

# Proposed Rules

Federal Register

Vol. 74, No. 229

Tuesday, December 1, 2009

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL HOUSING FINANCE AGENCY

### 12 CFR Part 1261

RIN 2590-AA03

### Federal Home Loan Bank Boards of Directors: Eligibility and Elections

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Housing Finance Agency (FHFA) is proposing to amend its regulations relating to the process by which successor directors are chosen after a Federal Home Loan Bank (Bank) directorship is redesignated to a new state prior to the end of its term as a result of the annual designation of Bank directorships. The current rules deem the redesignation to create a vacancy on the board, which is filled by the remaining directors. The proposed amendment would deem the redesignation to cause the original directorship to terminate and a new directorship to be created, which would then be filled by an election of the members.

**DATES:** Written comments on the proposed amendment must be received on or before December 31, 2009. For additional information, see

#### SUPPLEMENTARY INFORMATION.

**ADDRESSES:** You may submit your comments on the proposed amendment, identified by regulatory information number "RIN 2590-AA03," by any of the following methods:

- *U.S. Mail, United Parcel Post, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA03, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.

- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel; Attention: Comments/RIN 2590-AA03, Federal Housing Finance Agency, Fourth Floor, 1700 G

Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

- *E-mail:* Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail to [RegComments@fhfa.gov](mailto:RegComments@fhfa.gov). Please include "RIN 2590-AA03" in the subject line of the message.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to FHFA at [RegComments@fhfa.gov](mailto:RegComments@fhfa.gov) to ensure timely receipt by the agency. Include the following information in the subject line of your submission: Comments/RIN 2590-AA03.

#### FOR FURTHER INFORMATION CONTACT:

Janice A. Kaye, Associate General Counsel, [janice.kaye@fhfa.gov](mailto:janice.kaye@fhfa.gov), (202) 343-1514 or Patricia L. Sweeney, Management Analyst, [pat.sweeney@fhfa.gov](mailto:pat.sweeney@fhfa.gov), (202) 408-2872, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877-8339.

#### SUPPLEMENTARY INFORMATION:

##### I. Comments

FHFA invites comments on all aspects of the proposed amendment and will take all comments into consideration in determining whether further modifications are appropriate. Copies of all comments will be posted without change, including any personal information you provide, such as your name and address, on the FHFA Web site at <http://www.fhfa.gov>. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414-3751.

##### II. Background

The Housing and Economic Recovery Act of 2008 (HERA), Public Law 110-289, 122 Stat. 2654, established FHFA as an independent agency of the Federal Government to oversee the prudential operations of the Federal National Mortgage Association, the Federal Home

Loan Mortgage Corporation (collectively, the Enterprises), and the Banks (collectively, the Regulated Entities). FHFA ensures that the Regulated Entities operate in a safe and sound manner, including being adequately capitalized; foster liquid, efficient, competitive and resilient national housing finance markets; comply with applicable statutes, rules, regulations, and orders; and carry out their missions through authorized activities. FHFA also ensures that the activities and operations of the Regulated Entities are consistent with the public interest.

Section 1202 of HERA amended section 7 of the Federal Home Loan Bank Act (Bank Act), 12 U.S.C. 1427, which governs the eligibility and election of individuals to serve on the boards of directors of the 12 Banks. FHFA published an interim final rule and request for comments to implement section 1202 of HERA. See 73 FR 55710 (September 26, 2008). After considering the comments it received, FHFA published a final rule. See 74 FR 51452 (October 7, 2009). In the supplementary information to that final rule, FHFA noted that it had identified an issue relating to the redesignation of directorships to another state prior to the end of their terms of office, which it planned to address in a separate rulemaking because it would involve a change of agency policy. This proposed rule addresses that issue.

##### III. Discussion of the Proposed Rule

With certain limited exceptions, the Bank Act requires that member directorships be allocated among the states of each Bank district in proportion to the amount of Bank stock owned by the members located in each state, and requires the Director to conduct an annual "designation of directorships" to allocate each member directorship to a particular state. If the amount of Bank stock owned by members in one state changes relative to the amount of stock owned by members in another state from one year to the next, some member directorships may be re-allocated to another state, even if their terms have not expired. Under the rules of the Federal Housing Finance Board (Finance Board), a redesignated directorship with one or more years of its term remaining continued to exist, but became vacant as of the end of the

year because the incumbent no longer satisfied the statutory requirement that each member director be an officer or director of a member located in the state represented by the directorship. The board of directors of the Bank would elect a replacement director from the newly designated state to fill the directorship for the remainder of the term of office. Section 1261.4(d) of the final rule carried forward the Finance Board practice, although the **SUPPLEMENTARY INFORMATION** noted that FHFA intended to address this issue in a separate rulemaking.

