October 31, 2022

Director Sandra L. Thompson
Federal Housing Finance Agency
Constitution Center
400 Seventh Street, SW
Washington, DC 20219

Re: Federal Home Loan Bank System

Dear Director Thompson,

The National Fair Housing Alliance® ("NFHA™")[1] and the undersigned civil rights, housing, and other advocacy organizations appreciate the opportunity to comment on the Federal Housing Finance Agency's ("FHFA") comprehensive review of the Federal Home Loan Bank ("FHLBank") System.[2] We commend FHFA for seeking input on this important topic and we believe that our comments below will help inform FHFA's review.

Background

Generally, the FHLBank System and the member institutions benefit from tremendous public subsidies and private benefits while providing comparatively little in public benefits. In 1932, Congress passed the Federal Home Loan Bank Act ("FHLBank Act"), which created the FHLBank System as a government-sponsored enterprise ("GSE") to provide liquidity to member financial institutions to support mortgage lending and related community investment.[3] More specifically, FHFA's implementing regulations state that the mission of the FHLBanks is to "to provide to their members' and housing associates financial products and services…that assist and enhance…(a) financing of housing, including single-family and multi-family housing serving consumers at all income levels; and (b) community lending."[4] In 1989, Congress amended the FHLBank Act to also require each FHLBank to undertake specific housing and community development activities by establishing an Affordable Housing Program and Community Investment Program.[5]

Currently, the FHLBank system is composed of 11 regional FHLBanks, each of which is a separate, government-chartered, member-owned corporation. The FHLBanks are jointly and severally liable for all System consolidated obligation debt and they fund themselves principally

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[1] The National Fair Housing Alliance® ("NFHA™") leads the fair housing movement. NFHA works to eliminate housing discrimination and ensure equitable housing opportunities for all people and communities through its education and outreach, member services, public policy, advocacy, housing and community development, tech equity, enforcement, and consulting and compliance programs.
[2] FHFA, *FHFA Announces Comprehensive Review of the Federal Home Loan Bank System* (Aug. 31, 2022), https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Comprehensive-Review-of-the-FHLBank-System.aspx.
[3] *See* Federal Home Loan Bank Act of 1932, 12 U.S.C. § 1421 *et seq.*
[4] 12 C.F.R. § 1265.2
[5] *See generally,* Financial Institutions Reform, Recovery, and Enforcement Act ("FIRREA"), Pub.L. 101-73 (Aug. 9, 1989). FIRREA also provided FHFA with the authority to issue implementing regulations for the Affordable Housing Program and Community Investment Program.

by issuing this debt in the public capital markets. The FHLBank System is the largest issuer in the world of dollar-based debt after the U.S. Treasury.

The FHLBank System benefits from the following public subsidies and privileges:[6]

- The FHLBanks have a standing line of credit with the federal government.
- The FHLBank System can borrow funds cheaply because of an implied federal guarantee. That is, buyers of the FHLBanks consolidated obligation debt (mostly money market mutual funds) assume that the federal government will bail out the System in the event of default.
- The FHLBanks make money by lending out the funds they acquired at below-market rates to their member institutions at a higher rate than they borrowed.
- The FHLBanks are exempt from all corporate federal, state, and local taxes, except for local real property taxes.
- As separate entities, each FHLBank has its own C-suite of officers with relatively high executive compensation levels.

The FHLBanks largely operate as a bank for bankers. The FHLBanks provide their thousands of member institutions (commercial banks, credit unions, thrifts, insurance companies, and certified community development financial institutions ("CDFI's")) with long- and short-term loans (known as "advances"), which are primarily collateralized by residential mortgage loans, and government and agency securities; as well as provide specialized grants and loans aimed at increasing affordable housing and economic development. Eighty percent of the insured depository financial institutions in the United States are FHLBank members. To become a member, an institution must meet certain criteria and must purchase stock in the FHLBank commensurate with its borrowing from the FHLBank, its holding of mortgages and mortgage securities, and its assets.

