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By e-mail to RegComments@FHFA.gov

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Fourth Floor
1700 G Street, N.W.
Washington, D.C. 20552

Attention: Comments/RIN 2590-AA30

Re: Proposed Rulemaking on Board of Directors of the Federal Home Loan
Bank System Office of Finance

Dear Mr. Pollard:

On behalf of each of our respective Federal Home Loan Banks and the Office of Finance, we appreciate the opportunity to comment on the Federal Housing Finance Agency's Notice of Proposed Rulemaking concerning the Federal Home Loan Bank System Office of Finance Board of Directors (the "*Proposed Rule*"). As you are aware, the Office of Finance and the consolidated obligations ("*COs*") issued by the Federal Home Loan Banks (the "*FHLBanks*") through the Office of Finance are of critical importance to the safety and soundness of the FHLBanks, the liquidity of the nation's financial system and the achievement of the FHLBanks' housing finance mission. We believe that any proposed changes to the governance structure of the Office of Finance must be considered carefully and structured in a manner designed to advance these important policy objectives.

We believe many aspects of the Proposed Rule, in particular the expansion of the Office of Finance Board of Directors (the "*Board of Directors*") to include each of the FHLBank presidents as well as directors not currently affiliated with the FHLBank System or its underwriters, would be helpful in enhancing the FHLBanks' access to the market for COs and advancing the FHLBanks' liquidity and housing finance missions in a safe and sound manner. The expanded Board of Directors also will provide a valuable forum for the FHLBanks to consider issues of importance to the uninterrupted issuance of COs and the enhanced presentation of combined financial information for the use of purchasers of COs.

We believe, however, that the final rule could be improved in several key respects to better achieve our mutually shared governance objectives for the Office of Finance. In certain instances, the role and responsibilities of the audit committee of the Office of Finance Board of Directors (the "*Audit Committee*") seem to be disconnected from the oversight duties of the Board of Directors itself. The Board of Directors should be given plenary authority to oversee the Office of Finance, including the establishment of the Audit Committee. We recognize, however, that it may be appropriate for the final rule to require that certain responsibilities be performed by the Audit Committee, such as the retention and oversight of the outside auditor for the combined financial statements, just as each of the FHLBanks has its own responsibility relating to the selection of the auditor for its financial

statements and even though there may be significant advantages if each FHLBank and the Office of Finance were to select the same auditor.

We also believe that certain responsibilities that the Proposed Rule assigns to the Audit Committee, such as the facilitation of common accounting policies across the FHLBanks, must recognize the responsibilities that each FHLBank, and its audit committee, have with respect to that FHLBank's accounting policies. However, we support an enhanced role for the Audit Committee as it relates to the identification and appropriate resolution of accounting issues that would substantially improve the consistency in the combined financial reports. While we recognize that it may be appropriate for the Audit Committee to oversee the preparation of the FHLBanks' combined financial reports, the establishment of common accounting policies and procedures used to produce the combined financial reports involves issues on which the input of all of the FHLBanks is vitally important.

Finally, we have a number of technical revisions to the language in the Proposed Rule that we believe provide greater clarity regarding the meaning of the affected provisions.

Structure of the FHLBank System and the Role of the Office of Finance

As background for all of our comments, we believe it is important to recognize that the relationships among FHLBanks and the Office of Finance are unique.¹ Congress established the FHLBank System as a number of independent FHLBanks spread throughout different regions of the United States. Each FHLBank has its own membership (stockholders), its own board of directors, its own management, its own capital and its own operating policies and practices. Each of the FHLBanks is also a registrant under the Securities Exchange Act of 1934; in that regard, each FHLBank's audit committee is responsible for overseeing the accounting and financial reporting processes of its respective FHLBank and audits of its financial statements in accordance with generally accepted accounting principles in the United States ("*GAAP*"). We believe that this regional and decentralized structure is a source of strength to the FHLBank System and provides significant risk mitigation benefits to the shareholders of the FHLBanks, the holders of COs and other stakeholders in the FHLBank System.

The FHLBanks are linked together and their overall safety and soundness rest in part on their joint and several liability for all COs issued by the FHLBanks through the Office of Finance. COs are the primary source of funding for the FHLBanks.² The FHLBanks utilize

¹ As a general matter, the unique situation present here must be taken into account when trying to apply corporate governance rules and principles that were developed to address more conventional situations. Even those rules addressing more conventional situations contain exceptions that recognize that the conventional approach may be inapplicable to special situations, and some of these special situations that are subject to exceptions are analogous to this situation. For instance, most New York Stock Exchange corporate governance rules do not apply to listed companies that have only debt securities listed on the Exchange; the preamble to the Proposed Rule makes it clear that the combined financial reports are prepared by the Office of Finance because they are an adjunct to the issuance of COs.

² As of June 30, 2009, consolidated obligations comprised approximately 96% of the total liabilities of the FHLBanks, with over \$1 trillion in consolidated obligations outstanding. Quarterly Combined Financial Report for the Six Months Ended June 30, 2009.

the funding from the issuance of COs to fulfill their mission of providing liquidity to their member financial institutions, which assists the members in the financing of housing and community lending throughout the United States.³

The Office of Finance was established as a joint office of the FHLBanks.⁴ The primary purpose of the Office of Finance is to function as the agent of the FHLBanks in connection with the issuance and servicing of COs of the FHLBanks.⁵ In connection with its duties as agent for the FHLBanks for purposes of issuing COs, the Office of Finance also acts as fiscal agent for the FHLBanks. In connection with these activities, the Office of Finance prepares and issues combined financial reports for the FHLBanks.⁶ The duties of care and loyalty that directors of a corporation owe to the stockholders of the corporation are owed in the case of directors of the Office of Finance to the Office of Finance's principals, the FHLBanks.

