Comment # 5

FHLBank
PITTSBURGH

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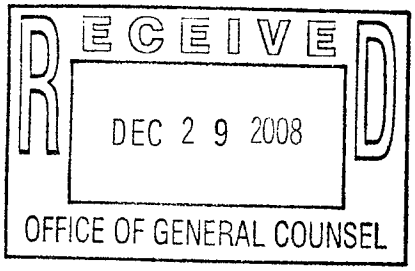
John R. Price
President,
Chief Executive Officer



December 29, 2008

BY FEDERAL EXPRESS AND E-MAIL

Alfred M. Pollard, General Counsel
Christopher Curtis, General Counsel
Federal Housing Finance Agency
1625 Eye Street, NW
Washington, DC 20006
Attention: Public Comments/RIN 2590-AA08

Re: RIN 2590-AA08 - Federal Housing Finance Agency Proposed Amendment to Interim Final Golden Parachute Payments Regulation Regarding Federal Home Loan Bank Indemnification Payments

Gentlemen:

On September 16, 2008, the Federal Housing Finance Agency ("FHFA") issued an interim final rule (the "Rule"), (amended September 19, 2008 and September 23, 2008) with respect to limitations and prohibitions on golden parachute payments by the Federal Home Loan Banks ("FHLBanks"). On November 14, 2008, the FHFA issued a Proposed Amendment to the Rule ("Proposed Amendment") to address prohibited and permissible indemnification payments with respect to any administrative proceeding brought by the FHFA against an FHLBank officer, director or other entity-affiliated party ("EAP"). This letter sets forth the comments of the Federal Home Loan Bank of Pittsburgh (the "Bank") with respect to the Proposed Amendment.

The twelve FHLBanks are large, complex financial institutions with assets of more than $1.4 trillion and loans outstanding of more than $1 trillion. The management of their balance sheets and investment portfolios requires highly skilled and sought-after staff, and the Bank competes against some of the nation's largest financial institutions for employees with the necessary experience and skills. Providing reasonable and competitive compensation plans, including appropriate indemnification benefits consistent with industry standards, ensures our ability to attract and retain these highly skilled employees.

The need to recruit and maintain a highly skilled workforce is a significant part of ensuring the prudential and safe and sound operation of the FHLBanks. Failing to retain these employees and the resulting inability to manage our obligations would conflict with our shared goal of serving the public interest.

It is in light of the above – and what we believe to be our shared policy goals – that we offer our suggestions and requests for clarification on the Proposed Amendment and further stress our desire that the Proposed Amendment and the Rule follow industry standards on the application of limits on "Golden Parachute" payments including indemnification payments, non-qualified plan and other compensation arrangements.

Under HERA Only Third Tier Civil Money Penalties Are Prohibited from Indemnification.

Section 1114 of the Housing and Economic Recovery Act of 2008 ("HERA") provides that a Regulated Entity may not reimburse or indemnify any individual for any penalty imposed under 12 U.S.C. 4636(b)(3), which refers to knowing violations, or "third tier" civil money penalties. See 12 U.S.C. 4636(g). HERA does not prohibit indemnification for first and second tier civil money penalties, that is, indemnification for unintentional misconduct. The exceptions from the definition of "prohibited indemnification payment" in Section 1231.2 of the Proposed Amendment already exclude indemnification payments for first and second tier civil money penalties from the prohibited indemnification payment definition with respect to a regulated entity in conservatorship. Consistent with HERA, the Bank believes that indemnification payments in regard to first and second tier civil money penalties should be excluded from the definition of "prohibited indemnification payments" for the Regulated Entities generally (FHLBanks, FHLMC and FNMA), not just those in conservatorship.

We agree with the FHFA's logic in the preamble to the Proposed Amendment that regulated entities in conservatorship should be permitted to indemnify EAPs for unknowing and inadvertent regulatory violations which form the basis for first and second tier civil money penalty liability. But, by not extending this authority to all Regulated Entities not in receivership, the Proposed Amendment penalizes healthy institutions.

