



January 29, 2025

Mr. Clinton Jones  
General Counsel  
Federal Housing Finance Agency  
400 Seventh Street, SW  
Washington, DC 20219

Re: Federal Home Loan Bank System Boards of Directors and Executive Management  
Comments - RIN 2590-AB24

Dear Mr. Jones:

## **1. Introduction**

On behalf of the Council of Federal Home Loan Banks (“Council”), and with the unanimous support of the 11 Federal Home Loan Banks (each an “FHLB”) and the Office of Finance (the “OF” and, collectively with the FHLBs, the “FHLB System”), I am writing to provide comments on the Federal Housing Finance Agency’s (“FHFA”) proposed rulemaking regarding Federal Home Loan Bank System Boards of Directors and Executive Management governance.

The Council, a trade association that represents the views and policy positions of the FHLB System, appreciates the opportunity to provide public comment on this proposed rulemaking. The Council was established in 1998 as a nonprofit trade association based in Washington, D.C. and its primary function is to represent the positions and views of the Council’s members to public policymakers. The Council consists of director and officer representatives of all 11 FHLBs.

The 11 FHLBs are regionally based, wholesale suppliers of lendable funds to financial institutions of all sizes and many types, including commercial banks, credit unions, savings institutions, insurance companies, and community development financial institutions. The FHLBs are cooperatively owned by member financial institutions operating in all 50 states and the U.S. territories. The steady supply of lendable funds from the FHLBs helps U.S. lenders invest in local needs including housing, jobs, and economic growth, while also providing reliable, on-demand liquidity for the nation’s insurance sector. FHLB lending is a source of stability for the nation’s financial system through all economic cycles.

The OF is a joint office of the FHLBs established primarily to facilitate the issuance and servicing of debt instruments for the FHLBs, known as consolidated obligations (“COs”), and to prepare the quarterly and annual combined financial reports of the FHLBs. The OF also acts as the fiscal agent of the FHLBs. The proceeds from the issuance of COs, which are the principal source of funding for the FHLBs, are made available to the FHLBs and then used to fund advances to members, to purchase conforming home mortgages under Acquired Member Assets programs, and for other purposes.

As government-chartered, FHFA supervised and regulated (with the FHFA's statutory powers parallel to the safety and soundness regulator of national banks), and U.S. Securities and Exchange Commission-regulated, privately-owned and for-profit institutions, each FHLB is governed by experienced boards of directors, independent of management, comprised of directors from member institutions as well as independent directors. The OF through FHFA regulation is also governed by an experienced board of directors comprised of all FHLB Presidents and independent directors.

The order of our comments are generally presented in the order of the proposed regulation. **To help clarify our comments, we are also attaching a document showing proposed changes to the draft regulation for the FHFA's consideration.**

The Council commends the FHFA for conducting a public rulemaking with ample time for public and industry comment. Additionally, we appreciate the FHFA for considering the comments contained in the FHLB System's joint letter in response to the FHFA's Spring 2023 Notice of Regulatory Review. The FHLBs and the OF are supportive of finalizing these regulatory amendments if the Council's comments contained herein are satisfactorily addressed. Some of the key concerns are as follows:

- Reducing the authority of the FHLBs and OF boards of directors to use market data and local needs to set director compensation, and the imposition of director compensation caps by the FHFA;
- Reducing the authority and flexibility of the FHLB boards of directors to evaluate incumbent directors as deemed appropriate by each board;
- Effectively creating a 'subset' of the board (a second quorum for independent directors);
- Eliminating a strong board of directors recruitment pipeline by disallowing consideration of potential independent director nominees who have not yet retired from service at a member institution but who will be retired from such service by the time their board term would begin;
- Restricting where an FHLB employee's parents, siblings and adult children could work or how they could invest their income; and
- Restricting FHLB employee development and engagement opportunities in industry activities as a result of automatic regulatory disqualification rules.

## **2. Conflict of Interest Policy**

With respect to 12 CFR 1239.31(a)(1), the reference "consistent with the public interest" appears to us to be too broad and vague. We recommend the reference be deleted, or, alternatively, be revised to read "consistent with the mission and public interest as expressly enumerated in the Federal Home Loan Bank Act, as amended."

Additionally, we suggest that the final regulations include new language at 12 CFR 1239.31(b) to indicate that FHLB conflict policies can be more lenient with regard to lower-level employees who do not have direct contact with FHLB members.

### **3. FHLB Employees Holding Paid Positions**

The FHFA's proposal to automatically prohibit FHLB employees from serving on paid positions (typically, directorships) with entities that are members of -- or who qualify for membership in -- another FHLB should be eliminated. FHLB boards of directors and FHLB ethics officers should be permitted to evaluate the positives of employee development, including the development of the employee's industry knowledge, as well as enhancing the FHLB's own professional prominence, versus the relatively low-risk potential that a conflict might arise with an out-of-district member or member prospect. A member only transacts business with one FHLB. In the unlikely event of a conflict or if an appearance of a conflict should arise, traditional corporate conflict mitigation processes of disclosure and recusal or resignation should be sufficient. Outright regulatory bans are in our view unnecessary. It would be most unfortunate if FHLB officers and staff were automatically blocked from activities such as supporting housing initiatives, or participating on federal- or state-created boards that address important public policy matters.

Section 1313(f) of the Safety and Soundness Act, 12 U.S.C. 5413(f), requires the FHFA Director when promulgating regulations relating to the FHLBs, to consider the differences between the FHLBs and the Enterprises (Fannie Mae and Freddie Mac) in particular as it relates to our cooperative ownership structure. It is fairly common for community banks to be family-owned with multi-generational operators. FHLB employees, knowledgeable in industry issues, should not be automatically banned by regulation from advising members that are not operating in that particular FHLB district. The transfer of technical FHLB expertise, especially with respect to market, credit, and operational matters, strengthens the industry and furthers the development of our employees and family-owned community banks. Employees in other industries, including insured depositories, are not banned by law from consulting or serving on other boards. Should actual conflicts arise, FHLB employees have been and will continue to be advised by FHLB ethics officers and the corporate legal norms of disclosure, recusal, or resignation will still apply.

Proposed 12 CFR 1239.31(a)(5) prohibits FHLB employees from otherwise holding financial interests that conflict with the "conscientious performance of duty." This regulatory standard is ambiguous, vague and is not otherwise defined in corporate law. It should therefore be eliminated or further defined in the final regulation, applying the regular corporate law standards of whether a conflict exists and whether the conflict should be determined acceptable under the standards of the duty of care and the duty of loyalty. The FHFA is proposing to apply an Executive Branch government employee standard under 5 CFR Part 2365, which is also inappropriate for private sector employees.

Finally, for both in-district and out-of-district situations, unpaid non-profit board service by FHLB employee should be expressly permitted in the regulations unless deemed impermissible by an FHLB's ethics officer or board of directors.<sup>1</sup>

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<sup>1</sup> The proposed regulation would automatically ban FHLB employee paid activity (including board service) with FHLB members -- or entities eligible for FHLB membership -- nationwide. This is overly broad and arbitrary, and the 'one size fits all' standard fails to adhere to the standards of corporate law. The Delaware Supreme Court recently clarified the standard of review for transactions involving a controlling stockholder in the *In Re Match Group, Inc.* derivative litigation case (315 A.3d 446 (2024)). The court emphasized that the entire fairness standard is the presumptive standard of review when a controlling shareholder or particular director stands on both sides of a

#### **4. Commercially Reasonable Business Entertainment**

Proposed 12 CFR 1239.31(c) concerning gift restrictions should also clarify that commercially reasonable business entertainment generally offered to other vendors, as well as the FHLBs, should not trigger this gift limit prohibition.

#### **5. Financial Interest Prohibition Should Not Extend to Adult Children, Parents or Siblings of FHLB Employees that Do Not Share the Same Household**

As discussed above, Section 1313(f) of the Safety and Soundness Act requires the FHFA Director when promulgating regulations relating to the FHLBs to consider the difference between the FHLBs and the Enterprises. With our cooperative ownership structure, the multi-generational family ownership of community banks, and the scope of employment available in entities that are FHLBank members, the proposed 12 CFR 1239.31(d) definition of "financial interest" and "immediate family member" should only include spouses and minor children, and specifically carve out adult children, parents, and siblings of FHLB employees that do not share the same household as the subject employee. These family members should not by FHFA regulation be denied the ability to be employed by or invest in a FHLB member. The proposed prohibition at 1239.31(4) is similarly restrictive and overbroad. This creates an undue hardship, undermines family-owned community banking, and restricts employment in the financial sector that should otherwise be encouraged. Any concerns about an actual conflict can be effectively addressed by a FHLB's ethics officer with traditional corporate law concepts of disclosure, recusal or resignation.

As a related matter, the proposed 12 CFR 1239.31(a)(2) reference to "establish appropriate limitations, standards, and procedures" for the conflict of interest for "close family members and associates" should instead read "immediate family members and business associates." This change is recommended to align with the other regulatory definitions.

#### **6. Independent Director Definition of "Bona Fide Resident" and Employment**

The proposed definition in 12 CFR 1261.2 of "bona fide resident" should clarify its application to Independent Directors and, in the definition of employment in the voting state, expressly include board service, consulting, or other paid activity. The expansion of this definition aligns with current practice.

#### **7. Independent Director Eligibility Requirements**

With regard to requirements pertaining to regular independent directors, proposed 12 CFR 1261.5(c)(3) requires FHLB board of directors to give 'special consideration' to individuals who have acquired their knowledge and experience primarily through full-time paid executive roles. The proposed requirement may inadvertently exclude diverse candidates who have historically been underrepresented in executive and senior leadership positions. We therefore recommend that qualifying experience explicitly include board service and volunteer experience

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transaction and receives a non-ratable benefit. A disclosed conflict does not, as a matter of law, create an automatic prohibition of the activity. The FHLBs believe that the bright line prohibition of FHLB employee involvement should be limited to the district level without a national level ban. A national prohibition is arbitrary and is not supported by traditional corporate law standards of disclosure, recusal or waiver of the business judgment rule protections and the application of the fairness test as explained in the *Match* decision.

(as a director of an entity or otherwise) as long as such experience was substantial in terms of time commitments and responsibilities. This suggestion correlates with the experience rules for public interest independent directors in 12 CFR 1261.5(c)(2), and follows previous agency guidance contained in DBR-2022-SYS-088 (controlled).

Also regarding independent director qualifications, at 12 CFR 1261.5(c)(1), we are not in favor of the inclusion of additional, expressly identified qualifications, with the exception of “technology” and “home building.” Given the FHLB System’s longstanding ties to housing finance and community economic development, home building should be specifically listed in the experience list. Further, adding “technology” will help address FHLB future operations.

The existing categories, along with our proposed additions set forth above, will be broad enough to cover new and emerging industry trends. Therefore, there is no need to include any further sub-specialties such as expertise in artificial intelligence, cybersecurity, climate risk, CDFI business models, and financial modeling. In particular, adding CDFI business models as a specific category will introduce a potential bias in favor of one membership type over another in the ranks of a FHLB’s independent directors.

We also do not support including the phrase “such other areas as the Director shall determine” in 12 CFR 1261.5(c)(1) as this would arguably give the FHFA Director the ability to change such independent director qualifications by guidance or directive. The FHLB Act at 12 U.S.C. 1427(a)(3)(B)(i) requires that the FHFA Director may only establish independent director qualifications by regulation.