In order for the FHLBanks to continue to access the global debt markets consistently and on terms beneficial to the FHLBanks and their members in order to fulfill the FHLBanks' public mission, we recognize the importance of enhancing the governance structure of the Office of Finance and its ability to prepare meaningful, informative and timely combined financial reports for the FHLBanks that meet the evolving needs of market participants. As noted above, we believe many aspects of the Proposed Rule advance these objectives. However, we do believe that the final rule could be improved in significant ways as described below.

Board of Directors

We support the expansion of the Board of Directors to include each of the FHLBank Presidents and the inclusion of additional directors that are currently unaffiliated with the FHLBank System.

We agree that the Board of Directors should include representation from each FHLBank. If the Board of Directors is to provide guidance on important issues facing the FHLBanks that have implications for the issuance of COs, such as guidance to achieve beneficial consistency in accounting policies and procedures, it must have representation from all of the FHLBanks. The January 2000 Federal Housing Finance Board proposed rule⁷ recognized that the presidents of all 12 FHLBanks needed to be represented on the Board of Directors, and we commend the Federal Housing Finance Agency ("*Finance Agency*") for incorporating this feature in the Proposed Rule. The presidents of the FHLBanks, together with qualified unaffiliated directors, have the knowledge, stature and perspective to oversee effectively the Office of Finance and its important functions.

Furthermore, as part of an expanded Board of Directors, we support the requirement in the Proposed Rule that the Board of Directors include additional directors who are not affiliated currently with the FHLBank System. We believe that these outside

³ 12 C.F.R. § 940.2.

⁴ *See, e.g.*, Section 1002(a)(3) of the Housing and Economic Recovery Act of 2008 and 12 C.F.R. § 985.2.

⁵ 12 U.S.C. § 1431(b) and (c).

⁶ 12 C.F.R. § 985.3.

⁷ *See* 65 Fed. Reg. 324 (2000).

directors will bring valuable perspectives to the Board of Directors, complementing those of the FHLBank presidents. The hallmark of an effective board is diversity of perspective, thought and experience. While all 12 FHLBank presidents are necessary to meet the need for representation from throughout the FHLBank System, the addition of outside directors will provide a dimension of diversity that will enhance the effectiveness of the Board of Directors.

While we do not object to the term “Independent Directors,” and this recognized term is used with respect to directors of individual FHLBanks in a different context, the term may suggest a meaning in terms of corporate governance that is inapplicable to the Office of Finance. The Office of Finance is a joint office of the FHLBanks that functions primarily as the FHLBanks’ agent for the issuance of COs. The FHLBanks, however, are not shareholders of the Office of Finance, and the Office of Finance is not a parent or holding company for the FHLBanks. This arrangement makes difficult the application of common notions of independence in corporate law. For this reason, we suggest that the Finance Agency consider a different term for these outside directors, such as “Unaffiliated Directors.” Alternatively, we suggest that the Finance Agency explain when issuing the final rule that the term “Independent Directors” is meant to denote a lack of *current* affiliation with the FHLBank System as specified in the regulations, and should not be interpreted as or analogized to the concept of independence in other contexts and under other regulatory regimes.

Rather than provide detailed rules for the conduct of meetings of the Board of Directors, the final rule should permit the Board of Directors to address such matters in its bylaws.

The Proposed Rule provides for a number of detailed rules related to the conduct of meetings of the Board of Directors that normally are found in the bylaws of a corporation. For instance, the Proposed Rule requires at least six in-person meetings per year.⁸ The Board of Directors may find that it can accomplish its work through video conferencing and other technology and may determine that it does not need to meet six times per year in-person. The six in-person meeting requirement may inadvertently limit the pool of talented outside directors willing to serve due to travel requirements. The Proposed Rule also provides that a quorum for purposes of meetings of the Board of Directors shall not be less than ten members, even if the entire Board of Directors consists of 15 members. We believe that a quorum may be better expressed as a majority of the total number of directors, and should be addressed in the bylaws rather than in the final rule.

The final rule should include a more explicit statement of the duties of directors of the Office of Finance.

Section 1273.8(a) of the Proposed Rule states that each director of the Office of Finance shall have the duties described in section 917.2(b) of the current regulations. Those regulations enumerate the specific duties for FHLBank directors and a cross-reference to those regulations may cause confusion between the roles and responsibilities of FHLBank directors and Office of Finance directors, and the functions of the Office of Finance generally. We believe that the Proposed Rule could be improved by specifically listing the

⁸ Section 1273.8(b) of the Proposed Rule.

duties of Office of Finance directors, because the role of the Office of Finance differs from that of the FHLBanks and consequently so would the duties of the entities' respective directors.

The final rule should make it clear that all of the members of the Board of Directors shall discharge their responsibilities consistent with the best interests of the FHLBank System taken as a whole when acting in their capacity as members of the Board of Directors, including the FHLBank presidents. We do not believe the Finance Agency intended a contrary approach when it decided that each FHLBank would be represented on the Board of Directors by its president.

Consistent with the above comments, we recommend that section 1273.8(a) of the Proposed Rule be revised to read as follows:

(a) *General. Conduct of business.*

Each OF director shall have the duty to:

- 1) Carry out his or her duties as director in good faith, in a manner such director believes to be in the best interests of the OF and the Banks, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances;
- 2) Administer the affairs of the OF fairly and impartially and without discrimination in favor of or against any Bank; and
- 3) Direct the operations of the OF within the functions prescribed in § 1273.3 in conformity with the requirements and limitations set forth in the Act.

We further recommend that section 1273.3 of the Proposed Rule be revised to include the following introductory paragraph:

The authority, duties and responsibilities of the OF shall be limited to the following specified functions:

Further, we recommend the following paragraph be inserted at the end of section 1273.3:

Neither the OF nor any OF director shall interfere with, or seek to assert, any of the authorities, powers or duties otherwise granted to each Bank under the Act or other applicable law.

