



June 23, 2020

The Honorable Mark Calabria  
Director  
Federal Housing Finance Agency  
400 Seventh Street, SW  
Washington, DC 20219

**RE: Federal Home Loan Bank Membership RFI**

Dear Director Calabria:

The Commercial Real Estate Finance Council (CREFC) appreciates this opportunity to provide feedback to the Federal Housing Finance Agency (FHFA) in response to its request for input (RFI) of February 24, 2020 regarding Federal Home Loan Bank (FHLBank) membership.<sup>1</sup> We welcome your efforts to explore criteria-based standards for new members of the FHLBank System. CREFC and our members believe it is essential for the FHLBank System to maximize its mission and financial strength by extending permanent membership to new lenders that can meet the appropriately conservative standards.

CREFC's members represent U.S. commercial and multifamily real estate investors, lenders, and service providers – a market valued at an estimated \$6.3 trillion supported by \$4.6 trillion of commercial real estate (CRE) debt. Commercial banking organizations, insurance companies, Agency mortgage-backed securities (Agency MBS), and the commercial mortgage-backed securities (CMBS) market are the top sources of financings for commercial and multifamily real estate.

**I. Introduction to CREFC's Proposal for Allowing New Members Access to the FHLBank System**

CREFC endorses Treasury's plan to expand FHLBank membership, subject to certain conditions, to increase the flow of capital to important sectors of the housing and commercial property markets, and to strengthen the FHLBank system.<sup>2</sup> CREFC supports the FHFA's efforts to bolster the efficiency and liquidity of the multifamily housing sector overall. This RFI is a particularly timely undertaking, as the FHLB's mission is more important than ever before; safe, affordable housing is a fundamental component to social justice, racial equity, and healthy communities across America.

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<sup>1</sup> <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Issues-RFI-on-FHLBank-Membership.aspx>

<sup>2</sup> Housing Reform Plan, US Department of the Treasury, September 2019.  
<https://home.treasury.gov/system/files/136/Treasury-Housing-Finance-Reform-Plan.pdf>

In its February 24, 2020 press release announcing the RFI, the FHFA stated:

“The RFI, part of a holistic review of FHLBank membership, seeks public input on whether FHFA's existing regulation on FHLBank membership ensures the FHLBank System, consistent with statutory requirements, remains safe and sound, provides liquidity for housing finance through the housing and business cycle, and supports the FHLBanks' housing finance and community development mission.”

### ***Short Legal History of Captive Insurers' FHLBank Membership***

Insurance companies have been eligible to be members in the FHLBank System since the original Federal Home Loan Bank Act (Bank Act) was enacted in 1932. In 2016, FHFA adopted a final rule defining the term “insurance company” to exclude captive insurers.

A straight-forward reading of the Bank Act’s “any...insurance company” means FHLBank membership eligibility includes any captive insurance company. The Supreme Court has interpreted “any” broadly.<sup>3</sup> Historically, FHFA has followed this reading and permitted any entity chartered or licensed as an “insurance company” under state law and that met the other applicable requirements to become an FHLBank member. Because captive insurance companies, which underwrite insurance risks of affiliated companies, are chartered or licensed as insurance companies under the laws of states that have enacted captive insurance statutes, captive insurers should be eligible for FHLBank membership under the Bank Act.

The legislative history of the Bank Act and subsequent Congressional action demonstrate that the Bank Act’s plain meaning inclusion of all insurance companies is consistent with the general context and purpose of the statute. For example, when the Bank Act was being written, Congress declined to adopt proposals that would have narrowed the scope of insurance companies eligible for FHLBank membership, owing to the important role that insurance companies play in supporting the FHLBank’s statutory mandate of supporting the U.S. residential real estate market.<sup>4</sup>

### ***Loss of Captives May Reduce the System’s Capacity to Meet Mission Goals***

CREFC counts most of the existing captives, and many of the traditional banks and insurance companies, in the FHLBank System as our own members. Community development projects are highly idiosyncratic and generally involve multiple partners and long timelines. Moving the business from an existing captive to another legal entity would require financial cost, time, and potential regulatory approval from states or municipalities, all which could possibly result in a diminished pipeline of affordable housing.

