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22 March 2011

Alfred M. Pollard, General Counsel
Attention: Comments/RIN 2590-AA39
Federal Housing Finance Agency
1700 G Street NW, Fourth Floor
Washington DC 20552

RE: Advanced Notice of Proposed Rulemaking RIN 2590-AA39/ 75 Fed. Reg. 81145 (12/2710) – Membership Requirements

Dear Mr. Pollard:

These comments are submitted on behalf of the American Council of Life Insurers (ACLI). The ACLI is a national trade association with over 300 member companies representing more than 90 percent of the assets and premiums of the life insurance and annuity industry in the United States. We appreciate the opportunity to submit commentary on the captioned advanced notice of proposed rulemaking (ANPR). However, ACLI respectfully suggests that the ANPR is untimely given congressional intention to evaluate the housing finance system, and that no compelling reason exists to alter insurance company membership requirements.

The ANPR is untimely

In light of the current economic and regulatory environment, the ACLI believes the ANPR is premature. ACLI finds its reasoning in line with that expressed by FHFA Director DeMarco as recently as September, 2010:

> …the main purpose in addressing housing finance reform should be to promote the efficient provision of credit to finance mortgages for single-family and multifamily housing. Legislation is needed to restructure and strengthen our nation’s housing finance system and to resolve the [Fannie Mae and Freddie Mac] Enterprise conservatorships. Ensuring an orderly transition will be essential to avoid disrupting the housing finance system at this critical juncture, when markets are still very fragile. It is also important to consider how the recent enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act will address certain deficiencies and make substantial changes to some long-standing policies and practices. The new law may affect the products offered to consumers and the manner in which financial institutions engage in various lending activities, as a result of new risk retention and borrower protection standards.

By all indications, the housing markets are still fragile. The nation has not moved beyond a critical juncture where economic growth might be taken for granted. Dodd-Frank regulations are not established and substantial doubt exists as to what will become new regulatory policies and practices. New regulations are expected to influence substantially how financial services, including those related to housing finance products, will be offered to consumers. Considerable doubt exists as to how different institutions will engage in financial activities that will contribute to stability and growth in the residential housing markets.

At the same time, Congress has announced its intention to conduct a comprehensive evaluation of the goals and operations of the Government Sponsored Entities (GSEs), including the Federal Home Loan Banks (Banks). For all these reasons, we request the FHFA to delay or table its ANPR at least pending congressional action regarding the GSEs, and to work with Congress as it determines the future of the Banks. There is no compelling reason to address insurance company membership in the Banks prior to congressional action.

The ANPR is unwarranted

The Director's remarks in September 2010 also expressed concerns regarding certain aspects of Bank operations, however, none related to insurance company membership. The Banks, no doubt, will remind you and Congress of their remarkable success over the decades – most recently marked by their extraordinary resilience in the great recession from which the nation is still recovering. Indeed, the role played by the Banks in the recent great recession validates the wisdom of their establishment during the Great Depression to provide a stable source of funding for their members, which at the time included, and continues to include, insurance companies. As financial markets began to seize in 2007, the Banks' lending to their members rose from about $200 billion to more than $800 billion in about six months, contributing much-needed liquidity in a timely, well-understood and traditional manner. The Banks acted quickly as a matter of normal business before extraordinary emergency actions were undertaken by the Federal Reserve Board and Treasury to accomplish the same goal. Unlike the other GSEs, the unique relationships of the Banks with its members – notably the members' cooperative investments in the Banks -- enabled the Banks to contribute substantially to the stability of housing and financial markets without extraordinary cost to the Federal Government and taxpayers.

Access to Bank funds aided insurance company members in navigating through the credit crisis. Symbiotically, the stability of the insurance company members and their use of longer-term advances helped shield the Banks' own operations from experiencing the full effect of the failures of other GSEs and depository institutions. Without identifying any specific complaint or concern regarding insurance company membership, the ANPR indicates a desire to increase insurance company commitment to the Banks and housing finance. Many of the changes under consideration in the ANPR would make it more difficult for insurance companies to maintain membership in the Banks, which would undermine the Banks' mission of supporting residential housing. Insurance companies that are existing Bank members would lose an incentive to support the housing markets by, among other things, investing in mortgage loans. Further, the proposed changes would discourage potential insurance company members from joining, ultimately inhibiting the ability of the Banks to serve the housing and community development needs of their districts.

Insurance company membership in the Banks should be encouraged

Further analysis of the contribution of insurers to the housing markets should lead one to the conclusion that insurance company membership in the Banks should be encouraged -- not discouraged by advancing the ANPR. Insurance company membership contributes importantly to the Banks' success and, especially, serves as a stabilizing influence in the housing finance markets. Congress established insurance company membership in the Banks from the original enactment of the FHLB Act in 1932. At no time has Congress acted to diminish the nature of insurance company membership in the Banks, or require their participation to be predicated on considerations similar to those applied to depository institutions. The nature of insurance industry support for housing finance and stability has long been understood to transcend mortgage loan origination. Rather, it includes indirect support of housing markets by a variety of activities, including investments in mortgage-backed securities (MBS). Acknowledging that the business of insurance naturally was not and is not fundamentally a banking business, neither Congress nor any regulator has sought to compel insurers to change their business models to function more like those of depository institutions. For the FHFA to do so in a rulemaking now, absent clear congressional guidance to the contrary, would potentially further destabilize the housing market.