This will more clearly delineate the scope of responsibility and authority of the Office of Finance with respect to the FHLBanks. This clarification is particularly important given the

inclusion of new independent directors on the Office of Finance board of directors, who may be unfamiliar with the structure of the FHLBank System, at least initially.

Independent Directors

We believe that the initial independent directors, chair and vice chair should be selected by the Board of Directors after consultation with the Finance Agency and so long as the Finance Agency does not object to a candidate.

The Proposed Rule provides that, after the initial selection of independent directors by the Finance Agency, they are to be elected by a majority vote of the Board of Directors.⁹ A similar structure is provided for the chair and vice chair of the Board of Directors, with the chair selected from among the independent directors and the vice chair from among the FHLBank presidents.¹⁰ We believe that the Finance Agency's objectives could be achieved and high standards of corporate governance advanced if the final rule permits the Board of Directors to elect the *initial* independent directors, chair and vice chair upon consultation with the Finance Agency and if the Finance Agency does not object to the election of any such independent director, chair or vice chair.¹¹ We believe this structure would best serve the institutional integrity and independence of both the Office of Finance and the regulator. The consultative role and objection rights held by the Finance Agency would ensure that the views of the Finance Agency were considered adequately and appropriately.

As a transitional matter, we do think it would be appropriate to provide in the final rule that the current chairman of the Board of Directors would become the initial chair of the reconstituted Board of Directors. Also, we would not object to a requirement that one of the independent directors shall always be designated as the chair of the Board of Directors, so long as there is an acknowledgement that an FHLBank president serving as vice chair could serve as chair temporarily in the absence of the chair.

The Proposed Rule further provides that, in any subsequent election for an independent directorship, if the Board of Directors fails, in the Finance Agency's judgment, to elect a suitably qualified person, the Finance Agency may appoint an independent director directly.¹² We are concerned that this may lead to frequent appointments by the Finance Agency, negatively impacting the overall independence of the Office of Finance from the FHLBanks' regulator. To the extent that the Board of Directors failed to elect the requisite number of independent directors as provided in the regulations, the Finance Agency could utilize its general enforcement authority over the Office of Finance to compel such election and regulatory compliance.

⁹ Section 1273.7(c) and (d) of the Proposed Rule.

¹⁰ Section 1273.7(e) and (f) of the Proposed Rule.

¹¹ The right to object to an independent director is consistent with the approach taken in 12 C.F.R. § 1261.7(a) with respect to the election of FHLBank directors.

¹² Section 1273.7(d) of the Proposed Rule.

We believe that the qualifications of the independent directors should be changed to help ensure the achievement of the goals and objectives of board recruitment.

As a general matter, we are concerned that the qualifications for service as an independent director may limit inappropriately the pool of talented outside directors able to serve. We believe there are several changes that should be made to assist the FHLBanks in recruiting directors with the desired level of diversity of perspective, thought and experience.

To better define the meaning of an independent director, we suggest the following revision to the second sentence of section 1273.7(a)(2) of the Proposed Rule:

Such Independent Directors may not be current officers, directors, or employees of any Bank or Bank System member, or of any consolidated-obligations selling or dealer group under contract with OF.

These changes would make clear that *former* officers, directors and employees of FHLBanks and their members may be independent directors. We believe such individuals may have valuable experience with the FHLBank System that could enhance the overall effectiveness of the new Board of Directors.¹³

These changes also eliminate the strict financial interest test contained in the Proposed Rule. We note that independent directors who serve on the board of directors of the individual FHLBanks are no longer required to meet this test following the 2008 amendments to the Federal Home Loan Bank Act¹⁴. Financial interest tests in the Proposed Rule are particularly difficult to apply in the context of the FHLBank System as compared to an individual FHLBank because of the large number of members located across the United States, and therefore will inadvertently remove a large number of persons with relevant financial institution experience from the pool of potential directors.

However, we are mindful of the unique status of the Office of Finance and the desire to avoid both actual conflicts of interest as well as even the appearance of conflicts of interest. Therefore, we believe the final rule should require the Board of Directors to measure the independence of the independent directors in accordance with the general independence test of the New York Stock Exchange¹⁵, as adapted to accommodate the other provisions of the final rule containing our proposed modifications. As noted above, we do not believe that prior service by a director, or an immediate family member of a director, should be subject to a “look-back” provision under these circumstances, although the independent directors who serve on the Audit Committee should be subject to the additional

¹³ The effect of this suggested clause is to make it clear that no provision analogous to 12 C.F.R. § 917.7(c) shall apply to the Board of Directors. We believe that persons with recent exposure to the FHLBank System will bring a useful perspective on issues confronting the Office of Finance and therefore should not be excluded on the basis of that recent experience. We note that even the Securities and Exchange Commission’s audit committee independence requirements contain an exception from certain independence requirements and permit a *current* director of an affiliate to serve on a registrant’s audit committee under certain circumstances. See Rule 10A-3(b)(1)(iv)(B) under the Securities Exchange Act of 1934.

¹⁴ Section 1202 of the Housing and Economic Recovery Act of 2008.

¹⁵ Rule 303A.02 of the Listed Company Manual of the New York Stock Exchange.

compensatory fee restrictions (and exceptions thereto) applicable to audit committee members generally.¹⁶ By applying the NYSE independence rules, the Board of Directors would be required to determine affirmatively that the director has no material relationship with the FHLBank System (either directly or as a partner, shareholder or officer of an organization that has a relationship with the Office of Finance or one or more FHLBanks). Also, we think the rule should make clear that payments relating to elements of the fundamental business of the FHLBanks, such as advances and COs, should not disable automatically anyone from serving as an independent director.

