



August 25, 2014

BY ELECTRONIC SUBMISSION
AT WWW.FHFA.GOV/OPEN-FOR-COMMENT-OR-INPUT

Alfred M. Pollard
General Counsel
Attn: Comments/RIN 2590-AA67
Federal Housing Finance Agency
400 Seventh Street, SW, Eighth Floor
Washington, D.C. 20024

**Re: Notice of Proposed Rulemaking Regarding Minority and Women
Inclusion Amendments
RIN: 2590-AA67**

Dear Mr. Pollard:

On behalf of the undersigned Federal Home Loan Banks (collectively, the “Banks,” each a “Bank”) and the Office of Finance (the “OF”), we appreciate this opportunity to comment on the notice of proposed rulemaking (“Proposal”) published by the Federal Housing Finance Agency (the “FHFA”) in the Federal Register on June 25, 2014 to amend its regulation on minority and women inclusion (“MWI”).

A. Introduction and Executive Summary.

We strongly support the goal of Section 1116 of the Housing and Economic Recovery Act of 2008 (“HERA”) to encourage diversity in all aspects of the Banks’ and Office of Finance’s management, employment, and business activities. The Banks and the OF have a strong culture of supporting diversity, inclusion and non-discrimination

through its policies, practices, and core principles, and we fully support the underlying intent of the Proposal to encourage diversity on the board of directors of each entity.

We have reviewed the Proposal and offer the following comments, which are discussed in further detail below in Sections B through D:

- We suggest that the FHFA include the board diversity self-reporting request in the annual director certification forms.
- The board diversity reporting requirement does not need to be tied strictly to the Form EEO-1 diversity categories or instructions. The board of directors of each Bank and the OF should retain the flexibility to self-report additional diversity categories as each board deems appropriate.
- We request clarification that the Banks and the OF are not required to report observed diversity information if a director chooses not to self-report.
- The Proposal should include a phase-in period for the year-over-year comparison reporting requirement.
- We note that the director nominations and elections process, prescribed by regulation in light of the Banks' unique cooperative structure, affects the Banks' and OF's diversity outreach and strategies in the solicitation and nomination of individuals to the boards of directors. As such, we ask that any final rule acknowledge the interplay between the MWI regulations and the director election regulations.

Each of the Banks and the OF recognize that diversity on its board of directors strengthens its ability to respond to its members' needs and stay nimble in a rapidly-changing environment. As with other aspects of the Banks' and OF's business, defining, maintaining and even increasing diversity directly impacts individuals and thus requires careful thought and implementation.

B. Board Demographic Reporting.

1. We support the careful manner in which proposed 12 C.F.R. § 1207.23(b)(9)(i)(A) was drafted, which will require the Banks to request board diversity demographic data but also clearly acknowledges that each director's self-identification should be voluntary and that a Bank's reporting should be without personally identifiable information. We propose that a simple method for obtaining this board diversity demographic data would be for the FHFA to include this voluntary self-identification request in the FHFA's Independent Director Annual Certification form and annual Member Director Eligibility Certification form.

2. Proposed 12 C.F.R. §1207.23(b)(9)(i)(B) requires the demographic information to follow the same classifications as those on the Form EEO-1. For the reasons set forth

below, if the Banks and the OF are to be responsible for the collection request, we request that the reference to the Form EEO-1 categories be deleted from the Proposal and replaced with a reference to the diversity categories set forth in the MWI regulation.

We note that the Form EEO-1 minority categories are slightly different from the definition of minority in 12 C.F.R. §1207.1:

12 C.F.R. §1207.1: Black (or African) American; Native American (or American Indian); Hispanic (or Latino) American; or Asian American.

Form EEO-1: Hispanic or Latino; Black or African American (not Hispanic or Latino); Native Hawaiian or Other Pacific Islander (not Hispanic or Latino); Asian (not Hispanic or Latino); American Indian or Alaska Native (not Hispanic or Latino); or Two or more Races (not Hispanic or Latino).¹

Further, the Form EEO-1 does not include a category for individuals with disabilities.

