

TUEBOR CAPTIVE INSURANCE COMPANY LLC

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Southfield, MI 48076

Alfred M. Pollard, Esq.
General Counsel
Federal Housing Finance Agency
400 Seventh Street SW
Eighth Floor
Washington, D.C. 20024

January 7, 2015

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

Dear Mr. Pollard:

I am writing on behalf of Tuebor Captive Insurance Company LLC (“Tuebor”) and its ultimate parent, Ladder Capital Corp (“Ladder Capital”), in response to the Notice of Proposed Rulemaking (“Proposal”) issued by the Federal Housing Finance Agency (“FHFA”) regarding membership in a Federal Home Loan Bank (“FHLB”).

Tuebor is a proud member of the FHLB Indianapolis (“FHLBI”). We are regulated by the Michigan Department of Insurance and Financial Services (“DIFS”) as an insurance company, and we are part of a corporate family dedicated to housing finance and community development. Since Tuebor would be impacted by the Proposal to a significant degree and in an unfavorable manner, we appreciate the opportunity to comment on it. More importantly, we look forward to continuing to work with the FHFA and FHLBI to ensure that membership policies and their implementation are properly calibrated to balance the various interests that the Proposal raises. In that regard, though we support the FHFA’s goal to ensure that the housing finance mission of the FHLB System is met, our conclusion is that the FHFA should withdraw the Proposal since the harm it will do will significantly outweigh any perceived benefits.

Tuebor’s Activities Demonstrate Its Dedication to the Housing Finance and Community Development Mission

Our starting point is Tuebor’s dedication to housing finance and community development and its adherence to the goals of the Federal Home Loan Bank Act (“FHLB Act”) and the FHFA’s regulations. Tuebor was originally granted membership in the FHLBI in July 2012, after extensive discussions with the FHLBI, an intensive effort by Ladder management to perform the research required to formulate a suitable business plan, and detailed reviews by the FHLBI and the Michigan DIFS that were supplemented with conversations with the staff of the FHFA.

Tuebor is an indirect subsidiary of Ladder Capital Finance Holdings LLLP (“LCFH”), which, along with Ladder Capital, is a co-guarantor of Tuebor’s obligations to the FHLBI. Ladder Capital is a leading commercial real estate finance company and is publicly traded on the New York Stock Exchange. Ladder Capital’s business is comprised of three major business lines: commercial and multifamily residential mortgage lending, investments in securities secured by first mortgage loans and investments in real estate assets. Ladder Capital and its

subsidiaries originate multifamily mortgage loans and commercial mortgage loans, which Tuebor purchases.

As of September 30, 2014, Tuebor had total investment assets of \$2.0 billion. This included \$484.3 million of multifamily residential and commercial mortgage loans, of which \$167.2 million or 34.5% were multifamily residential mortgage loans, and \$1.5 billion of commercial mortgage backed and U.S. Agency securities. Tuebor's portfolio of direct multifamily mortgage loans does not include any delinquent or defaulted loans.

Since its inception in July 2012, Tuebor has invested more than \$3.8 billion in multifamily residential and commercial mortgage loans, which includes over \$1.1 billion of multifamily residential mortgage loans and over \$2.7 billion of other commercial mortgage loans which include retail, office, hotel, and other property types supporting economic and community development. Over that same period, Tuebor has funded over \$630 million of loans secured by multifamily residential and commercial properties to facilitate the expansion, renovation, rehabilitation, and leasing-up of those properties. It has also provided liquidity for multifamily residential and commercial mortgage loans through its purchase of over \$300 million in U.S. agency securities (including GNMA CLCs, construction loans for FHA 221d(4)) and over \$2.5 billion in commercial mortgage backed securities.

Tuebor's FHLBI Borrowings are Conducted in a Safe and Sound Manner

We believe that any government action that would adversely impact businesses, borrowers and communities should begin with a comparative analysis of the documented harm and the specific benefits that would derive from such intervention. We have not seen any such analysis in connection with the Proposal. The conclusion of our own analysis is clear – the regulatory focus should be on underwriting the risk that the member creates, rather than blacklisting an entire category of members.

Tuebor's activities create no greater risk to the FHLBI than the activities of any of its other commercial bank, savings institution, credit union, insurance company or community development financial institution members. Indeed, the FHLBI's financial interests are better protected when Tuebor borrows because of the added underwriting protections that the FHLBI has adopted in regard to its captive insurance company members. That should be a critical factor from our perspective. Member risks that impact the ability of a FHLB to be repaid should be carefully underwritten, which is exactly what the FHLBs appear to have done quite well.