This approach will allow the Board of Directors to consider broadly all relevant facts and circumstances. The expanded OF Board will be in a position to make judgments regarding those relationships that would, or would not, interfere with the exercise of independent judgment in the context of the Office of Finance, which is appropriate in light of the principal/agent relationship between the FHLBanks and the Office of Finance. For instance, an independent director may be judged to be capable of serving on the OF Board even though he or she also serves on the board of directors of an entity that is under common control with a broker-dealer that underwrites COs by implementing disclosure and recusal procedures similar to those that govern service by FHLBank directors.¹⁷ Also, a reference to the NYSE rules will contain provisions dealing with attribution and other matters that will make the independence test easier to apply in a transparent manner.

Finally, we believe the language in the last sentence of section 1273.7(a)(2) of the Proposed Rule relating to the application of the rules to affiliations with a holding company should be clarified with respect to the reference to a “dealer group member,” as follows:

For purposes of this paragraph (2), a holding company of a member of a Bank or of an entity that is part of a consolidated obligations selling or dealer group shall be deemed to be a member of a Bank or part of a consolidated obligations selling or dealer group if the assets of the holding company's subsidiaries that are members of a Bank or part of a consolidated obligations selling or dealer group constitute 35% or more of the consolidated assets of the holding company.

We believe this change would more precisely define the restrictions related to affiliations with consolidated obligation selling group members.

¹⁶ See Rule 10A-3(b)(ii)(A) under the Securities Exchange Act of 1934. Compensatory fees under this rule do not include the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service, provided that such compensation is not contingent in any way on continued service.

¹⁷ See 12 C.F.R. §1261.11(b).

We agree with the independent director experience requirement set forth in the Proposed Rule, but also believe that the Board of Directors should be able to select the members of the Audit Committee from among the independent directors without requiring all independent directors to serve on the Audit Committee.

Section 1273.7(a)(2) of the Proposed Rule requires that the independent directors have substantial experience in financial and accounting matters “as a group.” We support this requirement, and the final rule should be clarified to indicate that such experience may be derived from a variety of sources, including as an attorney, government official or business executive involved in financial and accounting matters. However, we also recognize that the goal of recruiting an effective board with diversity of perspective, thought and experience inadvertently may be frustrated if *all* independent directors are required to serve on the Audit Committee. We believe that the Audit Committee should be comprised of a minimum of three independent directors, but that the Board of Directors should have the flexibility to use its option to elect one or two additional outside directors, who may have other valuable skill sets, to serve on the Board of Directors without requiring them to serve on the Audit Committee.

The final rule should make clear how the number of independent directors is determined.

Section 1273.7(a)(2) of the Proposed Rule indicates that the Board of Directors will consist of three to five independent directors, but the Proposed Rule does not address how the final number is determined within the authorized range. We recommend that the final rule make clear that the Board of Directors has the authority to alter the number of outside directors within the parameters established by the rule. This is consistent with the normal corporate governance standards for a corporation, which typically allow the board of directors of a corporation to amend its bylaws from time to time to change the size of its board of directors.

Audit Committee

We support the Proposed Rule’s focus on achieving appropriate accounting consistency across the FHLBanks, but believe that the enhanced role of the Audit Committee must be consistent with the responsibilities of each FHLBank and its audit committee, and should be based on well-recognized legal and accounting standards.

We believe that the allocation and definition of responsibilities with respect to accounting policies and procedures under the Proposed Rule should be altered to reflect the appropriate discretion that should be accorded to independent entities to apply GAAP. The imposition of accounting policies and procedures by the Office of Finance would be contrary to the authority and responsibility the Finance Agency and the Securities and Exchange Commission (“*SEC*”) rules¹⁸ assign to the individual FHLBanks as SEC registrants.

Consistent with these principles, we suggest that the following changes should be made to Section 1273.9 of the Proposed Rule.

¹⁸ See, e.g., 12 C.F.R. §917.7, and Rule 10A-3(b)(2) and Rule 13a-15 under the Securities Exchange Act of 1934.

Section 1273.9(b)(1) of the Proposed Rule.

We believe that it would be preferable to refer to the Audit Committee’s responsibilities based on the definition of “audit committee” contained in the Securities Exchange Act of 1934.¹⁹ Therefore, we suggest that section 1273.9(b)(1) be revised to read as follows:

The Audit Committee shall oversee the accounting and financial reporting processes of the OF and the audit of the combined financial statements of the FHLBanks and of the financial statements of the OF, and the preparation of the Bank System’s combined financial reports.

In the language at the end of section 1273.9(b)(1) of the Proposed Rule relating to the preparation of the combined financial reports, we have suggested the removal of the words “and accuracy”. In this context, the phrase could be read to express or imply a standard that presently does not exist under law, as described below.

It is management’s responsibility to ensure the accuracy of the financial statements of a company. The audit committee is responsible for assisting the board of directors with its oversight responsibilities in connection with the preparation of financial statements and is not responsible for the accuracy of such information.²⁰ The audit committee’s role is one of monitoring and overseeing the financial reporting process and the activities of the primary decision makers: the company’s principal financial and accounting officers and its outside auditor.²¹ “The audit committee does not and cannot assure or certify that the financial statements are free of misstatements... ”²²

Section 1273.9(b)(2) of the Proposed Rule.

We believe that the language in section 1273.9(b)(2) of the Proposed Rule inappropriately calls for the Audit Committee to cause the FHLBanks to adopt accounting policies and procedures that, for the reasons noted above, should remain within the discretion of each individual FHLBank and its audit committee.²³ We also believe that it is inappropriate to require the Audit Committee to “ensure” any result, and in previous

¹⁹ 17 U.S.C. § 3(a)(58).

