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VIA E-MAIL TO REGCOMMENTS@FHFA.GOV

October 2, 2009

Alfred M. Pollard, General Counsel
Attn: Comments/RIN 2590-AA10
Federal Housing Finance Agency
Fourth Floor, 1700 G Street, NW
Washington, DC 20552

RE: Record Retention Notice of Proposed Rulemaking; Requests for Comment RIN 2590-AA10

Dear Mr. Pollard,

We thank the Federal Housing Finance Agency ("FHFA") for giving the Federal Home Loan Bank of Pittsburgh ("Bank") the opportunity to comment on the aforementioned Proposed Rulemaking.

I. The FHFA should refine its definitions section for *E-mail* and *Record* or provide clarification in the preamble.

E-mail: In the Proposed Rulemaking, the FHFA defines E-mail as

"electronic mail, which is a method of communication in which—

- (1) Usually, text is transmitted (but sometimes also graphics and/or audio information);
- (2) Operations include sending, storing, processing, and receiving information;
- (3) Users are allowed to communicate under specified conditions; and
- (4) Messages are held in storage until called for by the addressee, including any attachment of separate electronic files."

The Bank recommends that the FHFA use the common definition of "E-mail" as the word is accepted and defined in dictionaries. Houghton Mifflin defines E-mail as "A system for sending and receiving messages electronically over a computer network, as between personal computers." Webster's defines E-mail as "a means or system for transmitting messages electronically (as between computers on a network)". To use the definition above would be to broaden the definition unnecessarily, invite potential confusion, and allow for the unintended expansion of records to be categorized as E-mail that are not generally understood to be E-mail. By not including "computers" or "computer network" in the definition, e-mail could inadvertently be broadened to include voicemails (see "or audio information") or other unintended electronic systems. If the FHFA intends to cast a wider net, then the Bank recommends that the FHFA add additional definitions as appropriate.

Record: In the Proposed Rulemaking, the FHFA defines Record as

“any information, whether generated internally or received from outside sources by a regulated entity or the Office of Finance or employee, maintained in connection with a regulated entity or Office of Finance business (which business, in the case of the Office of Finance, shall include any functions performed with respect to the FICO), regardless of the following—

- (1) Form or format, including hard copy documents (e.g., files, logs, and reports) and electronic documents (e.g., e-mail, databases, spreadsheets, PowerPoint presentations, electronic reporting systems, electronic tapes and back-up tapes, optical discs, CD-ROMS, and DVDs), and voicemail records;
- (2) Where the information is stored or located, including network servers, desktop or laptop computers and handheld computers, other wireless devices with text messaging capabilities, and on-site or off-site at a storage facility;
- (3) Whether the information is maintained or used on regulated entity owned or Office of Finance equipment, or personal or home computer systems of an employee; or
- (4) Whether the information is active or inactive.”

The Bank recommends the FHFA narrow the definition of records as follows. First, the FHFA should focus on business records, which are those records specifically relating to the business of the Bank, and not on all records the Bank “maintains”. This would clarify that records that the Bank does not generate or rely upon are excluded. Examples would include personal e-mails, newspapers, journals, sales materials, solicitations and the like. The Bank may maintain these records for some time; however, they would be of no value in an examination and costly to monitor and track under this regulation.

The Bank also suggests that the definition of Records explicitly exempt those categories of business records that are either confidential or privileged. The FHFA may choose to add an additional definitional category called “Confidential or Privileged Records” and to carve out these records from the “Access to Records” section Part 1235.6. While we anticipate this category to be narrow, the Bank must preserve its privilege and fulfill its confidentiality obligations.

The Bank recommends the FHFA eliminate the reference to voicemail records. To clarify, we refer to those voicemail messages left when a caller leaves a message in an “in-box”, and not the Bank’s recorded lines. Unlike on recorded lines, the Bank does not do business via voicemail. The Bank believes there is little to no value to requiring voicemails to be retained, and the costs to implement a compliant system could be great.

The Bank recommends deleting the reference to “personal or home computer systems of an employee.” Because the Bank has no control over the personal computer systems, the Bank’s policies prohibit Bank employees from transferring Bank business records to personal computer systems. In addition, the Bank is concerned that the regulation could be used against the Banks in litigation to make the case that the Banks have or should have control over employees’ personal or home computers. This is not the case.

Finally, the Bank suggests that rather than requiring the Banks to track whether records are active or inactive, the FHFA need only require the Banks to track the location of the files, which currently exists in the definition. There appears to be no functional reason to track this information in the Proposed Rulemaking as written. The Bank anticipates that location information would be most relevant when meeting the FHFA's access requests.

II. The FHFA requirements to include an accurate, current and comprehensive record retention schedule is unnecessary and potentially onerous given the expansive definition of "Record" as defined under the Proposed Rulemaking.

Part 1235.4(a)(5) requires that the Bank's records requirements:

"Include an accurate, current, and comprehensive record retention schedule that lists records by major categories, subcategories, record type, and retention period, which retention period is appropriate to the specific record and consistent with applicable legal, regulatory, fiscal, and operational and business requirements."