The costs apply even to those captives that are affiliates of insured depository institutions (IDIs), and thus are pass-throughs to permanent members. There are roughly a dozen such captives

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<sup>3</sup> SAS Inst., Inc. v. Iancu, 138 S. Ct. 1348, 1354 (2018).

<sup>4</sup> Creation of a System of Federal Home Loan Banks: Hearings before a Subcommittee of the House Committee on Banking and Currency, 72nd Cong. 12 (1932), Statement of Morton Bodfish, Executive Manager, United States Building and Loan League.

affiliated with permanent members. One of CREFC's bank members has two FHLBank memberships, one through a captive. Together, the two memberships allow the CREFC member to provide credit for affordable housing across a wider geography using both FHLBank funding and grants. The grants can be levered more than 13 times and allow the bank to achieve scale of close to \$900 million.

### ***Importance of the Non-Traditional Lenders in Multifamily and Affordable Housing***

Since the Great Financial Crisis, non-traditional lenders have increased their share of the multifamily market, and they represent an important source of credit in a sector otherwise dominated by the government-sponsored enterprises (GSEs), Fannie Mae and Freddie Mac, which are the largest credit providers to multifamily borrowers today. Given the presence of the GSEs, the FHLB system offers diversification benefits to the sector overall, non-banks being one of those drivers.

As of December 31, 2019, non-bank/non-insurers (e.g., mREITs, debt funds, CMBS trusts, and others) held 18% of outstanding senior housing debt, compared to insurance companies with 2% and banks with 44%. Non-bank/non-insurers also held 12% of multifamily debt overall, compared to 9% by insurers and 28% by banks.<sup>5</sup>

Non-bank/non-insurance members would be additive to the system, helping to bolster the FHLBank mission. They fill a gap in the lending landscape, often focusing on refurbishment of existing multifamily complexes and the development/re-development of the commercial infrastructure of communities. This segment of the market has a different risk-reward profile than that of insurers and banks, which have more conservative risk appetites accommodative of longer-durations. These non-bank/non-insurer lenders use their unique sourcing, credit, underwriting, and asset management skills to finance housing projects some permanent members simply cannot undertake. They provide flexible, short-term (2-5 years), floating-rate first mortgage loans that suit certain borrower financing needs.<sup>6</sup> In addition, these lenders are able to recycle their invested capital quickly, thus expanding the positive impact of their capital on the housing markets.

Recent analysis suggests that 31.5% of US households were cost-burdened at the end of 2017, some of them severely so.<sup>7</sup> Between 2016 and 2017, the supply of low-rent apartments declined by almost 1 million units nationwide.<sup>8</sup> These non-bank/non-insurer lenders are structurally positioned to provide financing to rehabilitate existing affordable housing, which is the quickest and most efficient way to maintain habitable housing stock and add new housing units.

These entities seeking FHLBank membership through captives are uniquely positioned to help address this gap efficiently. CREFC is seeking access to the FHLBank System for the captive

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<sup>5</sup> Real Capital Analytics

<sup>6</sup> At two- to five-year maturities, the loans provide the borrowers with sufficient time to complete the required renovations and their business plans, and often with the ability to prepay the loan without substantial penalty.

<sup>7</sup> Joint Center for Housing Studies of Harvard University, "State of the Nation's Housing", 2019, <https://www.jchs.harvard.edu/state-nations-housing-2019>.

<sup>8</sup> Ibid.

insurer members based on mission alignment and ability to meet stringent financial conditions and other criteria that align with the safety and soundness conditions applied to the FHLBank System's permanent members. The captive insurers interested in retaining or gaining access to the FHLBank System through captives are self-selecting. They do so with an understanding of and an alignment with the platform's mission. Broadly speaking, these entities are solely engaged in residential, multifamily, and/or commercial real estate activities.