12 CFR 1261.10(a) contains language that would impose all independent director eligibility requirements on independent director candidate applicants. The FHLBs have a good record of recruiting highly-qualified nominees in transition (e.g., applicants from persons currently employed at a member institution at the time of application but who would meet the independent director eligibility requirement of separating from the member before being seated on January 1st for a new term). The requirement of having to meet eligibility requirements at the time of application will needlessly reduce the candidate pool and make independent director recruitment more difficult and inflexible. Any language to the contrary should be removed from the final regulation.

## **8. Nomination Procedures**

Proposed 12 CFR 1261.7(c)(4) mandates that each FHLB include in its Bylaws procedures for the nomination and election of independent directors. Given that each FHLB presently has policies and procedures in place regarding election administration, and that the elections are already mandated by regulation, the FHLBs believe that a requirement to repeat the procedures in the Bylaws is unnecessary.

## **9. Background Check Results to Remain Confidential**

The submission concerning director background checks for fitness to serve determinations should in the final regulations at 12 CFR 1261.7(e) expressly indicate that the FHFA shall treat these submissions as confidential. This express regulatory acknowledgement will assist the FHLBs in providing candid information and analysis to the FHFA. In addition, we suggest that background checks should only be required to cover the past seven years. The foregoing aligns with certain

Federal and state consumer reporting limits. *See, e.g.,* 15 U.S.C. 1681c, part of the Fair Credit Reporting Act, and Section 380-J of the New York General Business Law.

## **10. Ballot Election Process - Nominees**

The FHLBs recommend that proposed 12 CFR 1261.8 be amended to clarify that the ballots' "brief description of the skills and experience of each nominee" be prepared by the nominee rather than the FHLB staff. Allowing FHLB staff to prepare the description for member directors while also requiring that ballots include the skills the FHLB seeks in director candidates arguably creates the potential for a FHLB and its board to inappropriately influence a member director election in violation of 12 CFR 1261.9(b) and (c). By having each nominee prepare their own statement of skills and experiences, this will ensure accuracy and fairness in the preparation of the ballot.

We further recommend adding a "random" option for ballot listings in addition to the use of alphabetical ballot listings for member, regular independent, and public interest independent director candidates (12 CFR 1261.8(a)(1-3)). FHLBs may choose to present director candidates in random order on ballots to mitigate any potential bias in alphabetical presentation.

## **11. Assessment of Board of Directors Skills and Experience**

In proposed 12 CFR 1261.9, we recommend that the requirement to conduct an annual board of directors skills and experience assessment be changed to a requirement that such assessments be conducted no less than every three years. This would give the FHLB boards the option to conduct such assessments with their own desired cadence and would allow each board to conduct such assessments after their own determination that meaningful changes have taken place among the seated directors.

## **12. Member Director Transitions to Independent Directors -- Waiting Periods**

In order to encourage the continued sharing of director expertise and to help ease the recruiting burden, we recommend that, at 12 CFR 1261.10(d), a member director who wishes to serve as an independent director not be required to 'wait' for any period of time as long as the director (i) will meet the independent director qualifications when the new term begins and (ii) has not otherwise reached the term limits established in 12 U.S.C. 1427(d). We believe that 18 U.S.C. 207's two-year waiting period as mentioned in the preamble to the proposed regulation should not be applied by analogy here because FHLB directors are not Federal employees. The FHLBs have a successful record of retaining expertise when member directors retire from member institutions and return to the board at the commencement of the next term as independent directors.

## **13. Director Conflict of Interest Policy**

Proposed 12 CFR 1261.11 requires each of the FHLBs to establish a conflict of interest policy that applies to all members of its board of directors. The FHLBs do not object to this requirement, but do ask for flexibility. For simplicity, we propose that the FHLBs be formally allowed to combine in one document their boards' conflict of interest policy with that of FHLB employees and Affordable Housing Advisory Council members.

## **14. Financial Interest Exception of Insurance Products**

We suggest a modest clarification to the defined exceptions to "financial interest" in proposed 12 CFR 1261.11 to include insurance products and other member offered products obtained in the normal course of business on non-preferential terms.

## **15. Director “Immediate Family Member” and Affordable Housing Program “Family Member” Definitions**

For the same reasons cited above for FHLB employees, we recommend that the definition of “immediate family member” in proposed 12 CFR 1261.11(f) (now subsection (g) in attached draft) and “family member” in 12 CFR 1291.1 specifically include spouses and children under the age of 18, and exclude adult children, parents and siblings that do not share the same household as the subject director.

## **16. Removal of a Director for Due Cause**

Regarding proposed 12 CFR 1261.13, we support the addition of a regulation that explicitly allows for a FHLB’s board to remove a director for cause. However, we believe that the regulation’s proposed requirement that such removal shall be effective upon a vote of 2/3rds of the FHLB’s disinterested directors is overly limiting. We therefore recommend that:

- the floor for such vote should be *not less* than a 2/3rds vote; and
- a FHLB’s board should be permitted in its Bylaws to establish if desired a higher ‘voting requirement.’

Further, the list of qualifying removal events in 12 CFR 1261.13(b) should be expanded to include the possibility of future performance lapses in addition to actual lapses.

## **17. Director Compensation**

### *Overview*

The issue here is not about the adequacy of FHLB director pay. It is about creating a regulatory standard which complies with the Congressional mandate that each FHLB board of directors set annual director fees and that the FHFA as the safety and soundness regulator has the authority to examine the reasonableness of a board's decision -- but requires the regulator to justify any decision that a board’s director compensation decision was not reasonable.

Proposed 12 C.F.R. 1261.21(a)’s reference that “the Director may establish and provide notice of an annual amount of compensation determined to be reasonable” should not be included in the final rule. The FHFA’s notice of annual reasonable compensation would effectively set fees and as such does not follow the plain meaning of 12 USC 1427(i)(1). Fee caps are also contrary to the corporate governance of privately-owned and managed cooperatives which, by Federal statute, vests decisions of compensation with the board of directors of each FHLB. Regulatory actions setting one national standard for compensation reasonableness are arbitrary, disenfranchise and weaken district board control (and may force a board to set compensation that they do not believe is in the best interest of the FHLB, thereby potentially resulting in a breach of their fiduciary duty to do what they feel is best for the company), and force director fees towards a ‘one-size fits all’ standard. FHFA de facto control of director compensation ignores market forces and does not take

into account the differing sizes of and complexity among the FHLBs, issues relating to operating in high cost areas, district travel demands, and varying market requirements needed to attract -- and retain -- qualified directors. To more closely align with other regulators, which do not mandate industry-wide compensation limits, we recommend, as further discussed below, that the director compensation regulation, in accordance with the Congressional mandate, permit each FHLB and OF board of directors to set annual director fees, and allow the FHFA, as the safety and soundness regulator, to examine the reasonableness of each board's decision.

### *HERA Director Compensation Amendment*

Section 1202 of the Housing and Economic Recovery Act ("HERA") removed statutory limits on FHLB director compensation and effectively reinstated the prior statutory authorization to pay reasonable compensation and expenses to the FHLB's directors. Although the FHFA has the authority to review director compensation for reasonableness, each FHLB retained the authority to set the compensation for its directors. However, in the preamble to the proposed regulation, the FHFA cites the prior history of regulatory approval and then claims that this was just a drafting error because "board" should be replaced by the word 'Director' (i.e., the FHFA Director).

The congressional record suggests that this was not an error. Congress by Amendment 24 to H.R. 1427 considered language to explicitly give the FHFA Director board compensation approval authority -- but expressly rejected the idea.<sup>2</sup> Logically, it makes little policy sense to eliminate the government fee limits with the intent to place such fees under FHLB board control -- and then re-impose FHFA Director control. This is why Amendment 24 failed.

However, even if one were to agree with the FHFA's analysis in the preamble that there was a drafting error, the legislative history and the statutory language suggest otherwise as discussed below.

### *GAO Recommendations Concerning Regulatory Oversight*

The breadth of the FHFA's powers to involve itself in internal management decisions by a FHLB, in this instance setting compensation limits for directors, should be viewed in the context of the years-long transformation of the regulator's powers from something equivalent to a "super board of directors" reviewing and approving practically all major decisions of a FHLB, to a pure safety and soundness regulator designed to function in a manner similar to that of the OCC with respect to national banks. GAO pointed out in reports to Congress that it was inappropriate, and a conflict-of-interest, for a safety and soundness regulator to exercise managerial powers and approve decisions which it should later examine and review. The GAO began this dialogue with its first comprehensive report in 1991 where it stated:

A GSE regulator should usually not involve itself in a GSE's business affairs by approving budgets, salaries, hiring decisions, etc. Such powers should fall under the domain of the GSE's boards of directors unless the regulator has determined that the GSE is acting imprudently. . . . The FHLBs do not have a private corporate governance mechanism for

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<sup>2</sup> See, 153 Cong. Rec. 5296 (House), May 16, 2007, H.R. 1427, amendment No. 24 offered by Mr. Garrett striking all after enacting clause and inserting the Federal Housing Finance Reform Act of 2007, including §202(e) ("Each Federal home loan bank may pay the directors on the board of directors for the bank reasonable and appropriate compensation for the time required of such directors, and reasonable and appropriate expenses incurred by such directors, in connection with service on the board of directors, in accordance with resolutions adopted by the board of directors **and subject to the approval of the Director.**") (emphasis added)



the system as a whole. FHFB now serves this role. It has explicit authority to approve budgets and set salaries. . . . We are concerned that having broad management oversight may undermine FHFB’s regulatory independence . . . [because] FHFB is not arm’s length from the outcome of those decisions.<sup>3</sup>

In a 1993 report focused solely on the FHLB system, the GAO reiterated its concerns about the agency being involved in approving salaries, and noted that the FHFB itself had finally recognized that combining the roles of regulation and governance was not compatible and resulted in an “inherent conflict.”<sup>4</sup> And again, in 1998, GAO reiterated its long standing view that the FHFB should divorce itself from approving compensation and being involved in other governance issues.<sup>5</sup>

### *A Reasonableness Review Standard Does Not Grant The Authority to Set Director Compensation*

The authority allowing the FHFA Director to review for reasonableness does not grant the authority to set caps on director compensation. This standard should be viewed as equivalent to the type of “reasonableness” regime used by the federal banking agencies when evaluating compensation for safety and soundness only.<sup>6</sup> As noted, in 2008, Congress specifically repealed the statutory caps for FHLB boards of directors that previously appeared in 12 U.S.C. 1427, and we are aware of no support in either the statutory text or the legislative history relating to HERA that would indicate that Congress intended to transfer the authority to set such caps to the FHFA Director instead.

On the contrary, the specific statutory provisions that grant the FHFA with clear, prospective authority over certain types of compensation arrangements further suggest that the Agency lacks broad applicable authority to set FHLB director compensation. HERA authorized the FHFA Director to “prohibit or limit by regulation or order, any golden parachute payment or indemnification payment” to any director, executive or other affiliated party, based on a variety of factors that center on wrongdoing by the individual (12 U.S.C. 4518(e)1; 4502). Under 12 U.S.C. 4518(d), the FHFA Director “may not prescribe or set a specific level or range of compensation” for executive officers of the regulated entities, and there is no indication that

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<sup>3</sup> Government Sponsored Enterprises: A Framework for Limiting the Government’s Exposure to Risks (GAO/GGD 91-90), pp. 32-33.

<sup>4</sup> Federal Home Loan Bank System: Reforms Needed to Promote its Safety, Soundness and Effectiveness, (GAO/GGD-94-38) p. 109.

