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May 15, 2009

Alfred M. Pollard, General Counsel  
Christopher T. Curtis, Senior Deputy General Counsel  
Federal Housing Finance Agency  
Fourth Floor  
1700 G Street, N.W.  
Washington, DC 20552  
Attention: Comments/RIN 2590-AA21

**RE: Capital Classifications and Critical Capital Levels for the Federal Home  
Loan Banks**

Dear Sirs:

The Independent Community Bankers of America<sup>1</sup> (ICBA) welcomes the opportunity to comment on the Federal Housing Finance Agency's Interim Final Rule, Capital Classifications and Critical Capital Levels for the Federal Home Loan Banks. Over 75 percent of ICBA members are FHLB members and these community banks rely on their FHLBs for advances to provide lendable funds for the local communities they serve.

This interim final rule implements requirements set forth in the Federal Housing Regulatory Reform Act, Division A of the Housing and Economic Recovery Act of 2008 (HERA) in establishing criteria for the amount and type of capital held by FHLBs based on certain capital classifications. The capital classifications provided for in HERA are adequately capitalized, undercapitalized, significantly undercapitalized and critically undercapitalized. ICBA supports the capital classifications contained in the interim final rule and sees them as an important tool for ensuring the safety and soundness of the FHLBs.

ICBA agrees with several recommendations offered by several FHLBs as contained in their comment letters to the FHFA on the interim final rule:

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<sup>1</sup> *The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.*

*With nearly 5,000 members, representing more than 20,000 locations nationwide and employing over 300,000 Americans, ICBA members hold \$1 trillion in assets, \$800 billion in deposits, and \$700 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at [www.icba.org](http://www.icba.org).*

Section 1229.6(a)(4) of the Regulations provides that an undercapitalized FHLB may not permit its average total assets in any calendar quarter to exceed its average total assets during the preceding quarter, unless certain requirements are met. ICBA has concerns that such a limitation may be counter productive to the goal of increasing capital since increases in advances generally would improve a FHLB's capital position. This is true even if the ratio of tangible equity to a FHLB's total assets is not then increasing at a rate sufficient to enable the bank to become adequately capitalized within a reasonable time (as Section 1229.6(a)(4)(ii)(B) requires). We are also concerned about the impact on community banks that have few other funding alternatives of advance rationing that would likely result if advance growth was capped. The FHFA should provide some flexibility to ensure that members have ready access to advances, particularly in the current environment when banks are being encouraged to lend to stimulate the economy. ICBA has recently been hearing from some of its members that their regulators are raising questions about their reliance on FHLB advances. We are concerned growth caps could exacerbate this problem. Consequently, we request that FHFA modify Section 1229.6(a)(4) to amend the cap requirement in a way that does not limit the making of capital-enhancing advances.

Section 1229.11(b) of the regulations requires a FHLB to submit a proposed capital restoration plan no later than 10 calendar days after receiving notice from the Director of the FHFA. In our view this may be too restrictive a timeframe for an institution to be able to receive and adequately respond to such a notice. We ask the FHFBA to provide a 30 day period to enable a FHLB the time to develop a workable plan.

We ask for clarification of Section 1229.6(a)(5) of the regulations which provides that an undercapitalized FHLB may not "acquire, directly or indirectly, any interest in any entity" unless certain requirements are met. Several FHLBs have pointed out that it is unclear how the prohibition would operate in the context of a FHLB's business. The provision should not interfere with a FHLB's exercise of its authority to make advances, acquire member assets, provide funding for programs such as the Affordable Housing Program, issue standby letters of credit, or purchase authorized investments.

### **Well-Capitalized Criteria**

In addition, the FHFA proposed a category of "well-capitalized" which it sees as a useful and appropriate way to encourage the FHLBs to hold more than the minimum amounts of capital. A FHLB would be well capitalized if it held a specified percentage of its minimum leverage and risk-based capital requirements such as 110 percent of the requirements, and/or met specific retained earnings or market value of equity/par value of capital stock (MVE/PVCS) targets. The FHFA believes that introducing a retained earnings target or an MVE/PVCS target into a regulation may be especially helpful in encouraging the FHLBs to maintain levels of retained earnings that would help prevent impairment of the par value of their stock.

Retained earnings have provided an important cushion to prevent impairment of members' stock during challenging times for the FHLBs. We see merit in exploring ways to encourage the FHLBs to hold more than minimum capital levels. We understand

that some FHLBs support a well-capitalized criteria, while others do not. ICBA believes that the introduction of a well-capitalized category and targets for MVE/PVCS or retained earnings are of sufficient importance that they should be analyzed by the FHFA and addressed in a separate rulemaking.

### **Review of Risk-Based Capital Requirements**

The FHFA has asked if other changes to the risk-based capital requirements should be considered in light of the provisions of the interim final rule. We think a review of the risk components given recent market conditions is in order. We understand that the market and operations risk capital requirements in particular have created difficulties during market dislocations.

We appreciate the opportunity to provide comments for the study. If you have any questions about our views, I may be reached by email at [ann.grochala@icba.org](mailto:ann.grochala@icba.org) or by phone at 202-659-8111.

Sincerely,

/s/

Ann M. Grochala  
Vice President, Lending and Accounting Policy