



January 5, 2015

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

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

Dear Mr. Pollard:

On behalf of the South Carolina Bankers Association (SCBA), I appreciate the opportunity to comment on the Federal Housing Finance Agency's proposed rule RIN 2590-AA39. SCBA is a trade association that represents and often speaks on behalf of the 83 banks doing business in South Carolina that are our members. SCBA's member banks represent more than 99% of all deposits in South Carolina and many of them are also member FHLBanks. SCBA understands FHFA's intent through the proposed rule to ensure that FHLBanks remain focused on the housing portion of their mission; however, SCBA's position is that the proposed rule will actually inhibit the FHLBanks' ability to execute their mission and ultimately will reduce liquidity, tighten credit, and restrict the flow of funds for housing and economic development.

SCBA's primary concern is that the proposed rule creates a new on-going test for FHLBank membership requirements for existing and prospective members that would have the effect of reducing the availability and reliability of liquidity on which many of South Carolina's banks depend, making it more difficult for SCBA's member banks to deliver important credit to their communities. Additionally, the proposed rule further restricts membership by changing the statutory definition of insurance company and terminating membership of captive insurance companies, some of whom have been FHLBank members for more than 20 years. Finally, SCBA is concerned that the proposed rule changes statutory language enacted by Congress to make these changes.

### **On-Going Asset Tests for Membership Will Negatively Affect Liquidity and Credit**

The proposed rule revises the FHLB membership rules by imposing, for the first time, an on-going mortgage asset tests – with different tests for members of different sizes. As proposed, all present FHLB members would now be required to hold, on an ongoing basis, one percent of assets in “home mortgage loans” as defined by the FHFA in order to satisfy the requirement that an institution make long term home mortgage loans. Further, all depository institutions that are not

Community Financial Institutions (CFIs) – defined by FHFA as depository institutions at or below \$1.108 billion in assets – must also comply with an ongoing requirement that at least 10% of their total assets are in “residential mortgage loans” as defined by FHFA.

The proposal that these tests would now be ongoing is a dramatic change to the current membership test. The current test to ensure that eligible members make home mortgage loans is a statutorily-set one-time test upon application for membership. Now, a prospective member must demonstrate that it has such long-term mortgage assets on its books at the time of application but with the new rule they will be required to comply with an ongoing test – for the first time in history. As proposed, members found to be out of compliance (based on a rolling three year average) would be given one year to return to compliance. If the member remains out of compliance for two consecutive years, their membership would be terminated and would be cut off from all FHLB liquidity and services.

The effect of this membership requirement is that FHLB liquidity will be far less certain. An ongoing asset test will result in member banks being unable to be certain of their future ability to meet the tests in all market conditions and maintain their membership and borrowing ability, especially in times of financial stress when asset values can erode rapidly. Uncertainty over the ability to borrow will harm the member bank’s safety and soundness standing with their prudential regulator. Member banks will face reduced flexibility in balance sheet management as they strive to ensure they hold the required mortgage assets on their books, even if other financial regulators express concern over holding greater amounts of mortgage assets on balance sheets. With less certainty over future availability of liquidity, banks may pull back from financing certain projects and investments, harming the communities they attempt to serve. A community that might benefit from a bank’s growth or merger could suffer if that growth was stifled due to concerns over continued membership eligibility.

### **Captive Insurance Companies Should Remain Eligible for Membership**

An outright ban on captive insurance company membership not only runs counter to the clear language of the authorizing statute but would remove from the System members who are engaged in lending and other activities that provide a substantial benefit to their communities, as well as to the members of the FHLB System. Captive insurance company members often provide servicing activities to the other members of their Federal Home Loan Bank. Imposition of the new rule would put those services at risk if not eliminate them entirely. FHFA should closely examine actual activities of captive insurance companies with FHLB member banks to assess their positive impact within the FHLB system instead of outright banning their membership with no justifiable basis for doing so.

### **Only Congress Can Amend the Membership Definitions**

Beyond the language of the proposed rule and its impact is the fact that the membership requirements of both a one-time asset test and the definition of insurance companies are statutorily established by Congress. In short, the proposed rule amends current law rather than establishing safety and soundness regulations to support the statute and FHLBank mission. SCBA’s position is that only Congress can make these changes. In fact, over the past 25 years, Congress has acted by broadening access to FHLBank funding and liquidity by expanding membership eligibility. While Congress has stipulated that most members must meet certain asset-related eligibility requirements


to join an FHLBank, Congress has never sought to require continuous testing of such requirements or a percentage of assets to demonstrate a commitment to housing finance. The plain language of the statute along with Congress' past actions shows that only Congress can change the membership requirements.

## Conclusion

Under the current membership structure established by Congress, the Federal Home Loan Banks have proven to be a safe and sound business model that reliably supplies liquidity, through all market cycles, to a broad range of cooperative members for a variety of uses. Even during the nation's recent financial crisis, when disruptions to the capital markets made funding from other sources unavailable, the FHLBanks were a critical source of liquidity for us and other U.S. financial institutions.

FHLBank members serve the housing needs of their communities in a variety of ways. Some hold assets on their balance sheets that reflect a role in the residential housing market; others originate home mortgages and sell them into the secondary market; others may have a greater focus on community and economic development lending; and some may play a key role in small business lending. All of these activities help create the economic foundation for housing opportunity. These various roles that FHLBank members play in local economies strengthen the FHLBank system and should be embraced. As there will be certain negative effects of changing the membership requirements and there is no demonstrable need to do so, FHFA should not change the membership requirements of a system that so positively affects local communities

Sincerely,

A handwritten signature in black ink, appearing to read "Fred L. Green, III", with a long horizontal flourish extending to the right.

Fred L. Green, III  
President and CEO