



December 22, 2008

**VIA EMAIL TO REGCOMMENTS@FHFA.GOV &  
BY FEDERAL EXPRESS**

Alfred M. Pollard, General Counsel (OFHEO)  
Christopher Curtis, General Counsel (FHFB)  
Attention: Comments / RIN: 2590-AA08  
Federal Housing Finance Agency  
1700 G Street, N.W., Fourth Floor  
Washington, D.C. 20552

**Re: Proposed Amendment to Interim Final Rule on Golden Parachute  
and Indemnification Payments, RIN 2590-AA08**

Dear Messrs. Pollard and Curtis:

The Office of Finance ("OF") is writing to comment on the proposed amendment by the Federal Housing Finance Agency ("FHFA") to the interim final regulation on Golden Parachute Payments and Indemnification Payments ("Interim Final Regulation"),<sup>1</sup> which was published on November 14, 2008 ("Proposal").<sup>2</sup> The Proposal addresses limits on indemnification payments by a regulated entity to an entity-affiliated party. The OF welcomes this opportunity to comment on the Proposal.

The OF has reviewed the Proposal and concluded that the restriction on indemnification payments set forth in section 1231.4(b) does not apply to indemnification payments made by the OF. We request that the FHFA confirm this view, or repropose the regulation for further comment.

Proposed section 1231.4(b) provides that no regulated entity shall make or agree to make any prohibited indemnification payment, except as provided in part 1231. Section 1231.1(m) defines a "regulated entity" to be Freddie Mac or any affiliate, Fannie

<sup>1</sup> The Interim Final Regulation was published on September 16, 2008, 73 Fed. Reg. 53356, and correcting amendments were published on September 19, 2008, 73 Fed. Reg. 54309, and September 23, 2008, 73 Fed. Reg. 54673.

<sup>2</sup> 73 Fed. Reg. 67424.

Mae or any affiliate, or any Federal Home Loan Bank. Section 1231.1(f), in turn, defines a "Federal Home Loan Bank" to mean a bank established under the Federal Home Loan Bank Act ("Bank Act"). The OF is not a bank established under the Bank Act. Moreover, unlike the case with Freddie Mac and Fannie Mae, the reference to a Federal Home Loan Bank does not extend to entities that might be deemed to be affiliates of a Federal Home Loan Bank.

The exclusion of the OF from the definition of the term "Federal Home Loan Bank" and thus the term "regulated entity" is further confirmed by the fact that the OF is expressly identified in the definitions to the Proposal, where it is defined as "an entity-affiliated party" in section 1231(d)(5). Thus, as drafted, the exclusion of the OF from the term "regulated entity" was intended.

We further conclude from our review of the Interim Final Regulation that there is no intention by the FHFA under the Proposal to assert that any funding provided by an individual Federal Home Loan Bank to the OF that might ultimately be used by the OF to indemnify an OF director or officer would be considered to be an indemnification payment by the Federal Home Loan Bank for purposes of the Proposal.<sup>3</sup>

If you have questions with respect to these comments, please feel free to contact the undersigned at (703) 467-3600. On behalf of the OF, we appreciate your consideration of these comments.

Sincerely,



John Fisk  
Chief Executive Officer

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<sup>3</sup> Similarly, we note that the restriction on golden parachute payments under the Interim Final Regulation only applies to "regulated entities" and thus does not extend to the OF. Furthermore, we conclude that there is no intention by the FHFA to assert that any funding provided by an individual Federal Home Loan Bank to the OF that might ultimately be used by the OF to make a payment to an OF director or officer would be considered to be a golden parachute payment by the Federal Home Loan Bank for purposes of the Interim Final Rule.