Tuebor has equity capital as of September 30, 2014 of approximately \$250 million. Moreover, as noted, the FHLBI has put into place policies and procedures designed specifically to underwrite the risk created by advances to its captive insurance company members. These policies require the FHLBI's captive members to: (i) over-collateralize all obligations to the FHLBI; (ii) pledge the collateral free of other encumbrances; (iii) obtain prior approval of the FHLBI before pledging collateral assets including first mortgage loans and securities; and (iv) provide annual audit reports of the captive member and its ultimate parent.¹ The FHLBI

¹ FHLBI Form 10-Q for the quarter ended September 30, 2014 at 61.

establishes a borrowing limit for its captive insurance company members, including Tuebor, on a case-by-case basis. This involves an individualized evaluation that takes into account a number of factors that may include the captive's financial condition, its collateral quality, its business plan, the existence of a parent guarantee and the captive's earnings stability. Most importantly, the FHLBI maintains custody or control of Tuebor's collateral, and two of its corporate parents guarantee repayment of Tuebor's obligations to the FHLBI.

Furthermore, the FHLBI has worked cooperatively with Michigan authorities to protect its interests in collateral provided to the FHLBI by Michigan insurance companies. In 2012, Michigan's state insurance code was expressly amended to provide that an FHLB's rights under a pledge or security agreement shall not be subject to a stay in the event of a Michigan insurance company insolvency proceeding.² The Michigan insurance code was also amended to generally protect an FHLB from voidable preference claims that could otherwise be asserted by a receiver.³

Tuebor and Ladder Capital Have Relied in Good Faith on Tuebor's Continuing Membership in the FHLBI

Tuebor's business strategy is based on its membership in the FHLBI. Accordingly, Tuebor and the Ladder Capital organization would be directly affected by the Proposal's adoption. Tuebor and Ladder Capital pursued Tuebor's membership in reliance on the understanding that Tuebor, being a Michigan chartered insurance company and regulated by the DIFS, was fully eligible for FHLB membership. Tuebor also relied on the expectation that following the approval of Tuebor's membership by the FHLBI, with the review of the FHFA, its membership and borrowing ability would continue so long as Tuebor acted in conformity with the statutory membership requirements and the conditions and underwriting criteria established by the FHLBI.

Based on these expectations, Ladder Capital contributed significant capital and resources to Tuebor. These commitments include approximately \$250 million in capital allocated to Tuebor, representing approximately twenty-five percent of Ladder Capital's total equity capital. Ladder Capital has also allocated staff, outside counsel and other resources to support the FHLBI relationship with the expectation that Tuebor would remain a member in the FHLBI.

The resources allocated to Tuebor have largely been invested in housing and community development-related assets. Approximately twenty-five percent of Tuebor's equity has been used to acquire FHLBI capital stock, which represents one of the least liquid assets on the Ladder Capital organization's balance sheet.

Membership in the FHLBI has become a valuable component of Tuebor's housing and community development mission and business plan. The Proposal, if adopted, would terminate

² Michigan Insurance Code, section 500.8115a(1)(b)(i).

³ Michigan Insurance Code, section 500.8115a(5)(b).

Tuebor's membership and its access to FHLBI advances and would force it to surrender its capital stock in the FHLBI, as well as the corresponding dividends it receives from the FHLBI.

The Proposal's Definition of Insurance Company is Not Appropriate or Supportable

The proposed exclusion of captive insurance companies is not appropriate or supportable. As discussed in-depth by several commenters,⁴ the FHLB Act expressly provides for "any" insurance company that is regulated by its state insurance regulator and meets the "makes long-term home mortgage loans" requirement to be eligible for FHLB membership. As is the case with other captive members, Tuebor is organized as an insurance company and is regulated by its state insurance regulator, the Michigan DIFS.

It appears to us that the FHFA is attempting to restrict membership eligibility by tailoring its own definition of insurance company to meet the FHFA's desired outcome, to exclude captive insurance companies. We are advised by counsel that such a restrictive approach is contrary to the express language of the FHLB Act, past Congressional actions and Congressional intent. Indeed, in 1989 and again in 2008, Congress addressed membership eligibility in the FHLB System by amending the FHLB Act, and on both occasions Congress expanded, rather than restricted, the types of institutions eligible for membership in an FHLB.

Perhaps most importantly, on November 17, 2014, a bipartisan group of 68 members of Congress wrote to FHFA Director Watt expressing concern regarding the Proposal, stating that it was likely to have "a profound adverse impact on the existing and prospective members and on the communities served by the system."⁵ The Members made clear that the determination regarding the types of institutions that are eligible for FHLB membership is a matter for Congressional action that is not the subject of regulatory discretion, stating:

Congress has retained its authority to determine the scope and nature of eligibility for FHLBank membership. Congress has frequently reviewed FHLBank membership and member access to the services the system offers. On multiple occasions, Congress has expanded the categories of eligible membership and facilitated access to the important funding the FHLBanks provide. As recently as four years ago, Congress adjusted FHLBank membership rules and did not choose to narrow eligibility for participation in the system, making its intent clear.