Unlike the employee demographic information reported by the Banks and the OF, we believe that it is neither necessary nor appropriate for board demographic information to follow the Form EEO-1 categories or instructions. Employee demographic reporting on Form EEO-1 was a well-established existing legal requirement for any employer with 100 or more employees when the FHFA finalized the MWI regulation in 2010. It was reasonable for the FHFA to require employee demographic reporting through the Form EEO-1, thus avoiding duplicating reporting burdens and ensuring that the Banks' and OF's employee demographic reporting to the FHFA is consistent with similar information reported to other federal agencies. However, there is no present legal requirement for the Banks or the OF to report board demographic information to any other agency or regulator. The Banks' and OF's boards range from 13 to 21, with an average size of 14.7 directors, close to the 15 employees or less size that would exempt an employer from Form EEO-1 reporting.² The small size of the reporting pool and greater visibility of each respondent notwithstanding reporting in the aggregate necessitates heightened sensitivity.

¹ See Instruction Booklet to the Equal Employment Opportunity Standard Form 100, Rev. January 2006, Employer Information Report EEO-1 ("EEO-1 Instruction Booklet").

² Only employers with 15 or more employees are covered by Title VII of the Civil Rights Act of 1964 as amended and subject to certain Equal Employment Opportunity Commission regulations on employment record keeping regulations. See 42 U.S.C.A. §2000e(b) definition of employer. Certain large employers and federal contractors are further subject to Form EEO-1 filing requirements.

We request the FHFA clarify that the Banks shall not report observed diversity statistics for any director who determines not to report his or her diversity status. Although this practice is encouraged for employers on the Form EEO-1,³ we believe reporting perceived diversity status for board members provides an opportunity for making poor assumptions and reporting inaccurate information, which can appear more pronounced when viewed against the small number of total directors for each Bank.

We also request, to be consistent with the overall scope of the MWI regulation, that any board demographic self-reporting request include a category for individuals with disabilities. The exclusion of such a category with respect to employees is due to potential tension with medical privacy and anti-discrimination statutes that do not have equivalent applicability to directors who are elected, not employed.

In addition, because the Banks and the OF believe diversity should be defined broadly for purposes of our outreach obligations,⁴ we suggest that the reference to the Form EEO-1 is unnecessary.

Please note that some Banks have been collecting voluntary self-identification information based on the minority categories described in 12 C.F.R. §1207.1. If the final rule requires this voluntary self-identification information based on the Form EEO-1 categories, some Banks will need to change their form of request, eliminating comparability to any past years' data.

Although we recognize that removal of the reference to Form EEO-1 categories from the Proposal may result in some differences in board demographic reporting among the Banks and the OF, the definition of minority provided by the MWI regulation will provide base information that may be used for comparisons. Any other diversity differences collected and reported by the Banks and the OF simply will be additional information.

³ See EEO-1 Instruction Booklet, instructing that "Self-identification is the preferred method of identifying the race and ethnic information necessary for the EEO-1 report. Employers are required to attempt to allow employees to use self-identification to complete the EEO-1 report. If an employee declines to self-identify, employment records or observer identification may be used."

⁴ In fact, some Banks have expanded their Equal Employment Opportunity statements beyond the regulatory minimum 'protected classes' to include categories that are commonly cited by public and private companies.

3. The Proposal's requirement to provide comparison data should be clarified. While some Banks have previously collected the data (using the minority categories in the MWI regulation), others have not done so. Accordingly, we request a phase-in period for the year-over-year comparative data such that the first required year-over-year comparison should be included in the Banks' 2015 MWI annual reports, which will be filed in March 2016.

C. Board Diversity Outreach.

1. The Banks and the OF support the FHFA's efforts to encourage diversity outreach in the solicitation and nomination of individuals to the boards of directors. We request the FHFA take a broad view of diversity for purposes of proposed 12 C.F.R. §1207.23(b)(9)(ii). Giving the Banks and the OF broad discretion to define diversity for this purpose would be consistent with the FHFA's previous discussion of board diversity⁵ as well as the Securities and Exchange Commission ("SEC") Regulation S-K approach to disclosing board diversity.⁶ Since "diversity" is not specifically defined in 12 C.F.R. §1207.1, an expansive approach for this purpose would not be inconsistent with the MWI regulation.

