ACLI
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Alfred M. Pollard, General Counsel
Attention: Comments/RIN 2590-AA39
Federal Housing Finance Agency
400 Seventh Street SW Eighth Floor
Washington DC 20024
Also via RegComments@fhfa.gov

RE:Proposed FHFA Rule re Members of Federal Home Loan Banks (RIN 2590-AA39)

Dear General Counsel Pollard:

The American Council of Life Insurers (ACLI) appreciates the opportunity to comment upon the proposed new Federal Home Loan Bank membership rule.[1] The ACLI is a trade association based in the District of Columbia with 300 member companies operating in the United States and abroad. ACLI advocates in federal, state, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers' products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance. Their enterprises represent more than 90 percent of life insurance industry assets and premiums.

This letter addresses (i) why the ACLI opposes the rule's proposed asset test for insurance company membership in a Federal Home Loan Bank ("Bank" and, collectively, the "Banks") and (ii) concerns about the proposal for determining which Bank a life insurer could join based on an insurance company's principal place of business. The appendix to this letter provides answers to the five specific requests for information posed by the Federal Housing Finance Agency ("Agency") in the Notice of Proposed Rulemaking. Although the ACLI believes that an asset test for insurance companies is not warranted, the appendix includes recommendations about how a test might be established to sustain insurance company interest in Bank membership.

Life Insurance Company Membership in the Banks Should Be Encouraged

The ACLI appreciates that the proposed new rule acknowledges the important contribution that life insurance companies provide to the American home mortgage loan market and the stability and success of the Banks. We respectfully suggest that any proposed changes in eligibility for Bank membership should have the objective of enhancing life insurance companies' roles as members of the Banks.

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

[1] See 79 Fed. Reg. 54848 (September 12, 2014).

the Federal Home Loan Bank Act in 1932 (Bank Act). At no time has Congress acted to diminish insurance company membership in the Banks, or required their participation to be predicated on considerations similar to those applied to depository institutions. 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, e.g., investments in mortgage-backed securities (MBS). Acknowledging that the business of insurance naturally and fundamentally was not and is not 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 Agency to do so in a rulemaking now, absent clear congressional guidance, could potentially destabilize a housing market in the nascent stages of recovery.

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. In 2013, the most recent year for which data is available, 850 life insurance companies held investments of $498 billion in residential mortgage loans (including single and multi-family mortgage loans), residential MBS (RMBS), and commercial MBS (CMBS) which includes multi-family housing.[2] Life insurance companies additionally invest in commercial mortgage loans that are specific to multi-family housing. Life insurance company investments in single and multi-family residential mortgage loans and RMBS alone totaled $339 billion. The 128 life insurance company members of the Banks for which ACLI has data have $235 billion invested in residential mortgage loans, RMBS and CMBS (including multi-family housing).[3]

In addition, insurance companies commit billions of dollars to investments that generate Low-Income-Housing Tax Credits, which are an important resource for creating affordable housing in the United States.[4] Insurance companies are also active participants in the Federal Home Loan Bank Affordable Housing Program, one of the largest private sources of affordable housing grant funding in the United States, as well as the Federal Home Loan Bank Community Investment Program, which offers below-market rate advances to members for financing housing and economic development benefitting low and moderate-income families.

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.[5] The historical reasons for the different qualification requirements for Bank membership by different kinds of financial institution members of the Banks remain sound to this day. 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.

Federal Insurance Office research corroborates that insurance companies have been expanding their support for the home mortgage loan market. As shown in Figure 1,

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[2] 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.
[3] About 256 insurance companies are members of the Banks, of which about 156 are life insurance companies.
[4] Year 2013 data indicates that life insurers invested $5.7 billion in Low-Income Housing Tax Credits (general account only tabulation). Source: ACLI tabulations of NAIC data, used by permission. The NAIC does not endorse any analysis or conclusions based on use of its data.
[5] As of September 30, 2010.

insurers have steadily increased investments in mortgage loans and real estate. These investments generally are less liquid than investment-grade fixed income investments.[6] Of note is the five (5) percent growth in both mortgage loans and real estate in 2013. Because price volatility associated with less liquid assets could result in realized capital losses if such assets had to be sold at distressed prices in periods of economic or financial stress, imposition of a three-year asset test could complicate an insurance company's ability to manage its principal business risks. In contrast, the flexibility of the current system based upon collateral requirements enables an insurance company member to utilize Bank liquidity to sustain its insurance operations and the home loan mortgage market simultaneously.

