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Patrick A. Bond
Chairman of the Board

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October 30, 2014

Alfred M. Pollard, General Counsel
Attention: Comments/RIN 2590–AA39
Federal Housing Finance Agency
400 Seventh Street SW, Eighth Floor
Washington, D.C. 20024

Re: Notice of Proposed Rulemaking and Request for Comments – Members of Federal Home Loan Banks (RIN 2590–AA39)

Dear Mr. Pollard:

The Federal Housing Finance Agency ("Finance Agency") has requested comments on its notice of proposed rulemaking ("NPR") regarding members of the Federal Home Loan Banks ("FHLBanks"). The NPR states that it seeks to address issues related to the membership requirements and the FHLBanks' housing finance mission—in doing so, the Finance Agency proposes to revise several of its regulations regarding membership eligibility. The NPR, if finalized in its current form, will fundamentally alter the FHLBank's relationship with its members and impair the FHLBank System's ability to advance its congressionally mandated mission of providing liquidity to support housing finance markets and the U.S. financial markets generally.

The Finance Agency seeks to adopt new continuing membership requirements by instituting two new ongoing home mortgage and residential mortgage asset membership tests, which are inconsistent with the FHLBanks' statutory history and practice. The proposed rule would also establish a new consequence for failing to meet either of these new ongoing membership tests, which would be expulsion from membership. It is particularly concerning that the NPR proposes these changes prior to fully considering the full scope of consequences and considering other less drastic alternatives to achieve the Finance Agency's objectives.

The Federal Home Loan Bank of Pittsburgh ("FHLBank Pittsburgh") also does not believe that the NPR recognizes the unique cooperative status of the FHLBanks, which requires a significant investment by institutions in order to become a member. The changes proposed by the NPR would apply to both prospective members and, more concerning, to institutions that have been members for years if not decades. Such sweeping changes to the terms of FHLBank membership should only be made by Congress through the adoption of legislation.

The Board of Directors ("Board") of FHLBank Pittsburgh submits the following specific comments on the NPR for consideration:

I. Ongoing Home Mortgage and Residential Mortgage Asset Membership Tests Fundamentally Change the Terms of FHLBank Membership

A. Ongoing Home Mortgage and Residential Mortgage Asset Membership Tests Are Inconsistent with the Express Provisions of the Federal Home Loan Bank Act ("FHLBank Act")

Whenever any member seeks an advance from its FHLBank, it must provide "eligible collateral." Eligible collateral is determined by statute, representing a mechanism put in place by Congress to ensure that advances were consistent with the FHLBank System's goals. Between 2010 and 2012, 97 percent of the FHLBank System's advances were secured by eligible collateral related to housing. Consequently, current practice supports the FHLBank System's goals and congressional intent as advances from the FHLBank provide liquidity for these home mortgages.

Additionally, under the FHLBank Act, the total amount of a member's advances that have a maturity greater than five years cannot exceed the amount of residential home mortgages on the member's balance sheet. Finally, the FHLBank Act imposes a community support requirement on all members for continued access to advances with terms longer than one year. These are the only ongoing asset and compliance requirements Congress has imposed on FHLBank members. These existing requirements work and do not impose regulatory burdens or draconian penalties.[1]

Significantly, in imposing these requirements, Congress did not provide that members who failed to meet them would have their FHLBank membership terminated. Instead, Congress provided that the remedy for failing to meet an ongoing requirement would be limited access to FHLBank advances until such time as the member was able to meet the requirement. These provisions of the FHLBank Act are instructive in that they demonstrate Congressional intent that membership termination not be a consequence of failing to meet an ongoing requirement specified in the FHLBank Act.

[1] Since the origination of the System, member eligibility for purposes of the "makes [long term] home mortgage loans" criterion, the statutory requirement in Section 4 of the FHLBank Act has been measured only at inception. The membership requirements "under the statute [are] a one-time screen, rather than an ongoing requirement." See U.S. Dept. of Treasury, Report to the Congress on the Impact of the Gramm-Leach-Bliley Act on Credit To Small Businesses and Farms (Jan. 2005) (discussing the requirements to "*become* a member of an FHLBank" and noting that the requirements need not be "*maintained*"). If Congress had desired to say that the standard of "makes long term home mortgages" required ongoing measurement and compliance monitoring to exclude certain classes of members, or this standard needed additional requirements to be supplied by the Finance Agency by regulation, it would have specified them in Section 4 of the FHLBank Act. For a condition that Congress wanted to apply to members on an ongoing basis, Section 5 of the original FHLBank Act stated that no institution could be admitted to or maintain membership if the institution charged home mortgage loan interest rates greater than 8 percent. See Federal Home Loan Bank Act of 1932, Pub. L. No. 72-522, § 5 (July 22, 1932). This specific statement in the adjacent section of the FHLBank Act and the absence of similar ongoing language in Section 4 shows a deliberate choice by Congress not to make the test of "makes home mortgages" one that is necessary to retain membership.