<sup>5</sup> Federal Housing Finance Board: Actions Needed to Improve Regulatory Oversight, Sept. 24, 1998, (GAO/GGD-98-185), p. 8 (“We remain concerned, as we have noted in the past, that combining the roles of oversight and involvement in System business may undermine the independence necessary for FHFB to be an effective safety and soundness and mission regulator. . . . Although FHFB has delegated some of these functions to the bank boards, we suggest that Congress consider ensuring, through legislation, that FHFB not be involved in the business of the System.”). Congress adopted many of the recommendations of the GAO, and stripped away much of the statutory authority that required the Federal Housing Finance Board to approve a wide variety of FHLB actions. Pub. L. No. 106-102, § 601 et seq (Nov. 12, 1999).

<sup>6</sup> 12 U.S.C. § 1831p-1(c) (“Each appropriate Federal banking agency shall, for all insured depository institutions, prescribe—

(1) standards prohibiting as an unsafe and unsound practice any employment contract, compensation or benefit agreement, fee arrangement, perquisite, stock option plan, postemployment benefit, or other compensatory arrangement that--(A) would provide any executive officer, employee, **director**, or principal shareholder of the institution with excessive compensation, fees or benefits; or

(2) standards specifying when compensation, fees, or benefits referred to in paragraph (1) are excessive, which shall require the agency to determine **whether the amounts are unreasonable** or disproportionate to the services actually performed by the individual.”) (emphasis added). See, for example, 12 C.F.R. Part 30, Appendix A, Part III.A. The OCC does not set dollar amount thresholds for director fees in its guidance.

Congress had more concerns over board compensation than executive compensation or intended to grant the FHFA Director a broader authority as related to board compensation. In addition, we believe that the reporting regime relating to board compensation and expenses of the FHLBs under HERA (12 U.S.C. 1427(i)(2)) is also more consistent with a mechanism where the FHLBs themselves, rather than the FHFA Director, set board compensation and then report that data to the FHFA for compilation in its Annual Reports to Congress (“... information regarding the compensation and expenses **paid by the Federal Home Loan Banks to directors on the boards of directors of the Banks**”) (emphasis added). If instead Congress intended the FHFA to set board compensation for the FHLBs, the need for such data reporting would be less obvious.

We also note that the authority the FHFA seeks to assert in this case is inconsistent with its statements in its prior rulemaking and on its public website, where the FHFA acknowledged the HLBs’ authority under the statute to pay reasonable compensation to their directors, subject to FHFA review.<sup>7</sup>

Based on all of the foregoing, under established principles of statutory interpretation, including recent case law, we believe that the FHFA’s assertion of the FHFA Director’s authority to set caps on director compensation raises substantial legal questions as to its validity, as that interpretation falls far short of being the best interpretation of the statute. Also, the previous historical authority of the regulator to control board compensation as detailed in the preamble is not relevant. Congress through HERA expressly removed such authority.

### *Regulatory Recommendations*

As is the case with executive compensation, the FHFA has by regulation (12 C.F.R. 1230.2) defined what ‘reasonable and comparable’ mean. We believe the FHFA should look to the guidance of the Senator who first authored a statutory provision on “reasonable and comparable” compensation in establishing an appropriate framework for the evaluation of that phrase. In discussing 12 U.S.C. § 4518, Senator Levin made the following statement on the Senate floor explaining how his original amendment contained in the prior version of the Senate bill had been modified by the Conference Report that was being considered by the Senate at that time:

Sen. Levin. [W]hen this legislation came before the Senate some months ago, I proposed adding a provision to prohibit compensation abuses. I modeled it after a provision I authored last year- now law- which clarified and strengthened the authority to stop compensation abuses at federally insured banks and S&Ls....[I]nstead of directing the new regulator to prohibit excessive compensation, defining those terms and listing the factors

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<sup>7</sup> See, e.g., <https://www.fhfa.gov/policy/executive-compensation> (“From 1999 to 2008, the annual compensation of the FHLBank directors was subject to statutory caps. Consequently, the annual maximum compensation for the chairmen of the boards of directors was set at the statutory cap. Although the annual compensation of the other directors varied by position (vice chair, audit committee chair, other committee chairs), it was similar across the FHLBanks. With the enactment of the Housing and Economic Recovery Act of 2008 (HERA), Congress repealed the statutory caps and **authorized the FHLBanks to pay reasonable compensation to their directors, subject to FHFA review.**”) (emphasis added). See also the following statement from the preamble of the FHFA’s April 5, 2010 final rulemaking on ‘Federal Home Loan Bank Directors’ Eligibility, Elections, Compensation and Expenses’: “In October 2009, FHFA published a proposed rule to address changes HERA section 1202 made to section 7(i) of the Bank Act. See 74 FR 54758 (Oct. 23, 2009). Among other things, section 1202 repealed the statutory caps on the annual compensation a Bank can pay to its directors, **the effect of which was to authorize the Banks to pay reasonable compensation and expenses to their directors subject to FHFA approval.** See 12 U.S.C. 1427(i).” (emphasis added)

the regulator should consider in evaluating compensation practices, section 108 simply directs the regulator to prohibit compensation which is not ‘reasonable and comparable’ to the compensation paid by similar businesses including major financial institutions.<sup>8</sup>

If there was any doubt that Congress intended that result, Senator Levin made it expressly clear:

Sen. Levin. If this legislation becomes law, in developing criteria and procedures to implement section 108, it will be important for the regulator to consult with the Federal Reserve, Comptroller of the Currency and Office of Thrift Supervision to see how they exercise their compensation oversight authority and set up a comparable system, so that S&L, bank and housing enterprise executives operate under the same prohibitions against compensation abuse.<sup>9</sup>

To more closely align with the other regulators, which do not mandate industry-wide compensation limits, we therefore recommend that the director compensation regulation, in accordance with the Congressional mandate, permit each FHLB and OF board of directors to set annual director fees, and allow the FHFA, as the safety and soundness regulator, to examine the reasonableness of each board’s decision. To accomplish this, we suggest the following process and review standards be implemented:

#### **A) For the FHLB & OF Boards of Directors**

To assist the FHFA in conducting a reasonable compensation analysis, we suggest the adoption of a regulation which tracks the statutory requirements of 12 U.S.C. 1427(i)(1), which reads as follows:

Each board may pay its directors reasonable compensation for the time required of them, in accordance with the **resolutions adopted by such directors**, subject to the **approval of the board**. (emphasis added).

To implement the statutory requirement of 12 USC 1427(i)(1), we recommend that the final regulation provide that, if a board elects to make a director fee change, the board must pass a **set of resolutions** that: (i) select a qualified and independent compensation consultant to conduct a director compensation study; (ii) in connection with the findings of the study, establish a list of companies for benchmarking purposes; and (iii) set a fee percentile to the market target based on the actual market data. After deliberating on the findings from the three resolutions above, the board must then **approve** a final resolution establishing the annual director fees. The results of the foregoing can then be examined by the FHFA Director for reasonableness.

#### **B) For the FHFA Director and the FHFA Office of the Ombudsman**

Since the duty for setting director compensation rests with the FHLB’s board of directors, the final regulation should set forth procedures the FHFA Director must follow in exercising the authority of proposed Section 1261.23 when making a determination that compensation and/or expenses to be paid to directors is not reasonable.

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<sup>8</sup> 138 Cong. Rec. 17916, 17922 Senate, (Oct. 8, 1992). These provisions were made applicable to the Federal Home Loan Banks by the amendments in the Housing and Economic Reform Act of 2008 which replaced “enterprise(s)” in section (a) with “regulated entity(ies)” and renumbered subsection (b) as subsection (d). Pub. L. No. 110-289, § 1113 (July 30, 2008).

<sup>9</sup> Id.

Specifically, the regulation should require the FHFA Director to provide a written factual analysis to an FHLB or the OF to support any such negative determination. Such analysis should include (i) an explanation of how the board failed to be reasonable with regard to its compensation decisions; and (ii) information contained in all studies or other supporting materials that the FHFA relied upon in determining that the level of compensation and expenses to be paid to directors was unreasonable. Such information would assist an FHLB's or the OF's board of directors in evaluating its prior decision making and in determining whether it is meeting its duties under 12 USC 1427(i)(1) or applicable FHFA regulations when establishing annual director compensation.

We also suggest that 12 CFR 1213 be amended to explicitly provide that, if a board of directors does not accept the director compensation findings of the FHFA Director, the board may ask for a review of the matter by the FHFA's Office of the Ombudsman ("Ombudsman")<sup>10</sup>. After conducting an independent inquiry, the Ombudsman will submit its findings of fact and its recommendation to the FHFA Director. A copy of the Ombudsman's determination will also be provided to the board of directors and to the FHFA's Office of Inspector General. If a board of directors elects to use this process, the FHFA may not take any enforcement action against the board for initiating this process.

Since this process is more robust than what is included in existing regulations, we recommend that the FHFA's '30 days to review' requirement be extended to 90 days<sup>11</sup>.

## **18. General Director Expense Reporting**

The FHLBs and the OF request that the preceding calendar year reporting requirement of group function expenses for group meals set forth in proposed 12 CFR 1261.21(b)(V) be deleted. This expense calculation requires a manual breakout of employee versus director expenses. It is burdensome and costly to calculate, the actual costs are insignificant, and the information in our view offers very little value to the shareholders, policymakers or the FHFA.

## **19. Individual Director Performance Reviews**

We agree that the annual evaluation of directors is a governance best practice, as proposed in 12 CFR 1261.22 (a)(3). However, the FHLBs and the OF are in the best position to determine how and when to evaluate their respective directors. We recommend maintaining the first part of proposed subsection (3) but deleting the specific components of such evaluation. The imposition of evaluation standards are more appropriately determined by the boards than by regulation.

## **20. Virtual Board Meetings**

The FHLBs and the OF commend the FHFA for proposing to eliminate the six in-person board meeting requirement. The FHLBs and the OF respectfully request that the FHFA reconsider its proposal at 12 CFR 1261.24(b) to require that an FHLB or OF director physically reside in the United States or its territories when attending a virtual meeting by video conference or teleconferencing. To bar such attendance seems arbitrary and burdensome to directors who may be engaged in foreign travel. These situations are infrequent and could be addressed by an FHLB's

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<sup>10</sup> The independent Ombudsman review is permitted by existing law. See 12 USC 4517.

<sup>11</sup> See the proposed change to 12 C.F.R. 1261.22(d), which will now be new sub-section (e) as marked in the attached draft of the regulation.

information technology officer if virtual meeting attendance from a particular foreign jurisdiction presents a security concern. Moreover, such restrictions could have unintended consequences, such as potentially jeopardizing the board's or a board committee's ability to meet the quorum requirement for a meeting, in particular a special meeting convened at short notice to address urgent issues.

We think it far more reasonable to allow for director participation in these cases regardless of their physical location, recognizing that all directors have their fiduciary duties, including the duty of care, and that there are existing information technology safeguards in place at the FHLBs and the OF.

## **21. Independent Director “Second Quorum” Requirement**

The FHLBs believe that the FHFA's proposal under 12 CFR 1261.24(c) that would create a “second quorum” requirement for independent directors is overly prescriptive. This requirement could impede an FHLB's board of directors to oversee and manage the affairs of the FHLB as otherwise required by 12 USC 1427 and 1432. The statutory responsibilities of independent directors are identical to those of the member directors. The FHFA is not authorized under Federal law to create new director authorities or powers for a subset of directors.

