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March 28, 2011

Sent via electronic mail to RegComments@FHFA.gov

Mr. Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
1700 G Street, NW
Fourth Floor
Washington, D.C. 20552

Re: Comments on the FHFA Advance Notice of Proposed Rulemaking; Request for Comments on Members of Federal Home Loan Banks (RIN 2590-AA39)

Dear Mr. Pollard:

On behalf of the 160,000 members of the National Association of Home Builders (NAHB), I would like to submit comments on the above-referenced Advanced Notice of Proposed Rulemaking ("ANPR") issued by the Federal Housing Finance Agency (FHFA) concerning a review of Federal Home Loan Bank (FHLBank) membership requirements.

NAHB is a national trade association representing individuals and companies involved in building single family and multifamily housing, remodeling, and other aspects of residential and light commercial construction. Each year, NAHB's builder members construct about 80 percent of all new housing in America. NAHB's builder members are mostly small businesses with limited capital of their own. These small businesses depend almost entirely upon commercial banks and thrifts for housing production credit. Our surveys show that 90 percent of all loans for residential land acquisition, development and construction (AD&C) come from commercial banks and thrifts, many of whom are members of the FHLBank System. Therefore, NAHB views the FHLBanks as crucial components of the housing finance system.

Summary of FHFA Review of FHLBank Membership Requirements

Section 4(a) of the Federal Home Loan Bank Act specifies three categories of institutions that are eligible for FHLBank membership: federally insured depository institutions; insurance companies; and, community development financial institutions (CDFIs). FHLBank members must meet the following three requirements: 1) members must be organized under laws of any state or the United States; 2) be subject to inspection and regulation under banking or similar laws of a state or the United States; and, 3) make long-term home mortgage

loans. Those who were not members as of January 1, 1989, must also have at least 10 percent of their total assets in residential mortgage loans (except statutorily designated community financial institutions (CFIs)); be in financial condition such that FHLBank advances may be safely made to the institution; and, show that the character of its management and home-financing policy are consistent with sound and economical home financing.

FHFA regulations define the mission of the FHLBanks as providing to their members and financial associates financial products and services that assist those members' financing of housing and community lending. FHFA states that the purpose behind the review of its membership regulations is to determine if the existing regulatory standards that have been established over the years to implement statutory membership requirements, and the manner in which they are applied, permit membership of institutions that do not sufficiently comply with FHFA's FHLBank mission definition. If so, FHFA is considering whether to revise the membership regulations to ensure that FHLBank members have a demonstrable continuing involvement in residential mortgage lending, and otherwise comply with statutory requirements for FHLBank membership. FHFA seeks comment on how to strengthen the ties between FHLBank membership and the FHLBanks' primary public purpose to ensure that FHLBank advances business supports the FHLBanks' housing finance and community development mission.

FHFA is reviewing whether the FHLBanks' mission to support housing finance and community development is met if compliance of membership requirements is only required at time of application. Currently, compliance with the "makes long-term home mortgage loans," the "ten percent of total assets" in residential mortgage loans and the "home financing policy" eligibility standards are all only based on information required at time of applying for membership. FHFA would like input on whether these requirements should be applied on an on-going basis, and, if so, how to define terms and measure compliance. FHFA is also looking for input on whether the ten percent requirement should be applied to insurance companies and CDFIs, which are not currently required to meet this standard. Non-compliant members could have their FHLBank membership terminated.

NAHB Comments

The statutory provisions for FHLBank membership reinforce the connection between membership eligibility and the FHLBanks' housing finance and community development mission. NAHB recognizes that FHFA has an important statutory responsibility to make sure that FHLBank members (and potential members) meet the statutory requirements to ensure the mission and the safety and soundness of the System.

The present membership eligibility standards and regulations have served the system well throughout its 80 year history. At times Congress has expanded membership, for example in 1989 to allow membership of commercial banks. Throughout the System's history, the eligibility requirements have been developed to provide special considerations to reflect the differing business

models of its members, for example the differences in eligibility requirements for depository institutions and insurance companies.