Notwithstanding the Finance Board's policy, FHFA believes that the relevant provisions of the Bank Act also would allow FHFA to deem any redesignated member directorship to terminate as of the end of the year in which it is designated to another state. Under that interpretation, FHFA would create a new directorship to replace the terminated directorship and would allocate the new directorship to the state gaining a directorship under the annual designation of directorships. The principal effect of such a change in agency policy would be that the newly created directorship would be filled by an election of the members in the newly designated state, rather than by the Bank's board of directors. FHFA anticipates that any such newly created directorship would be assigned a shortened term of office that corresponds to the amount of time remaining on the term of office for the terminated directorship. Although a directorship ordinarily has a term of four years, assigning a four year term to a newly created directorship would disrupt the existing staggering of the terms on the board of the Bank. Section 7(d) of the Bank Act, however, authorizes the Director to adjust the terms of any directors "first elected after the date of enactment" of HERA to ensure that the board remains appropriately staggered. Because any individual elected by the members to fill such a new directorship would be the first to be elected to that directorship, FHFA believes that section 7(d) authorizes the Director to adjust the term of any such directorships to correspond to the amount of time remaining on the term of the previous directorship. Doing so would maintain the appropriate staggering of the directorships, and FHFA believes that this treatment better serves both the language in section 7(d) and the intent of Congress.

In order to implement this change in policy, FHFA is proposing to modify or eliminate several provisions in part 1261 of its regulations, as those

provisions have been most recently amended by the final rule published on October 7, 2009 at 74 FR 51452. Specifically, FHFA is proposing to make the following changes to part 1261:

1. All but the first sentence in § 1261.3(d) would be removed because it no longer would be applicable. The removed language provides that a seat redesignated to another state will be deemed vacant rather than extinguished.

2. New § 1261.3(e) would provide that, in the event of redesignation of a member directorship from one state to another, the directorship in the previous state would terminate, and a new directorship would begin in the successor state, which would be filled by vote of the members in that state and would have a term equal in length to the remaining term of the terminated directorship, in order to maintain the staggering of director terms.

3. Section 1261.4(e)(1) would be revised in two respects. All references to "redesignation" of a directorship from one state to another would be removed, because that is not what occurs when a directorship ceases in one state at the time that a directorship begins in another state. In addition, the last sentence would be deleted. That sentence provides that any directorship that ceases in one state before its time expires, because it is either eliminated or moved to another state, shall not be a full-term directorship that counts toward the three-term limit provided in section 7(d) of the Bank Act. Under section 7(d), a term is counted for term limits if a director was elected to a full term, regardless of whether he or she serves a full term.

4. Section 1261.4(e)(2) would be removed because it no longer would be applicable. It is the paragraph that provides that a relocated directorship will be filled by the board of directors.

Section 1201 of HERA (codified at 12 U.S.C. 4513(f)) requires the Director, when promulgating regulations relating to the Banks, to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability. The Director may also consider any other differences that are deemed appropriate. In preparing this proposed rule, the Director considered the differences between the Banks and the Enterprises as they relate to the above factors. The Director requests comments from the public about whether differences related to these factors should result in a

revision of the proposed amendment as it relates to the Banks.

#### IV. Paperwork Reduction Act

The proposed amendment does not contain any information collection requirement that requires the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### V. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the proposed amendment under the Regulatory Flexibility Act. FHFA certifies that the proposed amendment is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the Banks, which are not small entities for the purposes of the Regulatory Flexibility Act.

#### List of Subjects in 12 CFR Part 1261

Banks, Banking, Conflicts of interest, Elections, Ethical conduct, Federal home loan banks, Financial disclosure, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, under the authority of 12 U.S.C. 1426, 1427, 1432, 4511 and 4526, the Federal Housing Finance Agency proposes to amend Subpart A of part 1261 of Title 12 CFR Chapter XII as follows:

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

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

1. The authority citation for part 1261 continues to read as follows:

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

2. Amend § 1261.3 by revising paragraph (d) and adding new paragraph (e) to read as follows:

##### § 1261.3 Designation of member directorships.

\* \* \* \* \*

(d) *Notification.* On or before June 1 of each year, FHFA will notify each

Bank in writing of the total number of directorships established for the Bank and the number of member directorships designated as representing the members in each voting state in the Bank district.

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

3. Amend § 1261.4 by revising paragraph (e) to read as follows:

**§ 1261.4 Director eligibility.**

\* \* \* \* \*

(e) *Loss of eligibility.* A director shall become ineligible to remain in office if, during his or her term of office, the directorship to which he or she has been elected is eliminated. The incumbent director shall become ineligible after the close of business on December 31 of the year in which the directorship is eliminated.