## **22. Elimination of the OF’s Monitoring of the FHLBs’ Unsecured Credit Exposure under 12 C.F.R. § 1273.6(f)**

We appreciate the FHFA for considering the comments contained in the FHLB System’s joint letter in response to the FHFA’s Spring 2023 Notice of Regulatory Review, including making several revisions to part 1273, which governs the OF. As raised in that joint letter and in the FHLB System’s November 2024 comment letter relating to the FHFA’s recent unsecured credit rulemaking and as conveyed to the FHFA staff on other occasions, the FHLBs and the OF respectfully request again that, as part of its streamlining and modernizing of the regulations governing the OF, the FHFA eliminate the OF’s monitoring of the FHLBs’ unsecured credit exposure under 12 C.F.R. § 1273.6(f). Such elimination would be consistent with the FHFA’s objective of improving its regulations’ effectiveness and reducing their burden, similar to what the FHFA has articulated when proposing to remove the redundant reporting requirements in 12 C.F.R. § 1277.7(e)(1) and (2) (“to avoid confusion and the possibility that the regulatory text may conflict with the DRM reporting requirements as FHFA's supervisory reporting needs evolve”).

12 C.F.R. § 1273.6(f), related to the monitoring of the FHLBs’ unsecured credit exposure, states that the OF shall “timely monitor, and compile relevant data on, each FHLBank’s and the FHLBank System’s unsecured credit exposure to individual counterparties.” We note that, under 12 C.F.R. § 1277.7, the FHLBs are already required to comply with regulatory limits on unsecured extension of credit and report information relating to their credit exposure to the FHFA. Since 2015, under the new reporting process developed by the FHFA, the FHLBs have submitted unsecured credit exposure information required under these regulations directly to the FHFA instead of reporting it through the OF, as before. In light of these process changes (including the change in the OF’s role in the related data collection and compilation process), the existence of a separate, enhanced regulatory mechanism (independent of the OF) under which the FHLBs monitor and report on their unsecured credit exposure and the lack of day-to-day involvement by the OF in the FHLBs’ extension of unsecured credit to their counterparties, we believe that the requirement on the OF under 12 C.F.R. § 1273.6(f) is duplicative, burdensome, and obsolete.

We note that, to the extent any unsecured credit exposure information relating to any FHLB is significant enough for disclosure in the FHLBs' combined financial reports ("CFRs"), that information will be collected, compiled, and reported on under generally accepted accounting principles or pursuant to other disclosure requirements, as in the cases of other relevant items, in the ordinary course of the preparation of the CFRs. 12 C.F.R. § 1273.6(f) would be unnecessary for that purpose, as CFR disclosures are already governed by existing FHFA regulations.

### **23. Regulation Compliance Date and Implementation Matters**

We ask that implementation of new governance rules be set in such a way that avoids inadvertent interference with any ongoing annual election process. Our proposed solution is to set the compliance date for those rules that would affect the annual election process as January 1, 2027. In addition to avoiding any clash with an ongoing election, such compliance date will also give the FHLBs the time to achieve the updates that will be needed for proper implementation of the new regulations.

We also ask that the final regulation allow an FHLB to allow for a legacy exemption for pre-existing activities of a particular director or employee that may be otherwise be in conflict with the new regulation.

### **24. Conclusion**

The Council appreciates the opportunity to provide comments on this proposed rulemaking. The FHLBs, the OF and the Council look forward to continuing to work constructively with the FHFA as the agency works to finalize the rulemaking. Proper regulation which encourages robust Board oversight will help further the mission -- and the continued safe and sound operation -- of the FHLB System in the years ahead.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan Donovan". The signature is fluid and cursive, with a large initial "R" and "D".

Ryan Donovan  
President and Chief Executive Officer  
Council of Federal Home Loan Banks

Attachment (1): copy of proposed regulation

## PART 1239—RESPONSIBILITIES OF BOARDS OF DIRECTORS, CORPORATE PRACTICES, AND CORPORATE GOVERNANCE

■ 1. The authority citation for part 1239 continues to read as follows:

**Authority:** 12 U.S.C. 1426, 1427, 1432(a), 1436(a), 1440, 4511(b), 4513(a), 4513(b), 4526, and 15 U.S.C. 7800(b).

■ 2. Add §1239.31 to read as follows:

### **§1239.31 Conflicts of interest policy for Bank employees.**

(a) *Adoption of conflicts-of-interest policy.* Each Bank's board of directors shall, by January 1, 2027, adopt an updated written conflicts-of-interest policy covering all Bank employees. At a minimum, the conflicts-of-interest policy of each Bank shall:

(1) Require that all Bank employees discharge their official responsibilities in an objective and impartial manner in furtherance of the interests of the Bank's membership as a whole and consistent with the mission and the public interest as expressly set forth in the Federal Home Loan Bank Act, as amended;

(2) Establish appropriate limitations, standards, and procedures regarding the holding of outside positions and financial interests by Bank employees and ~~close~~immediate family members and business associates;

(3) Prohibit Bank executive officers and senior management from holding paid positions with any entity that is, or may be eligible to become, a member or housing associate of ~~any~~the Bank or with any affiliate of such entity. Unpaid non-profit board service by a Bank employee is permissible so long as any actual or apparent conflict is disclosed and the Bank's conflicts-of-interest policy provides for future recusal or resignation;

(4) ~~Prohibit~~Require Bank employees ~~from~~to disclose participation~~g~~ in any particular matter in which the employee or any immediate family member or business associate has a financial interest;

~~Prohibit Bank employees from otherwise holding financial interests that conflict with the conscientious performance of duty~~;

Require Bank employees to disclose actual or apparent conflicts of interests and establish procedures for addressing such conflicts, including recusal;

(5) Require the establishment of internal controls to ensure that conflicts-of-interest reports are made and filed and that conflicts-of-interest issues are disclosed and resolved; and

(6) Establish procedures to monitor compliance with the conflicts-of-interest policy.

(b) Conflicts-of-interest policy standards. Each Bank's board-adopted conflicts-of-interest policy may be less restrictive for employees that are lower-level or that do not have direct dealings with a member or housing associate of the Bank.

~~(b)(c)~~(c) *Confidential information.* Bank employees shall not disclose or use confidential information they receive solely by reason of their position with the Bank to obtain any benefit for themselves or for any other individual or entity.

~~(e)(d)~~(d) *Gifts.* No Bank employee shall accept, and each Bank employee shall discourage the employee's immediate family members from accepting, any gift that the employee believes or has reason to believe is given with the intent to influence the employee's actions, or where acceptance of such gift would have the appearance of intending to influence the employee's actions. Any insubstantial gift or commercially reasonable business entertainment generally offered to other vendors would not be expected to trigger this prohibition.

(e) Legacy exemption. Conflicts of interest of a Bank employee existing prior to [the publication date of this final rule as amended] are exempt from the requirements of this §1261.31 if disclosed as required by the Bank’s conflict-of-interest policy.

~~(d)~~(f) *Definitions.* For purposes of this section:

*Business associate* means any individual or entity with whom a Bank employee has a business relationship, including, but not limited to:

(i) Any corporation or organization of which the employee is an officer or partner, or in which the employee beneficially owns ten percent or more of any class of equity security, including subordinated debt;

(ii) Any other partner, officer, or beneficial owner of ten percent or more of any class of equity security, including subordinated debt, of any such corporation or organization; and

(iii) Any trust or other estate in which an employee has a substantial beneficial interest or as to which the employee serves as trustee or in a similar fiduciary capacity.

*Financial interest* means a direct or indirect financial interest in any activity, transaction, property, or relationship that involves receiving or providing something of monetary value, and includes, but is not limited to any right, contractual or otherwise, to the payment of money, whether contingent or fixed. It does not include a deposit or savings account, loan or extension of credit, insurance policy, insurance annuity, or other accounts and products obtained in the normal course of business on non-preferential terms generally available to the public from a member institution or from a non-member counterparty to the Bank by which the individual is employed.

*Immediate family member* means a parent, sibling, spouse, child under the age of eighteen (18), or dependent of a Bank employee, or any relative sharing the same residence as a of the Bank employee.

- 3. Revise and republish part 1261 to read as follows:

## **PART 1261—FEDERAL HOME LOAN BANK DIRECTORS**

### **Subpart A—Definitions**

Sec.

1261.1[Reserved]

### **Subpart B—Federal Home Loan Bank Boards of Directors: Eligibility and Elections**

1261.2 Definitions.

1261.3 General provisions.

1261.4 Annual designation of directorships.

1261.5 Director eligibility.

1261.6 Determination of member votes.

1261.7 Nominations for member and independent directorships.

1261.8 Election process.

1261.9 Actions affecting director elections.

1261.10 Independent director independence.

1261.11 Conflicts of interest policy for Bank directors.

1261.12 Reporting requirements for Bank directors.

1261.13 Ineligibility and removal of Bank directors.

1261.14 Vacant Bank directorships.



1261.15 Minimum number of member directorships.

### **Subpart C—Federal Home Loan Bank Directors’ Compensation and Expenses**

1261.20 Definitions.

1261.21 General.

1261.22 Directors’ compensation policy.

1261.23 Director disapproval. 1261.24 Board meetings.

**Authority:** 12 U.S.C. 1426, 1427, 1432, 4511 and 4526.

### **Subpart A—Definitions**

#### **§1261.1 \_\_\_ [Reserved]**

### **Subpart B—Federal Home Loan Bank Boards of Directors: Eligibility and Elections**

#### **§1261.2 \_\_\_ Definitions.**

As used in this subpart:

*Advisory Council* means the Advisory Council each Bank is required to establish pursuant to section 10(j)(11) of the Bank Act (12 U.S.C. 1430(j)(11)), and part 1291 of this chapter.

*Bona fide resident* of a Bank district means, in the context of serving as an independent director, an individual who:

- (1) Maintains a principal residence in the Bank district; or
- (2) ~~If serving as an independent director, Both (a)~~ owns or leases in his or her own name a residence in the Bank district and ~~(b)~~ is employed, serves as a paid director, is a bona fide paid consultant, or otherwise derives income from his or her economic activity, in a voting State in the Bank district.

*FHFA ID number* means the number assigned to a member by FHFA and used by FHFA and the Banks to identify a particular member.

*Independent directorship* and *independent director* mean, respectively, a directorship designated as provided under §1261.4 to be filled by an individual meeting the eligibility requirements of §1261.5(b) and an individual serving in such a directorship.

*Member directorship* and *member director* mean, respectively, a directorship designated as provided under §1261.4 to be filled by an individual meeting the requirements of §1261.5(a) and an individual serving in such a directorship.

*Method of equal proportions* means the mathematical formula used by FHFA to allocate member directorships among the States in a Bank’s district based on the relative amounts of Bank stock required to be held as of the record date by members located in each State.

*Nominee* means an individual who has been nominated for a Bank directorship under the applicable provision of §1261.7.

*Public interest independent directorship* and *public interest independent director* mean, respectively, an independent directorship designated by a Bank to be filled by an individual having the qualifications specified in §1261.5(c)(2) and an individual serving in such a directorship.

*Record date* means December 31 of the calendar year immediately preceding the election year.

*Regular independent directorship* and *regular independent director* mean, respectively, an independent directorship designated by a Bank to be filled by a person having the qualifications specified in §1261.5(c)(1) and an individual serving in such a directorship.

*Voting State* means the State in which a member's principal place of business, as determined in accordance with 12 CFR part 1263, is located as of the record date. The voting State of a member with a principal place of business located in the U.S. Virgin Islands as of the record date is Puerto Rico, and the voting State of a member with a principal place of business located in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands as of the record date is Hawaii.

**§1261.3**        **General provisions.**

(a) *Term of directorships.* The term of office of each directorship shall be four years, except as adjusted pursuant to §1261.4(e) or (f) to achieve a staggered board, and shall commence on January

1 of the calendar year so designated by FHFA.