B. Home Mortgage and Residential Mortgage Asset Membership Tests are in Direct Conflict with Recent Congressional Actions Regarding the FHLBanks

In 1999, with the passage of the Gramm-Leach Bliley Act ("GLB Act"), Congress expanded eligible collateral to allow all members to pledge an unlimited amount of commercial real estate-backed mortgage loans to secure their advances from an FHLBank. It would have been incongruous for Congress to expand eligible collateral for advances to include commercial real estate while at the same time requiring the members to maintain some meaningful level of home mortgages on their balance sheet *at all times*.

In the GLB Act, Congress also considered application of the 10 percent residential mortgage asset membership test to Community Financial Institutions ("CFIs") and, instead, determined to exempt them from this test. In addition, at that same time, Congress expanded eligible collateral that CFIs could pledge to secure advances from an FHLBank to include small business and small agricultural loans. And just eight years later, in adopting the Housing and Economic Recovery Act of 2008 ("HERA"), Congress again expanded the types of eligible collateral that CFIs could pledge to include assets related to economic development activities. Both of these recent Acts of Congress moved the majority of members in the FHLBank System away from just focusing on home mortgages and to focus equally in commercial and economic development assets as eligible collateral.

C. The New Ongoing Home Mortgage and Residential Mortgage Asset Membership Tests Do Not Reflect the Changing Regulatory Environment and Mortgage Markets

Under the NPR, members with assets of or greater than $1.1 billion must meet the 10 percent residential mortgage asset membership test on an ongoing basis. Although this may not seem like a high hurdle, it actually is for many commercial banks, especially in the changing regulatory environment and mortgage market. There are significant changes in the regulatory environment that make holding mortgage assets at all times and in all environments less attractive than before, and may make meeting the 10 percent standard hard for many member institutions.

The full impact of these regulatory changes on the FHLBanks' members and their resulting capacity for holding long-term assets on their balance sheet are not known at this time. To compound the matter, the NPR fails to include an analysis of the impact of these new regulatory requirements on the ability of members to hold mortgage assets on their balance sheet and the resulting impact on member institutions to meet the new ongoing residential mortgage asset membership test. A comprehensive analysis of these issues should be completed before adopting a final rule.

D. Ongoing Home Mortgage and Residential Mortgage Asset Membership Tests Conflict with the Long-Standing Practice (and Finance Agency Regulations) Expressly Permitting Affiliates of Members to Pledge Assets to Secure Advances to the Member

The Finance Agency has long permitted (more than 20 years) the FHLBanks to accept pledges of assets from a member's affiliate to secure advances to that member. The ability for a member to use assets held by its affiliate to secure advances from an FHLBank has provided members with flexibility in their asset holding structures. The ongoing home mortgages and residential mortgage asset membership tests, in effect, eliminate this flexibility for members by requiring them to hold a certain amount of mortgage assets on their balance sheet. It is important to remember that member affiliate pledge transactions require that the affiliate only pledge eligible collateral. Additionally, the member itself is subject to the FHLBank Act limit on the amount of advances with terms greater than five years that it can access based on the level of assets on the member's own balance sheet. The newly proposed ongoing home mortgage and residential mortgage asset membership tests are unnecessary and disrupt long-standing business arrangements supported by existing statute and regulation.

E. Terminating Membership for Failing Either of the Ongoing Home Mortgage or Residential Mortgage Asset Membership Tests Eliminates Secondary Market Access; and Results in Reducing FHLBank Support for Housing

The FHLBank mortgage purchase programs, such as the Mortgage Partnership Finance® (MPF®) Program, have been a secondary market success. Expanding the FHLBanks' ability to serve as a source of secondary market access for members has been an important part of the ongoing mortgage finance reform debate in Washington and is addressed in one form or another in virtually all major legislative proposals. The ongoing home mortgage and residential mortgage asset membership tests in the NPR do not give credit to members for their mortgage origination and sale activity in the secondary market. The ongoing home mortgage and residential mortgage asset membership tests, if adopted as proposed, will cause members who fail either membership test but who actually are directly supporting housing by making mortgage loans and selling them (such as in the FHLBank's MPF® Program) to face membership termination. FHLBank Pittsburgh urges the Finance Agency to consider this incongruous result of the proposed ongoing membership tests and the importance of the FHLBanks' mortgage purchase programs.

II. Eliminating Captive Insurance Companies from FHLBank Membership Eligibility through Regulation Is Inconsistent with the FHLBank Act

Since the passage of the FHLBank Act, Congress has only acted to expand the scope of FHLBank membership, yet the NPR proposes to unilaterally limit the type of institution that can access membership. Insurance companies, including captives, established under state insurance laws and subject to regulation as insurance companies, have been eligible for membership since 1932. As a result, the Finance Agency, cannot through regulatory action, categorically eliminate captive insurance companies from eligibility for membership.

It is particularly concerning that, after two decades in which captive insurance company members have been permitted to be members in the FHLBank System (including some expressly approved as members by the Finance Agency's predecessor), the Finance Agency now seeks to limit the definition of an insurance company eligible for membership to exclude captive insurance companies. FHLBank Pittsburgh is concerned that this type of regulatory fiat could be applied to other types of insurance companies in the future.