²⁰ See the Audit Committee Guide, Third Edition, by Arthur H. Bill (2005) (the “Audit Committee Guide”), page 18.

²¹ The Audit Committee Guide, *Id.*

²² The Audit Committee Guide, *Id.* at 85.

²³ For instance, ASC 250-10-45-12 provides that an entity may change an accounting principle *only if it* justifies the use of an allowable accounting principle on the basis that it is preferable. See also ASC 235-10-05-3, which provides that “the accounting policies of an entity are the specific accounting principles and the methods of applying those principles that are *judged by the management of the entity* to be the most appropriate in the circumstances to present fairly financial position, cash flows, and results of operations in accordance with generally accepted accounting principles (GAAP) and that, accordingly, have been adopted for preparing the financial statements.” (Emphasis added).

rulemaking the Federal Housing Finance Board acknowledged that point.²⁴ Finally, we are not aware of any well-recognized meaning associated with the phrase “accurate and meaningful” that would guide the application of this standard by the Audit Committee going forward.²⁵

In its place, we suggest the following language to replace the language in section 1273.9(b)(2) of the Proposed Rule:

For purposes of the combined financial reports, the Audit Committee shall direct the management of the OF to adopt policies and procedures reasonably designed to produce combined financial reports that comply with the provisions of this part and do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

This replacement language will result in the establishment of policies that are reasonably designed to produce combined financial reports that satisfy the basic anti-fraud standard under Federal securities law with which the Office of Finance’s current disclosures must comply. This standard is well-recognized and consistent with existing requirements, and therefore preferable to the one contained in the Proposed Rule. This materiality standard will be applied by the Office of Finance at the “combined” level as the Office of Finance is responsible for the combined financial reports, while each FHLBank remains responsible for its financial reports.

Section 1273.9(b)(3) of the Proposed Rule.

We are concerned that the Proposed Rule does not appropriately respect the responsibilities of each individual FHLBank and its audit committee because it authorizes the Audit Committee to establish common accounting policies to be used by the FHLBanks. Any attempt to influence an individual FHLBank’s accounting approach by forcing it to comply with an edict from a source that does not control it would undermine the independence of that FHLBank’s accounting decisions and potentially create temporary gaps in each FHLBank’s internal controls. This situation could impair the ability of an FHLBank to comply with its internal control standards and issue timely its management report required under Section 404 of the Sarbanes-Oxley Act of 2002 (“*SOX*”). This rule also could impair the ability of an FHLBank’s management to sign certifications required under Section 302 of SOX relating to the design of internal control over financial reporting and compliance with GAAP depending on the timing of any changes.

While none of the undersigned objects to the principle of consistency, we believe that any consistency must be achieved by the FHLBanks working together. The

²⁴ See 65 Fed. Reg. 25267, 25268 (2000) relating to the establishment of regulations governing the responsibilities of the directors of FHLBanks contained in 12 C.F.R. Part 917.

²⁵ We note, however, that the Finance Agency expressed the view in the preamble to the Proposed Rule that the combined financial reports currently satisfy its view of the “accurate and meaningful” standard.

establishment of appropriate consistent accounting policies and procedures necessary for the preparation of the combined financial reports should require the input of the entire Board of Directors, including the FHLBank presidents (each of whom also is subject to the oversight of the board of directors of that president's FHLBank and its audit committee).

Because the Office of Finance and its Audit Committee cannot publish financial statements that fail to meet the basic anti-fraud standard, we understand the need for the Audit Committee to have an enhanced role in identifying significant accounting inconsistencies and calling their attention to the FHLBanks so they can try to resolve any inconsistencies before they reach a point where the combined financial reports cannot be published. Therefore, we propose the following replacement language for section 1273.9(b)(3):

The Audit Committee, in consultation with the OF board of directors, shall make recommendations to the Banks with respect to the establishment of consistent accounting policies and procedures for the information submitted by the Banks to the OF for the combined financial reports in connection with the adoption of new accounting standards where the Audit Committee determines such information provided by the several Banks may become inconsistent and that consistent, or common, policies and procedures regarding that information are necessary to create combined financial reports that will substantially improve disclosure and transparency regarding the combined financial performance of the Banks.

We have limited the application of this provision to the implementation of new accounting standards because we believe that the current reports satisfy the applicable legal standards and we note that the Finance Agency shares this view; in the preamble to the Proposed Rule, the Finance Agency stated that the Proposed Rule would enhance the responsibilities of the Audit Committee so that the combined financial reports *will continue to be* accurate and meaningful. The preamble to the final rule should make it clear that consultation with the entire Board of Directors is important here because of the relationship between the individual financial statements of each FHLBank and the combined financial statements. By requiring this consultation before making any recommendations, the process will take full advantage of the Finance Agency's decision to have each FHLBank president serve on the Board of Directors. The input of the FHLBank presidents in helping the Audit Committee form any recommendations also will help ensure that any recommendations delivered to the FHLBanks will be given serious consideration.

Section 1273.3(b) of the Proposed Rule.

Consistent with the above discussion on the proper roles of the Board of Directors and the Audit Committee, we recommend deleting the last clause of section 1273.3(b) of the Proposed Rule, which provides that the Office of Finance shall prepare and issue the combined financial reports "using consistent accounting policies and procedures as established under section 1273.9 of this part." This language is not necessary to the section

and raises questions about whether it creates an independent consistency requirement under the regulations. The last clause of section 1273.6(b)(2) of the Proposed Rule requires that information about each FHLBank “shall be presented using consistent accounting policies and procedures” and should be deleted for similar reasons.

Audit Committee’s Responsibilities Related to the Combined Financial Statements and to the Individual FHLBank Financial Statements.