FHLBank members receive the following benefits:

- Below-market rate access to funds in the form of grants, below-market rate loans, and discounted advances.
  - Community banks receive liquidity and below-market rate funding options that would not otherwise be available to individual banks of this size.
  - Large banks and insurers (including JPMorgan Chase, MetLife, and TIAA) are among the top 10 users of FHLB funding, accounting for more than 70% of the advances at five of the 11 FHLBanks in 2021.[7]

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[6] *See generally*, Daniel K. Tarullo, *How to Limit the Risks to Financial Stability Posed by the Federal Home Loan Bank System,* The Brookings Institution (July 11, 2022), https://www.brookings.edu/blog/up-front/2022/07/11/how-to-limit-the-risks-to-financial-stability-posed-by-the-federal-home-loan-bank-system/; William M. Isaac and Cornelius Hurley, *Federal Home Loan Banks Should Serve the Public, Not Themselves,* The Hill (Sept. 13, 2022), https://thehill.com/opinion/finance/3640287-an-fhlb-revamp-must-restore-its-mission-to-serve-the-public; George G. Gaberlavage, *The Federal Home Loan Bank System: A Chronological Review and Discussion of Key Issues*, Consumer Federation of America (June 2017), https://consumerfed.org/reports/federal-home-loan-bank-system-chronological-review-discussion-key-issues/.

[7] Kate Berry, *Big Banks, Nonbanks Largely Absent from FHFA Home Loan Banking Inquiry*, American Banker (Oct. 11, 2022) ("Berry Article"),

- Mitigation of interest rate risk through customizable advance terms from one day to 30 years.
- Robust dividends on their FHLB stock.
    - In 2021, the FHLBanks paid out more than $1 billion in dividends,[8] more than three times the amount they contributed to the Affordable Housing Program that year ($314.7 million).[9]

This structure also provides a few additional benefits to the FHLBanks:

- In the rare event of default by a member institution, the FHLBank takes priority over the FDIC (and the taxpayer) in a receivership.
- With interest rates rising, the FHLBank structure incentivizes banks to borrow at a lower rate from the FHLBank (which benefits the FHLBank) rather than borrow from banks' own depositors and pay the depositors a higher interest rate.[10]
    - This structure may also benefit the banks by decreasing their Community Reinvestment Act obligations, which are in part based on deposit share.[11]

Critics have suggested that the FHLBanks (and their public subsidies and private benefits) may no longer be necessary given the great evolution in mortgage financing and banking since 1932:

- Nonbank lenders cannot be members of FHLBanks, but provide the vast majority of mortgages to consumers, including the government mortgages that often serve consumers of color.
    - In 2021, 64% of all first-lien mortgages and 72% of loans backed by Ginnie Mae were originated by nonbank lenders.[12]
- Fannie Mae and Freddie Mac now provide sufficient liquidity to the mortgage market.
- The Federal Reserve now provides below-market funds when the market is stressed.
- The Federal Deposit Insurance Corporation protects depositors.
- The FHLBank System may provide greater risks than rewards in the current financial system.
    - For example, there used to be 12 FHLBanks, but now there are only 11. In 2015, the FHLBank of Des Moines absorbed the FHLBank of Seattle, which had bulked

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https://www.americanbanker.com/news/big-banks-nonbanks-largely-absent-from-fhfas-home-loan-bank-inquiry.

[8] *See* the Annual Reports of each FHLBank: Atlanta, Boston, Chicago, Cincinnati, Dallas, Des Moines, Indianapolis, New York, Pittsburgh, San Francisco, Topeka.

[9] *See* FHFA, Testimony of Director Sandra L. Thompson, before the House Committee on Financial Services, (July 20, 2022), https://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-Sandra-Thompson-Before-the-HFS-Committee_7202022.aspx; FHLBanks Office of Finance, Lending, and Collateral Q&A (March 25, 2022), https://www.fhlb-of.com/ofweb_userWeb/resources/lendingqanda.pdf.