Figure 1:
Life/Health Insurer Sector Invested Asset Compositions ($ thousands)[7]

	2009	2010	2011	2012	2013
Mortgage Loans	$315,953,480	$307,376,528	$323,083,104	$335,600,765	$353,154,594
Real Estate	$19,463,203	$19,690,208	$20,586,580	$21,379,092	$22,362,069

Source: SNL Financial

The Home Mortgage Loan Asset Test is Not Warranted

The Agency proposal requires insurance company members to demonstrate ongoing compliance with a minimum home loan mortgage asset test for which it admits the companies already receive a passing grade. The Agency is concerned that "it is currently possible for an institution to become a member without having either a history of supporting residential housing finance through the origination or purchase of home mortgage loans or a demonstrated intent to significantly support the residential housing finance market after becoming a member."[8] However, the Agency further acknowledges that it "has found no evidence that this problem is widespread…"[9] Nonetheless, the Agency finds it "necessary to revise its Bank membership regulation to establish a minimum quantitative standard that must be met to satisfy the 'makes long-term home mortgage loans' requirement, and to require ongoing compliance with that requirement…"[10]

In other words, the Agency perceives a *possible* problem for which it finds *no* evidence "necessitates" an unprecedented solution. The proposed solution is not authorized by the Bank Act. Indeed, the solution is contrary to precedent: "FHFA's predecessor agencies interpreted section 4 of the Bank Act as allowing compliance with the 'makes long-term home mortgage loans'… requirements to be measured only at the time an institution applies for Bank membership … [and] also concluded that section 4(a) does not require an institution to originate or purchase any minimum level of long-term home mortgage loans in order to be eligible for Bank membership."[11] The Agency then applied the new

[6] Federal Insurance Office Annual Report on the Insurance Industry, September 2014, page 16
[7] Note that Figure 1 appears to provide insurance company general account data excluding data from fraternal benefit societies, whereas ACLI data *supra* includes that of fraternal benefit societies.
[8] 79 Fed. Reg. 54848, at 54853.
[9] Ibid.
[10] Id.
[11] Id.

test to existing insurance company members of the Banks and determined that "a majority of existing insurance company members would have been in compliance even with a five percent requirement…"[12]

ACLI is moved to plea for common sense: *si fractum non sit, noli id reficere*.[13] The Agency's first consideration should be to do no harm. Nothing is actually broken regarding insurance company members fulfilling the goals of the Bank Act because both traditional and current methods of assuring compliance with the Act have been and are working well, as intended by Congress.

The Current Methods Assuring Bank Act Compliance Are Working Well

In order to become a member of a Bank, all eligible institutions including insurance companies must meet three requirements. They must:

- Be duly organized under the laws of any state of the United States;
- Be subject to inspection and regulation under the banking laws, or under similar laws, of a state or the United States; and
- Make such home mortgage loans as, in the judgment of the Director of the Agency, are long-term loans.[14]

Currently, the "makes long-term home mortgage loans" test is applied only at the time of application by otherwise qualified applicants. Current membership regulations do not contain a requirement for Bank members to demonstrate ongoing compliance with the "makes long-term home mortgage loans" test. Accordingly, the Agency expresses the concern that qualified applicants might achieve membership "by acquiring a minimal amount of home mortgage loans shortly before applying for membership."[15]

The "makes long-term home mortgage loans" test is expressly provided for in federal statute but it is limited to the time of application. A proposed rule which required a life insurance company to demonstrate a quantitative commitment to making home mortgage loans based on a reasonable asset test *at the time of application* or within a reasonable historical period prior to application would at least be colorable under statutory law. Of course, even such a limited proposed rule would penalize newly-incorporating insurance companies which sought to become Bank members and therefore would be questionable from a public policy perspective.

The Agency is also concerned that a member might "reduce or eliminate its eligibility to continue as a Bank member."[16] There is no basis in law for the Agency to perceive a problem here because there is no statutory requirement to demonstrate ongoing compliance with the "makes long-term home mortgage loans" test. Further, the Agency does not point to any fact or example that suggests that this is a problem.

