

FEDERAL HOUSING FINANCE BOARD

OPEN MEETING

Washington, D.C.

Wednesday, July 12, 2006

ANDERSON COURT REPORTING  
706 Duke Street, Suite 100  
Alexandria, VA 22314  
Phone (703) 519-7180 Fax (703) 519-7190

1 PARTICIPANTS:

2 Board Members

3 RONALD A. ROSENFELD, Chairman

4 ALICIA R. CASTANEDA

5 FRANZ S. LEICHTER

6 BRIAN MONTGOMERY

7 ALLAN I. MENDELOWITZ

8 Also Present

9 JOHN P. KENNEDY

10 SHELIA S. WILLIS

11 CHRIS BOSLAND

12 BILL GLAVIN

13 CHARLES JONES

14 DARIS MEEKS

15 MARK PRETZAT

16 STEVE CROSS

17 THOMAS JENNINGS

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1 P R O C E E D I N G S

2 (10:10 a.m.)

3 CHAIRMAN ROSENFELD: Good morning,  
4 everyone. I call this meeting of the Board of  
5 Directors of the Federal Housing Finance Board to  
6 order.

7 Today we will have an open session  
8 followed immediately by a closed session where the  
9 Board will receive updates of examination of  
10 supervisory findings. We now need to vote to  
11 approve closing the latter portion of today's  
12 meeting as required by the Sunshine Act and  
13 Finance Board regulations. Since the closed  
14 portion of today's meeting will contain sensitive  
15 and confidential banking examination information,  
16 I would ask for a motion to seal the transcript of  
17 this portion of the meeting. Director Castaneda?

18 DIRECTOR CASTANEDA: Mr. Chairman, I  
19 move to close the portion of this meeting, and  
20 further, if this Board determines, then the  
21 record and transcript of this closed portion of the  
22 meeting be kept confidential.

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1                   CHAIRMAN ROSENFELD: Thank you for the  
2 motion. Is there any discussion of the motion?  
3 Do I have a second for this motion? Director  
4 Montgomery?

5                   DIRECTOR MONTGOMERY: Second.

6                   CHAIRMAN ROSENFELD: The Secretary will  
7 please call the roll.

8                   SECRETARY WILLIS: On the item before the  
9 Board, Director Leichter, how do you vote?

10                  DIRECTOR LEICHTER: Yes.

11                  SECRETARY WILLIS: Director Castaneda?

12                  DIRECTOR CASTENADA: Yes.

13                  SECRETARY WILLIS: Director Mendelowitz?

14                  DIRECTOR MENDELOWITZ: Yes.

15                  SECRETARY WILLIS: Director Montgomery?

16                  DIRECTOR MONTGOMERY: Yes.

17                  SECRETARY WILLIS: Chairman Rosenfeld?

18                  CHAIRMAN ROSENFELD: Yes. The motion is  
19 carried, and the subsequent portion of our meeting  
20 will be closed, and this transcript will remain  
21 closed and confidential. Thank you.

22                  Let us now turn to the public portion of

1 today's meeting. We are asked to consider a Final  
2 Rule that will give each bank's board of directors  
3 the authority to identify and communicate to the  
4 Bank's members full information about the skills  
5 and qualifications most needed by the Board. A  
6 knowledgeable electorate is the best way to elect  
7 individuals who can provide appropriate  
8 governance, particular in light of the  
9 requirements related to the SEC registration.

10 Who will be making the staff  
11 presentation?

12 MR. JENNINGS: I will.

13 CHAIRMAN ROSENFELD: Tom Jennings from  
14 the Office of General Counsel. Please go ahead.

15 MR. JENNINGS: Good morning. On April  
16 12th, you authorized the publication of a Proposed  
17 Rule on Director Elections that would give each  
18 bank's board of directors additional tools to use  
19 to enable the members to elect individuals who  
20 have the skills and experience necessary to  
21 provide the best corporate governance for the  
22 bank.

1           The Proposed Rule would have allowed a  
2 bank's board of directors to conduct a self-  
3 assessment of the skills and experience it needs  
4 on the board before the election process begins,  
5 and send the results of that self-assessment to  
6 the bank's members at the time it solicits  
7 nominations and again with the ballots. The  
8 Proposed Rule also would have allowed the banks to  
9 include on the ballots a brief statement of the  
10 skills and experience of each nominee.