Additionally, revising the definition will also be consistent with the terms of Section 1231.4 of the Proposed Amendment which states that indemnification for civil money penalties (other than "third tier penalties") is permissible when the Bank's board of directors affirmatively determines in good faith to make such indemnification and determines that the indemnification payment will not have a material adverse affect on safety and soundness.

In addition to revising the language in subsection (iii) of the "exception" section of the "prohibited indemnification payment" definition in Section 1231.2 as described above, subsection (ii) should similarly be revised to permit the use of insurance to pay or reimburse the costs of first and second tier civil money penalties.

Section 1231.6 - the Receivership Provision

As outlined in our October 28, 2008 comment letter on the Rule, we believe that designing and offering reasonable compensation plans, including appropriate separation and other benefits consistent with industry standards, ensures our ability to attract and retain the necessary talent for the management and operation of the Bank. This ability is key to maintaining prudent safe and sound operation of the Bank. The Bank believes that the following language in Section 1231.6 of the Proposed Amendment raises several significant concerns in regard to retirement, deferred compensation and other employee benefits payable following separation from employment:

> *Claims for employee 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.*

Conflicts with Existing Federal Appeals Court Case Law with Respect to Other Compensation and Benefit Plans. While the Federal Deposit Insurance Corporation's ("FDIC") regulations governing prohibited indemnification payments include similar language, case decisions interpreting the FDIC regulations have found that such employee claims were provable against the receiver. Consequently, the Receivership Provision is not consistent with the current industry standards applicable to such plans as articulated by the courts.

For example, in the Bank's jurisdiction, the Eastern District Court in Pennsylvania and the Third Circuit Court of Appeals have upheld claims by employees for payment of supplemental pension benefits against the FDIC as receiver. See Soriero v. FDIC, 887 F.Supp. 103 (E.D. Pa. 1995) and McCarron v. FDIC, 111 F.3d 1089 (3rd Cir. 1997). Other Circuit Courts considering these issues have upheld similar employee claims. See McMillan v. FDIC, 81 F.3d 1041 (11th Cir. 1996); OPEIU v. FDIC, 27 F.3d 598 (D.C. Cir. 1994); and Monrad v. FDIC, 62 F.3d 1169 (9th Cir. 1995).

As courts are likely to look to the Federal Deposit Insurance Act ("FDIA") and FDIC regulations' case law to provide guidance in interpreting similar receivership provisions in HERA, the Receivership Provision in the FHFA's Proposed Amendment is likely to be in doubt in the Third Circuit and other Circuit Courts.

Conflicts with Section 1231.2 of the Rule on Nonqualified Plans. Consistent with HERA, the definition of "golden parachute payment" in Section 1231.2 of the Rule excludes "any payment pursuant to a bona fide deferred compensation plan." See 12 C.F.R. 1231.2(f)(2)(ii). Therefore, the Rule already recognizes nonqualified deferred compensation plan payments as excluded from the types of compensation and benefits payments which are prohibited to be made by a Regulated Entity in receivership. The addition of language in Section 1231.6 stating that payments under benefit plans such as nonqualified deferred compensation plans are not provable claims against a receiver conflicts with the terms of 1231.2 recognizing payments under such plans as permissible payments for an entity in receivership.

Creates an Incentive for Employees to Leave a Troubled Institution. The Bank strongly believes that the Receivership Provision, currently worded to include all employees at a Regulated Entity, creates an unintentional incentive for employees of a struggling Regulated Entity to resign to avoid a potential loss of accrued assets. Any such employee with benefits payable only after termination of employment, but not under receivership, will logically consider resigning to avoid such a loss. Retaining key employees during financial difficulties is challenging, and the Receivership Provision would only exacerbate the problem and in turn negatively impact efforts to stabilize the institution.