[10] Cornelius Hurley, *Imagining Taxpayers' Response to FHFA's Home Loan Bank Review*, American Banker (Oct. 7, 2022), https://www.americanbanker.com/opinion/imagining-taxpayers-response-to-fhfas-home-loan-bank-review

[11] *See* Berry Article..

[12] *See* Berry Article; Bonnie Sinnock, *Nonbanks Made the Majority of Purchase Mortgages in 2021*, American Banker (June 2022), https://www.americanbanker.com/news/nonbanks-made-the-majority-of-purchase-mortgages-in-2021.

up on mortgages from its largest borrower, Washington Mutual, which in 2008 became the largest U.S. bank failure ever.[13]

The current shortage of affordable housing and continued racial homeownership gap suggests that the FHLBanks and all players in the housing market need to do more to better serve the nation's housing and housing finance needs.

Comments

Comments from NFHA and the undersigned organizations:

- **FHFA should recommend that Congress amend the FHLBank Act to require the FHLBanks to direct substantially more of their net income to affordable housing, with a substantial portion of that amount dedicated to affirmatively furthering fair housing**. Homeownership has long been a path into the middle class and economic security for families in America. Unfortunately, America's long history of discriminatory housing policies has created distinct advantages for White families, leading to massive homeownership, credit, and wealth gaps that persist today. The homeownership rate for Black Americans is still where it was when the Fair Housing Act was passed in 1968: White homeownership is 73.4%; Latino homeownership is 47.8%; and Black homeownership is 42.7%. This translates to a homeownership rate gap between Blacks and Whites of about 30 percentage points, which is the largest gap since 1890.[14] Similarly, White wealth has soared while Black wealth has remained stagnant. In 2019, White median family wealth was valued at $188,200 while Black families' median net worth was only $24,100.[15]

  Despite the tremendous public subsidies received by the FHLBanks, including an implied federal guarantee and tax exemptions, the FHLBanks are only required to provide a minimal public benefit in the form of directing 10% of their net income to the Affordable Housing Program.[16] Last year, the FHLBanks provided only $314.7 million in affordable housing subsidies nationwide, while paying out more than $1 billion in dividends to their members.[17] The affordable housing requirement should be substantially increased, and a substantial portion of that amount should be dedicated to remedying the racial homeownership and wealth gaps by affirmatively furthering fair housing, consistent with the FHLBanks' obligations under the Fair Housing Act.

  While awaiting congressional action, FHFA should strongly encourage the FHLBanks to exceed rather than merely meet the statutory threshold of directing 10% of their net

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[13] *See* Berry Article.
[14] *See* Adam Levitin, *How to Start Closing the Racial Wealth Gap*, The American Prospect (June 17, 2020), https://prospect.org/economy/how-to-start-closing-the-racial-wealth-gap/.
[15] Neil Bhutta, Jesse Bricker, Andrew Chang, et al., *Changes in U.S. Family Finances from 2016 to 2019: Evidence from the Survey of Consumer Finances*, 106(5) Federal Reserve Bulletin (Sept. 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3716339.
[16] 12 U.S.C. § 1430(j)(5)
[17] *See* FHFA, Testimony of Director Sandra L. Thompson, before the House Committee on Financial Services, (July 20, 2022), https://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-Sandra-Thompson-Before-the-HFS-Committee_7202022.aspx.

income to affordable housing. The statutory threshold is just a floor and bare minimum, but it seems that the FHLBanks have treated it as a ceiling. Given the substantial public subsidies and privileges that the FHLBanks receive, FHFA should emphasize that the FHLBanks should aim for a race to the top in providing meaningful affordable housing benefits for the public, rather than a race to the bottom that merely meets the statutory floor.

- **FHFA should recommend that Congress amend the FHLBank Act to expand the purpose of the Affordable Housing Program to include funding for climate resiliency.** The program's purpose (as defined under 12 U.S.C. §1430(j)(2)) should be expanded to include investments in disaster preparedness and climate resiliency, green retrofits of affordable housing, energy efficient improvements, and related projects. In addition, FHFA should ensure that the program's benefits are publicly tracked and analyzed by the race, ethnicity, and income of the census tracts and (when possible) the individuals receiving the benefits to ensure that the FHLBanks' affordable housing programs are serving individuals and communities of color.

- **FHFA should require the FHLBanks to submit Equitable Housing Finance Plans.** In September 2021, FHFA required Fannie Mae and Freddie Mac to submit Equitable Housing Finance Plans, consistent with FHFA's statutory duty to ensure that regulatory entities "foster liquid, efficient, competitive, and resilient national housing finance markets (including activities relating to mortgages on housing for low- and moderate-income families involving a reasonable economic return that may be <u>less than</u> the return earned on other activities)" and "the activities of each regulated entity and the manner in which such regulated entity is operated are consistent with the public interest."[18] Also, under the Fair Housing Act, all Federal agencies having regulatory or supervisory authority over financial institutions, including FHFA, are required to administer their programs and activities relating to housing and urban development in a manner that affirmatively furthers the purposes of the Fair Housing Act, which includes providing for fair housing throughout the United States.[19] FHFA has explained that the Equitable Housing Finance Plan framework is a tool for Fannie Mae and Freddie Mac to undertake sustainable and meaningful actions to advance equity in the housing markets, while ensuring safety and soundness.[20] These same principles apply to FHFA's oversight of the FHLBanks. Accordingly, FHFA should require the FHLBanks to submit Equitable Housing Finance Plans, including the identification of barriers to affordable housing, specific plans for meaningful action to address these barriers, and plans for publicly-available annual reports.

- **FHFA should encourage the FHLBanks to clarify that financing to members can be used to promote access to credit for underserved markets**. Many commercial banks have contacted NFHA and others for information about concrete actions they can take to promote racial equity. FHFA should encourage the FHLBanks to host webinars and other education and outreach for members to clarify that advances can be used to promote

[18] 12 U.S.C. § 4513(a) (emphasis added).
[19] 42 U.S.C. § 3608(d).
[20] FHFA, *Request for Input: Enterprise Equitable Housing Finance Plans* (Sept. 2021), https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Equitable-Housing-Finance-Plans-RFI.pdf.

access to credit for underserved markets, including first-generation down payment assistance, Special Purpose Credit Programs ("SPCPs"), and small-dollar financing.

The rationale for targeting first-generation homebuyers is clear: those whose parents were the victims of exclusionary housing policies or otherwise unable to become homeowners are unlikely to have the benefit of intergenerational wealth and thus are most likely to be limited in their ability to purchase by the long-standing and massive racial wealth gap. An analysis by NFHA and the Center for Responsible Lending ("CRL") shows that targeting down payment assistance to first-generation, first-time homebuyers has the potential to increase access to homeownership for millions of new homebuyers, which would help to close the persistent homeownership gap.[21]

Under the Equal Credit Opportunity Act and Regulation B,[22] lenders can offer SPCPs with special underwriting, pricing, or other considerations targeted to economically disadvantaged groups. For example, some SPCPs offer down payment assistance for consumers living in neighborhoods long impacted by redlining and disinvestment. Also, SPCPs can be designed to remove the over-reliance on discriminatory credit scoring systems or to consider rental housing payment as a test of borrowers' ability and willingness to pay.[23] SPCPs are among the nation's most important mechanisms to correct our history of financial exclusion and create wealth-building opportunities for underserved communities. However, lenders have historically shied away from the development of SPCPs, in part due to liquidity concerns. The FHLBanks should host webinars informing member institutions of how to develop SPCPs and assuring them that advances can be used for financing SPCPs.

