



STATE OF INDIANA

IDOI

MICHAEL R. PENCE, Governor

Indiana Department of Insurance

311 W. Washington Street, Suite 103

Indianapolis, Indiana 46204-2787

Telephone: (317) 232-2385

Fax: (317) 232-5251

Stephen W. Robertson, Commissioner

December 8, 2014

Alfred M. Pollard

Attn: Comments/RIN 2590-AA39

FEDERAL HOUSING FINANCE AGENCY

400 Seventh Street SW, Eighth Floor

Washington, D.C. 20024

Re: Notice of Proposed Rulemaking RIN 2590-AA39

Dear Mr. Pollard:

I write in response to your agency's proposed rule and request for comments, RIN 2590-AA39. The Indiana Department of Insurance (the "IDOI") has serious concerns about the current draft of the proposed rule because of the negative impact it will have on Indiana and the public at large.

Fundamentally, this proposed rule seeks to limit the twelve Federal Home Loan Banks' (the "Member Banks") ability to approve and retain insurance companies as members, which will result in a significant reduction in the Member Banks' ability to fulfill their federal statutory function to promote housing, jobs, and economic development. This policy seems to be in conflict with Executive Order 12866 (September 30, 1993), which encouraged a regulatory policy that recognizes the private sector and private markets as the best engine for economic growth.

The IDOI's four primary concerns involve the following aspects of the proposed rule:

- 1) The ongoing membership requirement of maintaining 1-5% of assets in home mortgage loans.
- 2) The restrictive definition of an "insurance company."
- 3) The idea of defining criteria for insurance company financial strength.
- 4) Changing a Member's district Member Bank based on a change in the Member's principal place of business.

ACCREDITED BY THE

NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

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Ongoing Membership Requirement

The IDOI is unaware of any reason for implementing the percentage of assets test for membership in a Member Bank. Institutions and their regulators should determine the appropriate asset mix for each business, given the economic climate. To institute restrictions on membership with no identifiable regulatory purpose is unnecessary and potentially beyond FHFA's statutory authority created by the Federal Home Loan Bank Act ("FHLBA"). Furthermore, the proposed rule does not set forth any "grandfathering" provisions, which would likely reduce membership in the Member Banks and restrict funds available to promote housing, jobs, and economic development. The IDOI urges FHFA to eliminate the percentage of assets test.

Insurance Company Definition

The proposed rule defines an insurance company as one "whose primary business is the underwriting of insurance for nonaffiliated persons or entities." However, the FHLB statute states that *any* insurance company is eligible to become a member. *See* FHLBA § 4. The IDOI respectfully submits that this limitation contradicts the statute and is therefore beyond the power of FHFA.

Furthermore, the regulation of insurance is a power primarily reserved for states. *See* 15 USCA § 1011-12. Under Indiana law, an insurer is "a company, firm, partnership, association, order, society or system making any kind or kinds of insurance . . ." Ind. Code § 27-1-2-3(x). The proposed regulation would impede upon this definition in a way not authorized by Congress. For FHFA to impermissibly restrict the definition of insurance would be an invasion of states' rights, and the IDOI recommends elimination of the definition.

Determination of an Insurance Company's Financial Condition

The proposed rule attempts to limit the benefits to only certain insurance companies when the enabling statute extends membership to *any* insurance company. *See* 12 U.S.C. § 1424(a)(1) (extending membership eligibility to "[a]ny building and loan association, savings and loan association, cooperative bank, homestead association, **insurance company**, savings bank, community development financial institution, or any insured depository institution" (emphasis added)) Furthermore, to allow an insurer to become a member and then subject it to certain criteria to enjoy the benefits of membership seem to additionally violate the FHLBA. Finally, as insurance regulators, the IDOI understands the extreme costs in time and materials needed to monitor an insurer's financial condition. The value to FHFA in limiting member benefits based on financial condition cannot equal these costs. The IDOI requests that FHFA withdraw this portion of the proposed rule.

Change in Region when a Member Changes Its Principal Place of Business

The proposed rule states that the proposed change would more accurately reflect the Member Banks' current practice. However, that has not been the observation of the IDOI. In our experience, FHLB membership is decided by the Member Bank at the time an insurance company becomes a member, and the company may or may not change its Member Bank if it changes its principal place of business. For an insurance company, a change of domicile can be a complex transaction completed on a tight timetable. If an insurance company needed to include a change in Member Bank as part of a relocation, it could provide a hurdle that prevents an entire transaction. This barrier to economic growth would be too great a cost for any perceived benefit to the Member Banks, and the IDOI encourages FHFA to eliminate this unnecessary provision.

We encourage FHFA to study this matter more fully before proceeding, including discussions with state insurance regulators regarding FHFA's concerns with respect to insurance companies, so that insurance regulators may help FHFA craft measures that (1) adhere to the letter and intent of the FHLBA; (2) respect states' ability to regulate insurance primarily; and (3) allow the private markets to increase housing, jobs, and economic development.

Sincerely,

A handwritten signature in black ink, reading "Stephen W. Robertson". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Stephen W. Robertson
Insurance Commissioner