III. Applying New Ongoing Home Mortgage and Residential Mortgage Asset Membership Tests Will Have a Negative Impact on All Insurance Company Members

While insurance companies hold substantial amounts of single- and multi-family mortgages and agency debt supporting the mortgage market on their balance sheets, insurance company balance sheets are subject to different types of regulation than those applicable to insured depository institutions. The investment portfolios of insurance companies are subject to regulatory and management diversification limits. Consequently, applying a percentage of assets membership test to the investment portfolios of insurance company members is not workable. This issue was commented on and recognized by the Finance Agency's predecessor agency in its adoption of the final Community Support Regulation governing ongoing access by all FHLBank members (including insurance company members) to advances with terms greater than one year.

Because of these differences in regulatory limits on investment portfolios, it would prove difficult for many insurance companies to comply with the suggested 1 percent, 2 percent, or 5 percent home mortgage asset membership tests set forth in the NPR. Had the Finance Agency proposal been in effect since 2008, it would have had the following results across the FHLBank System:

> Under the 1 percent test: 61 insurance companies would have failed at least once or would have been disqualified from membership due to other provisions of the NPR.
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> Under the 2 percent test: 77 insurance companies would have failed at least once or would have been disqualified from membership due to other provisions of the NPR.
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> Under the 5 percent test: 132 insurance companies would have failed at least once or would have been disqualified due to other provisions of the NPR.

IV. Conditioning Membership on Compliance with Ongoing Home Mortgage and Residential Mortgage Asset Membership Tests Reduces the Reliability of FHLBank Funding to Members

The prelude to enactment of HERA shows why Congress shifted the FHLBank System's focus to providing liquidity to member institutions. Former Acting Director Edward DeMarco has stated that "[w]ith the onset of the financial crisis in late 2007, the FHLBanks became a key provider of liquidity . . . . [t]he FHLBanks demonstrated they were a reliable source of credit to their members, and that they could meet member liquidity needs safely and soundly."

The FHLBanks served as a reliable funding source to all of their members during this period, consistent with the statutory purpose and authorities established by Congress (including the eligible expanded collateral) in the FHLBank Act. The FHLBanks serve a unique statutorily defined role of providing liquidity for less liquid whole loan assets, including commercial real estate loans, and were thus able to serve their members effectively during the financial crisis.

The NPR has the potential to restrict access to liquidity at the exact point in time when more, not less, liquidity is needed such as in distressed or fragile/recovering markets. While most depository institutions are flush with deposits at the current time, most observers believe that this may change when interest rates inevitably rise. At that point, in order to support lending to their communities, they will need access to FHLBank funding. If the NPR is adopted and a member at that time fails one of the applicable ongoing asset membership tests, it will be unable to access FHLBank funding.

The regulators of our members place a value on the liquidity provided by access to an FHLBank. However, a member's borrowing capacity may not be perceived as reliable by its regulator if membership can be revoked due to failure of ongoing home mortgage and residential mortgage asset membership tests. This potential impact should be considered in the Finance Agency's analyses as well.

V. The NPR Is Likely to Reduce FHLBank Lending, Income and Funds Available to Support FHLBank Pittsburgh's Affordable Housing Program ("AHP")

The NPR, if adopted as proposed, will make membership in an FHLBank less attractive since continued access to FHLBank funding will be contingent on new ongoing home mortgage and residential mortgage asset membership tests. This will likely result in decreased lending by an FHLBank, which will hurt earnings and an FHLBank's AHP. Since 1990, FHLBank Pittsburgh has provided approximately $183 million in AHP grant awards that have created more than 28,000 units of housing for low- or very low-income residents. If current and prospective membership in an FHLBank is threatened, FHLBank Pittsburgh will have fewer funds available to provide AHP grants to support low- and very low-income housing.

VI. The NPR Raises Complex, Significant Issues Affecting FHLBank Members, their Communities and the Housing and Mortgage Markets Generally; These Issues Require Thorough, Deliberate Consideration and Analysis

The NPR proposes significant changes in the terms of FHLBank membership, including terminating membership for institutions that fail to meet ongoing home mortgage and residential mortgage asset membership tests. FHLBank Pittsburgh suggests that the Finance Agency engage in a comprehensive dialog with members, trade associations, regulators, and other stakeholder groups, such as affordable housing advisory councils, prior to adopting any of the changes in the NPR. At other times when the Finance Agency or its predecessor has considered changes affecting the FHLBanks, their members and the communities they serve, the Finance Agency has undertaken to hold hearings regarding such proposed changes. The results of such hearings and the studies recommended in this letter would serve as a solid foundation for any future legislative action addressing FHLBank membership eligibility.

The Board of FHLBank Pittsburgh appreciates the opportunity to submit these comments for Finance Agency consideration and I am submitting this letter on behalf of the Board.

Sincerely,