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Memo To: Federal Housing Finance Agency

From: Ohio Department of Insurance

Date: January 12, 2015

Subject: 12 CFR Part 1263

Ohio appreciates the opportunity to comment on the proposed changes to 12 CFR Part 1263.

§1263.1 Definition of insurance company

The proposed definition of "insurance company" in the Notice of Proposed Rule Making ("NPRM")[1] is without authority and is at odds with the clear intent of Congress as manifested in passage of the Federal Home Loan Bank Act of 1932.

The term "insurance company" is expressly and purposefully included in the statute.[2] The placement by Congress of "insurance company" in the statute has been left undisturbed for over 80 years. The Federal Housing Finance Agency ("FHFA") attempts to substantially deviate from the long-accepted use and understanding of "insurance company" for the stated purpose of barring captive insurance companies from FHLBank membership. The new definition purports to rectify a problem that has not been developed in the NPRM.[3] FHFA's claim is "that in some cases the primary, or sole, motivation for those captives being created has been to become members in order to serve as a funding conduit through which a parent or affiliate of the captive which is not itself eligible for Bank membership, may gain access to Bank advances."[4] Later it is asserted in the NPRM that "several real estate investment trusts ("REITs"), which are not eligible to become members, have established captive subsidiaries that then became Bank members."[5] The comments to the NPRM state that "[a] number of those captives then obtained advances in dollar amounts so large that they appear to have no relationship to the operations of the captive and appear to flow to the REIT's."[6]

A more narrowly tailored remedy should achieve the goal of the FHFA to prohibit use of captive insurance companies to transfer funds into entities that are not otherwise eligible for FHLBank membership. To accomplish the goal, perhaps the FHFA should establish, in the regulation, final approval authority over membership requests by captives not affiliated with an entity that is otherwise eligible for FHLBank membership. This type of approach should ease the concerns the FHFA has mentioned in their comments.

It is not prudent to ban all captive insurance companies from FHLBank membership when only a small subset of captive insurance companies causes the concern. A more targeted and proportional approach is to prohibit FHLBank membership for those captive insurance companies owned by entities FHFA has

[1] 79 Fed. Reg. 54848 (September 12, 2014); RIN 2590-AA39 [hereinafter NPRM].
[2] *See* 12 U.S.C. § 1424(a)(1)
[3] NPRM at 54851
[4] Id. at 54854
[5] Id. (emphasis added)
[6] Id. (emphasis added)

determined to be misusing affiliated captive insurance companies. This could be accomplished by giving the FHLBank additional authority to monitor the ultimate destination of the funds derived from the advance. Potentially, this could be handled as a matter of contract, or in the resolution of membership passed by the Board of Directors of the FHLBank. The NPRM uses a blunt instrument when a surgical tool is more appropriate.

Additionally, these comments intend to bring to the attention of FHFA that state regulators of captive insurance companies have mechanisms in place to deal with the problems you are seeking to remedy. The proposed rule should recognize the importance of state regulators and allow flexibility for the FHLBanks and state insurance regulators to use existing regulations or to work in concert to develop more appropriate regulations. This is not a case where one size fits all.

The Department appreciates the opportunity to comment on the NPRM. The Ohio Department of Insurance has enjoyed a productive relationship with the Federal Home Loan Bank of Cincinnati. The Bank's leadership has been open to dialogue on issues we may see differently. The Department encourages FHFA to continue this tradition of open-minded consideration.