As noted above, the Office of Finance is not the parent or holding company of the FHLBanks, and the FHLBanks are independent entities. The FHLBank System’s combined financial statements must be the aggregation of the financial statements of each of the 12 FHLBanks. The Federal Housing Finance Board recognized this fact by issuing a regulatory interpretation to the Office of Finance after the responsibility for preparing the combined financial reports was shifted to the Office of Finance through a change in the Office of Finance’s governing regulation in 2000.²⁶ The conclusion stated in that regulatory interpretation remains valid even if the Office of Finance’s role is enhanced by the Proposed Rule. Therefore, we suggest that the Proposed Rule be modified by including the following sentence from that regulatory interpretation:

The Audit Committee’s responsibilities as they relate to the combined financial statements are limited to a review of the audit of the combination aspects of the Bank’s combined financial reports and not the underlying financial statements of each FHLBank.

This language is consistent with the fact that each individual FHLBank and its audit committee will continue to have responsibilities relating only to that FHLBank’s financial statements, and the Office of Finance Board of Directors and the Audit Committee will have responsibilities relating only to the combined financial statements and the Office of Finance’s own financial statements.

We believe that section 1273.9(a) of the Proposed Rule regarding the composition of the Audit Committee should be revised to clarify the relationship between the Board of Directors and the Audit Committee.

We do not believe that the duties of the Audit Committee should be separated from the Board of Directors’ overall oversight function, but rather should be part of the Board of Directors’ overall oversight function. We note that such separation would be inconsistent with the structure of the audit committees for the individual FHLBanks, which are required to be established by that FHLBank’s board of directors, and in fact for public corporations generally. Overall management of an FHLBank is vested in its board of directors, which is then required to establish an audit committee meeting certain specifications and requirements.²⁷

²⁶ 2000-RI-26.

²⁷ 12 C.F.R. §§ 917.2(a) and 917.7(a).

Specifically, we suggest that section 1273.8 of the Proposed Rule should be amended to include a provision similar to 12 C.F.R. §917.2(a), which applies to the FHLBanks. This provision would provide explicitly that management of the Office of Finance is vested in the Board of Directors.²⁸ Section 1273.9(a) of the Proposed Rule should be amended to insert language similar to 12 C.F.R. §917.7(a) and (b), which applies to the FHLBanks. These new provisions would require the Board of Directors to create the Audit Committee and specify the requirements for its composition.

In order to better align the duties of the Audit Committee of the Office of Finance with those of the audit committees of the FHLBanks, we suggest that section 1273.9(b)(6) of the Proposed Rule, relating to the responsibilities of the Audit Committee with respect to the external auditor, be revised to track the language in section 10A(m)(2) of the Securities Exchange Act of 1934²⁹, as follows:

The Audit Committee, in its capacity as a committee of the OF board of directors, shall be directly responsible for the appointment, compensation, and oversight of the work of any registered public accounting firm employed by the OF (including resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or related work and each such registered accounting firm shall report directly to the audit committee.

Role of the Finance Agency

As noted above with respect to the establishment of accounting policies and the election of the initial independent directors, we do not believe it is necessary or appropriate for the Finance Agency to reserve to itself the degree of direct and regular involvement in the affairs of the Board of Directors as provided in the Proposed Rule. To do so would bring the regulator back into the business of managing the FHLBanks and preparing the combined financial reports rather than regulating the FHLBanks. This is contrary to the devolution in authority from the regulator to the FHLBanks that began under the Gramm-Leach-Bliley Act of 1999 and continued under the Housing and Economic Recovery Act of 2008, the latter of which ended the caps on FHLBank director compensation and the direct appointment of FHLBank directors by the regulator.³⁰

²⁸ “[The FHLBank] Act says that the management of the Banks is *vested* in the directors. This is very much like an ordinary business corporation, where the board of directors is charged with the management of the corporation, even though this function is in effect delegated to professional managers.” Testimony of Peter J. Wallison (Resident Fellow, American Enterprise Institute) before the Federal Housing Finance Board, February 10, 2004.

²⁹ This provision was made applicable to the FHLBanks by section 1112 of the Housing and Economic Recovery Act of 2008,

³⁰ See Section 1202 of the Housing and Economic Recovery Act of 2008. This view also comports with the Federal Housing Finance Board’s (“*Finance Board*”) previous actions in 2000 to remove itself from management of the FHLBanks, including the Finance Board’s transfer of the responsibility to issue System consolidated obligations and prepare the combined financial reports to the FHLBanks. In taking this action, the Finance Board stated that the FHLBanks “should have the autonomy to manage and run their own business” (see 65 Fed. Reg. 36290, June 7, 2000) and that this action was to “eliminate the potential for

In particular, the last sentence of section 1273.5(b)(2) of the Proposed Rule, dealing with the establishment of a funding mechanism for the Office of Finance by the Board of Directors, should be deleted. The regulation already provides that the funding mechanism must be “reasonable,” and the Finance Agency has examination authority over the Office of Finance to enforce this requirement. It is not necessary for the rule to provide specifically that the Board of Directors shall make “any changes to the formula as may be ordered by the [Finance Agency] from time to time,” even if the Board of Directors believes it has a good faith basis to object to such changes.

There are several other provisions of the Proposed Rule in which the Finance Agency has reserved the right to review and approve or order revisions outside of the normal examination process. We recommend that the Finance Agency delete such provisions, including the pre-approval rights for committee charters under section 1273.7(g) of the Proposed Rule, and the right to require the withdrawal or change to officer delegations under section 1273.7(j) of the Proposed Rule. Of course, all aspects of the operations of the Office of Finance and the Board of Directors, including the areas noted above and throughout this letter, would remain under the general safety and soundness oversight, examination and enforcement authority of the Finance Agency.