CREFC, and other institutions, believe that the non-banks/non-insurers should have access so long as they can meet compliance criteria, and that the existing captive insurance membership model is the most practical path for criteria-based members to support the mission of the FHLBank System.

### ***Summary of CREFC Recommendations***

Given that captive insurers, and their parent companies, provide efficient and low-levered credit to the housing sector and to the communities in need of affordable housing, CREFC believes they should be eligible for membership. Below we outline a proposal for permanent membership for captive insurers so long as they can meet mission, financial, and other criteria. The criteria we propose are designed to:

1. Meet the existing statutory requirements limiting FHLBank membership to insured depositories, non-insured credit unions, community development financial institutions, and insurance companies, including captives;
2. Align with the FHLBank System's established mission of supporting both housing finance and community development;
3. Meet certain financial thresholds required of banks (risk-based capital and leverage ratios); and
4. Provide transparency and other compliance requirements (e.g., high-quality collateral and conservative advance rates).

In the section below, we summarize our key points, and in following section, CREFC provides answers to the RFI questions relevant to our members.

### ***Eligibility Criteria for Captive Insurers***

#### **1. Standardized Balance Sheet and Risk Management Requirements**

CREFC members recognize the importance of standardization of financial condition criteria. They embrace the idea of enhancing their own internal balance sheet and risk management covenants to support the FHLBs in meeting their safety and soundness goals.

In the spirit of strengthening the new FHLBank members' case, they are interested in discussing bank-like risk-based capital and/or leverage requirements.<sup>9</sup> Though many of these current and

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<sup>9</sup> Insurers, captives or otherwise, especially those within the FHLBank System, operate with lower leverage than that of some of the permanent members. CREFC members are typically specialists that are only focused within the

potential FHLB members are regulated, they also believe that the benefits of FHLBank funding merit the burden of measuring, monitoring, and managing their businesses to these additional metrics, so long as the minimum requirements are calibrated to the adequately-capitalized RBC and leverage ratios required of the IDIs, and are assessed at the parent company.

## **2. Parent Guarantees**

New members appreciate the FHLBank System's need to protect itself in the event of bankruptcy. The FHLBs have already become familiar with various solutions depending on a given member's legal entity structure. New members are willing to engage with the FHLBs to satisfy their concerns about rights to collateral. They understand that, at a minimum, they will have to provide parent guarantees, high-quality collateral, and other protections.

It is essential that the strength of new members is analyzed through their respective parent entities, which often hold the majority of consolidated capital and liquidity. In many cases, FHLB members have dividend requirements that must be paid to shareholders. For mREITs, these dividends must be paid as a condition of maintaining their REIT status for tax purposes. Dividend payments are best managed out of the parent entity because, in part, state insurance regulators prefer to see stable assets and liabilities in regulated entities.

Given that the parent companies hold the majority of a consolidated group's capital and liquidity, the new members are also willing and able to provide parent guarantees to cover default risks. It then follows that the financial condition and reporting requirements also be applied at the parent

## **3. Required Transparency and Reporting**

We understand the concern about introducing unregulated members into the system. Respectfully, we submit that the captive insurance companies would, in fact, be regulated by state insurance commissioners. Moreover, many entities are public and/or affiliates of registered investment advisors, in which case, they are also overseen by the Securities and Exchange Commission (SEC) and/or FINRA. A large proportion of the new members borrow from banks, access public and private capital markets, and have sophisticated in-house teams responsible for managing financial compliance.

New members would, of course, agree to provide regular (annual and quarterly) reporting including, but not limited to, annually audited financial statements for the member entity and its parent.

## **4. Bankruptcy Protections**

New members appreciate the FHLBank System's need to protect itself in the event of bankruptcy. The FHLBs have already become familiar with various solutions depending on a

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mortgage asset class and therefore operate at 2-3x leverage versus traditional FHLBank members that operate at 5-10x leverage, but are more diversified.

given member's legal entity structure. New members are willing to engage with the FHLBs to satisfy their concerns about rights to collateral. They understand that, at a minimum, they will have to provide parent guarantees, high-quality collateral, and other protections.