(b) *Annual elections.* Each Bank annually shall conduct an election the purpose of which is to fill all directorships designated by FHFA as commencing on January 1 of the calendar year immediately following the year in which such election is commenced. Subject to the provisions of the Bank Act and in accordance with the requirements of this subpart, the disinterested directors of each Bank, or a committee of disinterested directors, shall administer and conduct the annual election of directors. In so doing, the disinterested directors may use Bank staff or independent contractors to perform ministerial and administrative functions concerning the elections process.

(c) *Location of members.* For purposes of the election of member directors, a member is deemed to be located in its voting State, unless otherwise specified by the Director.

(d) *Dates.* If any date specified in this subpart for action by a Bank, or specified by a Bank pursuant to this subpart, falls on a Saturday, Sunday, or Federal holiday, the relevant time period is deemed to be extended to the next calendar day that is not a Saturday, Sunday, or Federal holiday.

**§1261.4**        **Annual designation of directorships.**

(a) *Designation of directorships order.* As provided in this section, the Director will by June 1 of each year issue a written order designating for each Bank's board of directors for the following calendar year:

(1) The total number of member directorships and their allocation among the voting States of the Bank's district; (2) The total number of independent directorships; and

(3) The directorships for which an election will be held for terms beginning on the January 1 of the following year, and the length of those terms.

(b) *Capital stock reports.* (1) On or before April 10 of each year, each Bank shall deliver to FHFA a capital stock report that indicates, as of the record date, the number of members located in each voting State in the Bank's district, the number of shares of Bank stock that each member (identified by its FHFA ID number) was required to hold, and the number of shares of Bank stock that all members located in each voting State were required to hold. If a Bank has issued more than one class of stock, it shall report the total shares of each class of stock required to be held by the members. The Bank shall certify to FHFA that, to the best of its knowledge, the information provided in the capital stock report is accurate and complete, and that it has notified each member of its minimum capital stock holding requirement as of the record date.

(2) The number of shares of Bank stock that any member was required to hold as of the record date shall be determined in accordance with the minimum investment established by the capital plan for that Bank.

(c) *Allocation of member directorships.* For each Bank's board of directors, the Director will designate a total number of member directorships and allocate them among the voting States of the Bank's district as follows:

(1) *Method of equal proportions.* (i) FHFA will choose a base number of member directorships and, using the method of equal proportions, allocate those among the voting States of the Bank district according to the ratio of the number of shares of Bank stock required to be held by the members in each State to the number of shares required to be held by all members of the Bank.

(ii) In no case shall the number of member directorships allocated to a voting State be fewer than one or more than six.

(iii) If a Bank has issued more than one class of stock, the Director will allocate the member directorships based on the combined number of shares required to be held by members.

(iv) The Director will allocate a Bank's member directorships based upon members' minimum required stock holdings as of the record date, as shown in the Bank's capital stock report required by paragraph (b) of this section.

(2) *Grandfather provision.* If, after completing the process described in paragraph (c)(1) of this section for a Bank, the number of member directorships allocated to any voting State is not at least equal to the minimum number shown for that voting State on the table in §1261.15, the Director will allocate to that voting State such number of additional member directorships as are necessary to increase the total number of member directorships allocated to that voting State to the number shown on the table. If a voting State does not appear on the table in §1261.15, the minimum number of member directorships for that voting State is deemed to be one for purposes of this paragraph (c)(2).

(d) *Independent directorships.* After designating the member directorships for a Bank's board of directors as provided in paragraph (c) of this section, the Director will designate a number of independent directorships for the Bank's board that is at least 40 percent, but less than 50 percent, of the total number of directorships on the board.

(e) *Adjustments—(1) Redesignated member directorships.* If the annual designation of directorships results in an existing member directorship being redesignated as representing members in a different voting State, that directorship shall be deemed to terminate in the previous voting State as of December 31 of the current year, and a new directorship to begin in the succeeding voting State as of January 1 of the next year. The new directorship shall be filled by vote of the members in the succeeding voting State and, in order to maintain the staggered terms of directorships, shall be adjusted to a term equal to the remaining term of the previous directorship if it had not been redesignated to another State.

(2) *New directorships.* If the annual designation of directorships results in the addition of one or more directorships to a Bank's board, the Director may truncate the initial term of any such new directorship if required to ensure that the terms of the Bank's directorships are staggered with approximately one quarter of the terms expiring each year.

(f) *Public interest independent directorships.* Annually, the board of directors of each Bank shall determine the number of public interest independent directorships to be included among its designated independent directorships for the following year, ensuring that at all times the Bank will have at least two such directorships. In its discretion, a Bank's board may change the number of public interest independent directorships during the year, provided that there are at all times at least two such directorships.

#### **§1261.5 \_\_\_\_\_ Director eligibility.**

(a) *Eligibility requirements for member directors and nominees.* (1)

Each member director, and each nominee for a member directorship, shall be:

- (i) A citizen of the United States; and
- (ii) An officer or director of a member that is located in the voting State of the Bank district to which the directorship being occupied, sought, or filled has been allocated under §1261.4(c) and that meets all minimum capital requirements established by its appropriate Federal banking agency or appropriate State regulator.

(2) In the case of a director elected by a Bank's members under §1261.8, the institution of which the director is an officer or director must have been a member as of the record date. In the case of a director elected by a Bank's board of directors to fill a vacancy under §1261.14, the institution of which the director is an officer or director must be a member at the time the board acts.

(b) *Eligibility requirements for independent directors and nominees.* Each independent director, and each nominee for an independent directorship, shall at all times:

- (1) Be a citizen of the United States;
- (2) Be a bona fide resident of the district in which the Bank is located;
- (3) Meet the independence requirements of §1261.10; and
- (4) Meet the applicable qualifications requirements specified in paragraph (c) of this section.

(c) *Independent director qualifications*—(1) *Regular independent directors.* Each regular independent director and each nominee for a regular independent directorship shall have experience in, or knowledge of, one or more of the following areas: auditing and accounting; derivatives; financial management; organizational management; project development; home building; risk management practices; artificial intelligence; information technology and security; climate related risk; Community Development Financial Institution (CDFI) business models; modeling; or the law; ~~and such other areas as the Director shall determine~~. Before nominating any individual for a regular independent directorship, the board of directors of a Bank shall determine that such knowledge or experience of the nominee is commensurate with that needed to oversee a financial institution with a size and complexity that is comparable to that of the Bank.

(2) *Public interest independent directors.* Each public interest independent director and each nominee for a public interest independent directorship shall have more than four years of experience representing consumer or community interests in banking services, credit needs, housing, or consumer financial protection. For purposes of this paragraph (c)(2), *representing* means advocating for, or otherwise acting primarily on behalf of or for the direct benefit of, consumers or the community. Qualifying experience in one of the four enumerated areas may have been acquired in professional, public service, or significant volunteer positions, so long as the work done was substantial in terms of time commitment and responsibility. Such experience must have accrued from activities personally undertaken by the director or nominee, as opposed to being attributed based solely on the activities of organizations with which the person was associated.

(3) *Relevance of experience to be considered.* In considering potential nominees for independent directorships, a Bank's board of directors shall give special consideration to individuals that:

- (i) Possess knowledge and experience that are relevant to the business, programs, and mission of the Bank and that provide a basis for understanding the actual and potential impact of the Bank's activities on its members and on communities within the Bank's district; and

(ii) Have gained their knowledge and experience primarily through full time paid executive, management, or other senior positions. Substantial experience if directly obtained from significant volunteer positions may also be considered.

(d) *Term limits.* (1) The following are ineligible for nomination or election to a directorship of a Bank:

(i) Any incumbent director whose term of office would not expire before the new term of office would begin; and

(ii) Any person that has been elected to each of three consecutive full terms as a director of a Bank and has served for all or part of each of those terms, unless the term of the directorship to be filled begins at least two years after the expiration of the third consecutive term.

(2) For purposes of determining whether a person is ineligible under the term limit provision of paragraph (d)(1)(ii) of this section:

(i) A four-year term of office shall count as a full term;

(ii) A term of office that is adjusted to a period of fewer than four years as provided in §1261.4(e) shall not count as a full term;

(iii) Any full term of office that ends immediately before a term of office that is adjusted to a period of fewer than four years as provided in §1261.4(e), and any full term of office commencing immediately following such adjusted term of office, shall count as consecutive full terms of office; and

(iv) Any period of time served by a director who has been elected by the board of directors to fill a vacancy under §1261.14 shall not count as a full term.

(e) *Loss of eligibility.* A director shall become ineligible to remain in office if, during the director's term of office, the directorship to which the director has been elected is eliminated through the annual designation of directorships process described in §1261.4. The incumbent director shall become ineligible after the close of business on December 31 of the year in which the directorship is eliminated.

#### **§1261.6                        Determination of member votes.**

(a) *In general.* Each Bank shall determine, in accordance with this section, the number of votes that each member of the Bank may cast for each directorship that is to be filled by the vote of the members.

(b) *Number of votes.* For each member directorship and each independent directorship that is to be filled in an election, each member shall be entitled to cast one vote for each share of Bank stock that the member was required to hold as of the record date. Notwithstanding the preceding sentence, the number of votes that any member may cast for any one directorship shall not exceed the average number of shares of Bank stock required to be held as of the record date by all members located in the same State as of the record date. If a Bank has issued more than one class of stock, it shall calculate the average number of shares separately for each class of stock, using the total number of members in a State as the denominator, and shall apply those limits separately in determining the maximum number of votes that any member owning that class of stock may cast in the election. The number of shares of Bank stock that a member was required to hold as of the record date shall be determined in accordance with the minimum investment requirement established by the Bank's capital plan.

(c) *Voting preferences.* If the board of directors of a Bank includes any voting preferences as part of its approved capital plan, those preferences shall supersede the provisions of paragraph (b) of this section that otherwise would allow a member to cast one vote for each share of Bank stock it was required to hold as of the record date. If a Bank establishes a voting preference for a

class of stock, the members with voting rights shall remain subject to the provisions of section 7(b) of the Bank Act (12 U.S.C. 1427(b)) that prohibit any member from casting any vote in excess of the average number of shares of stock required to be held by all members in its state.

### **§1261.7 Nominations for member and independent directorships.**

(a) *Election announcement.* Within a reasonable time in advance of an election, a Bank shall notify each member in its district of the commencement of the election process. Such notice shall include:

- (1) The number of member directorships designated for each voting State in the Bank district and the number of independent directorships designated for the Bank, including the number of independent directorships designated by the Bank as public interest independent directorships, for the following calendar year;
- (2) The name of each incumbent Bank director, the name and location of the member at which each member director serves, and the name and location of the organization with which each independent director is affiliated, if any, and the expiration date of each Bank director's term of office;
- (3) Identification of the member directorships, regular independent directorships, and public interest independent directorships for which an election will be held;
- (4) A brief statement describing the skills and experience the Bank believes are most likely to add strength to the board of directors, as determined through the annual assessment required under §1261.9;
- (5) An attachment indicating the name, location, and FHFA ID number of every member in the member's voting State, and the number of votes each such member may cast for each directorship to be filled by such members, as determined in accordance with §1261.6; and
- (6) If a member directorship is to be filled by members in a voting State, a nominating certificate for those members.

(b) *Member directorship nominations*—(1) *Nominating certificates.* (i) Any member that is entitled to vote in the election may nominate an eligible individual to fill each available member directorship for its voting State by delivering to its Bank, prior to a deadline to be established by the Bank and set forth in the notice required in paragraph (a) of this section, a nominating certificate duly adopted by the member's governing body or by an individual authorized by the member's governing body to act on its behalf.