However, FHFA is now contemplating changes to this process, but the ANPR provides no evidence that the current membership requirements are flawed. Instead, FHFA contemplates replacing the existing membership mechanism with a system that could add regulatory burden and cost to the System, as well as create uncertainty about on-going membership eligibility. Further, FHFA does not cite any benefits to changing the membership rules. For these reasons, which are explained in further detail below, NAHB urges FHFA to withdraw the ANPR.

The regulatory changes under consideration would make it more difficult for many financial institutions to obtain and maintain access to the liquidity available through FHLBank advances. Shifting requirements would call into question the ability of FHLBank members to borrow under all future economic scenarios. This will destabilize a key premise of the FHLBank System, the reliability of accessing liquidity. The changes would also discourage potential members from joining, ultimately inhibiting the ability of FHLBanks to serve the housing and community development needs of their districts. These suggested changes are likely to prove particularly burdensome to small and medium sized members, at a time when these members are already subject to many other new regulatory requirements.

The collateral based nature of the FHLBank System ensures that FHLBank members maintain a commitment to housing finance. In order to obtain FHLBank advances, members must pledge eligible collateral such as mortgage loans. If members do not use advances to make mission appropriate loans, they will not have sufficient collateral to obtain additional advances. This is a well-functioning mechanism to ensure that FHLBank members utilize their access to the System for mission purposes.

Additional requirements, such as an ongoing "10 percent of total assets test" would add additional regulatory burden and uncertainty to FHLBank membership. Members would not know with certainty that they meet the test and maintain access to funding, particularly during times of financial stress. For example, in periods when mortgage valuations rapidly decline, as we recently experienced, members could not be assured of maintaining at least 10 percent of their assets in mortgages. As a result, the FHLBanks would be viewed by both existing members and potential members as a far less reliable funding source.

Further, FHFA provides no justification for continuous compliance with the 10 percent requirement. The ANPR states that FHFA has "no evidence that significant numbers of members that were subject to the 10 percent requirement when they became members have substantially reduced their holdings of residential mortgages after becoming members." FHFA's own analysis shows that only nine current members of the System have residential mortgage holdings less than five percent of their assets.

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In addition, expansion of the requirement to other categories of member institutions, specifically insurance companies and CDFIs, could significantly restrict the membership and access of these institutions to the FHLBank System. This is counter to the Bank Act which has allowed insurance company membership since the Act was enacted in 1932. Changes such as this should be implemented through Congressional mandate and not regulatory action.

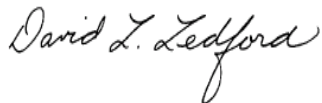
NAHB also questions the timing of FHFA's review of FHLBank membership requirements. We believe that the changes under consideration would be particularly harmful at this time with the housing finance system in such a fragile state. Again, these changes would also be especially burdensome on small and medium sized financial institutions, particularly when they are subject to many new regulatory requirements.

In the recent financial crisis, the FHLBanks provided liquidity nationwide to their members for housing and community credit needs through one of the most challenging periods of economic stress. As other sources of liquidity disappeared at the start of the Great Recession, the FHLBanks increased their lending to members in every part of the country. The FHLBanks were especially important as a source of funding to smaller institutions during this turbulent period, when other sources of funding essentially disappeared. The ability of community lenders to rely on their FHLBank as a readily accessible and reliable source of funding was critical during this period. The FHLBanks will continue to play a critical role as a source of liquidity as the Nation works to recover from the financial crisis and housing downturn. The FHLBanks role in the recovery process should not be limited by the imposition of unnecessary impediments to System access – such as the suggested membership changes.

NAHB appreciates the opportunity to submit comments on the ANPR and we appreciate that FHFA has sought public comment on the changes prior to taking further action. Given our serious concerns with the contemplated changes in the membership requirements, the potential impact on the FHLBank System, its members, the housing market and the economy, NAHB strongly urges FHFA not to proceed with this rulemaking.

Please contact Kim Moore, (202) 266-8529; kmoore@nahb.org, if there are questions concerning our letter.

Sincerely,



David L. Ledford
Senior Vice President
Regulatory Affairs