⁵ In the preamble to the FHFA's final rule on Bank boards of directors' eligibility and elections, the FHFA noted that representation of different types of member institutions might be beneficial to the Banks in considering the diversity of their boards, although the FHFA specifically chose not to include any provisions in the final rule mandating that the boards of the Banks include representatives from any particular industry groups or other populations. See Federal Register Vol. 74, No. 193 (October 7, 2009), at 51453.

⁶ In 2009, the SEC issued a final rule on proxy disclosure enhancements that included amendments to Item 407(c) of Regulation S-K to require disclosure of whether, and if so how, a registrant's nominating committee considers diversity in identifying nominees for director. In addition, if the nominating committee (or the board) has a policy with regard to the consideration of diversity in identifying director nominees, disclosure is required of how this policy is implemented, as well as how the nominating committee (or the board) assesses the effectiveness of its policy. The SEC specifically chose not to define diversity for these requirements, instead acknowledging in the preamble to the final rule that "companies may define diversity in various ways, reflecting different perspectives. For instance, some companies may conceptualize diversity expansively to include differences of viewpoint, professional experience, education, skill and other individual qualities and attributes that contribute to board heterogeneity, while others may focus on diversity concepts such as race, gender and national origin" and that "for purposes of this disclosure requirement, companies should be allowed to define diversity in ways that they consider appropriate." See Federal Register Vol. 74, No. 245 (December 23, 2009), at 68344. The Banks are exempt from proxy disclosure requirements, and the OF is not an SEC registrant.

2. The Banks request that the Proposal acknowledge the following aspects of the director nomination and election process (12 C.F.R. §1261 et seq.; the “election regulations”) developed in recognition of the Banks’ cooperative ownership structure.

a. Geographic Limitations. The residency requirements and other geographic limitations of the election regulations limit the pool of available candidates for both the member and independent directorships.⁷ These limitations do not apply to the Enterprises or, in general, to corporate boards of directors.

b. Eligibility Requirements and Nomination Procedures. The eligibility requirements and nomination procedures for member directors are prescribed by regulation⁸ and neither the Banks nor their boards have discretion to evaluate a nominee other than to verify eligibility (based on an FHFA prescribed form of certification) prior to placing a nominee on the election ballot. The election regulations specifically restrict the Banks from active involvement in the member directorship nomination in order to vest the nomination of member directors in the members.⁹

Although the boards are actively involved in nominating one or more individuals for an independent directorship, the eligibility requirements are still prescribed by regulation. We note that the independent director qualifications identified in 12 C.F.R. §1261.7(e) do not include any diversity categories as additional or illustrative factors to be evaluated.¹⁰ Similarly, the board skills and experience assessment of 12 C.F.R. §1261.9(a), and any

⁷ Member directors must be an officer or director of a member that is located in the district in which the Bank is located (12 C.F.R. §1261.5(a)(2)), and independent directors must be a bona fide resident of the district in which the Bank is located (12 C.F.R. §1261.5(c)(2)).

⁸ See 12 C.F.R. §1261.5(a) (establishing member director eligibility requirements) and 12 C.F.R. §1261.7(b) (providing that any member that is entitled to vote in the election may nominate an eligible individual to fill each available member directorship for its voting state by delivering a nominating certificate to the Bank prior to the established deadline. The nominating certificate shall include the name of the nominee and the name, location, and FHFA ID number of the member the nominee serves as an officer or director.)

⁹ See Federal Register Vol. 74, No. 193 (October 7, 2009), at 51453.