(ii) The nominating certificate shall include the name of the nominee and the name, location, and FHFA ID number of the member the nominee serves as an officer or director.

(iii) The Bank shall establish a deadline for delivery of nominating certificates, which shall be no earlier than 30 calendar days after the date on which the Bank delivers the notice required by paragraph (a) of this section, and the Bank shall not accept certificates received after that deadline.

(2) *Accepting member directorship nominations.* Promptly after receipt of any nominating certificate, a Bank shall notify in writing any individual nominated for a member directorship. An individual may accept the nomination only by delivering to the Bank, prior to a deadline established by the Bank and set forth in its notice, an executed member director eligibility certification form prescribed by FHFA. A Bank shall allow each nominee at least 30 calendar

days after the date the Bank delivered the notice of nomination within which to deliver the executed form. A nominee may decline the nomination by so advising the Bank in writing, or by failing to deliver a properly executed member director eligibility certification form prior to the deadline.

(c) *Independent directorship nominations*—(1) *Potential nominees*. Any individual may request to be considered for nomination to an independent directorship of the board of directors of a Bank by delivering to the Bank, on or before the deadline set by the Bank for delivery of nominating certificates, an executed independent director application form prescribed by FHFA. Any other interested party also may recommend to the Bank that it consider a particular individual as a nominee for an independent directorship, but the Bank shall not nominate any individual unless the individual has delivered to the Bank, on or before the date the Bank has set for delivery of nominating certificates, an executed independent director application form prescribed by FHFA.

(2) *Application form*. The independent director application form prescribed by FHFA will provide a means by which an individual can indicate an intent to be considered for a public interest independent directorship. The board of directors of the Bank shall nominate for a public interest independent directorship only an individual who indicates on the application form a desire to be considered for a public interest independent directorship.

(3) *Advisory Council*. The board of directors of the Bank shall consult with the Bank's Advisory Council before nominating any individual for any independent directorship.

~~(f) *Procedures*. Each Bank shall include in its bylaws the procedures it intends to use for the nomination and election of the independent directors.~~

*Minimum number of nominees*. Each Bank shall nominate at least as many individuals as there are respective regular and public interest independent directorship to be filled in that year's election.

(d) *Eligibility verification*—(1) *Member directorship nominees*. Using the information provided on executed member director eligibility certification forms prescribed by FHFA, each Bank shall verify that each nominee for each member directorship meets all the eligibility requirements of §1261.5(a).

(2) *Independent directorship nominees*. (i) Using the information provided on executed independent director application forms prescribed by FHFA, each Bank shall verify that each nominee for each public interest independent directorship and each regular independent directorship meets the eligibility requirements of §1261.5(b).

(ii) Before announcing any independent director nominee, the Bank shall deliver to FHFA for its review a copy of the independent director application forms executed by the individuals nominated for independent directorships. If within two weeks of such delivery FHFA provides comments to the Bank on any independent director nominee, the board of directors of the Bank shall consider FHFA's comments in determining whether to proceed with those nominees or to reopen the nomination.

(3) *Eligible nominees*. A Bank's board shall neither nominate any individual for an independent directorship nor include any nominee for a member directorship on the ballot required under §1261.8(a) if it has not concluded based on the submissions required under this part and any pertinent supplementary material that the individual meets the applicable eligibility requirements set forth in §1261.5(a) or (b) and is not term-limited as provided under §1261.5(d).

(e) *Background checks*. A Bank's board shall neither nominate any individual for an independent directorship nor include any nominee for a member directorship on the ballot required under §1261.8(a), without having first concluded, based on a thorough background

check of the individual's activities for at least the past seven years, that the individual is fit to serve in a fiduciary role with the Bank. Each Bank shall include with its submission required under paragraph (d)(2)(ii) of this section a discussion of the results of the background check for each independent directorship nominee, including any potentially concerning information that was revealed and how the Bank's concerns were allayed. The FHFA shall treat the background check results and how the Bank's concerns were allayed as confidential.

(f) *Record retention.* Subject to a duly enacted record retention policy, each Bank shall retain all information received under this section for at least seven years after the date of the election in question and, in the case of any information about a specific director, for at least seven years after that director leaves the board.

#### **§1261.8 Election process.**

(a) *Ballots.* Promptly after fulfilling the requirements of §1261.7(d), each Bank shall prepare and deliver a ballot to each member that was a member as of the record date. The Bank shall include with each ballot a closing date for the Bank's receipt of voted ballots, which date shall be no earlier than 30 calendar days after the date such ballot is delivered to the member. A ballot shall include at least the following provisions:

(1) For states in which one or more member directorships are to be filled in the election, an alphabetical -or random listing of the names of each nominee for such directorship, the name, location, and FHFA ID number of the member each nominee serves, the nominee's title or position with the member, a brief description of the skills and experience of each nominee as prepared by each nominee and submitted to the Bank, and the number of member directorships to be filled by the members in that voting State in the election;

(2) An alphabetical or random listing of the names of each nominee for a public interest independent directorship and a brief description of how each nominee meets the qualifications requirements for public interest independent directors set forth in §1261.5(c)(2);

(3) An alphabetical or random listing of the names of each nominee for regular independent directorships and a brief description of how each nominee meets the required qualification requirements for regular independent directors set forth in §1261.5(c)(1);

(4) A statement of the results of assessments conducted under §1261.9 and, if the statement differs from the statement provided under §1261.7(a)(4), an explanation of why the statements differ;

(5) A statement that write-in candidates are not permitted; and

(6) A confidentiality statement prohibiting the Bank from disclosing how any member voted.

(b) *Lack of member directorship nominees.* If, for any voting State, the number of nominees for the member directorships for that State is equal to or fewer than the number of such directorships to be filled in that year's election, the Bank shall deliver a notice to the members in the affected voting State (in lieu of including any member directorship nominees on the ballot for that State) that such nominees shall be deemed elected without further action, due to an insufficient number of nominees to warrant balloting. Thereafter, the Bank shall declare elected all such eligible nominees. The nominees declared elected shall be included as directors-elect in the report of election required under paragraph (f) of this section. Any member directorship that is not filled due to a lack of nominees shall be deemed vacant as of January 1 of the following year and shall be filled by the Bank's board of directors in accordance with §1261.14.

(c) *Voting.* For each directorship to be filled, a member may cast the number of votes determined by the Bank pursuant to §1261.6. A member may not split its votes among multiple nominees for a single directorship, and, where there are multiple directorships to be filled, either within the member's voting State or at large, in the case of independent directorships, a member



may not cumulatively vote for a single nominee. If any member votes, it shall by resolution of its governing body either authorizing the voting for specific nominees or delegating to an individual the authority to vote for specific nominees. To vote, a member shall:

(1) Mark on the ballot the name of not more than one of the nominees for each directorship to be filled. Each nominee so selected shall receive all of the votes that the member is entitled to cast.

(2) Execute and deliver the ballot to the Bank on or before the closing date. A Bank shall not allow a member to change a ballot after it has been delivered to the Bank.

(d) *Counting ballots.* A Bank shall not review any ballot until after the closing date, and shall not include in the election results any ballot received after the closing date. Promptly after the closing date, each Bank shall tabulate the votes cast in the election: for the member directorships, the Bank shall tabulate votes by each voting State; for the independent directorships, the Bank shall tabulate votes for the district at-large. Any ballots cast in violation of paragraph (c) of this section shall be void.

(e) *Declaring results—*(1) *For member directorships.* The Bank shall declare elected the nominee receiving the highest number of votes. If more than one member directorship is to be filled for a particular State, the Bank shall declare elected each successive nominee receiving the next highest number of votes until all such open directorships are filled.

(2) *For independent directorships.* (i) The bank shall tabulate separately the votes received for public interest independent directorship nominees and those received for regular independent directorship nominees, in each case in accordance with paragraph (e)(2)(ii) of this section.

(ii) If the number of nominees exceeds the number of directorships to be filled, the Bank shall declare elected the nominee receiving the highest number of votes. If more than one directorship is to be filled, the Bank shall declare elected each successive nominee receiving the next highest number of votes for such directorship until all such open directorships are filled.

(iii) If the number of nominees is no more than the number of directorships to be filled, the Bank shall declare elected each nominee receiving at least 20 percent of the number of votes eligible to be cast in the election. If any directorship is not filled due to any nominee's failure to receive at least 20 percent of the votes eligible to be cast, the Bank shall continue the election process for that directorship under the procedures in paragraph (g) of this section.

(3) *Tie votes.* In the event of a tie for the last available directorship, the disinterested incumbent directors of the Bank, by a majority vote, shall declare elected one of the nominees for whom the number of votes cast was tied.

(4) *Eligibility.* A Bank's board shall not declare elected a nominee that it has reason to know is ineligible or unfit to serve, nor shall it seat a director-elect that it has reason to know is ineligible or unfit to serve.

(5) *Record retention.* The Bank shall retain all ballots it receives for at least seven years after the date of the election, and shall not disclose how any member voted.

(f) *Report of election.* Promptly following the election, each Bank shall deliver a notice to its members, to each nominee, and to FHFA that contains the following information:

(1) For each member directorship, the name of the director-elect, the name and location of the member at which he or she serves, his or her title or position at the member, the voting State represented, and the expiration date of the term of office;

(2) For each independent directorship, the name of the director-elect, whether the director-elect will fill a public interest or a regular independent directorship and, as appropriate, the consumer or community interest represented by such director, any qualifications under §1261.5(c)(1), and the expiration date of the term of office;

(3) For member directorships, the total number of eligible votes, the number of members voting in the election, and the total number of votes cast for each nominee, which shall be reported by State; and

(4) For independent directorships, the total number of eligible votes, the number of members voting in the election, and the total number of votes cast for each nominee, which shall be reported for the district at large.

(g) *Failure to fill all independent directorships.* If any independent directorship is not filled due to the failure of any nominee to receive at least 20 percent of the eligible vote, the Bank shall continue the election process for that directorship under the following procedures:

(1) The Bank's board of directors, after again consulting with the Bank's Advisory Council, shall nominate at least as many individuals as there are independent directorships to be filled. It may nominate individuals who failed to be elected in the initial vote. The Bank thereafter shall deliver to FHFA a copy of the independent director application form executed by each nominee.

(2) The Bank then shall follow the provisions in this section that are applicable to the election process for independent directors, except for the following:

(i) The Bank shall not place the name of any nominee on a ballot without prior approval of FHFA; and

(ii) The Bank may adopt a closing date that is earlier than 30 calendar days after delivery of the ballots to the eligible voting members, provided the Bank determines that an earlier closing date provides a reasonable amount of time to vote the ballots.

#### **§1261.9 Actions affecting director elections.**

(a) ~~Annual~~ *assessment of skills and experience.* Each Bank, acting through its board of directors pursuant to policies adopted by the board, shall conduct at least every three years an ~~annual~~ assessment of the skills and experience possessed by its board of directors as a whole and may determine whether the capabilities of the board would be enhanced through the addition of individuals with particular skills and experience. If the board of directors determines that the Bank could benefit by the addition to the board of directors of individuals with particular qualifications such as those described in §1261.5(c)(1), it shall identify those qualifications and inform the members that the Bank is seeking member and independent director nominees that have those qualifications as part of its election announcement pursuant to §1261.7(a).

(b) *Support for nomination or election.* (1) A Bank director, officer, attorney, employee, or agent, acting in his or her personal capacity, may support the nomination or election of any individual for a member directorship, provided that no such individual shall purport to represent the views of the Bank or its board of directors in doing so.

