



FEDERAL HOME LOAN BANK OF INDIANAPOLIS

Building Partnerships. Serving Communities.

Milton J. Miller
CEO-President

November 25, 2008

VIA EMAIL

Federal Housing Finance Agency
1625 Eye Street, NW
Washington, DC 20006
Attention: Public Comments/RIN 2590-AA03

**RE: Federal Housing Finance Agency Interim Final Regulation with Request for Comments:
Federal Home Loan Bank Boards of Directors – Eligibility and Elections**

Ladies and Gentlemen:

The Federal Housing Finance Agency (FHFA) has issued an interim final rule (the Interim Final Rule) with respect to the eligibility and election of Federal Home Loan Bank directors. This letter sets forth the comments of the Federal Home Loan Bank of Indianapolis (the Bank) with respect to the Interim Final Rule and is based on analysis and discussion among the Federal Home Loan Banks (FHLBanks). We appreciate the FHFA's effort to expedite its rulemaking on this topic, and we thank you for the opportunity to comment on this important matter.

The Bank generally supports the comments and suggestions provided to FHFA by the other FHLBanks, particularly those of the FHLBank of Atlanta. Their comments include thorough, detailed analyses of the Interim Final Rule and applicable law, along with many important suggestions for the Final Rule.

The Bank shares the FHFA's goal of promoting safety and soundness and believes that the election of qualified and accountable directors is a critical element in achieving that goal. With that shared goal in mind, the Indianapolis Bank offers the following comments for your consideration:

- Clarify the Interim Final Rule's Application of the Statutory Term Limitation. The FHFA seeks comment on the Interim Final Rule's application of the consecutive full-term limitation in section 7(d) of the Federal Home Loan Bank Act (Bank Act). The Bank Act, as amended by HERA, limits the service of directors chosen by election to three consecutive full terms; directors are then eligible for re-election two years after the end of the last full term.

- Based on the preamble to the regulation, we understand that the intent of the rule is to deem existing three-year terms of both member and independent directors expiring after December 31, 2008 and four-year terms beginning after the effective date of the Act (July 30, 2008) to be full terms. Terms beginning after July 30, 2008 that are shortened to implement staggering are not intended to be full terms; nor are they intended to be gaps in service. For example, we understand that the intent of the rule is as follows:

Term	Full or Shortened?	Counts for Consecutive Term Limitation?	Term Limitation Reached?
First Term: 1-1-03 to 12-31-05	Full	Yes	No
Second Term: 1-1-06 to 12-31-08	Full	Yes	No
Third Term: 1-1-09 to 12-31-11	Shortened to Implement Staggering	No	No
Fourth Term: 1-1-12 to 12-31-15	Full	Yes	Yes

However, the Interim Final Rule does not correspond to that intent. Section 1261.4(c)(2)(ii) states, “ Any three year term of office ending immediately before a term of office that is adjusted after July 30, 2008 to a period of fewer than four years and *any term of office commencing immediately following such adjusted term of office* shall constitute consecutive full terms of office” [emphasis added]. Pursuant to the italicized phrase, a term of office immediately following a shortened term is a full term even though it may be less than a four-year term.

For example, we understand the application of the Interim Final Rule to be as follows:

Term	Full or Shortened?	Counts for Consecutive Term Limitation?	Term Limitation Reached?
First Term: 1-1-03 to 12-31-05	Full	Yes	No
Second Term: 1-1-06 to 12-31-08	Full	Yes	No
Third Term: 1-1-09 to 12-31-11	Shortened to Implement Staggering	No	No
Fourth Term: 1-1-12 to 12-31-14	Shortened to Implement Staggering	Yes	Yes

Under section 1261.4(c)(2)(ii), the last three-year term is deemed to be a full term contrary to the intent stated in the preamble to the Interim Final Rule. In addition, section 1261.4(c)(2)(ii) conflicts with section 1261.4(c)(2)(i) which provides that a term of office that is adjusted after July 30, 2008 to a period of less than four years is not deemed to be a full term. Rather than retain 1261.4(C)(2)(ii), the FHFA might revise it to state simply that terms shortened after July 30, 2008 to achieve staggering do not constitute breaks or gaps in service.