If the FHFA retains its current definition of "Record", the list of records could reach into the thousands for the Bank. In the event the FHFA retains its current definition of "Record", the Bank requests that the FHFA require the regulated entities to track only those records the entities are legally required to maintain to fulfill either their legal or regulatory requirements. The process to catalog every record type that enters the Bank could be never-ending, and the value of recording these records along with a required retention period of 0 (for example, publications the Bank receives) would be of little or no use to the FHFA.

III. The FHFA should provide guidance in the preamble regarding Part 1235.4(a)(6) requirement to protect records from unauthorized access.

Part 1235.4(a)(6) states that the Bank's records requirements:

"Include adequate security and internal controls to protect records from unauthorized access and data alteration."

As the FHFA is aware, the Bank employs both automated and manual controls to prevent unauthorized access to records. The Bank requests that the FHFA provide guidance in the preamble to the Rulemaking that clarifies that manual controls are appropriate so long as they are shown to be effective. Without such clarification, the Bank is concerned that it could be forced to purchase expensive software, consultants and vendors to advise on the additions of systems, which may offer no more protection than what is currently being offered under the Bank's automated and manual controls that the Bank has established as part of its overall control environment.

IV. The FHFA should revise Part 1235.5 to clarify that regulated entities have no control over the records of independent contractors.

The FHFA requires that a regulated entity shall:

“(1) Address how ... agents or independent contractors consistent with their respective roles and responsibilities to the regulated entity or the Office of Finance, will receive prompt notification of a record hold.”

After consultation with outside counsel who is experienced in building records retention programs, the Bank has been very clear that it cannot control the records of its independent contractor vendors. The Bank cannot accept legal or regulatory responsibility for the actions or inactions of these contractors. Therefore, the Bank requests that the FHFA make it clear either in the definition section or in the preamble that while the regulated entities may inform such contractors of any record holds the Bank is required to maintain, the Bank is not required to have any control over the records of such vendor/contractors.

V. The FHFA’s prescribed reasonable period for access to records should provide flexibility for those records maintained offsite.

The FHFA states that “For requests for documents made during the course of an on-site examination and pursuant to the examination’s scope, a reasonable period is presumed to be no longer than one business day. For requests for documents made outside of an on-site examination, a reasonable period is presumed to be three business days.” The Bank recommends that the FHFA take the location of the records into consideration when determining what time frame is a reasonable period. Since the FHFA will require the Bank to track record locations, the FHFA will be aware that its requests may require additional time due to the processing and recovery actions of our records vendor.

VI. The FHFA should extend the time frame for implementation.

The FHFA states that it will give the regulated entities 120 days to implement the Proposed Rulemaking. The proposed time frame will pose an operational burden for the Bank to meet, particularly in the event that the definition of “record” is not narrowed as discussed above. Also, as discussed above, the Federal Home Loan Bank System (“System”) has a very different history regarding the regulatory requirements as prescribed by the Federal Housing Finance Board (“FHFB”) than Fannie Mae and Freddie Mac (the “Enterprises”) have had with the Office of Federal Housing Enterprise Oversight. The Banks will need more time to adjust to the Proposed Rulemaking than the Enterprises given that the Proposed Rulemaking almost exactly mirrors the Enterprises’ current requirements. Any flexibility by the FHFA would be greatly appreciated and an implementation period of at least nine months is requested.

VII. The Bank requests additional guidance as to the applicability of the July 7, 1993 Mary L. Moore Memorandum to the Federal Home Loan Bank Presidents regarding the Finance Board policy on the Retention and Disposition of Records by the FHLBanks.

The Bank appreciates and encourages flexibility in the Proposed Rulemaking. A significant reason for the necessary flexibility is the unique regulatory history of the System regarding records retention, which is distinct from the other "regulated entities". While the System and other regulated entities are subject to a variety of local, state and federal records requirements, the System has a unique history regarding record retention requirements with the FHFB. For example, only the System remains subject to the policy statement regarding records retention that was issued by the FHFB in 1993. As part of the FHFB's policy statement, the System was provided a minimum records retention schedule for FHFB purposes. While the FHFB has subsequently mandated additional record requirements in later actions in regard to certain items, as the FHFB affirmed the applicability of the 1993 policy statement in its waiver of those requirements to the FHLB-NY in 2001, the Bank believes it would be helpful for the FHFA to clarify whether and to what extent the 1993 records retention schedule still applies to the FHLBanks.

As stated above, the Bank notes that the FHLBanks are distinct from the Enterprises. Under Section 1201 of the Housing and Economic Recovery Act of 2008, "the Director shall consider the differences between the Federal Home Loan Banks and the Enterprises" regarding an enumerated list of qualifications, including "any other differences that the Director considers appropriate." In addition to the existing FHFB policy guidance for the FHLBanks on records retention (which is distinct from the existing regulatory guidance applicable to the Enterprises), the FHLBanks are each much smaller corporations, have a cooperative ownership structure, have very few employees, have differing business models from the Enterprises and between the FHLBanks, and generally do not have specialized records management employees. The Bank believes that these differences should be considered by the FHFA in adopting a final records retention regulation for the FHLBanks.

On behalf of the Bank, we appreciate your consideration of these comments.

Sincerely,



Teresa M. Donatelli
Chief Information Officer