In addition, the Agency's concern should be further assuaged by (i) the requirement that all members own capital stock of the Bank and (ii) the nature of Bank collateral

[12] 79 Fed. Reg. 54848, at 54859.
[13] If it ain't broke, don't fix it.
[14] See 12 U.S.C. § 1424(a)(1)(A), (B)
[15] 79 Fed. Reg. 54848, at 54853.
[16] Ibid.

requirements which require all advances to be secured primarily by mortgage related assets. That is, the law provides two methods by which every member must continue to support making home mortgage loans by the very nature of membership in the Banks. One is the requirement to purchase the stock of the relevant Bank, thereby contributing capital support to the Bank system on a basis coexistent with membership. The other is by providing acceptable mortgage-related collateral for Bank advances which itself constitutes insurance company member support for long-term loans in the home mortgage market.

Collateral Requirements Sufficiently Support Long-Term Home Mortgage Lending

Of the two mechanisms, the collateral requirement makes the most important contribution to effectuating Bank Act goals. In most years, the Banks demand and have rights to collateral on a member-by-member basis with a value in excess of their outstanding advances. The collateral itself is of a kind determined by statute but notably includes government agency securities, residential mortgage loans, mortgage-backed securities and other real estate related assets.

The quality of the collateral is confirmed by members' reporting information to the Banks on a quarterly basis and the ability of the Banks to require additional collateral if the Bank's review of the borrower's financial condition indicates deterioration in the housing and mortgage markets. Should such an event occur, the Banks may take a variety of actions, including, e.g., decreasing the maximum borrowing limits on certain types of mortgage loan collateral, or increasing secondary market discounts for loans with high-risk characteristics and for loans with deficiencies in either their servicing or underlying documentation. These changes mitigate the credit risk of advances. They also contribute to a dynamic utilization of the Banks by their members.

Rather than realizing Bank Act goals by regulatory imposition of a static asset test not based in law, cooperative equity membership and dynamic collateral requirements for advances contribute to realization of Bank Act goals in an admirable and preferable way. The current system is preferable precisely because it is dynamic. An insurance company might well want the opportunity to access Bank liquidity. It will be willing and able to demonstrate a natural commitment to making home loan mortgages in order to meet statutory eligibility requirements. It will qualify for membership as a matter of law. It will pay for the privilege of membership by purchase of Bank stock at par value. Then it might wait for an indeterminate amount of time, if ever, to utilize the option of drawing Bank advances or letters of credit, as it sees fit or deems necessary to further its business goals. These goals traditionally and today include supporting home loan mortgages.

The Proposed Asset Test is Not Reasonable

The Agency's proposed asset test for insurance company members of the Banks is arbitrary *prima facie* because the Agency has no basis for requiring such a test on any percentage of an insurance company's assets. Because the Agency proposal does not emanate from the functional regulation of life insurance companies by state insurance authorities, the proposed rule potentially complicates an insurance company's management of its balance sheet to the detriment of both its insurance business and the goals of the Bank Act.

Indeed, the Agency's proposed asset test is contrary to and undermines state insurance regulation of life insurance company investment practices. Those practices are governed by state laws, many of which are derived from the NAIC *Investments of Insurers Model Act* (the "NAIC Investments Act"), adopted in 1993. The NAIC Investments Act and related state laws expressly address mortgage loans and real estate investments, and they impose quantitative limitations upon insurance companies' ownership of such investments.[17] The ACLI continues to evaluate how to reconcile the application of the Agency's proposed rule at various percentage levels with insurance statutory and regulatory requirements. Nonetheless, we believe that the proposed rule is inconsistent with the functional state regulation of the principal investment activities of an insurance company.

The Proposed Asset Test Has Worrisome Implications Detrimental to Bank Act Goals

Each of the following aspects of the proposed membership asset test has worrisome implications:

- The proposal is based upon regulatory fiat and not statutory law;
- The proposal contemplates an ongoing asset test based on rolling 3-year evaluations; and
- The proposed rule is not transparent in its intentions and appears unnecessary.

These concerns complicate an insurance company's prudential decision-making as to how best to allocate and invest capital resources. Such decisions are not merely to make home loan mortgages but, more fundamentally, how to run its insurance business. Hence the proposed new asset test would operate detrimentally as a practical matter and discourage insurance company membership in the Banks. This, in turn, would be detrimental to the fundamental organization of the Bank system and the goals of the Bank Act.