¹⁰ 12 C.F.R. §1261.7(e) requires that each non-public interest director and each nominee for such directorship “have experience in, or knowledge of, one or more of the following areas: auditing and accounting, derivatives, financial management, organizational management, project development, risk management practices, and the law” and “knowledge or experience ... commensurate with that needed to oversee a financial institution with a size and complexity that is comparable to that of the Bank.” Each public interest independent director and each nominee for such directorship must have “more than four years’ experience representing consumer or community interests in banking services, credit needs, housing or consumer financial protection.”

statement about the results of such an assessment in the announcement of elections (as permitted by 12 C.F.R. §1261.7(a)) or in the ballots (as permitted by 12 C.F.R. §1261.8(b)) emphasizes qualifications rather than individual qualities such as diversity self-identification. While the election regulations do not preclude a Bank's board of directors from considering diversity as a factor when (in consultation with the Bank's Advisory Council) nominating an individual for an independent directorship,¹¹ the election regulations appear to assign a diversity-neutral primacy to these enumerated skills and experience qualifications.

The election regulations restrict actions that the Bank or directors may take affecting director nominations and elections. Section 1261.9 prohibits a Bank director, officer, attorney, employee or agent from communicating in any manner that he or she directly or indirectly supports or opposes the nomination or election of a particular individual for a directorship, or take any other action to influence the voting with respect to any particular individual, except:

- as part of a skills and experience assessment and statement as permitted by 12 C.F.R. §1261.9(a);
- in his or her personal capacity, to support the nomination or election of any individual for a member directorship, provided that he or she does not purport to represent the views of the Bank or its board of directors in doing so; or
- to support the candidacy of any individual nominated by the board of directors for election to an independent directorship.

While this restriction on communication does not prohibit solicitation of diverse candidates, when combined with the qualifications focus of the eligibility and nomination regulations, the restriction appears to limit the extent to which a Bank may address gender or minority identification in the election process, particularly with respect to member directorships. The Banks believe that general outreach and education efforts are consistent with the terms of 12 C.F.R. §1261.9, such as the following actions: (i) general outreach to encourage a diverse pool of nominations for member directorships and applications for independent directorships; (ii) including an EEO-type of statement in member director nomination, independent director application, and election materials; (iii) encouraging trade associations to consider diverse candidates for member director nominations, or encouraging a Bank's Advisory Council to encourage applications from diverse candidates for an independent directorship; (iv) providing information about

¹¹ As noted previously, the FHFA encouraged the Banks in the preamble to the final rule regarding elections to consider the diversity of their boards. See Federal Register Vol. 74, No. 193 (October 7, 2009), at 51453.

Bank directorships and the election process through general outreach to professional affinity groups to which officers and directors of member institutions may belong; and (v) other similar general outreach and education efforts. It is far less clear whether more direct actions, such as a Bank identifying specific individuals as potential nominees and encouraging nomination of that individual for a member directorship are contemplated under this restriction on communications.

c. Incumbent Independent Directors. Once an eligible, qualified independent director is initially elected to the board of directors, the director election process provides the opportunity for such individual to serve on the board of directors for up to twelve years before becoming subject to term limits.¹² The election regulations specifically give the board flexibility to nominate only one candidate or multiple candidates for each open independent directorship, subject to election by the members.¹³ Assuming that the incumbent independent director remains interested in and capable of serving, the incumbent's experience, historical knowledge, diversity (through gender, race, class, professional experience, community involvement, etc.) and board leadership skills built up over years of service could reduce a Bank's or its board's interest in actively soliciting additional potential nominees for the independent director seat. The election regulations appropriately balance a board's right to nominate a candidate, the members' right to elect a candidate,¹⁴ and the Bank's need for a range of seasoned and new directors through specific term limits.

¹² Section 7(d) of the Federal Home Loan Bank Act establishes term limits, providing that a Bank director may not be elected to more than three consecutive full (four-year) terms. Independent directors have only been subject to election (rather than appointment) since HERA (2008), and appointive terms do not count for term limit purposes. See Federal Register Vol. 74, No. 193 (October 7, 2009), at 51454. As a result, incumbent independent directors previously appointed by the Federal Housing Finance Board (FHFB) and who remain on a Bank board will not "term out" until 2020 (or later, to the extent that the director commenced an appointive term shortly before HERA was enacted, or was elected to a shortened term for staggering purposes).

