Comment #3

FHLBank Topeka
Building Communities Together

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By e-mail to RegComments@FHFA.gov

Alfred M. Pollard, General Counsel
Christopher Curtis, General Counsel
Federal Housing Finance Agency
Fourth Floor, 1700 G Street, NW
Washington, DC 20552

Attn: Comments/RIN 2590-AA08

Re: Federal Housing Finance Agency Proposed Amendment to Interim Final Rule on Golden Parachute and Indemnification Payments; RIN 2590-AA08

Dear Messrs. Pollard and Curtis:

The Federal Home Loan Bank of Topeka (FHLBank Topeka) is pleased to submit comments on the proposed amendment published in the *Federal Register* November 14, 2008, to the Interim Final Rule on Golden Parachute and Indemnification Payments. The proposed amendment would add provisions to the Interim Final Rule to prohibit certain indemnification payments by regulated entities, including FHLBanks, to entity-affiliated parties, and would also broadly restrict claims for employee benefits against receivers of regulated entities.

While FHLBank Topeka agrees that it may be appropriate to prohibit indemnification in certain situations, especially in the case of serious, willful violations causing substantial loss to a regulated entity, we believe that the proposed amendment places excessive restrictions on indemnification and the rights of employees to earned benefits. If these restrictions are not revised or clarified, as we request in the following comments, the FHLBanks could face increased difficulties in attracting and retaining well-qualified directors, and in retaining employees in any times of perceived financial difficulties.

1. Extend Indemnification Authority for First and Second Tier Civil Money Penalties to FHLBanks.

Under subsection (2)(iii) of the definition of "prohibited indemnification payment" in proposed § 1231.2, a regulated entity may indemnify its entity-affiliated parties against first and second-tier civil money penalties only if it is in conservatorship. We believe it is very reasonable to indemnify for the kinds of unknowing, inadvertent regulatory violations which form the basis for first and second tier civil money penalty liability and see no reason why it should be limited to regulated entities in conservatorship, currently Fannie Mae and Freddie

Mac, and currently denied to the FHLBanks. Also, we note that 12 U.S.C. § 4636(g), as amended, prohibits indemnification for the more serious *third* tier penalties only, which implies that indemnification for first and second tier penalties should be permitted for all regulated entities and not limited to those in conservatorship.

Therefore, we urge you to remove the words "where the regulated entity has been placed in conservatorship" from the end of subsection (2)(iii). In addition, we request that the exemption for indemnifying against first and second tier civil money penalties include legal and professional fees and expenses attributable to the charges resulting in such penalties.

2. Clarify Partial Indemnification Exception.

In proposed § 1231.2, subsection (2)(ii) of the definition of "prohibited indemnification payment" permits partial indemnification when there has been a final adjudication or finding in connection with a settlement favorable to the entity-affiliated party on some but not all charges, unless the proceeding or action resulted in a "final prohibition order" against the entity-affiliated party. Please add a definition of "final prohibition order" to the regulation.

3. Remove Sentence that Would Deny Valid Employee Benefit Claims Against a Receiver.

Proposed § 1231.6 includes the following sentence:

> "Claims for employee welfare benefits or other benefits which are contingent, even if otherwise vested, when a receiver is appointed for any regulated entity, including any contingency for termination of employment, are not provable claims or actual, direct compensatory damage claims against such receiver."

We are concerned that if a receiver were appointed for a regulated entity, this sentence might result in its employees' loss of earned benefits under 401(k) plans, defined benefit plans, retiree life and medical plans, death and disability benefits, unused leave, and deferred compensation plans, even if the benefits have vested. We see no basis for such a draconian result, especially in view of the fact that this sentence would apply to *all* employees, not only executive officers.

Retaining employees during financial difficulties is a challenge under any circumstances, and this sentence would only exacerbate the problem as well as allow highly unjust denials of earned benefits. It would certainly encourage employees with significant accrued benefits to leave a regulated entity at the first sign of trouble rather than risk the loss of valuable earned benefits. We urge you to delete this sentence.

In the alternative, if you decline to remove this sentence, we ask that its scope be properly limited as follows:

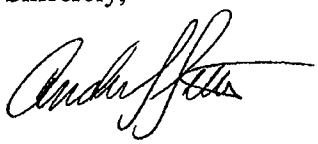
- At the beginning of the sentence please replace "Claims for employee welfare benefits or other benefits" with "Golden parachute payments prohibited by the Director and prohibited indemnification payments."

- The final version of the proposed amendment should indicate that the sentence in question does not apply to any benefits that have vested before the effective date of the amendment.

- The final version of the proposed amendment should state that the sentence in question does not apply to claims for employee benefits against a conservator of a regulated entity.

We appreciate the opportunity to comment on the proposed amendment. If you have any questions or would like to discuss any of our comments, please call Patrick C. Doran, Senior Vice President and General Counsel (785-438-6054) or me (785-438-6001).

Sincerely,



Andrew J. Jetter
President and CEO