Indemnification

Section 1273.7(i) of the Proposed Rule addresses indemnification by the Office of Finance of its directors, CEO, and other officers and employees. We suggest that the Finance Agency modify the Proposed Rule to adopt the approach that the Office of Federal Housing Enterprise Oversight (“*OFHEO*”) took with regard to corporate governance and indemnification for Freddie Mac and Fannie Mae (together the “*Enterprises*”).

In 2002, OFHEO issued a rule addressing the corporate governance of the Enterprises (“*Enterprises Corporate Governance Rule*”). This rule required each Enterprise to designate a body of law that it would use for corporate governance practices and procedures: (i) the law of the jurisdiction in which the principal office of the Enterprise is located, (ii) the Delaware General Corporation Law, or (iii) the Revised Model Business Corporation Act (“*RMBCA*”).³¹ OFHEO stated that the Enterprises were authorized to operate under the indemnification requirements set forth by the elected body of state law or the RMBCA.³²

conflicts to the Finance Board in its role as regulator of the OF and the Banks.” (see 65 Fed. Reg. 324, 325, January 4, 2000). The Finance Board also stated that authorizing the FHLBanks to issue their consolidated obligations as opposed to the regulator is “consistent with the Finance Board’s ongoing efforts to remove itself as much as it can legally do so from involvement in the management of the FHLBanks, and with devolutionary actions taken by Congress to give the FHLBanks greater autonomy over the management of their business.” *Id.* at 324.

³¹ 12 C.F.R. § 1710.10. A similar rule has been adopted by the Office of the Comptroller of the Currency with respect to national banks and by the Office of Thrift Supervision with respect to federal savings institutions. 12 C.F.R. § 7.200 (OCC); 12 C.F.R. § 552.5(b)(3) (OTS).

³² 67 Fed. Reg. 38361, 38369 (2002).

Accordingly, paragraph (i) of section 1273.7 of the Proposed Rule should be revised as follows:

(i) *Corporate Governance and Indemnification.* (1) *General.* The corporate governance practices and procedures of the OF and indemnification (including advancement of expenses) by the OF shall comply with applicable Federal law, rules, and regulations.

(2) *Election and designation of body of law.* To the extent not inconsistent with paragraph (i)(1) of this section, the OF shall follow the corporate governance practices and procedures and indemnification (including advancement of expenses) provisions of the law of the jurisdiction in which the principal office of the OF is located, as amended; Delaware General Corporation Law, Del. Code Ann. tit. 8, as amended; or the Revised Model Business Corporation Act, as amended. The OF shall designate in its bylaws the body of law elected pursuant to this paragraph (i)(2) within 90 calendar days from [insert effective date].

(3) *Indemnification.* Subject to paragraphs (i)(1) and (i)(2) of this section, to the extent applicable, the OF shall indemnify (and advance the expenses of) its directors, the CEO, and other officers and employees of the OF under such terms and conditions as shall be determined by the OF board of directors. The OF shall also be authorized to maintain insurance for its directors, the CEO and other officers and employees of the OF. Nothing in this paragraph (i) shall affect any rights to indemnification (including to the advancement of expenses) that a director, the CEO, or any other officer or employee of the OF had with respect to any actions, omissions, transactions or facts occurring prior to the effective date of this paragraph (i) of this section.

Other Comments

Publication Date for Combined Financial Reports

We believe the deadline for publishing combined financial reports should be 21 days after the FHLBanks' deadline for filing the periodic reports with the SEC relating to the same fiscal period.

The current regulatory deadlines for the publication of the combined financial reports are the same as the SEC's non-accelerated deadlines that apply to the FHLBanks. In order for the Office of Finance to publish the combined financial reports on time, the Office of Finance needs time to complete the combined financial report process after each FHLBank is complete, or at least substantially complete, with its SEC reporting processes.

However, as financial disclosures have become more complex and granular, this approach of meeting the same SEC reporting and combined financial report deadlines is no longer realistic. We believe it makes more sense to extend the combined financial report deadlines to 21 days after the FHLBanks' SEC deadlines in order to allow each FHLBank to finalize its financial data and disclosures through its internal processes before the Office of Finance begins the process of finalizing the financial data and disclosures for the combined financial reports. Failure to allow the Office of Finance the requested additional time to complete its review of the combined financial reports subjects the Office of Finance's discharge of its responsibility to the timing of an individual FHLBank's last minute changes to its own disclosures.

The combined financial report regulatory deadlines were established prior to the completion of the FHLBanks' SEC registrations. The FHLBanks, as SEC registrants, are allowed to build their financial reporting and disclosure processes utilizing the 45-day period following the end of a fiscal quarter to complete their quarterly SEC Forms 10-Q and the 90-day period following the end of a fiscal year to complete their annual SEC Forms 10-K. Because the FHLBanks can make changes up until the time they file with the SEC, the regulatory deadline for the combined financial report should be revisited. We believe that it is better to allow each FHLBank to use all of its allotted time prior to the SEC deadline to make sure its SEC filings are complete and accurate.

To avoid delay in providing combined financial information to the public, the Office of Finance will plan to publish more detailed combined operating highlights in conjunction with, or very soon after, the FHLBanks' completion of their SEC filings. The enhanced combined operating highlights would include the combined statements of condition and income and related combining schedules, as well as additional information on the combined results of operations that the Office of Finance traditionally has not included in its combined operating highlights releases. Such publication of operating highlights will ensure that the financial markets receive timely disclosure of material financial information about the FHLBanks.

Issuer of COs

Since the Office of Finance is not the "issuer" of the FHLBanks consolidated obligations under Section 11(a) of the FHLBank Act, proposed Section 1273.6(a) should be revised to state that the Office of Finance "administers the issuance of consolidated obligations on behalf of the FHLBanks."