An Important Consideration Regarding Membership Location in Bank Districts

The proposed new rule provides that the "principal place of business" of an insurance company is the state in which it maintains its home office, as so designated in accordance with the laws under which it is organized, so long as the insurance company conducts business operations from the home office.[18] The proposal includes a new paragraph that would address how the Banks are to determine the "principal place of business" for insurance companies which cannot satisfy the general requirements. The Banks would use this authority only if an insurance company does not have an actual "home office" established under the laws of its chartering statute. Alternatively, the authority could be used if an insurance company has such a "home office" but does not conduct business operations from that location. In addition, the proposed authority could be used if an insurance company cannot meet a three-part test for designating its

[17] See NAIC Investments of Insurers Model Act § 15 ("Mortgage Loans and Real Estate") and § 15C ("Quantitative Limitations). NAIC 1996.
[18] 79 Fed. Reg. 54848, at 54865.

principal place of business.[19] There are many technical aspects of the proposed new rule but the goal is to locate insurance company members in the Bank district where the insurer principally conducts its business.

The ACLI observes that, in the extraordinary circumstances of a Bank-member, insurance company insolvency or receivership, the location of the member in a Bank district different from the state of insurance company domicile might complicate Bank-insurance company coordination of advances, collateral and rehabilitation. To some degree, the preference of locating an insurance company in the district of its principal place of business rather than its state of domicile might be at cross-purposes with current Bank and ACLI efforts to address other Agency concerns.

Following the publication of the Agency's *Advance Notice of Public Rulemaking* at the end of 2010, several Banks initiated efforts to amend state insurance receivership laws to assuage Agency concerns regarding the timing of access to insurance company member collateral. In May 2012, e.g., FHLBank-Pittsburgh proposed legislation that would have Bank collateral relating to loans made to its insurer-members treated the same way in a state receivership as Bank collateral relating to loans made to its depository institution members is treated in a federal bank resolution. Specifically, the proposal would amend a state's receivership provisions by expanding the exemptions to its "stay" and "avoidance of transfer" provisions to include pledges, security and collateral relating to a Bank security agreement.

In October 2012, the ACLI Board of Directors adopted policy to (1) support the FHLBank-Pittsburgh proposal and (2) assist the Banks to advocate it in the states. ACLI has been supporting and continues to support legislation that is introduced in the states that is either identical to, or substantially similar to, this proposal. In December 2013, the NAIC approved a report concluding that it neither supports nor opposes the Bank legislative proposal. This had the practical effect of clearing the way politically for the Bank legislative initiative.

The result of this activity is that Bank and ACLI-supported legislation has been enacted in Colorado, Delaware, Indiana, Iowa, Kansas, Mississippi, Nebraska and Oklahoma. Similar legislation is now pending in Connecticut and Massachusetts. Presumably the Agency appreciates this activity as intended to address Agency concerns. Yet the proposed membership rule with regard to membership location in Bank districts is likely at cross-purposes.

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In sum, life insurance companies have been important members of the Bank system for decades. There is no justification for the asset test proposed in the new membership rule. Rather, such an asset test unreasonably and unnecessarily undermines state functional regulation of insurance companies to no clear beneficial end. The ACLI respectfully requests that the asset rule be retracted and otherwise omitted from any promulgation by the Agency of changes to Bank membership rules.

[19] See proposed rule at § 1263.19(c); 79 Fed. Reg. 54848 at 54865.

Sincerely,

THE AMERICAN COUNCIL OF LIFE INSURERS
Michael Lovendusky
Vice President & Associate General Counsel

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APPENDIX
FHFA REQUESTS, ACLI RESPONSES

FHFA Request # 1: FHFA invites comments on all aspects of the proposed rule and will take all comments into consideration before issuing a final rule.[20]

A. The ACLI supports the proposed expansion of the definition of "home mortgage loans." The proposed, expanded definition would include all types of MBS backed by qualifying whole loans and securities, eliminating the distinction that current rules draw between pass-through securities and other types of MBS. This means that collateralized mortgage obligations, real estate mortgage investment conduits, and other non-pass-through MBS will now be accepted for the purpose of satisfying the "makes long-term home mortgage loans" requirement.