11           The Finance Board received 17 comments,  
12 some from banks, some from trade associations, and  
13 a few from members. Three of the commentators did  
14 not support the rule, while almost all commentators  
15 did support all aspects of the rule and made  
16 various suggestions for types of revisions. Based  
17 on the comments, we recommend several changes to  
18 be adopted as part of the Final Rule.

19           First, we have used language in the rule  
20 and in the preamble to more clearly state the  
21 permissive nature of the provisions. All of the  
22 commentators that addressed this issue stated that

1 the rule should be permissive rather than  
2 mandatory.

3 Second, we have clarified that the  
4 results of the self-assessment sent with the  
5 ballots do not have to be the same as the statement  
6 sent at the start of the election process. If the  
7 initial statement no longer is accurate and the  
8 bank explains the reasons for the change, then it  
9 may modify the statement.

10 Since the banks already have begun this  
11 year's election process, or at least some of them  
12 have, we state in the preamble that the Finance  
13 Board will not object if for this year only a bank  
14 provides the initial statement of needed skills  
15 and experience with the ballots rather than with  
16 the first notice of the election process.

17 Third, we have changed Section 915.8(a)  
18 to allow a bank, if it chooses to provide a  
19 description of the skills and experience of the  
20 nominees, to do so either in the body of the  
21 ballots or as an attachment to the ballots. This  
22 will allow a bank's board to use a description

1 provided by the candidates, or to provide its own  
2 description of each of the nominees' skills and  
3 experience.

4 Fourth, we addressed concerns that a  
5 bank might use the results of the self-assessment  
6 to manipulate the election process in a way that  
7 unfairly affects a member's right to choose  
8 directors. We state more clearly in the preamble  
9 that the bank's board of directors, in particular,  
10 the directors who will not stand for election that  
11 year, will control the election process.

12 Existing 915.3(a) of the Finance Board  
13 Rules which is not a part of these rules that is  
14 being changed by this rule, clearly puts the  
15 administration of the election process under the  
16 jurisdiction of the directors. The Final Rule  
17 states that the bank's board of directors must  
18 conduct a self-assessment, if one is conducted.  
19 Decisions on whether and how to send the results  
20 of the self-assessment to members during the  
21 election process is within the control of the  
22 directors who are not standing for election.

1           The directors may seek the assistance from  
2 sources they deem appropriate so long as they  
3 oversee that process. We believe that if the  
4 directors comply with their statutory duty to  
5 administer the affairs of the bank fairly and  
6 impartially, the process should not be manipulated  
7 unfairly.

8           Fifth, the Final Rule retains the  
9 prohibitions on the Finance Board's boards,  
10 directors, officers, attorneys, employees and  
11 agents, from taking actions to influence the  
12 elections at the banks. The prohibition was  
13 written into the rule when the Federal Home Loan  
14 Bank Board, the predecessor to the Finance Board,  
15 was actively involved in administering the  
16 election process. Each bank now administers its  
17 own election process. The proposal to delete the  
18 prohibition was not for the purpose of becoming  
19 more involved in the election process. However,  
20 to allay any concerns about Finance Board  
21 intentions, the Final Rule does not remove this  
22 prohibition.

1           Finally, we recommend that the Final  
2 Rule become effective immediately upon publication  
3 in the Federal Register rather than the usual 30  
4 days after publication. There are two primary  
5 reasons for this. First, some banks might be  
6 harmed by a delay of the effective date because  
7 they either recently started or intend to start  
8 the election process before 30 days after  
9 publication in the Federal Register. Second, the  
10 rule is permissive rather than mandatory, so no  
11 time is needed to prepare for an effective date of  
12 the rule.

13           In conclusion, staff believes that the  
14 Final Rule improves the election process which in  
15 turn should lead to stronger boards of directors  
16 at the banks. I would welcome any questions you  
17 might have.