Conflicts with ERISA Plan Requirements. The Receivership Provision, to the extent that it purports to prohibit or prevent payment of benefits pursuant to ERISA-protected plans, such as the Bank's qualified retirement plans (including a defined benefit plan subject to the protection of the Pension Benefit Guaranty Corporation) is inconsistent with ERISA rules. As written, Section 1231.6 suggests that unless an employee previously retired or terminated employment, their right to benefits following employment termination (e.g., qualified plan pension benefits) is nullified. This provision of the final regulation should be revised to clarify that the protections within ERISA plans are not affected by receivership.

In the event that FHFA declines to remove the Receivership Provision, we suggest the following changes to it:

- The final amendment should add a definition of "claims for employee benefits or other benefits which are contingent" and that definition should include only golden parachute payments prohibited by the Director and prohibited indemnification payments as defined in the Proposed Amendment. Claims specifically excluded from the definition of "golden parachute payment" in the final version of the regulation should also be excluded from this definition. Employees of Regulated Entities should be provided comfort that the Receivership Provision will not apply to their claims for earned benefits under 401k plans, defined benefit pension plans, retiree life and medical plans, death and disability benefits, unused leave and deferred compensation plans.

- The final amendment should indicate that the Receivership Provision does not apply to benefits that have vested prior to the effective date of the amendment.

- The final amendment should state that no similar principle applies to claims for employee benefits against a conservator of a regulated entity.

Clarification of Definitions and Provisions

Clarify that Indemnification is Permissible in Connection with a Settlement. As drafted, Section 1231.2 provides a limited exception from the definition of "prohibited indemnification payment" in connection with a settlement where there is a finding that the EAP has not violated laws or regulations or engaged in unsafe or unsound practices. As a practical matter, most settlements do not include affirmative findings of non-violation. Instead, settlements typically include broad language stating that the settlement is entered

into without admission. Consequently, the Bank suggests that the exception language in subpart (2)(ii) of the exceptions from the definition of "prohibited indemnification payment" be revised to state that, unless the proceeding results in a final prohibition order, indemnification is permissible in connection with a settlement in which the EAP does not admit wrongdoing.

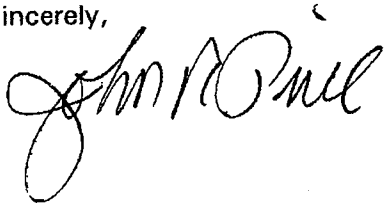
Partial Indemnification Provision. The Proposed Amendment permits partial indemnification when there has been a final adjudication, settlement or finding favorable to the EAP on some, but not all, charges, unless the proceeding or action resulted "in a final prohibition order" against the EAP. A "final prohibition order" is not defined and we request clarification of this definition.

Clarify Scope of Section 1231.4. Please clarify that the Proposed Amendment requires a Regulated Entity to go through the Section 1231.4(c) process (which requires specific findings by the Regulated Entity's board of directors in a good faith inquiry based on the information reasonably available to it) as a precondition to advancement of legal or professional expenses by the Regulated Entity to an EAP, but not in connection with the advancement of such expenses by a third party insurer under insurance or bonds purchased by the Regulated Entity pursuant to Section 1231.2.(2)(i).

Clarify That a Regulated Entity Will Not Be Rewarded for Denying Advancement of Legal Expenses or Penalized for Approving Them. In light of the policy concerns and constitutional principles animating both Judge Kaplan's decisions in the KPMG litigation and the sections on advancement of legal fees contained in the Department of Justice's McNulty Memorandum, we believe it would be helpful and appropriate for the FHFA to clarify that it will not treat a regulated entity (i) more favorably for having denied an EAP advancement of legal fees or (ii) less favorably for having approved advancement of legal fees to an EAP.[1] A determination by a board of directors of a regulated entity under proposed Section 1231.4(c)(1) should be made objectively and based solely on the merits of the EAP's claim for indemnification.

On behalf of the Bank, I appreciate the opportunity to present these comments.

Sincerely,



[1] See United States v. Stein, 435 F.Supp. 2d 330 (S.D.N.Y. 2006) and Memorandum from Deputy Attorney General Paul McNulty, Principles of Federal Prosecution of Business Organizations (2006).