to address – that director-nominated candidates may not be the choice of shareholders. However, such a concern is minimized in the context of a cooperative. In addition, the requirement seems to contradict the Bank Act, as discussed below. If, despite these factors, the FHFA determines to retain such a requirement, the requirement should be reduced to a lesser percentage, such as 10 percent, to avert the possibility of failed elections.
  - This is Not an Issue Given the Bank's Cooperative Structure. The FHFA's reason for adopting this requirement is not persuasive in the context of cooperatives such as the FHLBanks. The FHFA believes that receiving at least a minimum percentage of votes affirms that the candidate is the choice of the members. The FHFA's concern is appropriate for a typical corporation where the board essentially is self-perpetuating in that the entire board comprises individuals nominated by each other without any shareholder input and many of whom are "insiders" (i.e., members of management). In contrast, FHLBank shareholders directly nominate 60 percent of the board. If shareholders believe the board is nominating inappropriate candidates for independent directorships, they – unlike shareholders in a typical corporation – can easily replace the majority of the board. In addition, no member of management can serve on the board of an FHLBank. This independence from management, together with a majority of directors nominated directly by shareholders, is sufficient to mitigate the concerns about director accountability to shareholders that seem to underpin the Finance Agency's motivation in adopting this requirement.
  - This Requirement Contradicts the Bank Act. The meaning of "plurality" is well-understood in the context of corporate director elections. With plurality voting, a director who receives the most votes is elected without regard to the number of votes actually cast or eligible to be cast. Given the well-settled understanding of plurality voting, the plain language of HERA does not support imposition of a percentage requirement. In addition, Congress presumably was aware of the widespread discussion of the "majority vote" movement when it adopted HERA and did not include such a provision, electing instead to retain the plurality rule.

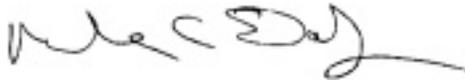
The Bank respectfully requests that the FHFA reconsider this requirement, particularly in light of the fact that the rule may cause elections to fail, with the result that an FHLBank may violate the statutory board composition requirements.

member as of December 21, 2007. The Bank requests that the FHFA clarify the rule to permit the Bank to fill such vacancies with an officer or director of an institution that is a member at the time of the board's election to fill the vacancy and to apply the four-years' experience requirement to public interest directors elected in this manner by the board.

- Bylaws and Independent Director Nominating and Election Procedures. The Bank requests the FHFA not require the FHLBanks to include detailed procedures in their bylaws for the nomination and election of independent directors. The Interim Final Rule is, effectively, the procedure. Therefore, the statutory requirement for inclusion of such procedures in the FHLBanks' bylaws can be satisfied with a reference to applicable regulations.

Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Daly", with a stylized flourish at the end.

Mike Daly  
Chairman of the Board  
Federal Home Loan Bank of Seattle