Such action by the FHFA risks destroying the positive contributions of insurance companies to housing finance activity and the Banks at precisely the time housing finance activity is in historic need of support from as many sources as possible. In 2009, the most recent year for which data is available, 946 life insurance companies invested $538 billion in residential mortgage loans, residential MBS (RMBS) and commercial MBS (CMBS) (the latter which includes multi-family housing). [1] Life insurance companies additionally invest tens of billions of dollars in commercial mortgage loans that are specific to multi-family housing, and which help to enhance the infrastructure afforded to the residential community and provide jobs to residents of the community. Life insurance company investments in residential mortgage loans and RMBS alone totaled $295 billion. The 101 life insurance company members of the Banks for which ACLI has data have $220 billion invested in residential mortgage loans, RMBS and CMBS (including multi-family housing).[2] While this comment letter limits its focus to life insurers participating in the Bank system, it is fair to assume that the levels of investment in housing finance and support for the housing market cited above become even larger when property-casualty insurers, mortgage insurers and reinsurers are factored in.

Insurance companies historically have played –- and continue to play -- a significant role in our housing market and in driving economic development in communities across the United States. They hold substantial amounts of single and multifamily mortgages and agency debt supporting the mortgage market on their balance sheets. Insurance companies also invest in Low-Income-Housing Tax Credits, which are an important resource for creating affordable housing in the United States. In addition, insurance companies are active participants in the FHLB Affordable Housing Program, one of the largest private sources of affordable housing grant funding in

[1] Data in this paragraph was tabulated by ACLI from National Association of Insurance Commissioner (NAIC) data, and used with permission. NAIC does not endorse any analysis or conclusions based upon the use of its data. MBS are multi-class; single-class MBS are not included.
[2] About 229 insurance companies are members of the Banks.

the United States, as well as the FHLB Community Investment Program, which offers below market rate advances to members for financing housing and economic development benefitting low-and moderate-income families. Whatever the problems of the Bank system, if any, they do not appear to be attributable to insurance company membership.

Insurance companies are a significant and valuable part of the Bank system, in the aggregate representing ten (10) percent of outstanding combined advances and eight (8) percent of Bank capital stock[3]. The historical reasons for the different qualifications for different kinds of financial institution members of the Banks remain sound to this day. Arbitrarily limiting insurance company membership in the Banks could have an adverse liquidity impact not only on the insurance companies, but on other non-insurance company members of the Bank system as well.

The ten percent test is misguided

A common theme of the ANPR is the introduction of a requirement of a sustained insurance company investment of ten (10) percent of their assets in lieu of the current requirements that each member makes long-term home mortgage loans and has a home financing policy satisfactory to the relevant district Bank. Because of the different nature of their businesses, including the longer-term nature of insurance company liabilities, management of insurance company balance sheets is very different than that of insured depository institutions. As a result, it would be unrealistic for insurance companies to comply with a ten percent residential mortgage asset requirement.

Insurance companies rely on Bank products for contingent liquidity planning, managing high impact liquidity events, and reducing risk through enhanced asset liability management. Imposition of static requirements expressed as a percentage of the balance sheet will deter insurance company utilization of Bank financing and could lead to the unintended consequence of decreasing rather than sustaining long-term home mortgage loan generation from insurance companies.

Rather, the FHFA should respect the different contributions made to housing support activity by the different kinds of institutions that by statute are eligible to become members of the Banks. This is especially true for insurance companies, which operate businesses pursuant to regulations and investment goals substantially different from depository institutions. The imposition of a percentage holding requirement upon insurance companies would be counterproductive to supporting housing activity. Imposition of static requirements will reduce insurance company utilization of Bank financing and, correspondingly, result in insurers reducing rather than increasing (or maintaining) their level of investment in the residential mortgage markets. Further, insurance companies need to be able to manage their assets on a flexible basis, especially during times or circumstances of duress.

[3] As of September 30, 2010.

Home finance policy should be flexible to be successful

ACLI members that are also members of the Banks unanimously believe that the historical flexibility relating to insurance company membership should be respected to safeguard insurance company support for residential housing finance activity. ACLI at the same time appreciates that improvements might be possible in articulation of FHFA standards for flexible supervision of Bank membership criteria. However, generally, the FHFA should retain the existing structure of its membership regulations, under which the regulations establish certain standards of ''presumptive compliance'' and allow an opportunity for institutions that do not meet those standards to rebut the presumption of noncompliance.

Such a regulation should allow the specifics of a home financing policy to vary based on the type of institution – perhaps including a differentiation among different types of insurance companies. Originating mortgage loans may constitute the core business of certain types of eligible institutions, especially depository institutions, while naturally constituting only an incidental portion of the business of other eligible institutions, such as insurance companies.

Certainly, however, any rulemaking should respect the fundamental distinctions between insurance companies and depository institutions and afford the greatest degree of deference and flexibility to insurance company utilization of the Banks. In this regard, an insurance company might be obliged to be duly licensed and subject to examination by the appropriate domestic state insurance regulator to qualify for membership in a Bank.

To summarize, the ACLI believes the ANPR is untimely and unwarranted, both in general and specifically with regard to insurance company membership in the Bank system. As explained above, the ANPR, if implemented, would undermine the very purpose for which the FHFA is considering such rulemaking by ultimately limiting insurance company contributions to the housing markets and the Banks themselves. These contributions are simply too important to the fragile housing market to risk, particularly at this time. Thank you for your consideration.

Sincerely

THE AMERICAN COUNCIL OF LIFE INSURERS

MICHAEL LOVENDUSKY
Vice President & Associate General Counsel