18           CHAIRMAN ROSENFELD: Thank you, Tom. Do  
19 any of the other Board members wish to comment?

20           DIRECTOR CASTANEDA: I do have some  
21 comments, as always.

22           CHAIRMAN ROSENFELD: Director Castaneda?

1                   DIRECTOR CASTANEDA:  If I may, Mr.  
2           Chairman, obviously corporate governance is an  
3           extremely important issue and we are all  
4           interested in taking steps to ensure the banks  
5           employ governance best practices.  That is what  
6           has motivated this rule here.  As we should be  
7           clear that this regulation both as proposed and as  
8           now before us for final consideration, is intended  
9           to be only a modest step toward that end.  It does  
10          not seek to radically change the election process,  
11          but, rather, make clear that individual bank  
12          boards can take certain limited steps to ensure  
13          that members are as informed about the bank's  
14          needs as they can be before voting.

15                   Indeed, as I noted at the time we  
16          approved the proposed regulation in April, I am  
17          not so sure that this clarification is absolutely  
18          necessary as a strictly legal matter, being more in the  
19          nature of a regulatory interpretation or no-action  
20          letter.  I know that some of the commentators argue  
21          that boards are already able to do much of what is  
22          now contemplated under our existing regulations,

1 and I tend to agree.

2 As a general practice, I believe we  
3 ought to not muck around with changing regulations  
4 where some other action short of that suffices.  
5 That said, putting the contemplated provisions  
6 into a regulation certainly makes the authority of  
7 the boards absolutely clear and it stresses the  
8 importance this Board puts on corporate  
9 governance.

10 In that case, however, I think it is  
11 important that we make sure that we do not create  
12 unnecessary problems while we are making our  
13 policy statements. I am so glad to see the  
14 proposed deletion of the prohibition against the  
15 Finance Board's involvement in the election  
16 process has been dropped. As I said, at the April  
17 meeting, I had concerns about that proposed  
18 change, and I am glad the prohibition will remain  
19 in place.

20 And because in the context of elections  
21 it is almost as important to assure people than  
22 the process itself is fair, in addition to the

1 outcome being fair, I hope the addition of the  
2 explicit requirement to identify and explain any  
3 changes between the statement of the nominees'  
4 skills sent to members helped reassured some of  
5 the commentors.

6 As a final point, the version before us  
7 retains the flexibility given under the proposal  
8 to the interested directors on the boards to  
9 include a statement of qualifications about the  
10 nominees for election with the ballot. A number  
11 of commentors were concerned that this might leave  
12 too much room for mischief. Anytime you leave  
13 discretion, of course there is that risk. My  
14 assumption, though, is that boards of directors  
15 will use their editorial discretion as little as  
16 possible both for reasons of potential liability  
17 and of member relations and politics, so there may  
18 be less here as a practical matter.

19 But in any event, our Office of  
20 Supervision will continue to closely watch how the  
21 banks carry out the director election process.  
22 And of course, the best supervision will come from

1 self-policing by members who have every incentive  
2 to watch closely to ensure their Home Loan Banks  
3 act with the utmost fairness and scruples. Thank  
4 you, Mr. Chairman.

5 CHAIRMAN ROSENFELD: Is there anything  
6 else? If there is nothing else, I will accept a  
7 motion to approve the Final Rule and to allow  
8 staff to make technical and conforming changes to  
9 the rule.

10 DIRECTOR LEICHTER: So moved.

11 CHAIRMAN ROSENFELD: Do I have a second?

12 DIRECTOR MENDELOWITZ: Second.

13 CHAIRMAN ROSENFELD: Thank you, Director  
14 Mendelowitz. Would the Secretary please call the  
15 roll?

16 SECRETARY WILLIS: On the item before the  
17 Board, Director Leichter, how do you vote?

18 DIRECTOR LEICHTER: Yes.

19 SECRETARY WILLIS: Director Castaneda?

20 DIRECTOR CASTANEDA: Yes.

21 SECRETARY WILLIS: Director Mendelowitz?

22 DIRECTOR MENDELOWITZ: Yes.

1                   SECRETARY WILLIS: Director  
2           Montgomery?

3                   DIRECTOR MONTGOMERY: Yes.

4                   SECRETARY WILLIS: Chairman Rosenfeld?

5                   CHAIRMAN ROSENFELD: Yes. The motion is  
6           adopted. This ends the open session of the  
7           meeting. We will reconvene in 3 minutes.

8                                 (Whereupon, at 10:28 a.m. the  
9                                 PROCEEDINGS were adjourned.)

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