B. The logical list of assets that qualify as "home mortgage loans" should include all the assets identified by statute as approved collateral for Bank advances. Because such assets are *statutorily* defined as approved collateral for Bank advances, and protection of Bank advances are *statutorily* more important than the membership qualification requirements (which have no quantifiable asset criteria), it is reasonable to infer that assets qualified as security for advances should also be recognized as assets qualifying an institution providing for membership. Multi-unit (1-4 family) loans, multi-family loans, MBS, CMOs and REMICs backed by such loans are all approved collateral. Other approved collateral includes CRE loans, CMBS, municipal bonds and student loans. Indeed, some Banks base their member stock investment calculations on a percentage of collateral-eligible assets rather than just mortgage-related assets.[21]

[20] 79 Fed. Reg. 54848.
[21] The applicable provisions of the Bank Act regarding eligible collateral for insurance company members is found in 12 U.S.C. § 1430(a)(3)(A-D): A Bank, at the time of origination or renewal of a loan or advance, shall obtain and maintain a security interest in collateral eligible pursuant to one or more of the following categories:
(A) Fully disbursed, whole first mortgages on improved residential property (not more than 90 days delinquent), or securities representing a whole interest in such mortgages.
(B) Securities issued, insured, or guaranteed by the United States Government or any agency thereof (including without limitation, mortgage-backed securities issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Corporation, and the Government National Mortgage Association).
(C) Cash or deposits of a Federal Home Loan Bank.

C. The Agency should make clear that the Banks should rely upon NAIC annual statements to capture more accurately the expanded class of assets important for FHLB membership compliance.

FHFA Request # 2: FHFA is considering adding additional components to the "financial condition" requirement for insurance companies that are analogous to those that currently apply to insured depository institutions. The agency requests comments on what type of metrics or other criteria would be appropriate indicators that an insurance company is in a financial condition such that advances may be safely made to it and how such metrics or benchmarks should reflect the business models and risks insured by different types of insurance companies.[22]

A. The ACLI advises that United States insurance regulators use uniform accounting rules called *Statutory Accounting Principles* (SAP) to determine the safety and soundness of life insurance companies. *Statutory Accounting Principles* are the accounting rules for insurance companies set forth by the National Association of Insurance Commissioners. SAP financials are used to prepare the statutory financial statements of insurance companies. With minor state-by-state variations, they are the basis for state regulation of insurance company solvency throughout the United States.

B. The NAIC *Risk Based Capital for Insurers Model Act* (NAIC RBC Model Act) is the basis for insurance regulators' determination of the safety and soundness of insurers, and it should be relied upon by the Agency and the Banks. That is, safety and soundness issues become a concern with life insurance companies only if RBC Model Act regulatory action levels are triggered. Historically, very few life insurance companies have experienced solvency concerns, a fact testifying to the success of life insurance solvency regulation and, since its adoption by the NAIC in 1993, the NAIC RBC Model Act. The NAIC RBC Model Act has been enacted in all of the United States and is a critical element for the accreditation of a state insurance department by the NAIC.

FHFA Request # 3: Although FHFA is proposing to use one percent of total assets as the standard for compliance with the "makes long-term home mortgage loans" requirement, it also believes that it could establish a higher percentage without either supplanting the "10 percent" requirement or unduly burdening a significant number of existing members. The Agency will continue to consider whether to establish the standard at some higher percentage, such as two percent, or possibly as high as five percent, as part of this rulemaking. To aid it in deciding this issue, the Agency requests public comments on whether setting the minimum required home mortgage loans-to-total assets ratio at a percentage greater than one percent of a member's total assets would be more consistent with the statutory intent and, if so, what the appropriate percentage should be in the final rule.[23]

(D) Other real estate related collateral acceptable to the Bank if such collateral has a readily ascertainable value and the Bank can perfect its interest in the collateral…

[22] 79 Fed. Reg. 54848, at 54864.

[23] 79 Fed. Reg. 54848, at 54859.

A. Although the ACLI believes that an asset test for insurance companies is not warranted, the responsive comments below contain recommendations of how a test might be established to sustain insurance company interest in Bank membership.

B. An asset test should be calculated using a life insurance company's general account. In the insurance industry, a general account is the account into which all incoming funds, except those designated for a separate account, are deposited. Deposits to a general account include premiums for life insurance and fixed annuities, plus assets in the fixed portfolios of variable annuities. Assets in a general account can be used to cover company expenses and are vulnerable to creditors' claims.

C. An asset test, if promulgated, should be set at one (1) percent of total general account assets of the life insurance company with an expressed plan to remain fixed at such a level for a period of at least six (6) years. The Agency is venturing into uncharted waters with the proposed asset test. Its full ramifications will not be understood until years after it is promulgated and effectuated. A period of six years will enable the Banks to evaluate the impact on its insurance company members during a period where a member's asset might be adjusted multiple times for insurance business reasons and only coincidentally in relation to the proposed Agency test, which will be applied on the basis of a three-year average.