- Also for consistency in applying the statutory term limitation provision to all classes of directors (including directors previously appointed by the Federal Housing Finance Board) to correspond to the intent stated in the preamble, section 1261.4(c)(2)(iii) should be revised to read, “A three year term of office existing on or before July 30, 2008 shall be deemed to be a full term.” Without such clarification, the rule does not address the application of the term limitation provision to directors previously appointed by the Federal Housing Finance Board.
- The above clarifications will allow the FHFA to implement the transitional term stagger requirements while supporting the statutory intent of allowing a director to serve three consecutive full terms. This will ensure needed board continuity and reduce turnover.
- Retain the Consultative Role of the Advisory Council. The FHFA seeks comment on whether it should require the Advisory Council to play any specific role in consulting with the board regarding independent director nominees and whether the FHFA should prescribe procedures on how the consultation should take place. We believe that the nomination of independent directors implicates the board’s fiduciary duties and that boards should have flexibility to specify the role of the Advisory Council and design a process that, in the board’s judgment, best assist it in fulfilling those duties. The form, content, and timing of advice that each FHLBank needs from its Advisory Council will differ depending on the background and experience of the FHLBank’s board and the FHLBank’s process for identifying nominees. A regulatorily-prescribed process may not meet the unique requirements of each FHLBank. The Interim Final Rule provides flexibility for each FHLBank to establish a process that will meaningfully assist the board in fulfilling its statutory mandate to nominate independent directors.
- Retain the Rule Permitting the Board to Nominate a Minimum of One Nominee for Each Independent Directorship. The FHFA has asked whether FHLBank boards should be required to nominate more candidates for independent directorships than there are positions to be filled, if the board determines that there are sufficient applicants who are both eligible and qualified. As stated previously, the nomination of independent directors implicates the board’s fiduciary duties. Boards should be free to nominate the candidates who are most qualified and who will contribute experience and skills that enhance board oversight. A rule requiring more nominees than directorships to be filled may force boards to nominate candidates who meet the minimum requirements for eligibility and qualifications, but who are not the most qualified considering the board’s particular needs at the time. Such a rule potentially limits the board’s role to that of a

conduit, merely placing eligible, qualified candidates' names on the ballot. Given that independent directors are elected at large, shareholders may not be familiar with candidates who are not from their states, and they should be able to rely on the board's judgment in identifying the most highly qualified candidates.

- Clarify that the Board May Immediately Elect a Member Director if the Number of Nominees Is Insufficient. The preamble to the Interim Final Rule states that the board must wait until January 1 of the year following an election to elect a member director to fill a vacancy resulting from insufficient nominees. However, sections 1261.7(c) and 1261.14(a) together require the board to fill such a vacancy "as soon as practicable after any vacancy occurs." We believe that these sections of the Interim Final Rule correctly permit the board to fill such a vacancy immediately, so that the member director can begin service on January 1. To delay such action until January 1 may cause a board to violate the statutory board composition requirements and may prolong the length of a vacancy.
- Clarify the Election Process following Failed Independent Director Elections. If the FHFA retains some percentage requirement for the election of independent directors, it should more explicitly define the process for holding elections subsequent to an election in which a nominee fails to obtain the required percentage of votes. For example, the rule should specify shortened time frames for delivery of independent director applications, review by the FHFA, and voting, so that the vacancy can be filled prior to the January 1 commencement of the directorship's term. The rule also should address the content of the report of election required by 1261.7(g) as it relates to failed elections. The rule also should permit a board to nominate the same candidate for a subsequent election, which an FHLBank might do if it believed that low voter participation, rather than shareholder disfavor of the candidate, was the real cause of the candidate's failure to receive 20 percent of eligible votes.
- Technical Changes. The Bank notes the following technical changes for the FHFA's consideration:
 - The Bank requests that section 1261.9(b) of the Interim Final Rule be clarified to permit individual Advisory Council members to individually support the candidacy of the Bank's nominees for independent directorships; as currently written, the rule implies that only the Advisory Council as a whole may do so. The Bank requests that the last reference to "director" in section 1261.9(b)(1) be expanded to include officers, attorneys, employees and agents of the FHLBanks, so that they too are prohibited from stating that the FHLBank or its board supports the nomination or election of any member director. The final rule should be structured so that individuals, not acting in their official capacity, retain the right to support or oppose individual candidates.
 - Section 1261.14(a), like section 7(f)(2) of the Bank Act, produces an odd result with respect to the application of the provision requiring that any person elected to fill a vacancy must meet the eligibility and qualification requirements applicable to his predecessor in office. The Bank

requests that the FHFA clarify the rule to permit the Bank to fill such vacancies with an officer or director of an institution that is a member at the time of the board's election to fill the vacancy and to apply the four-years' experience requirement to public interest directors elected in this manner by the board.

- Bylaws and Independent Director Nominating and Election Procedures. The Bank requests the FHFA not require the FHLBanks to include detailed procedures in their bylaws for the nomination and election of independent directors. The Interim Final Rule is, effectively, the procedure. Therefore, the statutory requirement for inclusion of such procedures in the FHLBanks' bylaws can be satisfied with a reference to applicable regulations.

Thank you for your consideration of our comments.

Sincerely,

FEDERAL HOME LOAN BANK OF INDIANAPOLIS

By: 

Milton J. Miller
President and Chief Executive Officer