## II. ANSWERS TO SELECT RFI QUESTIONS

***1. General. FHFA seeks to develop requirements to address questions regarding membership eligibility on a consistent basis, guided by the twin objectives of ensuring that the System remains safe and sound and able to provide liquidity for housing finance through the housing and business cycle and ensuring that all members have an appropriate nexus to the housing finance and community development mission of the FHLBanks.***

***a) In addition to the statutory requirements of the FHLBank Act, what are the most important general principles and factors FHFA should consider in achieving those objectives?***

New Members Fill Sector Gaps: Non-traditional lenders have grown to represent a greater proportion of the market and serve as essential sources of credit for the affordable housing sector, both on the residential and the multifamily sides. In many ways, they fill a gap in the market, as they are able to fund relatively larger, somewhat more transitional and complex projects, oftentimes in secondary and tertiary markets. They also often provide financing for the rehabilitation of existing properties, which is an essential component of community revitalization and affordable housing stock.

System-wide Diversity: In this letter, we describe how the new members add to the strength of the system through diversity and through oversight, controls, risk management, transparency requirements outside of the FHLBank System, and again as FHLBank members.

Need for Affordable Housing: The need for affordable housing was rapidly increasing prior to COVID-19 in low- and middle-income (LMI) neighborhoods. The pandemic will drive the gap in availability even wider. Our members' multifamily and community development finance capabilities are critical at this time. Unemployment trends favor rental housing in many ways over single family housing, and CREFC members are long-time anchors of the multifamily and community development finance sectors.

***b) Are there classes or types of institution not currently eligible for FHLBank membership under FHFA's current regulation whose eligibility would simultaneously further both of those objectives and, if so, how? In particular:***

CREFC believes that the individual FHLBanks should be the gate keepers of their own membership. They alone can decide what type of member would add diversity to their mix. It is CREFC's view that membership eligibility should be criteria based and not exclude parties from membership solely because of the potential member's type of entity. Captives, for example, will have to be allowed access in order to provide membership indirectly to non-bank/non-insurance

companies. CREFC submits that membership for mREITs and other non-banks, especially through a state-regulated captive insurer, will add to the FHLBank System's ability to meet the nation's affordable housing needs more efficiently. The mREITs and other non-banks capable of meeting requirements will also enhance the FHLBank system's safety and soundness, as they will add diversity to the overall membership of the FHLBank System.

***c) What would be the safety and soundness risks, if any, to the FHLBanks or the System of making such institutions eligible for membership? What impacts, if any, would allowing such institutions to be members have on the System's cost of funds and ability to provide low-cost liquidity to current members?***

The non-bank lenders interested in FHLBank membership are self-selecting and know that they will have to reorganize structurally and submit to additional compliance criteria. For current captive members, the utilization rate averages 20% - 30%. From a cost-benefit perspective, the FHLBanks' moderate financing rate does not offset the burden of additional compliance requirements for certain non-banks.

Only lenders that believe they can meet the mission and safety and soundness criteria similar to the statutory requirements for IDIs would move forward with the process to join through a captive insurer. If the FHFA and the FHLBanks together establish appropriate financial condition and collateral requirements, the impact on the risk profile of the FHLBank System should be neutral to positive, given the benefits of lender diversity.

To the specific issue of bankruptcy, various FHLBanks have already established several models through which they can ensure security in such an event. Most FHLBanks require parent guarantees, reporting, as well as conservative collateral requirements and advance rates.

***ii. How, specifically, would membership of such institutions further the housing finance and community development mission of the FHLBanks?***

The gap between supply of and demand for affordable housing is increasing nationwide. FHLBank rates would help to equalize the playing field by allowing non-bank members to pass savings on and to expand the affordable housing pipeline. The programmatic approach to community development financing also translates into lower operational costs and would allow a greater number of lenders to extend credit to multifamily housing where the structuring of transactions is relatively complex and requires intensive financial and time resources requirements.

