DATE

Alfred M. Pollard, General Counsel

Attention: Comments/RIN 2590–AA39

Federal Housing Finance Agency

400 Seventh Street SW

Washington, D.C. 20024

Re: Notice of Proposed Rulemaking and Request for Comments – Members of FHLBanks (RIN 2590–AA39)

Dear Mr. Pollard:

All 15 members of the board of directors of the Federal Home Loan Bank of Topeka (FHLBank Topeka) appreciate the opportunity to comment on the Federal Housing Finance Agency’s (FHFA) proposed rule regarding membership eligibility in the Federal Home Loan Banks (FHLBanks).

We oppose the proposed rule for both legal and practical reasons. First, as we describe below, we believe the proposed rule is not consistent with the Federal Home Loan Bank Act (the FHLBank Act), and we feel the changes FHFA is contemplating are inconsistent with Congressional intent. Second, there are several negative practical implications of the proposed rule, including multiple ways in which the proposed rule would unnecessarily harm the communities we serve.

The proposed rule would first contravene the intent of Congress by ignoring acts of Congress that have expanded the types of collateral certain members may pledge in support of advances. In 1999 and again in 2008, Congress expanded the types of collateral that Community Financial Institutions (CFIs) could pledge to secure advances. These expanded collateral types include “secured loans for small business, agriculture, or community development activities.” By requiring continued membership to be based on long-term home mortgage loans or residential mortgages, FHFA’s proposed rule ignores the clear expansion of the FHLBanks’ mission by Congress and effectively contravenes the intent of Congress. It does this by requiring CFIs to maintain long-term home mortgage loans or residential mortgages on their balance sheet, even if such assets are not necessary to support the CFIs’ advances.

Second, the proposed rule conflicts with Congressional intent because the FHLBank Act has never required *ongoing* membership requirements, as would be mandated under FHFA’s proposed rule. The FHLBank Act was drafted to require a quantitative test only at the time of membership. Nothing in the legislative history of the FHLBank Act, nor its subsequent amendments, supports an ongoing membership requirement. In fact, every act by Congress related to FHLBank membership since the creation of the System in 1932 has only served to expand, versus contract, membership in the FHLBanks.

Third, by requiring the FHLBanks to continually monitor their members for compliance with the proposed rule, FHFA would put the FHLBanks back into a quasi-regulatory role. In 1989 under the Financial Institution Reform, Recovery, and Enforcement Act (FIRREA), Congress removed the FHLBanks’ regulatory function when it abolished the Federal Home Loan Bank Board. The proposed rule’s ongoing membership requirements, which would mandate that the FHLBanks annually examine the financial statements of members, coupled with the proposed rule’s mandatory termination requirement, would force the FHLBanks back into the role of quasi-regulator. This runs counter to the intent of Congress under FIRREA.

We also want to point out that FHFA’s proposed rule could impermissibly exclude many insurance companies from FHLBank membership. Under the proposed rule, insurance companies would be subject to an ongoing 1%-5% “makes test.” As stated above, *any* requirement that a member of the FHLBank cooperative comply with an ongoing collateral test runs contrary to the plain language and intent of the FHLBank Act. Also under the proposed rule, the membership of captive insurance companies in the FHLBank system would be terminated. A captive insurance company meets the definition of an insurance company under state law. And because the FHLBank Act is clear that “any” insurance company may be eligible to join an FHLBank, we believe the proposed rule’s provisions excluding captives from FHLBank membership would violate the FHLBank Act.

There are also practical implications to the proposed rule. Since 2008, in FHLBank Topeka’s region alone, 93 banks, 6 credit unions and 8 insurance companies would have failed FHFA’s proposed test at some point. This would have put their membership in the FHLBank cooperative in jeopardy. If 107 regional financial institutions were to lose access to reliable FHLBank liquidity, the result would be a higher cost of credit for consumers, fewer dollars available for affordable housing projects in the region, a drop in the number of financial institutions serving the public, and potential safety and soundness concerns for relevant regulators. Additionally, stricter requirements will call into question the ability of our members to borrow under all future economic scenarios, even if members have pledged sufficient eligible collateral. The proposed rule would also discourage potential members from joining the System, inhibiting the ability of these institutions to serve the needs of their communities. We are particularly concerned that the proposed rule would disproportionately burden small and medium sized banks and credit unions – institutions that comprise a large portion of FHLBank Topeka’s membership base. At a time of ongoing debate about the consolidation of the banking industry and the loss of community banks, we do not believe Congress intended for our regulator to implement rules that would have such a dramatic and harmful effect on our regional economies and cause harm to many of the small community banks that are supported by the FHLBank System.

Importantly, FHFA fails to provide a compelling reason for wanting to restrict membership in the FHLBanks, and FHFA does not present any information showing there is a problem with existing membership rules. Nor does FHFA present analysis in the proposed rule reflecting that it took into account the harm that could be caused by the proposed rule. The proposed rule does not identify a safety and soundness concern with the FHLBank System. And the proposed rule fails to cite a benefit it hopes to achieve by upending existing membership rules.

We’d like to reiterate that FHFA’s proposed rule goes far beyond interpreting and implementing the FHLBank Act. In several important ways, as described above, FHFA’s proposed rule directly contravenes the intent of Congress, and it runs counter to subsequent acts of Congress that have broadened the scope of the FHLBanks’ mission, membership and eligible collateral. Thus, we believe that Congress – and Congress alone – may act to alter the FHLBanks’ eligible membership base. The proposed rule would also unnecessarily do harm to lower income families, small businesses, agriculture producers and entrepreneurs in our region. For these many reasons, the board of directors of FHLBank Topeka respectfully requests that FHFA withdraw its proposed rule. If FHFA maintains the opinions that gave rise to the proposed rule, we feel strongly that FHFA must share its concerns with Congress and seek statutory changes to the FHLBank Act. Thank you for considering these comments.

 Sincerely,

G. Bridger Cox, Chairman Robert E. Caldwell II, Vice Chair

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