

*FEDERAL HOME LOAN BANK
OF CINCINNATI*

October 2, 2009

Via Electronic Mail: RegComments@fhfa.gov

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

Attention: Comments/RIN 2590-AA10--Notice of Proposed Rulemaking on Record Retention

Dear Mr. Pollard:

The Federal Home Loan Bank of Cincinnati (FHLBank) is pleased to submit comments on the Federal Housing Finance Agency's (FHFA) proposed regulation addressing record retention requirements with respect to the record management programs for the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Banks (FHLBanks), and the Office of Finance that was published in the Federal Register on August 4, 2009 (the "Proposal"). We appreciate that the FHFA has identified the importance of vital record retention and the FHLBank welcomes the opportunity to comment on the proposed rule.

A. With regard to the definitions included in proposed **Section 1235.2**, *Record* would be defined 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;

Comment: The FHLBank requests that the phrase "any information" be changed to "any original information", where original information is defined as the sanctioned or official version of information excluding records containing copies or derivatives of the original. For example, if a regulated entity destroys drafts of certain information as a matter of policy, this should be permitted under the Proposal and such information should not be required to be maintained, so long as it is not subject to a record hold and is not required to be maintained otherwise for mandatory legal reasons or to support litigation, audits, or

other business functions of the regulated entity. In addition, we would suggest that voicemail records not be an inclusive part of the retained documentation as a part of the proposed rule given the transitory and informal nature of such communications, but that recorded telephone lines that document formal communications and business transactions be the more appropriate form of documented telephone related communications.

- B. **Section 1235.3**, "Establishment and Evaluation of Record Retention Program", would, if the Proposal is adopted, require each regulated entity and the Office of Finance to establish and maintain a written record retention program and provide a copy of such program to the Deputy Director of the Division of Enterprise Regulation and the Deputy Director of the Division of Federal Home Loan Bank Regulation, or his or her designee (Deputy Director), as appropriate, within 120 days of the effective date of this Proposal, and annually thereafter, and whenever a significant revision to the program has been made.

Comment: The FHLBank believes that the initial "120 days" may not provide a sufficient period of time to evaluate and remediate potential compliance issues (internal process changes, system evaluation, reconfiguration and implementations, etc.) and could result in significant budget considerations. We therefore recommend the adoption of one year from regulation effective date to provide any updated written record retention program.

- C. **Section 1235.4**, requires a regulated entity's record retention program to be reasonably designed to assure that the format of retained records and the retention period permit ready access by the regulated entity and, upon request, by the FHFA by reasonable means consistent with the nature and availability of the records and existing information technology.

Comment: The FHLBank respectfully requests that the FHFA clarify that "ready access" means that the records are readily available consistent with the nature and availability of the regulated entity's existing records retention storage and retrieval methods. In addition we request that "existing information technology" be clarified to mean a specific regulated entity's existing information technology, rather than information technology that may exist at another entity or otherwise in the marketplace in general. Different regulated entities may have different systems that should be deemed acceptable as long as they are in compliance with the Proposal.

- D. **Section 1235.5**, could appear to presume that each regulated entity has an in-house legal department.

Comment: Please clarify that there is no strict regulatory requirement to have such a department.

- E. **Section 1235.6**, "Access to Records", would, if the proposal is adopted, set forth the requirement that records must be readily available for inspection within a reasonable period upon request by FHFA, at a location acceptable to FHFA. For requests made during the course of an onsite examination and pursuant to an examination's scope, a reasonable period is defined to be no longer than one business day, and for requests for documents made outside of an onsite examination, a reasonable period is presumed to be three business days.

Comment: The FHLBank believes that a reasonable amount of time for making records available during the course of an onsite examination and pursuant to an examination's scope should be up to three business days; this will allow for the delivery of offsite physical records. We also believe that a period of up to five business days would be reasonable for complying with requests for documents outside of an onsite examination.

On behalf of the FHLBank, we appreciate your consideration of these comments regarding the Proposal.

A handwritten signature in cursive script, appearing to read "A. Howell".

Andrew S. Howell
Executive Vice President
Chief Operating Officer