



American Insurance Association



REINSURANCE ASSOCIATION OF AMERICA

January 12, 2015

**VIA AGENCY WEBSITE ([www.fhfa.gov/open-for-comment-or-input](http://www.fhfa.gov/open-for-comment-or-input))**

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

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

Dear Mr. Pollard:

The Federal Housing Finance Agency (FHFA) published a notice of proposed rulemaking (NPR) in the Federal Register (79 Fed. Reg. 54848 – 54881) on September 12, 2014, proposing amendments to the current rules governing Federal Home Loan Bank (FHLBank) membership requirements. The American Insurance Association (AIA)<sup>1</sup> and the Reinsurance Association of America (RAA)<sup>2</sup> appreciate the opportunity to provide comments on the NPR. Some of our respective companies are also FHLBank members or may be contemplating membership in the future. As a result, both AIA and RAA have significant interest in the NPR.

We respectfully request that the FHFA reconsider three provisions of the NPR, and return to the prevailing standards or, at a minimum, revise the NPR in order to lessen the impact of those provisions on property-casualty insurance and reinsurance companies. While supposedly designed to address problems involving captive insurers, these amendments could have ramifications well beyond their intended target. There is no persuasive reason to disrupt or discourage the current membership rules for insurance companies generally in order to address

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<sup>1</sup> AIA represents approximately 300 leading U.S. property-casualty insurance companies, which write insurance across the country and around the world. In the U.S., AIA companies write more than \$117 billion annually in premiums in all lines of property-casualty insurance.

<sup>2</sup> The RAA is a national trade association representing reinsurance companies doing business in the United States. RAA membership is diverse, including reinsurance underwriters and intermediaries licensed in the US and those that conduct business on a cross border basis. The RAA also has life reinsurance company affiliates.

a more specific FHFA concern. Our specific comments on these amendments are set forth below.

1. The NPR establishes – for the first time – an ongoing quantitative threshold requirement of 1 – 5 % of home mortgage loan assets that could disenfranchise current FHLBank insurance company members and create significant barriers to entry for those insurance companies that are considering membership.
2. The NPR proposes to alter the determination of FHLBank district membership for insurance companies by differentiating the manner in which an insurer’s “principal place of business” is defined.
3. The NPR would create conflict with state law about the definition of an “insurance company,” in contravention of the McCarran-Ferguson Act, establish a precedent for future limitations on insurance company membership, and violate long-standing Congressional intent, as expressed in the Federal Home Loan Bank Act.

**I. THE PROPOSED RULE’S ONGOING HOME MORTGAGE LOAN ASSET THRESHOLD MAY DISENFRANCHISE EXISTING INSURANCE COMPANY MEMBERS AND CREATE A BARRIER TO ENTRY FOR OTHERS.**

12 CFR § 1263.9 requires, at the time of application, that the company “originates or purchases long-term home mortgage loans” to demonstrate eligibility for FHLBank membership. As this “makes” test has been applied, there is no specific quantitative threshold and no ongoing application of the test. Equally important, decisions on membership have been generally left to the discretion of the individual FHLBanks. The NPR revises 12 CFR § 1263.9 to condition FHLBank membership on the *ongoing* maintenance of 1 – 5% of assets in residential mortgage loans. The FHFA’s reasoning for this new quantitative threshold is that it constitutes a minimum sufficient commitment to housing finance for FHLBank membership.

However, insurance company balance sheets are very different than those of insured depository institutions. These differences would make it difficult for the insurance companies to comply with a set percentage residential mortgage asset requirement, particularly one that is applied on an ongoing basis. As a result, the suggested changes to FHLBank membership could significantly restrict insurance company membership in and use of the FHLBank System. This restriction would also effectively serve as a barrier to FHLBank membership for insurance companies that would be otherwise interested.

Restrictions that deter financially strong insurers from participating as FHLBank members could impede the fragile housing market’s ongoing recovery. Insurance companies have played and continue to play an important role in the housing finance market and in driving economic development in communities across the United States. Insurance companies hold substantial amounts of single and multifamily mortgages and mortgage debt securities on their balance sheets, which support the FHLBank’s primary housing finance mission. Insurance companies

also invest in Low-Income-Housing Tax Credits, which are an important resource for creating affordable housing in the United States. The proposed restrictions would also limit funding options for insurance companies, in turn limiting the ability of FHLBank insurance company members to further provide needed liquidity to mortgage and housing-related assets.

Currently, 295 insurance companies are members of the FHLBanks. Insurance companies are an integral part of the FHLBank System, representing 12.4 percent of outstanding combined advances and 10.4 percent of FHLBank capital stock as of September 30, 2014.<sup>3</sup> In addition, insurance companies rely on FHLBank products for contingent liquidity planning, managing high impact liquidity events, and reducing risk through enhanced asset liability management. A decrease in involvement by insurance companies would take significant liquidity out of the FHLBank System, making borrowing for other institutions more expensive. The advances made to FHLBank insurance company members are conditioned on providing collateral, thus providing security to the FHLBank system.