¹³ The Banks have found this flexibility to be important, for the reasons suggested in the preamble to the FHFA's September 2008 interim final rule on director elections (Federal Register Vol. 73, No. 188 (September 26, 2008) at 55712): the board of directors of a Bank might determine that the most highly qualified candidates may not apply if they would be required to participate in a contested election, a process that would be unusual compared to other corporate board election processes. We do not understand the Proposal to require a Bank board of directors to seek a replacement for or fail to renominate a qualified incumbent director for the purpose of increasing one form of diversity over another.

¹⁴ Section 1261.7(d) of the director election regulations; see also Federal Register Vol. 74, No. 193 (October 7, 2009), at 51455.

Given the potential length of an independent director's service on the board, a Bank's diversity outreach strategy might be longer term than a given year; instead, a Bank's strategy might comprise communicating with trade organizations, professional affinity groups, or other diversity groups outside of a given election cycle about the election process, the timing of a possible independent director seat opening, and building a network of future independent director applicants over a multi-year horizon. The Banks and the OF may vary in their approach to this.

The Banks urge the FHFA to acknowledge the interplay between the MWI regulations and the election regulations and to consider that each Bank has adopted its own interpretation of compliance with Section 1261.9. The Banks appreciate the flexibility to undertake outreach activities promoting board diversity consistent with their own current or evolving policies and procedures, pursuant to Section 1261.9 for purposes of implementing the director elections process.

D. Requested Changes to Proposal.

Given our comments discussed above, we urge the FHFA to make the following changes to the proposed rule (deletions shown by strikethrough and additions shown by underlining):

12 C.F.R. §1207.23(b):

(9)(i) Data showing for the reporting year by minority ~~and~~, gender and disability classification, the number of individuals on the board of directors of each Bank and the Office of Finance –

(A) Using data collected by each Bank and the Office of Finance through an information collection requesting each director's voluntary self-identification of his or her minority ~~and~~, gender and disability classification and any additional classifications the board of directors may deem appropriate to request, without personally identifiable information;

(B) Using minority and disability classifications consistent with the definitions of "minority" and "disability" provided in 12 C.F.R. §1207.1 ~~the same classifications as those on the Form EEO-1;~~ and

(ii) A description of the outreach activities and strategies executed during the preceding year to promote diversity, however defined by the regulated entity's board of directors, in nominating or soliciting nominees for positions on boards of directors of the Banks and the Office of Finance, consistent with 12 C.F.R. §1261.9.

(10) A comparison of the data reported by Fannie Mae and Freddie Mac under paragraphs (b)(1) through (b)(8) of this section, and by the Banks and the Office of Finance under paragraphs (b)(1) through (b)(9) of this section, to such data as reported in the previous year together with a narrative analysis. This comparison data will be voluntary for the first annual report following the effective date of this regulation and will be required for each annual report thereafter.

* * * * *

As the chair of the board of directors, the chair of the governance committee of the board of directors, or the minority and women inclusion officer of our respective Bank or the OF, as indicated below, we appreciate your consideration of our comments.

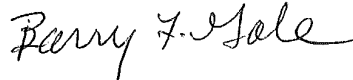
Sincerely,

Federal Home Loan Bank of Atlanta



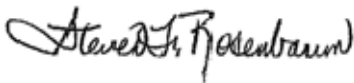
M. Bryan Delong
Senior Vice President, Director of Human
Resources and Staff Services

Federal Home Loan Bank of Boston



Barry F. Gale
Senior Vice President/Executive Director –
Human Resources

Federal Home Loan Bank of Chicago



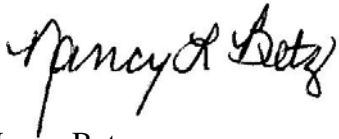
Steven F. Rosenbaum
Chairman of the Board of Directors

Federal Home Loan Bank of Cincinnati



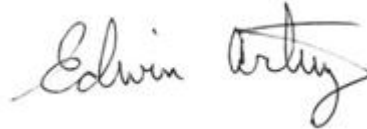
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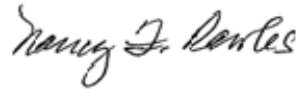
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