Dated: November 20, 2009.

**Edward J. DeMarco,**

*Acting Director, Federal Housing Finance Agency.*

[FR Doc. E9-28716 Filed 11-30-09; 8:45 am]

BILLING CODE 8070-SS-P

## **SMALL BUSINESS ADMINISTRATION**

### **13 CFR Parts 121 and 124**

#### **Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice of public meetings; request for comments.

**SUMMARY:** The U.S. Small Business Administration (SBA) announces it is holding a public meeting in Washington, DC on the topic of the proposed changes to the 8(a) Business Development (BD) Program Regulations and Small Business Size Regulations. Testimony and comments presented at the public comment meetings will become part of the administrative record

as comments addressing the proposed changes to the regulations pertaining to the 8(a) BD program and small business size standards. Additional public meetings will be scheduled prior to the end of the comment period for the proposed rule-making.

**DATES:** The public meetings will be held on Thursday, December 10, 2009, from 9 a.m. to 4 p.m.; and Friday, December 11, 2009, from 9 a.m. to 4 p.m. Prospective participants must pre-register for either or both sessions on or before Monday, December 7, 2009, 5 p.m., Eastern Standard Time.

**ADDRESSES:** The public meetings will be conducted at SBA Headquarters in Washington DC in the Eisenhower Conference room located on the 2nd floor.

1. SBA is located at 409 3rd Street, SW., Washington DC 20416.

2. Send pre-registration requests to attend and/or testify to Ms. Latrice Andrews, SBA's Office of Business Development at

*Latrice.Andrews@sba.gov* or by facsimile to (202) 481-4042.

3. Send all written comments to Mr. Joseph Loddo, Associate Administrator for Business Development, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

4. Visitors to SBA will be subject to a security screening and will be required to present identification.

**FOR FURTHER INFORMATION CONTACT:** If you have any questions on this proposed rulemaking, call or e-mail LeAnn Delaney, Deputy Associate Administrator, Office of Business Development, at (202) 205-5852, or *leann.delaney@sba.gov*. If you have any questions about registering or attending the public meeting please contact Ms. Latrice Andrews, SBA's Office of Business Development at (202) 205-6031, or *latrice.andrews@SBA.gov*, or by facsimile to (202) 481-4042.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

On October 28, 2009 (74 FR 55694-01), SBA issued a Notice of Proposed Rulemaking (NPRM). In that document, SBA proposed to make a number of changes to the regulations governing the 8(a) BD Program Regulations and several changes to its Small Business Size Regulations. Some of the changes involve technical issues. Other changes are more substantive and result from SBA's experience in implementing the current regulations. In addition to written comments, SBA is requesting oral comments on the various approaches for the proposed changes.

## **II. Public Hearings**

The public meeting format will consist of a panel of SBA representatives who will preside over the session. The oral and written testimony will become part of the administrative record for SBA's consideration. Written testimony may be submitted in lieu of oral testimony. SBA will analyze the testimony, both oral and written, along with any written comments received. SBA officials may ask questions of a presenter to clarify or further explain the testimony. The purpose of the public meetings is to allow the general public to comment on SBA's proposed rulemaking. SBA requests that the comments focus on the proposed changes as stated in the NPRM. SBA requests that commentators do not raise issues pertaining to other SBA small business programs. Presenters may provide a written copy of their testimony. SBA will accept written material that the presenter wishes to provide that further supplements his or her testimony. Electronic or digitized copies are encouraged.

SBA will hold additional public meetings before the close of the comment period for this rulemaking.

## **III. Registration**

Any individual interested in attending and making an oral presentation shall pre-register in advance with SBA. Registration requests must be received by SBA no later than 5 p.m., Monday, December 7, 2009. Please contact Ms. Latrice Andrews of SBA's Office of Business Development in writing at *Latrice.Andrews@sba.gov* or by facsimile to (202) 481-4042. Please include the following information relating to the person testifying: Name, Organization affiliation, Address, Telephone number, E-mail address, and Fax number. SBA will attempt to accommodate all interested parties that wish to present testimony. Based on the number of registrants it may be necessary to impose time limits to ensure that everyone who wishes to testify has the opportunity to do so. SBA will send confirmation of registration in writing to the presenters and attendees.

## **IV. Information on Service for Individuals With Disabilities**

For information on facilities or services for individuals with disabilities or to request special assistance at the public meetings, contact Ms. Latrice Andrews at the telephone number or e-mail address indicated under the **FOR**