

## Federal Housing Finance Agency.

## § 1261.6

(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 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.

[73 FR 55715, Sept. 26, 2008, as amended at 74 FR 51461, Oct. 7, 2009]

### § 1261.6 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 for the Bank;

(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) A brief statement describing the skills and experience the Bank believes are most likely to add strength to the board of directors, provided that the Bank previously has conducted the annual assessment permitted by § 1261.9 and the Bank has elected to provide the results of the assessment to the members;

(4) 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 § 1261.5; and

(5) If a member directorship is to be filled by members in a State, a nominating certificate for those members.

(b) *Member directorship nominations.* (1) 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.

(2) 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.

(3) 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. The Bank shall retain all accepted nominating certificates for at least two years after the date of the election.

(c) *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 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 director eligibility certification form prior to the deadline. Each Bank shall retain all information received under this paragraph for at least two years after the date of the election.

(d) *Independent directorship nominations.* (1) Any individual who seeks to be an independent director of the board

of directors of a Bank may deliver 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 that demonstrates that the individual both is eligible and has either of the following qualifications:

(i) More than four years experience representing consumer or community interests in banking services, credit needs, housing, or consumer financial protections; or

(ii) Knowledge of or experience in one or more of the areas set forth in paragraph (e) of this section.

(2) Any other interested party 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. The application form prescribed by FHFA will provide a means by which an individual can indicate an intent to be considered for a public interest directorship. The board of directors of the Bank may consider any individual for any independent directorship nomination, provided it has determined that the individual is eligible and qualified, but the board shall nominate for a public interest directorship only an individual who indicates on the application form a desire to be considered for a public interest directorship. The board of directors of the Bank shall consult with the Bank's Advisory Council before nominating any individual for any independent directorship. Each Bank shall include in its bylaws the procedures it intends to use for the nomination and election of the independent directors, and shall retain all information received under this paragraph for at least two years after the date of the election.

(3) Each Bank shall determine the number of public interest directorships to be included among its authorized independent directorships, provided that each Bank shall at all times have at least two such directorships, and shall announce that number to its members in the notice required by

paragraph (a) of this section. In submitting nominations to its members, each Bank shall nominate at least as many individuals as there are independent directorships to be filled in that year's election.

(e) *Independent director qualifications.*

(1) Each independent director and each nominee for an independent directorship, other than a public interest 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, risk management practices, and the law. Before nominating any individual for an independent directorship, other than a public interest 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) Each public interest independent director and each nominee for a public interest directorship shall have more than four years experience representing consumer or community interests in banking services, credit needs, housing or consumer financial protection.

(f) *Eligibility verification.* Using the information provided on member director eligibility forms prescribed by FHFA, each Bank shall verify that each nominee for each member directorship meets all the eligibility requirements for such directorship. Using the information provided on independent director application forms prescribed by FHFA, each Bank shall verify that each nominee for each public interest independent directorship and each other independent directorship meets all eligibility requirements and any knowledge or experience qualifications for such directorship, as set forth in the Act and this subpart. Before announcing any independent director nominee, the Bank shall deliver to FHFA, for the Director's 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

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on any independent director nominee, the board of directors of the Bank shall consider the FHFA's comments in determining whether to proceed with those nominees or to reopen the nomination.

[73 FR 55715, Sept. 26, 2008, as amended at 74 FR 51461, Oct. 7, 2009]

### § 1261.7 Election process.

(a) *Ballots.* Promptly after fulfilling the requirements of § 1261.6(f), 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.

(i) For states in which one or more member directorships are to be filled in the election, an alphabetical 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, and the number of member directorships to be filled by the members in that voting state in the election;

(ii) An alphabetical listing of the names of each nominee for a public interest independent directorship and a brief description of each nominee's experience representing consumer and community interests;

(iii) An alphabetical listing of the names nominee for the other independent directorships and a brief description of each nominee's qualifications, including his or her knowledge or experience in the areas of financial management, auditing and accounting, risk management practices, derivatives, project development, organizational management and any other area of knowledge or experience set forth in § 1261.6(e);

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

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

(2) At the election of the Bank, a ballot also may include, in the body or as an attachment, a brief description of the skills and experience of each nominee for a member directorship.

(b) *Statement on skills and experience.* If a Bank has conducted an annual assessment permitted by § 1261.9 and has included the results of the assessment as part of the notice to members required in § 1261.6(a), it may include with each ballot a statement of the results of that assessment or any subsequent assessment. If the statement differs from the statement provided under § 1261.6(a)(3), the Bank also shall include an explanation of why the statements differ.

(c) *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 and in doing so shall designate particular nominees to guaranteed directorships or stock directorships, respectively, if necessary. The nominees declared elected shall be included as directors-elect in the report of election required under paragraph (g) 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(a).

(d) *Voting.* For each directorship to be filled, a member may cast the number of votes determined by the Bank pursuant to § 1261.5. 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 authorize the voting for specific nominees or delegate to an individual the authority to vote for specific nominees. To vote, a member shall: