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Sandra L. Thompson

Director

Federal Housing Finance Agency

400 7th Street, SW

Washington, DC 20024

RE: **FHLBank System at 100: Focusing on the Future**

Dear Director Thompson and FHFA Staff:

Today marks seven months since the Federal Housing Finance Agency launched *FHLBanks at 100: Focusing on the Future*, a comprehensive review of the FHLBanks. In that time, FHFA staff has conducted 19 roundtable discussions throughout the country, 6 days of listening sessions in Washington, D.C., and entertained hundreds of written comments. Brookings and Boston University co-sponsored an entire symposium devoted to the topic of how the FHLBanks can best serve a public purpose in the years ahead.

As informative as these initiatives have been, nothing could have showcased the strengths and the core weaknesses of the FHLBanks more than the events that have transpired in the banking industry this month. The FHLBanks have been significant creditors to each of the banks that have defined the current banking crisis. They are: Silvergate Bank, Silicon Valley Bank, and Signature Bank. The spillovers from those failures brought down one of the G-SIBS.

***Lenders of Last Resort***

In the weeks and months prior to their failures, advances from FHLBanks were used, not to promote housing, but to fund panic-driven runs on deposits at those banks. After their failures, the FHLBanks demonstrated their resilience by issuing hundreds of billions of taxpayer-supported debt. The advances from that debt were used, not to promote housing, but to fund the transfer of deposits from local banks to the Too Big to Fail Banks and to money market mutual funds.

By lending to crypto banks and to banks whose assets and liabilities are grossly mismatched, and by doing so without any hint of a public purpose, the FHLBanks have abused their charters. They have demonstrated the urgent need for their substantial reform.

Despite their having escorted these and other banks to the door of receiverships, the FHLBanks steadfastly proclaim that they have never lost a dollar on an advance in their ninety years of operation. It is now well understood, however, that losses on FHLBank advances *do* occur.

Those considerable losses are born, not by the FHLBanks, but by the FDIC. Moreover, advances allow the borrowing bank to further leverage itself thus adding to the FDIC’s ultimate losses. The FDIC conservatively estimates its losses on the Silicon Valley Bank and Signature Bank receiverships to be $22.5 billion.

*It was never the intention of Congress that FHLBanks serve as lenders of last resort and their doing so has been harmful to the public interest.*

***Affordable Housing***

At the many fora hosted by FHFA staff in recent months, bankers and housing advocates have directed much justified praise toward the Affordable Housing Program. Yet many have also criticized the AHP for its inadequate funding and for its bureaucratic complexity.

The essential problem is that while the FHLBanks distribute advances to their members through a firehose, when it comes to affordable housing credit, they use a bean blower. For example, the advances made to one member bank, Silicon Valley Bank, were forty times (40 X) the entire AHP assessment for all eleven FHLBanks in 2022.

The FHLBanks were the recipients of a taxpayer subsidy of approximately $7.3 billion in 2022 consisting of the implied taxpayer support of their $1.2 trillion debt and the tax-exempt status of interest on that debt and the FHLBanks themselves. With the current surge in their taxpayer-supported debt, the taxpayer subsidy of the FHLBanks is likely to come in well over $9 billion in 2023.

Yet less than 4 per cent of this annual taxpayer subsidy finds its way to affordable housing or to any other public benefit. The remaining 96 per cent of taxpayer outlay is divided between the FHLBanks’ members (banks and insurance companies) in the form of subsidized funding and generous dividends and the FHLBanks themselves. As was observed by one FHFA staff members at a recent roundtable, this is nothing less than “[corporate welfare](https://www.americanbanker.com/news/critics-allege-federal-home-loan-bank-system-amounts-to-corporate-welfare).”

*AHP is but a thin veneer over a windfall for the FHLBanks and their members. FHFA should remind the FHLBanks that the 10 per cent statutory assessment for affordable housing is a bare minimum and that they are expected to contribute multiples of that amount. If necessary, propose a legislative change.*

***A Substitute for Deposits***

But the punishment of the taxpayers does not end with their squandered subsidy of the FHLBanks. For months, I have been pointing out [the open secret](https://thehill.com/opinion/finance/3786767-its-not-a-wonderful-bureaucracy/) that the FHLBanks’ members use their access to low cost advances as a substitute for paying market rates of interest to their own depositors.

Only now, faced with an exodus of depositors, have bankers awakened to the realization that depositors respond positively to being treated fairly. As pointed out in a recent [Reuters article](https://www.reuters.com/business/finance/bankers-us-midsize-lenders-battle-keep-deposits-after-exodus-2023-03-28/?mkt_tok=ODUwLVRBQS01MTEAAAGKzEAxXKkdGVs2CV-Hpl3LtZvm6OLCJP_iVI35OmW1_NIUBzsLuY5JCWY60carVz7TOztRzLr5Ut8pGWlPTp9wdyKyFDcxBx-ls_6BKMSkYnAI):

“’Paying higher rates on deposits is the most common way to make them stick’, executives said.” The failure of Silicon Valley Bank demonstrated depositor sensitivity to real time information and their ability to act on such information quickly.

*Disclosure of member banks’ use of FHLB advances (see below) will better inform bank customers.*

***Truth and Consequences***

The FHLBanks and their trade association have become accustomed to repeating two materially false statements. First, they claim that there have never been any losses of FHLBank advances. Second, they claim that they receive no taxpayer support. FHFA should instruct the FHLBanks to cease the repetition of these false and misleading statements.

*The FHLBanks should be required to disclose the actual consequences of their bad loans and the full amount of their taxpayer subsidy. Disclosure of these data points will be a helpful reference point for the public in evaluating the efficacy of the FHLBanks.*

***Transparency***

Had we known about the FHLBanks’ massive loans to the likes Silvergate, Silicon Valley, and Signature many months ago when those loans were first made, the discipline of the marketplace may have replaced the chaos of the past two weeks. To this very day, we do not know which banks are borrowing our taxpayer dollars. Nothing instills panic more than ignorance.

*Disclose FHLBank borrowings in real time.*

***Accountability***

The principal reason for the FHLBanks’ lax underwriting standards is the so-called “super-lien” status that FHLBank advances enjoy *vis a vis* the FDIC in the event of a member’s failure. According to the FDIC, from 2006 to 2022, the cost to the FDIC directly attributable to the super-lien is over $11 billion.

The FHLBanks Accountability Act addresses this issue of moral hazard by introducing accountability into the underwriting processes of the FHLBanks It does so in a manner consistent with the FHLBanks’ mission of supporting affordable housing.

The Act accomplishes this in two ways. First, the FDIC’s Inspector General will report to FHFA all losses incurred by the FDIC that are attributable to the super-lien. The total of all those losses will be added *pro rata* to the eleven FHLBanks’ statutory annual assessment (10 per cent of FHLBank net income) for affordable housing. Second, FHLBank executives that have benefited financially from advances to their members that eventually failed, thus incurring costs to the FDIC, will have those financial rewards reversed prospectively and through clawbacks.

*Attachment A is draft legislation to achieve accountability.*

***Community***

“Community support” is the only statutory provision that empowers the FHFA to condition members’ continued access to long-term advances on meeting minimum levels of required mortgage activity. This is particularly important when it comes to insurance companies and banks that have exited the housing finance marketplace.

*The FHFA should set minimum thresholds for mortgage lending by all members and broaden community support requirements to include a new affordable rental housing finance component. In this regard, the FHFA should also lower the threshold for what constitutes a long-term advance from one year or longer to 180 days or more.*

The Community Investment Program (CIP) and the Community Investment Cash Advance Program (CICA) are significantly underutilized by the FHLBanks and by their members.

*FHFA should make a concerted effort to ensure that these programs are revitalized.*

The widespread practice of overcollateralizing CFI borrowings is due largely to FHLBanks’ mistaken boast of never having incurred a dollar of credit loss on a single advance in its 90-year history (see above). Haircuts on CFI collateral far exceed those on most other asset types because no FHLBank wants to be the first one to have an advance go bad.

*Reduce haircuts on collateral advances posted by highly ranked community banks that are within the CFI asset threshold.*

***Conclusion***

It is understood that making the FHLBanks fit for service in the coming decades may require legislation. Accordingly, the product of *FHLBanks at 100* will be reports both to the public and recommendations to the Congress for reform of the FHLBanks.

In the current legislative environment and considering the entrenched nature of the FHLBanks and their membership, it is suggested that a bipartisan legislative commission focused on the public purpose of the FHLBanks may the most efficacious way of proceeding. In this regard, Attachment B is a draft bill establishing such a commission.

*FHFA is urged to recommend this approach to Congress.*

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Thank you for this opportunity to contribute to your deliberations.

Yours truly,



Attachments

ATTACHMENT A

Title: To amend the Federal Deposit Insurance Act and the Federal Home Loan Bank Act to establish a loan loss recovery protocol, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Federal Home Loan Banks Advances Accountability Act”.

SEC. 2. FEDERAL HOME LOAN BANK ADVANCES ACCOUNTABILITY.

(a) In General.—Section 38(k) of the Federal Deposit Insurance Act (12 U.S.C. 1831o(k)) is amended—

(1) in paragraph (1)(B)—

(A) in clause (iii), by striking “and” at the end;

(B) in clause (iv), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(v) in the case of a report described in paragraph (2)(B)(iv), the Federal Housing Finance Agency.”; and

(2) in paragraph (2)(B)—

(A) in clause (ii), by striking “and” at the end;

(B) in clause (iii), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(iv) any amount if—

“(I) the depository institution, at the time the Corporation is appointed receiver, has advances outstanding from a Federal Home Loan Bank; and

“(II) the Corporation is required to—

“(aa) repay the advances described in subclause (I), interest, and prepayment penalties; or

“(bb) sell any assets securing the advances at a loss to the Deposit Insurance Fund.

[“(1) SECTION TBD] any amount if the depository institution, at the time the National Credit Union Association is appointed receiver, has advances outstanding from a Federal Home Loan Bank and the NCUA is required to repay such advances and interest, prepayment penalties, or sell any assets securing such advances at a loss to the National Credit Union Association.”]

[(1) SECTION TBD] any amount if the depository institution, at the time the State Insurance Guaranty Agency is appointed receiver, has advances outstanding from a Federal Home Loan Bank and the State Agency is required to repay such advances and interest, prepayment penalties, or sell any assets securing such advances at a loss to the State Agency.”]

(b) Federal Home Loan Bank Loan Loss Recovery Protocol.—

(1) In general.—Section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430) is amended—

(A) by redesignating subsections (g) through (k) as subsections (f) through (j), respectively;

(B) in subsection (i)(10), as so redesignated, by striking “subsection (i)” and inserting “subsection (h)”; and

(C) by adding at the end the following:

“(k) Advances Accountability.—

“(1) In general.—After receiving reports from the Inspector General of the Federal Deposit Insurance Corporation pursuant to section 38(k)(2)(B)(iv) of the Federal Deposit Insurance Act (12 U.S.C. 1831o(k)(2)(B)(iv)), the Agency shall calculate the total annual losses incurred by the Deposit Insurance Fund resulting from advances by the Banks.

“(2) Assessment.—The Agency shall calculate the pro rata share of each Bank for the total losses as described in paragraph (1) based on the share of each Bank of year-end advances balances for all Banks.

“(3) Notice.—The Agency shall submit to the relevant Bank an annual notice that includes the amount described in paragraph (2).

“(4) Contribution to program.—Each Bank shall contribute an amount equal to the amount described in paragraph (2) to the Affordable Housing Program.

“(5) Recalculation of financial statements.—

“(A) In general.—Each Bank that has one or more members described in paragraph (1) shall recalculate any financial statements used in determining executive incentive payments factoring in the payments described in that paragraph.

“(B) Executive incentive payments.—Each Bank shall adjust executive incentive payments described in subparagraph (A) and withhold any executive incentive payments paid or to be paid based on the unadjusted financial statements.

“(6) Calculation of losses.—The Agency, in coordination with the Federal Deposit Insurance Corporation, the National Credit Union Administration, and State insurance guaranty funds, shall establish a standardized methodology for calculating losses if a receiver is required to—

“(A) repay Bank advances, interest, and prepayment penalties; or

“(B) sell any assets securing the advances described in subparagraph (A).

“(7) Reports.—The Federal Deposit Insurance Corporation, the National Credit Union Administration, and State insurance guaranty funds shall submit to the appropriate agency

an annual report on the total payments described in paragraph (1).”.

(c) Technical and Conforming Amendments.—

(1) Section 21B(f)(2)(C) of the Federal Home Loan Bank Act (12 U.S.C. 1441b(f)(2)(C)) is amended by striking “10(j)” each place the term appears and inserting “10(h)”.

(2) Section 1371(a)(2) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4631(a)(2)) is amended by striking “10(j) of the Federal Home Loan Bank Act (12 U.S.C. 1430(j))” and inserting “10(i) of the Federal Home Loan Bank Act (12 U.S.C. 1430(i))”.

ATTACHMENT B

117TH CONGRESS

 2ND SESSION

**S. \_\_\_\_**

To address the issues surrounding the Federal Home Loan Bank System.

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IN THE SENATE OF THE UNITED STATES

March , 2022

Ms./Mr. \_\_\_\_\_\_\_\_\_\_\_ introduced the following bill which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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**A BILL**

To address the issues surrounding the Federal Home Loan Bank System.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE**.

This Act may be cited as the ‘‘Federal Home Loan Bank Inquiry Commission Act’’

**SEC. 2. FEDERAL HOME LOAN BANK INQUIRY COMMISSION.**

(a) ESTABLISHMENT OF COMMISSION. — There is established in the legislative branch the Federal Home Loan Bank Inquiry Commission (referred to as the ‘‘Commission’’) to examine the structure, operations, products, costs and usefulness of the Federal Home Loan Banks.

(b) COMPOSITION OF THE COMMISSION.— (1) MEMBERS.—The Commission shall be composed of 10 members, of whom (A) 3 members shall be appointed by the majority leader of the Senate, in consultation with relevant Committees; (B) 3 members shall be appointed by the Speaker of the House of Representatives, in consultation with relevant Committees; (C) 2 members shall be appointed by the minority leader of the Senate, in consultation with relevant Committees; and (D) 2 members shall be appointed by the minority leader of the House of Representatives, in consultation with relevant Committees. (2) QUALIFICATIONS; LIMITATION. — (A) IN GENERAL. —It is the sense of the Congress that individuals appointed to the Commission should be prominent United States citizens with national recognition and significant depth of experience in such fields as banking, regulation of markets, taxation, finance, economics, consumer protection, and housing. (B) LIMITATION. —No person who is a member of Congress or an officer or employee of the Federal Government or any State or local government may serve as a member of the Commission. (3) CHAIRPERSON; VICE CHAIRPERSON. — (A) IN GENERAL. —Subject to the requirements of subparagraph (B), the Chairperson of the Commission shall be selected jointly by the Majority Leader of the Senate and the Speaker of the House of Representatives, and the Vice Chairperson shall be selected jointly by the Minority Leader of the Senate and the Minority Leader of the House of Representatives. (B) POLITICAL PARTY AFFILIATION. —The Chairperson and Vice Chairperson of the Commission may not be from the same political party. (4) MEETINGS, QUORUM; VACANCIES. — (A) MEETINGS. — (i) INITIAL MEETING. —The initial meeting of the Commission shall be as soon as possible after a quorum of members have been appointed. (ii) SUBSEQUENT MEETINGS. —After the initial meeting of the Commission, the Commission shall meet upon the call of the Chairperson or a majority of its members. (B) QUORUM. —6 members of the Commission shall constitute a quorum. (C) VACANCIES. —Any vacancy on the Commission shall— (i) not affect the powers of the Commission; and (ii) be filled in the same manner in which the original appointment was made.

(c) FUNCTIONS OF THE COMMISSION.—The functions of the Commission are: (1) to examine the current structure and operations of the Federal Home Loan Banks specifically with respect to — (A) the cost of the Banks’ operations including the cost of the government’s implicit guaranty of the Banks’ debt; (B) the public interest served by the Banks; (C) the relevance of the Banks’ mission to current economic conditions; (D) the appropriateness of Bank membership requirements in light of changes in the financial services industry; (E) standards regarding collateral that is or may be eligible to be pledged at the Banks in return for advances; (F) the appropriateness of the Banks’ compensation structures in light of their status as government sponsored entities; (G) the costs and the benefits of consolidation of the Banks into one or more banks; and (H) the role if any that the Banks can play in remediating the effects of climate change; lending to small businesses and consumers; financing infrastructure and the supply chain of affordable and market rate housing; and, preserving naturally occurring affordable housing (NOAH); and, (2) to submit a report under subsection (h) building upon the work of other entities, and avoiding unnecessary duplication, by reviewing the record of the Federal Housing Finance Agency, the Committee on Banking, Housing, and Urban Affairs of the Senate, the Committee on Financial Services of the House of Representatives, other congressional committees, the Government Accountability Office, other legislative panels, and any other department, agency, bureau, board, commission, office, independent establishment, or instrumentality of the United States (to the fullest extent permitted by law) with respect to the current financial and economic crisis.

(d) POWERS OF THE COMMISSION. — (1) HEARINGS AND EVIDENCE. —The Commission may, for purposes of carrying out this section— (A) hold hearings, sit and act at times and places, take testimony, receive evidence, and administer oaths; and (B) require, by subpoena or otherwise, the attendance and testimony of witnesses and the production of books, records, correspondence, memoranda, papers, and documents. (2) SUBPOENAS. — (A) SERVICE. —Subpoenas issued under paragraph (1)(B) may be served by any person designated by the Commission. (B) ENFORCEMENT. — (i) IN GENERAL. —In the case of contumacy or failure to obey a subpoena issued under paragraph (1)(B), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court. (ii) ADDITIONAL ENFORCEMENT. —Sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192 through 194) shall apply in the case of any failure of any witness to comply with any subpoena or to testify when summoned under the authority of this section. (iii) ISSUANCE. —A subpoena may be issued under this subsection only— (I) by the agreement of the Chairperson and the Vice Chairperson; or (II) by the affirmative vote of a majority of the Commission, including an affirmative vote of at least one member appointed under subparagraph (C) or (D) of subsection (b)(1), a majority being present. (3) CONTRACTING. —The Commission may enter into contracts to enable the Commission to discharge its duties under this section. (4) INFORMATION FROM FEDERAL AGENCIES AND OTHER ENTITIES. — IN GENERAL. —The Commission may secure directly from any department, agency, bureau, board, commission, independent establishment, or instrumentality of the United States any information related to any inquiry of the Commission conducted under this section, including information of a confidential nature (which the Commission shall maintain in a secure manner). Each such department, agency, bureau, board, commission, office, independent establishment, or instrumentality shall furnish such information directly to the Commission upon request. (5) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission— (A) the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this Act; and (B) other Federal departments and agencies may provide to the Commission any administrative support services as may be determined by the head of such department or agency to be advisable and authorized by law. (6) DONATIONS OF GOODS AND SERVICES. —The Commission may accept, use, and dispose of gifts or donations of services or property. (7) POSTAL SERVICES. —The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States. (8) POWERS OF SUBCOMMITTEES, MEMBERS, AND AGENTS. — Any subcommittee, member, or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

(e) STAFF OF THE COMMISSION. — (1) DIRECTOR. —The Commission shall have a Director who shall be appointed by the Chairperson and the Vice Chairperson, acting jointly. (2) STAFF. —The Chairperson and the Vice Chairperson may jointly appoint additional personnel, as may be necessary, to enable the Commission to carry out its functions. (3) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The Director and staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this paragraph may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code. Any individual appointed under paragraph (1) or (2) shall be treated as an employee for purposes of chapters 63, 81, 83, 84, 85, 87, 89, 89A, 89B, and 90 of that title. (4) DETAILEES. —Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption. (5) CONSULTANT SERVICES. —The Commission is authorized to procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(f) COMPENSATION AND TRAVEL EXPENSES. — (1) COMPENSATION. —Each member of the Commission may be compensated at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission. (2) TRAVEL EXPENSES. —While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

(g) NONAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT. — The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

(h) REPORT OF THE COMMISSION; APPEARANCE BEFORE AND CONSULTATIONS WITH CONGRESS. — (1) REPORT. —On \_\_\_\_\_\_\_\_\_\_\_, 2023, the Commission shall submit to the President and to the Congress a report containing the findings, conclusions and recommendations of the Commission on the operations of the Federal Home Loan Banks. (2) INSTITUTION-SPECIFIC REPORTS AUTHORIZED.—At the discretion of the chairperson of the Commission, the report under paragraph (1) may include reports or specific findings on any financial institution examined by the Commission under subsection (c)(2). APPEARANCE BEFORE THE CONGRESS. —The chairperson of the Commission shall, not later than 120 days after the date of submission of the final reports under paragraph (1), appear before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives regarding such reports and the findings of the Commission. (4) CONSULTATIONS WITH THE CONGRESS. —The Commission shall consult with the Committee on Banking, Housing, and Urban Affairs of the Senate, the Committee on Financial Services of the House of Representatives, and other relevant committees of the Congress, for purposes of informing the Congress on the work of the Commission. (i) TERMINATION OF COMMISSION. — (1) IN GENERAL. —The Commission, and all the authorities of this section, shall terminate 60 days after the date on which the final report is submitted under subsection (h). (2) ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION. —The Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding the activities of the Commission, including providing testimony to committees of the Congress concerning reports of the Commission and disseminating the final report submitted under subsection (h). (j) AUTHORIZATION OF APPROPRIATION. —There is authorized to be appropriated to the Secretary of the Treasury such sums as are necessary to cover the costs of the Commission. Approved \_\_, 2022.