Oftentimes, affordable housing stock is older, which could present a more complex transaction from a lending perspective. In 29 of the 100 metro areas<sup>10</sup>, low-income residents typically could only afford homes twice the median age of homes outside their affordability range. Captive insurers and their parent entities often provide financing to this segment of the market.

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<sup>10</sup> Casey, Alexander. "Age and Affordability: Why an Affordable Rental Home Is More Often an Older Home, and Why That Matters" May 16, 2027. <https://www.zillow.com/research/rentals-age-and-affordability-14508/>

***iii. Would allowing such institutions to be members further FHFA's duty to ensure that the operations and activities of the FHLBanks foster liquid, efficient, competitive, and resilient national housing finance markets? How would doing so affect competition among existing participants in housing finance markets? How would doing so improve the System's resiliency through the cycle? Please be specific.***

Limiting FHLBank membership impairs their ability to provide liquidity to financial markets. Given that advances to members are over-collateralized, the risk to the FHLBanks is covered with high-credit quality securities. As such, the FHLBank System has the capacity to act as a pillar within the broader financial system and is an alternative to bank financing. In business as usual conditions, the FHLBank System serves as competition to banks, lowering the cost of funds in order to expand the supply of credit to borrowers. In times of volatility, it can act as a much-needed reliable source of credit.

CREFC cannot emphasize enough the importance of the role that the captives and their mREIT and other non-bank parents already play in the marketplace, renovating existing housing and repurposing other forms of real estate. Revitalizing and repurposing existing housing are much more cost effective and require considerably less time to execute than new construction. Again, banks typically do not engage in this type of lending, as they cannot staff, underwrite, or service them.

***2. Financial condition requirement. As described above, the provisions of the current regulation implementing the "financial condition" eligibility requirement establish different standards of review for different types of eligible entities.***

***a) In general, what financial factors should FHFA consider for the types of entities eligible for membership, and how many years of financial statements and other data is sufficient for an FHLBank to make a sound assessment of an applicant's financial condition?***

For non-banks, the FHLBanks should assess a captive in part on access to long-term capital through the parent. Additionally, the CREFC members interested in FHLBank membership are supportive of conforming to risk-based capital and leverage ratios in line with bank requirements. Transparency should be maintained around the parent and captive. Audited annual reporting should be provided to the FHLBank and to the state insurance authority. In addition, similar, though unaudited, reporting should be provided to the FHLBank quarterly.

CREFC and its members are interested in further discussing these concepts and other operational requirements, such as the quality, experience, and capabilities of management. Because these issues are detailed and complex, we would welcome the opportunity to follow up with FHFA staff and discuss our comments in greater detail.

***b) Would there be benefits to establishing financial condition review requirements that are substantially similar for all applicants, regardless of whether they are organized as an insured depository institution, insurance company, or CDFI? What would such requirements***



***comprise, and would such changes entail risks to the System's safety and soundness and the FHLBanks' ability to provide liquidity to members through the cycle?***

CREFC agrees that the FHLBank System would benefit from consistency in standards at a high level. As noted above, CREFC endorses the concept of a standardized bank-like capital ratio, as long as it applies to the new member's parent organization. That standardization should provide comfort to the system that new members are risk-neutral and are accorded similar terms as permanent members.

***3. Use of conduit arrangements by ineligible entities.***

***a) Should FHFA amend its regulations to bar from FHLBank membership particular types of otherwise-eligible entities that are most susceptible to being used as conduit vehicles by institutions that are not themselves eligible for membership? Which types of currently eligible entities are most susceptible to such use?***

There seems to be little reason to adopt a blanket prohibition against certain legal entities, given the market's continued evolution. Risks to the FHLBank System can effectively be assessed and limited dynamically via standardized mission alignment, financial condition standards, and other compliance requirements. So long as there is no blanket prohibition on the legal form of an entities membership, the FHLBank System is able to evolve with the marketplace going forward.