(2) A Bank director, officer, attorney, employee or agent and the board of directors and Advisory Council (including members of the Council) of a Bank may support the candidacy of any individual nominated by the board of directors for election to an independent directorship.

(c) *Prohibition.* Except as provided in paragraphs (a) and (b) of this section, or §1223.21(b)(7) of this chapter, no director, officer, attorney, employee, or agent of a Bank shall:

(1) Communicate in any manner that a director, officer, attorney, employee, or agent of a Bank, directly or indirectly, supports or opposes the nomination or election of a particular individual for a directorship; or

(2) Take any other action to influence the voting with respect to any particular individual.

#### **§1261.10 Independent director independence.**

(a) *Employment interests.* (1) An independent director, ~~and a nominee for an independent directorship~~, shall not serve as an officer, employee, or director of any member of the Bank on

whose board the individual serves ~~or has been nominated to serve~~, or of any recipient of advances from such Bank, and shall not serve as an officer or employee of any Bank. An independent director or nominee for any independent directorship, and any individual seeking nomination for an independent directorship, shall disclose all such interests to the Bank on whose board of directors the individual serves or which is considering the individual for nomination to its board of directors. A nominee for an independent directorship who is not currently an independent director may serve as an officer, employee, or director of any member of the Bank on whose board the individual been nominated to serve, or of any recipient of advances from such Bank, and may serve as an officer or employee of any Bank, as long as such service ends prior to the start of the nominee's term as an independent director of the Bank.

(2) For purposes of paragraph (a)(1) of this section, "advances" includes any loan from a Bank to the recipient, regardless of form or nomenclature, except for debt securities traded in the public capital markets.

(b) *Holding companies.* Service as an officer, employee, or director of a holding company that controls one or more members of, or one or more recipients of advances from, the Bank on whose board an independent director serves is not deemed to be service as an officer, employee or director of a member or recipient of advances if the assets of all such members or all such recipients of advances constitute less than 35 percent of the assets of the holding company, on a consolidated basis.

(c) *Attribution.* For purposes of determining compliance with this section, a Bank shall attribute to the independent director any officer position, employee position, or directorship of the director's immediate family members (as defined in §1261.11(gf)).

(d) *Member director transition period.* An individual who has served as a member director of any Bank and who (i) meets the independent director qualifications when the new term begins and (ii) has not otherwise reached the term limits established in 12 U.S.C. 1427(d) may not serve as an independent director of any Bank without any waiting period from until at least two years has elapsed since the date the individual officially left the member directorship; ~~whether due to ineligibility or otherwise.~~

#### **§1261.11 Conflicts of interest policy for Bank directors.**

(a) *Adoption of conflicts of interest policy.* Each Bank shall adopt a written conflicts of interest policy that applies to all members of its board of directors. This policy may be a stand-alone policy or may, at the discretion of a Bank, be combined with other conflict of interest policies applicable to employees or the Affordable Housing Advisory Council members. At a minimum, the conflicts of interest policy of each Bank concerning its board of directors shall:

- (1) Require the directors to administer the affairs of the Bank fairly and impartially and without discrimination in favor of or against any member;
- (2) Require independent directors to comply with §1261.10(a);
- (3) Prohibit the use of a director's official position for personal gain;
- (4) Require directors to disclose actual or apparent conflicts of interest and establish procedures for addressing such conflicts;
- (5) Require the establishment of internal controls to ensure that conflicts of interest reports are made and filed and that conflicts of interest issues are disclosed and resolved; and
- (6) Establish procedures to monitor compliance with the conflicts of interest policy.

(b) *Disclosure and recusal.* A director shall disclose to the Bank's board of directors any financial interests he or she has, as well as any financial interests known to the director of any immediate family member or business associate of the director, in any matter to be considered by the Bank's board of directors and in any other business matter or proposed business matter

involving the Bank and any other person or entity. A director shall disclose fully the nature of his or her interests in the matter and shall provide to the Bank's board of directors any information requested to aid in its consideration of the director's interest. A director shall refrain from considering or voting on any issue in which the director, any immediate family member, or any business associate has any financial interest.

(c) *Confidential information.* Directors shall not disclose or use confidential information they receive solely by reason of their position with the Bank to obtain any benefit for themselves or for any other individual or entity.

(d) *Gifts.* No Bank director shall accept, and each Bank director shall discourage the director's immediate family members from accepting, any gift that the director believes or has reason to believe is given with the intent to influence the director's actions as a member of the Bank's board of directors, or where acceptance of such gift would have the appearance of intending to influence the director's actions as a member of the board. Any insubstantial gift would not be expected to trigger the prohibition in this paragraph (d).

(e) *Compensation.* Directors shall not accept compensation for services performed for the Bank from any source other than the Bank for which the services are performed.

(f) *Transitional Regulations.* With respect to the new conflict and directory eligibility requirements as implemented by the final rulemaking as published in Federal Register (2025), existing directors are exempted from the new conflict of interest or new eligibility requirements until January 1, 2027, if they disclose the actual or apparent conflict or eligibility issue to the Bank or OF.

(g) *Definitions.* For purposes of this section:

*Business associate* means any individual or entity with whom a director has a business relationship, including, but not limited to:

(i) Any corporation or organization of which the director is an officer or partner, or in which the director beneficially owns ten percent or more of any class of equity security, including subordinated debt;

(ii) Any other partner, officer, or beneficial owner of ten percent or more of any class of equity security, including subordinated debt, of any such corporation or organization; and

(iii) Any trust or other estate in which a director has a substantial beneficial interest or as to which the director serves as trustee or in a similar fiduciary capacity.

*Financial interest* means a direct or indirect financial interest in any activity, transaction, property, or relationship that involves receiving or providing something of monetary value, and includes, but is not limited to any right, contractual or otherwise, to the payment of money, whether contingent or fixed. It does not include a deposit or savings account, loan or extension of credit, insurance policy, insurance annuity, or other accounts and products obtained in the normal course of business on non-preferential terms generally available to the public from a member institution or from a non-member counterparty to the Bank on whose board the director sits.

*Immediate family member* means ~~parent, sibling,~~ spouse, child under the age of eighteen (18), or dependent, or any relative sharing the same residence as the director.

#### **§1261.12 Reporting requirements for Bank directors.**

(a) *Annual reporting.* Annually, each Bank shall require each of its directors to execute and deliver to the Bank the appropriate director eligibility certification form prescribed by FHFA for the type of directorship held by such director. The Bank promptly shall deliver to FHFA a copy of the certification form delivered to it by each director.

(b) *Report of noncompliance.* At any time that any director believes or has reason to believe that he or she no longer meets the eligibility requirements set forth in the Bank Act or this subpart, the director promptly shall so notify the Bank in writing. At any time that a Bank believes or has reason to believe that any director no longer meets the eligibility requirements set forth in the Bank Act or this subpart, the Bank promptly shall notify FHFA in writing.

#### **§1261.13 Ineligibility and removal of Bank directors.**

(a) *Ineligibility.* Upon a determination by FHFA or a Bank that any director of the Bank no longer satisfies the eligibility requirements set forth in the Bank Act or this subpart, or has failed to comply with the reporting requirements of §1261.12, the directorship shall immediately become vacant. Any director that is determined to have failed to comply with any of the requirements in this paragraph (a) shall not continue to serve as a Bank director. Whenever a Bank makes such a determination, the Bank promptly shall notify the Bank director and FHFA in writing.

(b) *Removal for good cause.* (1) A Bank's board of directors may, upon a vote of not less than two-thirds of its disinterested directors, remove any director for good cause pursuant to policies adopted by the board. Removal for good cause may be based upon:

- (i) A material violation of the Bank's code of ethics or other applicable Bank policy;
- (ii) A material violation of the Bank Act, FHFA regulations, or other civil or criminal law;
- (iii) A determination by the board that continuation in office of such director would be materially harmful to the Bank;
- (iv) Conduct, or a mental or physical condition, that raises substantial questions concerning the director's ability to fulfill his or her duties and obligations; or
- (v) A determination under §1261.22(b)(3) that the director's continuous poor performance or lack of participation is compromising, or may in the future compromise, the board's ability to adequately oversee the operations of the Bank.

(2) A Bank shall promptly notify FHFA in writing of any pending or final removal action under this paragraph (b).

#### **§1261.14 \_\_\_\_\_ Vacant Bank directorships.**

(a) *Filling unexpired terms.* Subject to the provisions of this section, when a vacancy occurs on the board of directors of a Bank, the board shall elect, by a majority vote of the remaining Bank directors sitting as a board, an individual to fill the unexpired term of office of the vacant directorship, regardless of whether the remaining Bank directors constitute a quorum of the Bank's board of directors.

(1) The board of directors may fill an anticipated vacancy prior to the effective date of the vacancy, provided the board does so no sooner than the date of the regularly scheduled board meeting that occurs immediately prior to the effective date of the vacancy.

(2) The board of directors shall:

- (i) Fill a vacant member directorship only with an individual who meets the requirements of §1261.5(a); and
- (ii) Fill a vacant independent directorship only with an individual who meets the requirements of §1261.5(b).

(3) If a Bank does not have at least two sitting public interest independent directors, its board of directors shall either:

- (i) Elect an individual who is qualified under §1261.5(c)(2) to serve as a public interest independent director to fill the vacancy; or

(ii) Elect to redesignate as a public interest independent director a sitting regular independent director who is qualified under §1261.5(c)(2) to serve as a public interest independent director and elect another individual who is qualified under §1261.5(c)(1) to serve as a regular independent director to fill the resulting vacant regular independent directorship.

(4) If the Bank has more than two sitting public interest independent directors, the board of directors may redesignate as a regular independent director a sitting public interest independent director who is qualified under §1261.5(c)(2).

(5) The board of directors of the Bank shall consult with the Bank's Advisory Council before considering any individual to fill a vacant independent directorship.

(b) *Verifying eligibility.* Prior to any election by the board of directors to fill a board vacancy, the Bank shall fulfill the requirements of this paragraph (b).

(1) The Bank shall obtain an executed member director eligibility certification form prescribed by FHFA from each individual being considered to fill a vacant member directorship and an executed independent director application form prescribed by FHFA from each individual being considered to fill a vacant independent directorship (including any sitting regular independent director to be redesignated as public interest independent director). Using the executed forms, each Bank shall verify each individual's eligibility and, as to independent directors, also shall verify that the individual meets the qualifications requirements for regular independent directors under §1261.5(c)(1) or public interest independent directors under §1261.5(c)(2), as appropriate.

(2) For each individual being considered to fill a vacant directorship, the Bank shall conduct a background check, as provided in §1261.7(e).

(3) The Bank shall deliver to FHFA for its review a copy of the executed independent director application form for each individual being considered by the board to fill a vacant independent directorship, as well as a summary of the results of the background check. If within two weeks of such delivery FHFA provides comments to the Bank on any of those individuals, the board of directors of the Bank shall consider FHFA's comments in determining whether to elect a director from among those individuals or to seek additional individuals for consideration.

(4) The Bank shall retain the information it receives pursuant to this paragraph (b) for at least seven years after the date of the election in question and, in the case of any information about a specific director, for at least seven years after that director leaves the board.

(c) *Notification.* Promptly after allowing the individual to assume the directorship, as provided in paragraph (b) of this section, a Bank shall notify

FHFA and each member located in the Bank's district in writing of the following:

(1) For each member directorship filled by the board of a Bank, the name of the director, the name, location, and FHFA ID number of the member the director serves, the director's title or position with the member, the voting State that the director represents, and the expiration date of the director's term of office; and

(2) For each independent directorship filled by the board of a Bank, the name of the director, the name and location of the organization with which the director is affiliated, if any, the director's title or position with such organization, and the expiration date of the director's term of office.