The lack of liquidity for small-dollar mortgage loans has a disparate impact on borrowers of color and entire cities and regions throughout the nation, who are more likely to need and apply for these loans.[24] Lack of profitability is one of the primary reasons lenders note for failing to make loans for less than $100,000. Because lenders' fees and interest are derived from the loan amount, lenders typically are focused on higher-dollar

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[21] NFHA and Center for Responsible Lending, *First Generation: Criteria for a Targeted Down Payment Assistance Program* (May 21, 2021), https://nationalfairhousing.org/wp-content/uploads/2021/06/crl-nfha-first-generation-jun21.pdf. This research suggests the optimal program would target eligibility to first generation homebuyers whose income is at or below 120% of the Area Median Income ("AMI"). The FHLBank Act limits use of advances for the Community Investment Program to families whose income does not exceed 115% of AMI and for the Affordable Housing Program to families whose income does not exceed 80% of AMI. 12 U.S.C. § 1430(i), (j). Research may need to be conducted as to how members can offer down payment assistance consistent with statutory constraints.

[22] 15 U.S.C. § 1691(c); 12 C.F.R. § 1002.8

[23] *See, e.g.*, Chi Chi Wu, *Doing Special Purpose Credit Programs Right: Why Programs to Assist Black Communities Should Avoid Conventional Use of Traditional Credit Scores*, National Consumer Law Center (Feb. 2021), https://www.nclc.org/resources/doing-special-purpose-credit-programs-right-why-programs-to-assist-black-communities-should-avoid-conventional-use-of-traditional-credit-scores/.

[24] See, Ben Eisen, *Dearth of Credit Starves Detroit's Housing Market*, Wall Street Journal (Oct. 29, 2020), https://www.wsj.com/articles/a-broken-mortgage-market-strands-detroits-black-residents-11603984218 (finding low property values to be the main driver of the dearth of mortgages in Detroit as lenders earn little profit on small dollar mortgages).

mortgages to generate higher profits. By clarifying that the FHLBank member advances can be used for small-dollar mortgages, the FHLBanks will encourage lenders to make more loans to borrowers purchasing homes for less than $100,000, which can help remedy the racial homeownership and wealth gaps.

These actions can be taken immediately as they would not require any legislative or regulatory changes.

- **FHFA should require the FHLBanks to ensure that member advances are not used to promote source of income discrimination in multi-family rental housing.** The FHLBanks maintain an important role in the financing of multi-family rental housing, with private landlords benefiting from the liquidity the FHLBanks provide in the multi-family rental market. The nation's lowest-income renters often require the use of housing vouchers, Social Security Disability Insurance, or other sources of lawful income to pay rent. Yet, currently, there is no requirement for multi-family rental owners receiving FHLBank financing to accept all forms of lawful income from new applicants and no protections in place to ensure that existing renters do not face eviction when attempting to pay rent using a government source of income. Such requirements would greatly improve the FHLBanks' ability to fully serve communities and renters with the greatest needs. By regulation, FHFA should require FHLBanks to provide member advances on the condition that the member ensures that multi-family developers receiving member financing: 1) accept all housing vouchers, Social Security Disability Insurance, government income assistance, and other lawful sources of income as rental payment; and 2) have eviction protections for tenants in member-financed multi-family units that attempt to pay rent with any housing voucher, government income assistance, and other lawful sources of income.

- **FHFA should issue regulations requiring that approval of an application for membership or access to long-term advances be conditioned on the fair housing and fair lending record, and that certain community development financial institutions ("CDFIs") must have a community benefits agreement.** With respect to applications for membership, the FHLBank Act states that an insured depository institution may only become a member if "the character of its management and its home-financing policy are consistent with sound and economical home financing.[25] FHFA's implementing regulations state that "an applicant shall be deemed to be in compliance with the home financing policy requirements…if the applicant has received a [Community Reinvestment Act ("CRA")] rating of 'Satisfactory' or better on its most recent CRA performance evaluation."[26]

  With respect to long-term advances, the FHLBank Act requires FHFA to adopt regulations establishing standards of community investment or service for members to maintain continued access to long-term advances, including the member's performance under the CRA and the member's record of lending to first-time homebuyers.[27] FHFA implemented this requirement through "Community Support Requirements" found at 12 C.F.R. Part

[25] 12 U.S.C. § 1424(a)(2)(c).
[26] 12 C.F.R. § 1263.13(a).
[27] 12 U.S.C. § 1430(g).