***b) How should FHFA balance the legitimate housing finance activities of those types of entities against the risks that they could be misused as funding conduits by ineligible entities to create another form of de facto membership?***

No matter the situation, abuse of funds is generally guarded against by oversight, governance, controls, and other remedies, many of which are already in place within the FHLBank System. To the extent additional mitigations are warranted, the FHLBanks should define them as opposed to excluding new members based on legal entity type.

***c) Should FHFA amend its regulations to impose conditions on membership approvals pertaining to those entities that are susceptible to being used as conduits that do not apply to other types of members?***

CREFC endorses the use of captive insurers for the purposes of FHLBank System membership for entities (parent companies) that meet mission alignment and other criteria.

***d) Irrespective of membership requirements, should FHFA limit conduit activity by FHLBank members through other means, such as by restricting the amount of advances a FHLBank may have outstanding to a single member (for example, to a percentage of the member's total assets) or limiting the extent to which affiliates may pledge collateral to secure a member's advances? If so, what should those limitations be? Should FHFA impose any such limitations on all FHLBank members as a prudential measure, irrespective of any concerns about conduit activity?***

CREFC supports the continuation of existing protocols, whereby individual FHLBanks manage their own concentration risks. We also endorse the consistency of advance rates, cost of funds, and other terms, as new members will agree to compliance requirements similar those established for IDIs.

#### ***4. Unsupervised members and affiliates.***

***a) What are the principal risks to the FHLBanks from doing business with members that are not subject to supervision by a prudential safety and soundness regulator, and are those risks materially greater than those associated with doing business with members subject to such oversight?***

As a generality, risk associated with non-banks as on-going concerns is not materially greater than that associated with the permanent members. Many of the captives' parent companies are regulated by the SEC and/or FINRA.

Risks may be different in instances of default. However, these risks can be neutralized through parent guarantees, comprehensive detailed transparent reporting, and overcollateralization requirements.

***b) If FHFA were to allow conduit arrangements, what would be the principal risks to the FHLBanks in cases where the affiliate to which the FHLBank funding is being passed by the conduit member is not subject to supervision by a prudential safety and soundness regulator?***

CREFC appreciates that the FHFA and FHLBanks must understand who their borrowers/pledgers are and what business(es) they engage in, in order to assess the risk of the enterprise to which they are lending. It then follows then that: 1) parent guarantees are necessary; and 2) conservatism in collateral quality and advance rates is essential for new members.

***c) To the extent there are added risks arising from either scenario, what measures could FHFA or the FHLBanks take (for example, enhanced collateral discounts, capital requirements, or other counterparty risk management practices) that would best mitigate those risks? Would such measures be sufficient? Please be as specific as possible.***

CREFC members acknowledge that modified approaches to the definition and application of credit standards may be necessary to mitigate default risk, but that should come in the form of parent guarantees and other means to secure the collateral in these cases. Collateral requirements should be assessed based on credit quality and standardized across members.

***d) What would be the added risks and costs, if any, to the FHLBanks and the System, including with respect to the cost of funds, in the event of a default or failure of a member and/or parent institution for which a bankruptcy or similar proceeding would be the resolution regime (as opposed, for example, to an FDIC resolution for an insured depository institution)?***

As noted above, our goal is to establish financial condition metrics for new members that approximate the IDI's RBC and leverage requirements. Parent guarantees and other mitigations

can be instituted, depending on a new member's structure, to address the risk of default. Parent guarantees combined with the already conservative levels of overcollateralization applied by the FHLBanks in their lending practices and each member's investment in FHLB stock, provide the FHLBanks with substantial protection.