Interim FHLBank Presidents

Section 1273.7(a)(1) of the Proposed Rule should be revised to provide that if the presidency of any FHLBank becomes vacant, the person temporarily fulfilling the duties of such president *shall* sit on the Board of Directors *upon designation by the FHLBank's board of directors* and until a permanent replacement is appointed. The Proposed Rule provides that such interim president "may" sit on the Board of Directors. We believe it is important to be clear that the right of each FHLBank to representation on the Board of Directors is not discretionary to the Office of Finance, the Finance Agency or the other FHLBanks.

Number of Terms Available to Initial Independent Directors

Section 1273.7(b) should be clarified to state whether an independent director appointed or elected to a term of less than five years initially would be authorized to serve two additional five-year terms. The prohibition on serving more than two “full” terms would seem to support the interpretation that such a director would be authorized to serve such additional terms, but it would be helpful if the final rule clarified this position. A similar clarification recently was provided by the Finance Agency with respect to the number of terms permitted to be served by a member of the board of directors of an FHLBank.³³

Independent Director Compensation

Section 1273.7(h)(2) relating to compensation of the independent directors should be revised to provide that the Board of Directors shall provide compensation to such directors in amounts and pursuant to terms that are reasonable and comparable under the circumstances.

Office of Finance Chief Executive Officer

Consistent with the agency relationship between the FHLBanks and the Office of Finance and the devolution of responsibilities from the regulator to the FHLBanks, section 1273.8(d)(4) of the Proposed Rule should be revised to have the Office of Finance chief executive officer assume any other responsibilities that may from time to time be assigned to it by the Board of Directors, rather than having such additional duties assigned to the chief executive officer by the Finance Agency, as provided in the Proposed Rule.

Incorporation by Reference

The Proposed Rule incorporates by reference sections of other regulations. We generally agree with that approach in order to help ensure that common provisions will be interpreted in a consistent manner, but in three places we believe that more clarity is necessary.

In section 1273.9(c)(4)(i) of the Proposed Rule, we believe the broad reference to the FHLBank audit committee rule may lead to confusion because some of these provisions are inconsistent with the structure of the Proposed Rule. We would suggest either narrowing the cross reference to 12 C.F.R. §917.7(d), (e) and (f) or rewriting those clauses to change references to “Bank” to the “OF,” and making it clear that the references to “audit committee,” “internal auditor” and “external auditor” refer to the Office of Finance’s Audit Committee, internal auditor and external auditor, and that references to “financial statements” refer to the Office of Finance’s financial statements and the combined financial statements, but not to the financial statements of the individual FHLBanks.

In section 1273.9(c)(4)(ii), the reference to the audit committee report requirements in the SEC’s Regulation S-K has been changed to Item 407(d)(3) of Regulation S-K, so we would suggest updating the cross reference accordingly.

³³ 12 C.F.R. §1261.4(d)(2)(iv), 74 Fed. Reg. 51461 (2009).

Effective Date of Final Rule

Given the importance of the subject matter of the Proposed Rule to the FHLBank System, we encourage the Finance Agency to finalize this rule as soon as possible after the comment period has closed. This would allow the reconstituted Board of Directors to begin its work as promptly as practicable. We believe the final rule should require an organizational meeting to be conducted within 60 days of the effective date of the final rule, and that the Office of Finance Board would be deemed to be reconstituted at the time of such meeting. We further suggest an additional phase-in period for the addition of independent directors beyond the current chairman to allow such time for their recruitment. If the final rule continues to require that the Audit Committee consist entirely of independent directors, then the final rule should require the Board of Directors to allow the two FHLBank presidents who currently serve on the Board of Directors to serve on the Audit Committee until such time as additional qualified independent directors can be recruited.³⁴

We appreciate the opportunity to provide our comments on this important rulemaking and commend the Finance Agency for moving forward with a restructuring of the Office of Finance Board of Directors.

Sincerely,

Federal Home Loan Bank of Atlanta



Richard A. Dorfman
President and Chief Executive Officer

Federal Home Loan Bank of Boston



Edward A. Hjerpe
President and Chief Executive Officer

Federal Home Loan Bank of Chicago



Matthew R. Feldman
President and Chief Executive Officer

Federal Home Loan Bank of Cincinnati



David H. Hehman
President and Chief Executive Officer

³⁴ The need for phase-in periods is recognized in the SEC's rules relating to the audit committees of listed companies. See Rule 10A-3(b)(1)(iv)(A) under the Securities Exchange Act of 1934.

Federal Home Loan Bank of Dallas



Terry Smith
President and Chief Executive Officer

Federal Home Loan Bank of Des Moines



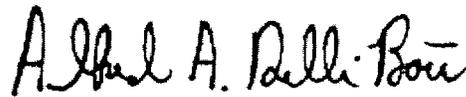
Richard S. Swanson
President and Chief Executive Officer

Federal Home Loan Bank of Indianapolis



Milton J. Miller II
President and Chief Executive Officer

Federal Home Loan Bank of New York



Alfred A. DelliBovi
President and Chief Executive Officer

Federal Home Loan Bank of Pittsburgh



John R. Price
President and Chief Executive Officer

Federal Home Loan Bank of San Francisco



Dean Schultz
President and Chief Executive Officer

Federal Home Loan Bank of Seattle



Richard M. Riccobono
President and Chief Executive Officer

Office of Finance



H Ronald Weissman
Chairman

Office of Finance

A handwritten signature in black ink that reads "John Fisk". The signature is written in a cursive style with a large, looping initial "J".

John Fisk
Chief Executive Officer

Cc: Edward DeMarco, Acting Director
Stephen Cross, Acting Senior Deputy Director and Chief Operating Officer and
Deputy Director for Federal Home Loan Bank Regulation