D. The Agency should make clear that, in any application of an asset test for continued membership in a Bank, the Bank may rely upon data in the NAIC annual statements, including CMBS on multi-family residential mortgages.

E. While any asset test appears contrary to the multiple goals of the Bank Act and the congressional intention that insurance companies should be eligible members of the Banks, an asset test at, e.g., five percent (5%) would actually undermine the Bank Act and operations of the Banks. It is peculiar that the Agency should assert that it has "determined that the vast majority of those [insurance company] members would have been in compliance even with an asset ratio requirement set as high as five percent…"[24] when the better data available to the Banks indicates a much greater negative impact: "[T]he proposed ongoing tests would unduly affect insurance company members. … Twenty-one percent of P&C insurance company members would have failed an ongoing 1 percent test while 10 percent of life insurance company members would have failed at the 1 percent requirement. If the FHFA chose to require a higher percentage, such as 5 percent, the numbers of insurance company members that would have failed rises significantly to 46 percent for life insurance companies and 39 percent of P&C companies."[25] The disparity between the Agency and the Banks in the estimated impact of a five percent asset test itself indicates that no rule should proceed until a reliable estimate of impact becomes available based on a common understanding of what assets are to be counted and which sources of data will be and become the authorities for determinations of membership eligibility.

F. The Agency should address in its estimated impact of any asset test the degree of difficulty of an insurance company resuming membership following ineligibility arising from a failure of an asset test. The proposed rule "would specify that a Bank must calculate each member's and applicant's home mortgage loans-to-total assets ratio

[24] 79 Fed. Reg. 54848, at 54859.
[25] FHLBank Chicago Letter to FHFA re Proposed Membership Rule, October 20, 2014, p. 4.

using three-year averages for both the numerator and the denominator, with all numbers being as of the end of the preceding three calendar years."[26] Certainly the cost of monitoring and calculating the relevant asset ratio on a quarterly basis for the remainder of the year of noticed ineligibility will substantially add cost to member compliance with the proposed rule.[27] However, the FHFA Notice of Proposed Rulemaking does not contain the cost to either the Banks or insurance companies from the consequences of failing the proposed test. The current membership rules § 1263.30[28] prohibit readmission to membership for five years following redemption of all Bank stock. Bank stock generally has a 5-year redemption period. Thus, a life insurance company that fails to meet the test is prohibited from reapplying for membership, and obtaining advances, for at least 10 years. This would be a draconian penalty for failing to meet a test created by the Agency for an undocumented problem and unjustified by any provision of the Bank Act.

G. The current membership system already aligns FHLB advances with each insurance company member's relative commitment to the housing finance market. Since the amount of advances which can be drawn are limited by the amount of pledged collateral, companies which have little housing-related activity will be unable to borrow a significant amount. The collateral must be maintained throughout the term of the advance, hence further aligning the member, the Bank and the FHFA housing mission.

<u>FHFA Request # 4</u>: Section 1313(f) of the Safety and Soundness Act requires the Director of FHFA, when promulgating regulations relating to the Banks, to consider the differences between the Banks and the Enterprises (Fannie Mae and Freddie Mac) as they relate to: the Banks' cooperative ownership structure; the mission of providing liquidity to members; the affordable housing and community development mission; their capital structure; and their joint and several liability on consolidated obligations. The Director also may consider any other differences that are deemed appropriate. In preparing this proposed rule, the Director considered the differences between the Banks and the Enterprises as they relate to the above factors, and determined that the rule is appropriate. FHFA requests comments regarding whether differences related to those factors should result in any revisions to the proposed rule.[29]

A. The proposed rule does not take into account the Banks' mission of providing liquidity to members. The proposed rule focuses on the Bank's housing mission. If the Agency focused on the Banks' liquidity mission, the impact on both Banks and life insurance companies of nearly 50% of life insurance company members failing the 5% test and not being able to access advances for at least 10 years would have been evaluated. ACLI requests that the Agency specifically consider the impact on the Banks' mission of providing liquidity to members before proceeding with the proposed rule.

B. Importantly, the Banks will not extend new advances if the collateral requirements cannot be met by an insurance company member. Hence there is no risk to the Bank for new advances.