***5. Nexus to FHLBanks' public policy mission.***

***a) Is the current membership regulation sufficient to ensure that the activities of FHLBank members have a sufficient nexus to the public policy mission of the FHLBanks? If not, what changes should be made?***

N/R

***b) Should FHFA require FHLBank members to demonstrate an ongoing commitment to housing finance in order to remain eligible for membership? If so, how should that commitment be measured and monitored?***

CREFC endorses the principle that members should have an ongoing commitment to the FHLBank System mission, which includes housing finance and community development finance. The quantitative compliance standards should be stated in absolute dollar amounts and as a proportion of a member's overall investment activities with compliance achieved by meeting any one of multiple standards to allow both smaller-sized members who are heavily focused on mission-supporting activities, as well as larger members who make substantial financial commitments to mission-related activities as part of a larger, multifaceted lending enterprise. Compliance should be measured over multi-year periods to allow for fluctuations in activity from period to period that could occur for reasons (e.g., impacted by a pandemic) beyond the control of the member.

***c) If FHFA were to permit conduit arrangements, should it limit such arrangements to members whose parent company is actively and substantially engaged in activities that are consistent with the housing finance and community development mission of the FHLBanks? If so, what criteria should be employed and how could compliance with such criteria be monitored and enforced?***

Active and substantial engagement of a member's parent company, on its face, is a reasonable requirement for membership. However, measures of "activity or activities" should allow for both: 1) a very small organization that engages in activities that are heavily weighted toward the FHLB's housing finance and community development mission; and 2) a much larger organization with a diverse range of business activities that also devotes a large dollar amount of capital to support the FHLB's mission (even though that large dollar amount may not represent a large proportion of its overall capital).

***d) Would the use of FHLBank advances to finance the purchase of mortgage-backed securities by the conduit entity or its parent, as was the case with mortgage REITs that created captive insurance companies, be consistent with the mission of the FHLBanks, particularly if***

*the mortgage-backed securities have been issued or guaranteed by Fannie Mae or Freddie Mac?*

N/R

***6. Rebuttable presumption approach of regulation. As discussed above, an applicant’s failure to meet the specific standards by which compliance with a membership eligibility requirement is determined may, in some cases (specifically, with respect to the “subject to inspection and regulation,” “financial condition,” “character of management,” and “home financing policy” requirements), raise a mere presumption of non-compliance that the applicant may rebut by meeting additional criteria. The intent behind this approach is to facilitate the processing of membership applications by the FHLBanks by allowing them to exercise a degree of judgment in assessing the unique facts that may be presented by some applicants. Because those additional criteria allow the FHLBanks considerably more discretion than do the primary standards, however, they also are more subject to misinterpretation and misapplication, particularly when the FHLBanks are considering cases of first impression.***

***Would the safety and soundness of the FHLBanks be enhanced if FHFA were to establish new standards that provided less discretion to the FHLBanks, and all of which must be met for an applicant to be admitted to membership? If so, what should those standards be? Please explain in detail.***

The FHLBanks currently retain a degree of discretion to determine member eligibility. This right is commensurate with their insight; at any given point in time, the individual FHLBanks should possess the most current, comprehensive, and detailed view of any member’s (or potential member’s) financial and operating status at both a corporate level and with respect to the collateral pledged to the FHLBank.

***7. Other issues and concerns. Are there any issues not explicitly discussed above that relate to FHLBank membership and need clarification?***

No.

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CREFC supports the FHFA’s efforts to establish criteria-based membership for new members, to standardize those criteria across the FHLBank System, and to structure relationships with new members in such a way as to adequately secure collateral in the event of a bankruptcy. We encourage the FHFA to reverse its 2016 rule that denies captive insurers, and the alternative lenders that stand behind them, access to the system. Risks related to expanding FHLBank membership can be offset with existing tools so that the system can benefit from the efficient and low-levered affordable housing credit.

The gap between affordable housing supply and demand has been widening for years. To address this structural challenge, which is sure to be exacerbated by the pandemic, the FHLBanks should be allowed flexibility to manage their own mission and risks as expediently as possible.

We would be pleased to address any questions you and your staff may have regarding this issue.

Sincerely,

A handwritten signature in black ink that reads "Lisa A. Pendergast". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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