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June 2, 2006

Federal Housing Finance Board  
Attention: Public Comments  
1625 Eye Street NW  
Washington, DC 20006

Dear Sir or Madam:

The Independent Community Bankers of America<sup>1</sup> welcomes the opportunity to comment on the Federal Housing Finance Board's proposed rule, Federal Home Loan Bank Director Elections.

The Finance Board proposes to amend its rules to assist each Federal Home Loan Bank in having a board of directors whose members possess the range of skills and experience best suited to administer the affairs of the FHLBank. The Finance Board intends the rule to enhance the corporate governance of each FHLBank by more closely aligning the experience and skills of individual directors with the expertise the FHLBank has identified as appropriate to enhance the board of directors in providing overall board management of the FHLBank.

### Summary of ICBA Views

**ICBA strongly opposes the proposed rule due to concerns that while it is intended to improve governance in the FHLBanks, it is more likely to undermine good governance as FHLBank directors would be given the ability to influence elections in an improper manner.** Many community banks, including some currently serving as FHLBank directors, have told ICBA that they see the proposal as "anti-small

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<sup>1</sup> *The Independent Community Bankers of America represents the largest constituency of community banks of all sizes and charter types in the nation, and is dedicated exclusively to representing the interests of the community banking industry. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.*

*With nearly 5,000 members, representing more than 18,000 locations nationwide and employing over 265,000 Americans, ICBA members hold more than \$876 billion in assets \$692 billion in deposits, and more than \$589 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at [www.icba.org](http://www.icba.org).*

member” and an attempt to get more representatives of the largest members on the boards—members that otherwise would not have sufficient votes to be elected.

ICBA is concerned that elements of the rule create an environment where seated directors could use the election process to improve their reelection chances or the election of their preferred candidates, members that may or may not have the skills that are truly needed by the board and FHLBank. Due to the Finance Board’s decision not to fill appointed director seats, the number of directors sitting on boards has significantly declined, making it easier for directors to influence elections by inappropriately using the proposed authorities. Congress created the FHLBanks as a cooperative with voting limits to ensure smaller members get fair representation. **In our view, the proposal would undermine the statutory election process that ensures that all members have a voice in FHLBank governance.**

FHLBanks must be well governed and operated in a safe and sound manner to ensure that they remain a reliable source of competitively priced funds for their members. ICBA recognizes that the operations of FHLBanks have become increasingly sophisticated and complex, far more so than the operations of many of their members. We do not believe that having a certain skill set automatically guarantees a person will be a good board member. The boards of directors of certain government sponsored enterprises have had individuals serving that appeared to have the skills and expertise needed to steer the organizations clear of their recent problems, yet did not. **We believe that there are ways, such as the use of consultants, hiring management and staff with the needed skills and educational opportunities for board members, to ensure that the FHLBanks have the leadership and expertise they need, yet not jeopardize the integrity of the elections.**

### **Election Process**

The Finance Board proposes to permit each FHLBank to conduct an annual assessment of the skills and experience which, if present in new directors, would enhance the capabilities of the board of directors. If, in the assessment process, particular skills or experiences are identified, each FHLBank may as part of its announcement of elections, notify its members of the identified skills and experience. The Finance Board proposes to include in the rule skills or experience in the areas of financial management and/or financial accounting, hedging, risk management, capital markets, disclosures required of issuers of securities, and housing finance as examples of what a FHLBank might determine to be appropriate skills or experience to add to its board of directors. A FHLBank would be allowed to identify these or other skills or experience or it could decide not to identify any skills or experience, as it sees fit.

Each FHLBank would be permitted to include with election notices sent to members at the start of the election process a brief statement describing the skills and experience that the FHLBank has identified as most likely to add strength to its board of directors. Members would continue to be free to nominate persons as they see fit. No nominee otherwise eligible for election would be excluded from a ballot based on whether or not the FHLBank perceives the nominee to have any of the skills or

experience that the FHLBank has included in the brief statement sent with the written notice.

The Finance Board proposes to allow each FHLBank, as part of the information on each ballot about each nominee, to describe briefly that nominee's skills and experience. The Finance Board believes that voting members, by having a description of the skills and experience of the nominees, will be better informed when those members face voting decisions. At present, the FHLBanks have no specific authorization to include on the ballots any information about a nominee's qualifications. Some FHLBanks and members have expressed a desire to have such information at the time of voting and the Finance Board believes that this is an appropriate means of providing such information to the members.

### **ICBA Comments**

While the proposed rule suggests certain skills and experience that should be sought in directors, FHLBanks would have total flexibility to determine what skills they ask for during the **nomination** process. ICBA is concerned that this flexibility could be abused and used to target certain individuals for directorships. We are even more concerned about the potential for abuse of these authorities at **election** time. For example, it does not appear that the rule would require that the skill set communicated at nomination time be exactly the same as that communicated at election time. While the proposal calls for an annual skill assessment, if only a subset is communicated at election time based on who is nominated, the process could be subject to abuse.

The proposal would give each FHLBank the ability to both determine what skills and experience it wants and communicate which candidate or candidates fit the bill—in essence communicate who it wants elected. We realize shareholders of publicly traded corporations are sent a ballot of directors nominated by the board, ensuring the election of certain individuals. However, we believe that giving the FHLBanks the authority to influence elections conflicts with their cooperative, member-run nature. **While we recognize that the intent of the proposal is to improve the governance of the FHLBanks, we strongly believe it will create an environment where the election process could be corrupted.**

### **Incumbent Directors**

**ICBA agrees with the Finance Board that incumbent directors should be able to act in their *individual capacities* to support any person for a position as an elective director.** We believe that it is important that incumbent directors in no way suggest that they represent the views of other directors or the FHLBank or its management. All members should be encouraged to be active in the election process and this is a right that should not be taken away from incumbent directors.

ICBA is concerned about the involvement of incumbent directors in the skill assessment process. These directors would be in the position to determine what skills are needed on the board, but would they have the potential to bias the skill set and board

communications in a manner that promotes their reelection? In our view, this would provide them an unfair advantage over candidates not serving on the board.

### **Prohibitions on Finance Board Involvement in Elections**

The Finance Board proposes to revise Section 915(b) by removing the prohibition on communications in any manner, directly or indirectly, that a director, officer, attorney, employee or agent of the Finance Board supports the nomination or election of a particular individual for an elective directorship or any other action to influence votes for a directorship. The Finance Board states that this prohibition was appropriate when it took an active part in the election process but now that it has devolved responsibility for administering elections to the FHLBanks, the prohibitions no longer serve their intended purposes.

ICBA is concerned that by removing these prohibitions, the Finance Board is inferring that such action may now be permissible. **While ICBA does not believe that it is the intent of the current Finance Board or its staff to become involved with FHLBank director elections, future members of the Finance Board may not act so independently. Thus, ICBA believes that the language should be retained in order to reinforce the independence of the Finance Board, now and in the future.**

### **Monitoring Election Process**

Should the Finance Board decide to permit the involvement of the FHLBank boards of directors in the election process as proposed, we urge it to carefully monitor how the FHLBank boards determine the types of skills they believe they need and what and how they communicate such needs to members in order to ensure that directors are fairly elected and the elections remain truly in the hands of members.

We appreciate the opportunity to comment. If you would like to discuss our views further, please call me at (202) 659-8111 or email me at [ann.grochala@icba.org](mailto:ann.grochala@icba.org).

Sincerely,



Ann M. Grochala  
Director, Lending and Accounting Policy