As a result, the Members urged the FHFA to reconsider the Proposal and begin a dialogue on this topic with Congress.

⁴ See Thomas P. Vartanian, Dechert LLP, letter to FHFA, October 31, 2014; John E. Bowman, Venable LLP, letter to FHFA, October 8, 2014; FHLB Pittsburgh letter to FHFA, October 30, 2014; and FHLB Chicago letter to FHFA, October 20, 2014.

⁵ See Representative Spencer Bachus letter to FHFA Director Melvin L. Watt, November 17, 2014.

We suggest that if the FHFA believes that it is necessary and appropriate to exclude captive insurance companies from membership, it should present its arguments for such an amendment to the FHLB Act, along with an analysis of the costs and benefits of such a step, directly to Congress for its consideration and action.

FHFA's Concerns Can Be Addressed by Less Drastic Means

The Proposal discusses several hypothetical scenarios supporting the FHFA's conclusion that captive insurance companies pose a safety and soundness risk. We are aware of no actual instances where these concerns have evolved into financial issues, safety and soundness concerns or enforcement actions by the FHFA.

For example, the Proposal discusses the possible rapid deterioration of a captive's financial condition which could cause an adverse effect on the FHLB System. But the Proposal does not identify, and we cannot think of, any instances where this has occurred. Nor does the Proposal explain why this risk is any higher in captive insurance companies than it is with other insurance companies or insured depository institutions. As far as we are aware, no captive insurance company has ever defaulted on an FHLB advance. Assuming, for the sake of argument, a captive insurer failed, an FHLB's claim to collateral provided by a captive is in no worse position than collateral provided by any other insurance company, especially when the FHLB maintains custody or control of the collateral.

The FHFA and the FHLBs have other less drastic means to address any concerns regarding captive insurance company members, without resorting to the expulsion of members in good standing whose membership allows them to promote the FHLB mission every day. While the expulsion process defined in the Proposal provides for a five year transition period, that approach is the same approach applied to members whose memberships have been terminated. A member is typically terminated for one of two basic reasons – failure to comply with the rules of membership or an election by the member to terminate. In Tuebor's case, neither is applicable – Tuebor has complied with the rules (while advancing the FHLB mission) and Tuebor does not want to end its FHLB membership.

Finally, FHLBs, as part of their underwriting process, are free to require that members provide relevant updated financial information as often as appropriate. Moreover, under the FHLB Act and FHFA regulations, reports of examination by state insurance authorities may be furnished by such authorities to the FHLBs and the FHFA upon request. The FHLBs have the ability to access any and all information they may need, and in our experience, they do just that to protect the interests of the FHLB. Sound collateral practices, robust loan documentation, collateral agreements, and other sound underwriting practices that focus on the risks presented by each individual relationship between the FHLB and its members are currently and should continue to be the way that FHLBs control membership risk.

Redefining the Principal Place of Business for Members Is Unnecessary

We believe the Proposal's redefinition of an insurance company's principal place of business should be reconsidered. The Proposal would, on a prospective basis only, establish new

rules for determining the principal place of business for insurance companies that do not have a home office, or do not meet the three-prong principal place of business test. We believe that an appropriate and less disruptive approach would be to allow an insurance company, to use its place of domicile for purposes of determining the district of its FHLB membership. This approach recognizes that the locus of statutory authority, regulation, supervision, and insolvency regime for an insurance company is in its state of domicile. The FHFA has emphasized the importance of FHLBs being familiar with the insurance laws of the domicile of its insurance company members. This consideration is clearly promoted by tying domicile to FHLB membership.⁶

Conclusion

If adopted, the Proposal would damage Tuebor's business and the borrowers and communities that it serves. We urge the FHFA to consider an approach that focuses more on sound underwriting standards and the risks created by individual members. Such an approach is more consistent with the inclusive approach to FHLB membership that Congress has undertaken in its amendments to the FHLB Act. An individualized approach focusing on sound underwriting standards would allow each FHLB, which is in a better position to evaluate its risks with respect to each member, to determine the status of its membership, rather than the FHFA.

We also suggest that the FHFA undertake a cost/benefit analysis before any action is taken on the Proposal. We feel it is imperative to evaluate the costs associated with both withdrawing liquidity from the home lending market from underserved areas and the costs to the captive insurance company members and their customers that rely on FHLB advances to fund their housing finance missions. Only after such costs are determined can any benefit to the FHLB System be measured. In view of the foregoing, we respectfully request that the FHFA withdraw its proposal to exclude captive insurance companies from FHLB membership.

Sincerely,



Marc A. Fox
Chief Financial Officer

⁶ See FHLB Chicago letter to FHFA, October 20, 2014; FHLB Cincinnati letter to FHFA, October 31, 2014.