1290, which are focused only on the member's CRA record and first-time homebuyer programs.

Consistent with the statute, FHFA should expand the requirements for approval of membership and access to long-term advances by conditioning such approval and access on the fair housing and fair lending record. An applicant or member's policies cannot be "sound" or meet "standards of community investment or service" if the institution or any of its directors or senior officers are subject to a fair housing or fair lending action. Therefore, FHFA should amend its regulations to allow membership or access to long-term advances only if neither the applicant (or member) or any of its directors or senior officers is subject to, or operating under, any settlement or enforcement action related to alleged violations of the Fair Housing Act, the Equal Credit Opportunity Act, or any state or local fair housing or fair lending laws. In addition, for CDFIs with assets greater than $1 billion, FHFA's regulations should condition membership and long-term advances on the CDFI having a community benefits agreement to ensure that underserved communities of color continue to have access to the institution's deposit and lending services.

- **FHFA should encourage FHLBanks to add more public interest independent directors, including those with experience in fair housing and fair lending.** The FHLBank Act requires that each FHLBank's board of directors be comprised of a majority of member directors, with the remaining being independent directors.[28] Of those independent directors, not fewer than two must be "public interest" directors with more than four years of experience in representing consumer or community interests on banking services, credit needs, housing, or financial consumer protections.[29] According to FHFA's implementing regulations, each FHLBank's board of directors has the authority to determine how many of the independent directorships will be public interest directorships.[30] To build public trust and ensure that the FHLBanks better serve the whole of the community, including communities of color, FHFA should encourage the FHLBanks to add more public interest directors, including those with fair housing and fair lending experience.

- **FHFA should require the FHLBanks to provide transparency regarding how they address equity concerns and the unique needs of financially vulnerable communities**. The FHLBanks should be required to complete public annual reports on their fair housing and fair lending activities. The report should specifically outline their efforts to meet their affirmatively furthering fair housing obligation under the Fair Housing Act.

- **FHFA should disclose details on the Office of Minority and Women Inclusion's ("OMWI") findings that required corrective actions.** In 2021, the FHFA OMWI's supervision and examination team completed its fifth year of examinations of the Diversity and Inclusion Program ("D&I Program") of each entity regulated by FHFA, including each of the FHLBanks.[31] In the most recent annual report, FHFA disclosed that the operations of

[28] 12 U.S.C. § 1427.
[29] *See id.*
[30] 12 C.F.R. § 1261.3(a).
[31] FHFA, *2021 Report to Congress* (June 15, 2022), https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/FHFA-2021-Annual-Report-to-Congress.pdf.

several of the FHLBanks contained deficiencies that required corrective action. To promote transparency and build public trust, FHFA should disclose the details of the findings that required corrective action and the FHLBanks' actions to remediate the weaknesses.

- **FHFA should conduct a comprehensive analysis of the public support and private benefits received by the FHLBanks and their members as compared to the benefits received by the public**. The FHLBanks and their members receive tremendous public support and private benefits, as well as raise potential systemic risks. FHFA should conduct a study balancing the support, benefits, and risks against the benefit to the public of the current structure. The FHFA should also analyze whether the public would be better served by providing those benefits through other means, such as enhancements to Fannie Mae, Freddie Mac, and Ginnie Mae. Finally, the FHFA study should determine whether the public would benefit from consolidation of the 11 FHLBanks into one entity, rather than duplicating executive compensation, IT infrastructure, and other operational costs.

Thank you for considering our views.

Sincerely,

National Fair Housing Alliance
Americans for Financial Reform Education Fund
Consumer Action
Consumer Federation of America
Mountain State Justice, Inc.
National Consumer Law Center, on behalf of its low-income clients
National Housing Law Project
National Housing Resource Center
Prosperity Now