[26] 79 Fed. Reg. 54848, at 54858.
[27] See 79 Fed. Reg. 54848, at 54881.
[28] Ibid.
[29] 79 Fed. Reg. 54848, at 54868.

C. Safety and soundness issues pertinent here were addressed in the FHFA *Advisory Bulletin on Collateralization of Advances and Other Credit Products Provided by Federal Home Loan Banks to Insurance Company Members* [No. 2012–N–14]**.** The ACLI in that context and now here observes that the Banks enjoy the confidence that securities pledged as collateral obtain a perfected first priority security interest under the *Uniform Commercial Code* in all such collateral pledged by its insurance company members. There is no empirical justification to modify current statutory or regulatory guidance in order to achieve a higher level of perfection than already exists today. The Banks have mitigated the different risks associated with each membership group through prudent secured lending practices. All advances to insurance companies are fully-secured and managed to a zero-loss expectation by the Banks. Insurance company advances are primarily collateralized by high credit quality securities of commercial loans or CMBS of higher quality with readily available market prices. Both of these types of collateral are highly liquid and could be readily sold, or securitized quickly. Moreover, all collateral pledged by insurers to the Banks is physically held by them, creating a perfected first-priority security interest in the collateral. The Banks have never taken a loss on an advance in their 80-year history. During that time, the Banks effectively collaborated with state insurance regulators to manage three member rehabilitations without taking a loss on an advance. The Banks have been lending successfully to insurance companies on a conservative, fully-secured basis, consistent with the Federal Home Loan Bank Act since the system's creation in 1932.

<u>FHFA Request # 5</u>: FHFA will accept written comments concerning the accuracy of the burden estimates and suggestions for reducing the burden at the address listed above… Written comments are requested on: (1) Whether the proposed collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the proposed collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.[30]

The ACLI responds to each of the four enumerated elements of this question below but here makes the overall observation that the Agency cost estimates appear extremely low and also presumptuous about the implementation of the substantial new obligations inherent in the proposed rule. For example, the Agency cost estimates apparently are based upon the one percent (1%) asset test for insurance companies articulated in the proposed rule and ignore the likelihood of higher costs attending the imposition of a higher asset test factor and the requisite due diligence to ascertain compliance.

FHFA 5.1: Whether the proposed collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility;

ACLI: No. The collection of asset data is unnecessary for the proper performance of FHFA functions because neither the Bank Act nor Congress intends the FHFA to test Bank member assets for membership qualification purposes. Further, even assuming *arguendo* that the Agency promulgates the proposed membership rule, "[a] Bank shall perform the [required

[30] 79 Fed. Reg. 54848, at 54869-54870.

asset test] calculation..." Hence the possible collection of data might be necessary for *Bank* functions, not FHFA functions.

FHFA 5.2: the accuracy of FHFA estimates of the burdens of the collection of information;

ACLI: Agency estimates are not likely accurate, especially if an asset test factor other than one percent (1%) is utilized. There are many ambiguities about what assets will be included for the Bank calculation of qualifying insurance company assets, the extent to which existing data sources will suffice for such a test, and whether external auditing will need to commence or expand to satisfy membership asset test requirements.[31]

FHFA 5.3: ways to enhance the quality, utility, and clarity of the information collected;

ACLI: The Agency should make clear which insurance company assets will qualify for the proposed asset test, and the clarification should be based on the kinds of assets statutorily determined as acceptable collateral for advances.

FHFA 5.4: ways to minimize the burden of the proposed collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

ACLI: Insurance company self-certification of data without necessity for external third-party audit will diminish substantially the cost of the proposed collection of information. Life insurance companies engage in substantial self-certification, which is at the heart of the Own Risk and Solvency Assessment (ORSA) which, in turn, is part of the United States insurance solvency surveillance framework. ORSA is a set of processes constituting a tool for decision-making and strategic analysis. It aims to assess, in a continuous and prospective way, the overall solvency needs related to the specific risk profile of the insurance company. The Risk Management and ORSA Model Act is a similar insurance regulation that has been adopted in the United States by the NAIC. If necessary, the Agency and the Banks could rely upon insurance company self-certification for asset-testing requirements with confidence that insurers have practical, well-respected experience performing such activity.

~ End of Appendix ~

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[31] *See, also*, ACLI comment about inconsistencies in evaluating proposed rule impact at ACLI response (E) to FHFA Request # 3, *supra*, at Appendix page 10.