



October 1, 2009

By e-mail to [RegComments@FHFA.gov](mailto:RegComments@FHFA.gov)

Alfred M. Pollard, Esq.  
General Counsel  
Federal Housing Finance Agency  
Fourth Floor  
1700 G Street, N.W.  
Washington, D.C. 20552

Attention: Comments/RIN 2590-AA10

Re: Notice of Proposed Rulemaking on Record Retention

Dear Mr. Pollard:

The Federal Home Loan Bank of Topeka ("FHLBTopeka") appreciates the opportunity to comment on the Notice of Proposed Rulemaking published by the Federal Housing Finance Agency ("FHFA") in the *Federal Register* August 4, 2009 addressing record retention requirements for the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Banks ("FHLBanks") and the Office of Finance ("OF").

Current Record Retention Policy

FHLBTopeka currently has in place a records management policy. The goal of the policy is to provide the rules, structure and requirements related to the retention and disposal of records, information and material. Through the implementation of a records management policy, record retention procedures and retention period guidelines, FHLBTopeka has effectively managed its records to comply with legislative and regulatory requirements. Through our data classification guidelines, FHLBTopeka has also taken substantive steps to ensure the security of our data and records. Although there is currently no formal regulation for record retention, FHLBTopeka has been proactive in its record retention program.

FHLBTopeka requests that the FHFA provide guidance in the final regulation, or alternatively in the preamble to the final regulation, clarifying that manual controls are appropriate so long as they are shown to be effective. As noted above, we believe our current program effectively

manages our records, and without such a clarification we are concerned that we could be compelled to purchase expensive records management software and utilize costly consultants and vendors to advise on the additions of systems which may offer no more protection than what is currently being offered under FHLBTopeka's current policy and programs. We hope the effectiveness of existing programs will be recognized by the FHFA when making decisions regarding the final rulemaking and its examination staff when the rule is finalized and enforced.

Recognition of Distinctions between the Enterprises and the Federal Home Loan Banks

Section 1201 of the Housing and Economic Recovery Act of 2008 ("HERA") requires the Director to consider the differences between the FHLBanks and the Enterprises prior to promulgating any regulation relating to the FHLBanks. FHLBTopeka encourages the Director to consider the differing business models and size of the FHLBanks, compared to the Enterprises, when promulgating a final regulation. We therefore recommend the FHFA add a sentence at the end of §1235.3(a) stating: "Such record retention program shall be reasonable in scope and expense compared to the size and complexity of the regulated entity."

Proposed Section 1235.3 "Establishment and Evaluation of Record Retention Programs"

Proposed section 1235.3, if adopted, would require each FHLBank and the OF to establish and maintain a written record retention program and provide a copy of such program to the Deputy Director of the Division of FHLBank Regulation within 120 days of the effective date of the regulation.

While FHLBTopeka has a record retention program currently in place, we believe that the initial 120 day requirement may provide an insufficient period of time to properly establish and implement a formal record retention program that would meet the requirements of the proposed rulemaking. Compliance with the rule could require significant planning, internal process changes, file plan development, system implementations, inventory analysis, and will likely have significant budget implications. We therefore request the FHFA extend the period to require implementation of a written record retention program within one year of the effective date of the final regulation.

Proposed Section 1235.6 "Access to Records"

Proposed section 1235.6, if adopted, would require each regulated entity, or the OF, to make its records available for inspection within a reasonable period. A reasonable period is defined as no longer than one business day for requests made during the course of an on-site examination pursuant to an examination's scope and is defined as three business days for requests made outside of an on-site examination.

While FHLBTopeka recognizes that these periods were contained in Federal Housing Finance Board Regulation 914.3, we request that the definition of a reasonable period be amended.

Historically, the FHFA has provided us with a wide range of days to respond to record requests, anywhere from one to 60 days, based in large part on the critical nature of the specific request. Based on that experience, we believe a reasonable period should not be defined as a set number of days, but should rather be simply "a reasonable time period, based upon the critical nature of the request." This would provide appropriate flexibility to adjust the response deadline to reflect the particular circumstances of the request.

Proposed Section 1235.2 "Definitions"

The term *Record* as defined in proposed section 1235.2 includes "voicemail records." FHLBTopeka requests the FHFA remove the phrase "and voicemail records" from the end of section (1) of the definition of *Record*, as FHLBTopeka does not conduct business via voicemail. However, we note that FHLBTopeka has recorded telephone lines over which transactions may be consummated, and as such FHFA may consider including "recorded telephone lines" in the definition of *Record*.

We appreciate the opportunity to comment on this proposed rule and thank you for your consideration of our comments.

If you have any questions, please contact me at (785) 438-6226.

Sincerely,



David S. Fisher  
Senior Executive Vice President  
and COO