#### **§1261.15 Minimum number of member directorships.**

Except with respect to member directorships of a Bank resulting from the merger of any two or more Banks, the number of member directorships allocated to each State shall not be less than the number of directorships allocated to that State on December 31, 1960. The following table

sets forth the States within Bank districts not created from the merger of two or more Banks whose members held more than one directorship on December 31, 1960:

TABLE 1 TO §1261.15

State	Number of elective directorships on December 31, 1960
California	3
.....	
Colorado	2
.....	
Illinois	4
.....	
Indiana	5
.....	
Kansas	3
.....	
Kentucky	2
.....	
Louisiana	2
.....	
Massachusetts	3
.....	
Michigan	3
.....	
New Jersey	4
.....	
New York	4
.....	
Ohio	4
.....	
Oklahoma	2
.....	
Pennsylvania	6
.....	
Tennessee	2
.....	
Texas	3
.....	
Wisconsin	4
.....	

## Subpart C—Federal Home Loan Bank Directors' Compensation and Expenses

### §1261.20 Definitions.

As used in this subpart:

*Compensation* means any payment of money or the provision of any other thing of current or potential value in connection with service as a director. Compensation includes all direct and indirect payments of benefits, both cash and non-cash, granted to or for the benefit of any director.

*Expenses* means necessary and reasonable travel, subsistence and other related expenses incurred in connection with the performance of official duties as are payable to senior officers of the Bank under the Bank's travel policy, except gift or entertainment expenses.

### §1261.21 General.

(a) *Standard.* Each Bank may pay its directors reasonable compensation for the time required of them, and their necessary expenses, in the performance of their duties, as determined by a resolution adopted by the board of directors of the Bank and subject to the provisions of this subpart. ~~The Director may establish and provide notice of an annual amount of compensation determined to be reasonable.~~

(b) *Reporting—(1) Following calendar year.* By December 31 of each calendar year, each Bank shall report to the Director the compensation it anticipates paying to its directors for the following calendar year.

(2) *Preceding calendar year.* No later than the tenth business day of each calendar year, each Bank shall report to the Director the following information relating to director compensation, expenses, and meeting attendance for the immediately preceding calendar year:

- (i) The total compensation paid to each director;
- (ii) The total expenses paid to each director;
- (iii) The total compensation paid to all directors;
- (iv) The total expenses paid to all directors;

~~(c) The total of all expenses incurred at group functions that are not reimbursed to individual directors, such as the cost of group meals in connection with board and committee meetings;~~

The total number of meetings held by the board and its designated committees; and

(v) The number of board and designated committee meetings each director attended in-person or remotely, through video conferencing or teleconferencing, and in accordance with §1261.24(b).

**§1261.22 Directors' compensation policy.** (a) *General.* Each Bank's board of directors annually shall adopt a written compensation policy to provide for the payment of reasonable compensation and expenses to the directors for the time required of them in performing their duties as directors. Payments under the directors' compensation policy may be based on any factors that the board of directors determines reasonably to be appropriate, subject to the requirements in this subpart. (b) *Minimum contents.* (1) The compensation policy shall address the activities or functions for which director attendance or participation is necessary and which may be compensated, and shall explain and justify the methodology used to determine the amount of compensation to be paid to the Bank directors.



(2) The compensation policy shall require that any compensation paid to a director reflect the amount of time the director has spent on official Bank business and shall require that compensation be reduced or a director removed, as necessary, to reflect lesser attendance or performance at board or committee meetings during a given year.

~~(f)~~—In addition to attendance, the compensation policy shall establish a fair and impartial process for annually evaluating individual director performance and participation, ~~including, but not limited to, an assessment of whether each director:~~

~~Demonstrated understanding of the Bank System;~~

~~Demonstrated knowledge of the Bank's policies and governance documents;~~

~~Demonstrated understanding of his or her legal and ethical responsibilities as a board member;~~

~~Made suggestions congruent with the Bank's mission, vision and values (even if divergent from majority opinion); and~~

~~Acted in support of Board decisions, regardless of initial position.~~

(c) Prohibited payments. A Bank shall not pay a director who regularly fails to attend board or committee meetings, and shall not pay fees to a director that do not reflect the director's performance of official Bank business conducted prior to the payment of such fees.

(d) Implementation resolutions. Before the board of directors may amend its compensation policy or change its director fees, it must first by majority vote:

(i) select an independent, qualified compensation consultant to conduct a director compensation market study;

(ii) after completion and review of the study, establish a list of comparable companies to be used for benchmarking purposes;

(iii) establish a fee percentage market to target estimate based on the study's presented market data; and

~~(iv)~~ then establish a proposed annual director fee schedule for implementation in the next calendar year.

~~(d)~~(e) Submission requirements. No later than the tenth business day after adopting its annual policy for director compensation and expenses, and at least ~~3090~~ days prior to disbursing the first payment to any director, each Bank shall submit to the Director a copy of the compensation policy, along with all studies or other supporting materials upon which the board relied in determining the level of compensation and expenses to pay to its directors, and the board of director decisional resolutions mandated by 12 CFR 1261.22(d).

### **§1261.23 \_\_\_\_\_ Director disapproval and Ombudsman review.**

(a) Director determination or FHFA guidance. The Director may determine, based upon his or her review of a Bank's director compensation policy, methodology and/or other related materials, that the compensation and/or expenses to be paid to the directors are not reasonable. In such case, the Director or FHFA staff may through guidance, no-action or by Director order, direct the Bank to reverse a proposed fee or expense reimbursement increase, or to refrain from making any further payments under that compensation policy. Any such FHFA guidance or Director's order shall apply prospectively only and will not affect either compensation or expenses that have been earned but not yet paid or reimbursed or payments that had been made prior to the date of the FHFA guidance, or the Director's determination and order.

(b) Written analysis. In providing this FHFA guidance, or the Director's determination and order, the Director or FHFA staff shall provide to the board of directors of the Bank or the OF a written analysis to support the FHFA's disapproval or determination. This analysis will: (i) explain the compensation review and methodology used by FHFA; (ii) identify the study information and other supporting information upon which the FHFA relied in determining that the level of compensation and expenses to be paid to the directors is unreasonable; and (iii)

provide an explanation as to why the FHFA's selected studies and other material support the FHFA's finding that the board's determination was unreasonable.

(c) Ombudsman review. If the board of directors does not accept the FHFA's analysis, the board of directors may ask for an independent review of the matter by the FHFA's Office of the Ombudsman. After conducting its independent inquiry and review, the Ombudsman will submit its findings of fact and its recommendations for consideration by the FHFA Director. A copy of the Ombudsman's determination will also be provided to the Bank's or OF's board of directors and to the FHFA's Office of Inspector General. If a board of directors uses this Ombudsman's process and does not advance the fees or expenses until after the inquiry is resolved, the FHFA will not take formal or informal enforcement actions against a board of directors for using this process.

**§1261.24 \_\_\_\_\_ Board meetings.**

(a) *Number of meetings.* The board of directors of each Bank shall hold as many meetings each year as necessary and appropriate to carry out its fiduciary responsibilities with respect to the effective oversight of Bank management and such other duties and obligations as may be imposed by applicable laws, provided the board holds a minimum of six meetings in any year.

(b) *Site of meetings.* (1) A Bank's board of directors and its committees may conduct meetings in-person, through video conferencing or teleconferencing, or in a hybrid format, provided that all directors have an opportunity to communicate and have access to all written documents and presentations.

(2) Each Bank should generally hold board and committee meetings within the district served by the Bank. A Bank shall not hold board or committee meetings in any location that is not within a State, as defined by 12 CFR 1201.1. ~~A director must be located within a State when attending a meeting remotely through video conferencing or teleconferencing.~~

(c) *Quorum.* A quorum, for purposes of meetings of a Bank's board of directors, shall require a majority of sitting directors, ~~which must include a majority of sitting independent directors.~~

**PART 1273—OFFICE OF FINANCE**

■ 4. The authority citation for part 1273 continues to read as follows:

**Authority:** 12 U.S.C. 1431, 1440, 4511(b), 4513, 4514(a), 4526(a).

■ 5. Amend §1273.5 by revising paragraph (b)(1) to read as follows:

**§1273.5 \_\_\_\_\_ Funding of the OF.**

\* \* \* \* \*

(b) \* \* \*

(1) At the direction of and pursuant to policies and procedures adopted by the OF board of directors, the Banks shall periodically reimburse the OF in order to maintain sufficient operating funds under the budget approved by the OF board of directors. The OF operating funds shall be:

(i) Available for expenses of the OF and the OF board of directors, according to their approved budgets; and

(ii) Subject to withdrawal by check, draft, wire transfer, or other funds transfer methods with written authorization by the CEO or other persons designated by the CEO or OF board of directors in accordance with OF governance documents.

\* \* \* \* \*

■ 6. Amend §1273.6 by removing paragraph (f) thereof.

■ 67. Amend §1273.8 by revising paragraphs (b) and (d) to read as follows:

**§1273.8 General duties of the OF board of directors.**

\* \* \* \* \*

(b) *Meetings and quorum*—(1) *Meeting frequency.* The OF board of directors shall conduct its business by majority vote of its members at meetings convened in accordance with its by-laws, and shall hold no fewer than six meetings annually, which may be conducted in-person, through video conferencing or teleconferencing, or in a hybrid format, provided that all directors have an opportunity to communicate and have access to all written documents and presentations.

(2) *Meeting location.* The OF shall not hold board or committee meetings in any location that is not within a State, as defined by 12 CFR 1201.1. ~~A director must be located within a State when attending a meeting remotely through videoconferencing or teleconferencing.~~

(3) *Notice.* Due notice shall be given to FHFA by the Chair prior to each OF board of directors meeting.

(4) *Quorum.* A quorum, for purposes of meetings of the OF board of directors, shall require a majority of sitting board members, which must include a majority of sitting Independent Directors.

\* \* \* \* \*

(d) *Other duties.* The OF board of directors shall:

- (1) Set policies for management and operation of the OF;
- (2) Approve a strategic business plan for the OF in accordance with the provisions of 12 CFR 1239.14, as appropriate;
- (3) Select, employ, determine the compensation for, and assign the duties and functions of a CEO of the OF who shall—
  - (i) Be head of the OF and direct the implementation of the OF board of directors’ policies;
  - (ii) Serve as a member of the Directorate of the FICO, pursuant to section 21(b)(1)(A) of the Bank Act (12 U.S.C. 1441(b)(1)(A)); and
  - (iii) Serve as a member of the Directorate of the REFCORP, pursuant to section 21B(c)(1)(A) of the Bank Act (12 U.S.C. 1441b(c)(1)(A));
- (4) Review and approve contracts of the OF, as to the extent specified in OF governance documents; and
- (5) Assume any other responsibilities that may from time to time be assigned to it by FHFA.

**PART 1291—**

■ 8. Amend §1291.1 in part to read as follows:

**§1291.1 Definitions.**

\* \* \* \* \*

Family member means a spouse, child under the age of eighteen (18), or dependent of an individual, or any relative sharing the same residence of the individual. ~~any individual related to a person by blood, marriage, or adoption.~~

\* \* \* \* \*

**PART 1213—**

■ 9. Amend §1213.4 by adding a new subsection (c) to read as follows:

**§1213.4** **Complaints and appeals from a regulated entity or the Office of Finance.**

\* \* \* \* \*

(c) Independent review of director compensation. A Federal Home Loan Bank or the OF may request independent review of director compensation as further described in 12 CFR §1261.23, as amended.