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FHFA Issues First New Rule For FHLBanks – Addresses Golden Parachute and Indemnification Payments

On September 16, 2008, the Federal Housing Finance Agency ("FHFA") took its first rulemaking action applying to the Federal Home Loan Banks ("FHLBanks") when it issued an interim final rule on golden parachute and indemnification payments ("Rule"). The FHFA requests comments on the Rule by October 31, 2008.

The Rule implements provisions regarding golden parachute and indemnification payments that are contained in Section 1114 of the Housing and Economic Recovery Act of 2008 ("Recovery Act"). These provisions are substantially identical to the provisions contained in Section 18(k) of the Federal Deposit Insurance Act, which have been implemented by the Federal Deposit Insurance Corporation in Part 359 of its regulations ("FDIC Rule").

The FHFA has taken a very different approach to its Rule than was followed by the FDIC. The FDIC conducted a very deliberative process in which it issued two proposed rules and adopted the final rule more than five years after the relevant statute was enacted.

The FHFA, in contrast, has issued an interim final rule, without the benefit of any prior public notice or comment, that is effective immediately. The short preamble to the Rule does not discuss how the agency plans to interpret and implement the regulation and does not include a series of clarifications and exemptions that are contained in the FDIC Rule.

The Rule may have a significant impact on FHLBank governance matters. FHLBanks should carefully evaluate the Rule to determine its impact on their operations and take advantage of the comment period to suggest revisions to the Rule.

FHFA issued the Rule two days after issuing a statement that it had notified the former CEOs of Freddie Mac and Fannie Mae that "golden parachute" payments under their contracts would not be paid.

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