Insurance companies also play an integral role in the FHLBanks community development efforts. Insurance companies are active participants in the FHLBanks' Affordable Housing Program (AHP). The AHP is one of the largest private sources of affordable housing grant funding in the United States, as well as the FHLBanks' Community Investment Program (CIP), which offers below market rate advances to members for financing housing and economic development benefiting low-and moderate-income families. Artificially limiting membership through an arbitrary quantitative threshold would reduce much needed funding for these effective programs. We respectfully urge the FHFA to reconsider the quantitative threshold and to restore the flexibility currently embedded in 12 CFR § 1263.9.

## **II. INSURANCE COMPANIES SHOULD BE SUBJECT TO FHLBANK DISTRICT MEMBERSHIP DETERMINATIONS THAT ARE TRANSPARENT AND ASSURE EQUAL TREATMENT AMONG MEMBERS.**

The NPR adds new provisions addressing how the Banks "should determine the 'principal place of business' for insurance companies." (79 Fed. Reg. at 54851). According to the NPR preamble, "the Banks would use this provision only if an institution does not have an actual 'home office' established under the laws of its chartering statute, or it has such a 'home office' but does not conduct business operations from that location, or it cannot satisfy the three-part test of proposed § 1263.19(c) for designating its principal place of business." (79 Fed. Reg. at 54865). It is unclear how this proposed revision modifies the operation of this requirement. Historically, an insurer's principal place of business ("home office") under FLHBank regulations has been construed as the company's state of domicile. Under the new construction, the FHLBank can, under certain circumstances, make the determination of principal place of business based on predominant business operations and a totality of the circumstances inquiry. (79 Fed. Reg. at 54879).

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<sup>3</sup>FHLBank Combined Financial Report for Q3 2014 (Tables 3, 41 and 42) (available at [http://www.fhlbof.com/ofweb\\_userWeb/resources/14Q3end.pdf](http://www.fhlbof.com/ofweb_userWeb/resources/14Q3end.pdf)).

By effectively determining that the existing basis for establishing an insurance company member's principal place of business is "insufficient," the NPR introduces uncertainty and complexity into the process. As applied to insurance company business models, the outcome of this determination may result in the FHLBank interfacing with multiple state regulators rather than focusing on those regulators within their jurisdictional parameters. It will also result in differentiated treatment among FHLBank members, which is contrary to the FHFA's regulatory standards. We would urge the FHFA to either clarify this new provision or confirm that the existing construction (state of domicile) remains appropriate.

### **III. ANY REGULATORY DEFINITION OF "INSURANCE COMPANY" SHOULD BE CONSISTENT WITH STATE DEFINITIONS AND CONGRESSIONAL INTENT.**

Noting that the Federal Home Loan Bank Act does not define "insurance company," the NPR proposes to define the term as "a company whose primary business is the underwriting of insurance for nonaffiliated persons or entities." (79 Fed. Reg. at 54871) The FHFA maintains that "the principal effect of this provision would be to prohibit captive insurers from becoming Bank members," (79 Fed. Reg. at 54853) and would address the FHFA's concern that captive insurers were serving as conduits for FHLBank advances to ineligible affiliated companies.

The AIA and RAA respectfully submit that the definition may have unintended effects. Fundamentally, section 1422 of the Bank Act states that "[a]ny...insurance company...shall be eligible to become a member of a Federal Home Loan Bank." The intent of Congress on insurance company membership in the FHLBank System has thus been clear and unequivocal – insurance companies have been statutorily allowed membership in the FHLBanks since the System's inception in 1932. At no time since then, in spite of numerous other opportunities to review and amend the Bank Act, has Congress decided to restrict insurance company membership through federal definition or otherwise. Accordingly, any fundamental alterations to the FHLBank System should be done with Congressional guidance. The Administration and Congress have been undertaking a comprehensive review of the housing finance system in the United States, including an examination of the FHLBanks' role in providing liquidity to the financial system. The NPR definition is therefore premature, and assumes that Congressional intent has changed regarding the treatment of insurance companies.

In addition, the proposed NPR term may not square with state definitions of what constitutes an insurance company. To the extent that the federal term is inconsistent with the scope of state authority, this will generate confusion and undercut the primary purpose of the McCarran-Ferguson Act's delegation of regulatory responsibility over the business of insurance to the states. This is particularly problematic in a situation like this one, where federal law has not spoken specifically on the subject of insurance regulation, leaving intact the reverse-preemption preference provided to state insurance regimes under the McCarran-Ferguson Act. Equally important, the NPR proposed definition is not self-executing, but permits the FHFA to determine when a company is "primarily" conducting insurance underwriting for nonaffiliated individuals or entities. In sum, the AIA and RAA cannot support the NPR definition's inclusion,

as it creates a precedential standard that could generate confusion and inconsistency with state insurance law, and could lead to further erosion of insurance company membership in FHLBanks in the future.

## **CONCLUSION**

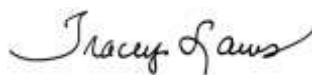
The FHFA has not presented any compelling reason for imposing the amendments that are a source of concern to the undersigned insurance trade associations and their respective member companies. The current membership requirements have served the FHLBanks and insurance companies well for many years. Absent Congressional guidance, there is no reason to alter them, particularly where they would result in the erosion of insurance company participation in the process. We appreciate the opportunity to comment.

Respectfully submitted,



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