RIMS
the risk management society™

OFFICERS & DIRECTORS
PRESIDENT
Richard J. Roberts, Jr., RF, ARM-e, CPCU, ALCM, MBA
Ensign-Bickford Industries, Inc.

VICE PRESIDENT
Julie C. Pemberton, ARM
Outerwall, Inc.

TREASURER
Robert Cartwright, Jr., CRM
Bridgestone Retail Operations, LLC

SECRETARY
Jennifer Santiago, ARM
Novartis Corporation

DIRECTORS
Gordon L. Adams
Tri-Marine International, Inc.

Gloria Brosius
Farm Credit Council Services, Inc.

Al Gorski
Orange County Transportation Authority

Leslie Lamb
Cisco Systems, Inc.

Steve Pottle
York University

Frederick J. Savage, FCII, ARM
Chevron Corporation

Lori Seidenberg, RF, ARM
HCP Pacific Asset Management, LLC

Janet Stein
University of Calgary

Robert Zhang
IKEA (China) Investment Co., Ltd.

EX OFFICIO
Carolyn M. Snow, CPCU
Humana Inc.

EXECUTIVE DIRECTOR
Mary Roth, ARM
RIMS
mroth@RIMS.org

January 12, 2015

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

Re: Proposed Rulemaking (RIN 2590-AA39) – Members of Federal Home Loan Banks; Comments of the Risk and Insurance Management Society, Inc.

Dear Mr. Pollard:

The Risk and Insurance Management Society, Inc. ("RIMS") is pleased to provide these comments to the Federal Housing Finance Agency ("FHFA") concerning the referenced proposed rulemaking. As the preeminent organization dedicated to advancing the practice of risk management, RIMS, the risk management society™, is a global not-for-profit organization representing more than 3,500 industrial, service, nonprofit, charitable and government entities throughout the world. RIMS' members routinely use captive insurance companies to assist them with risk management. RIMS opposes the FHFA's proposal to define the term "insurance company" in a manner that would prohibit a captive insurance company from being a member of a Federal Home Loan Bank ("Bank").

The FHFA proposes to prohibit all captive insurance companies from being a member of a Bank by defining an "insurance company" as "a company whose primary business is the underwriting of insurance for nonaffiliated persons or entities." But doing so would run counter to the approach that has long been used to evaluate the eligibility of an insurance company to become a member of a Bank – an approach that largely relies on state insurance regulators to assess an insurance company's financial condition.

The proposed prohibition runs counter to the way the financial condition of insurance companies has historically been assessed for purposes of membership in a Bank.

The McCarran-Ferguson Act provides that the states are the primary regulators of the "business of insurance," defined to include the underwriting of insurance and reinsurance by insurance companies, and that remains the case today. In the mid-1990s, the Federal Housing Finance Board (predecessor to the FHFA) finalized regulations that contain the eligibility requirements currently used for Bank membership. In a 1995 proposed rule, the Board noted that the "differences between the regulatory scheme for insurance companies and the regulatory scheme for insured depository institutions has led the Finance Board to propose a separate set of financial condition standards for insurance company applicants." The final rule, released in 1996, further explained why the eligibility requirements for insurance companies differ from those for insured depository institutions:

> Insurance companies are subject to state, not federal, regulation and, therefore, the standards used to inspect and regulate insurance companies from state to state are not uniform. Every United States insurance company is subject to examination and regulation by the state insurance department in its domiciliary state, as well as to some level of regulation by the state insurance department in each state where the insurance company applicant is licensed to do business. *State insurance laws are similar to federal banking laws in that they require the appropriate state regulator to monitor whether the insurance company has complied with minimum capital and reserve, financial condition, asset valuation and various consumer-related requirements.*
>
> While not all states have yet [as of 1996] adopted the NAIC capital standards, the Finance Board believes that these standards are a useful measure of an insurance company's financial condition. *Satisfaction of these standards, as well as the applicant's minimum statutory and regulatory capital requirements, should be sufficient to deem an insurance company applicant in compliance with the financial condition requirement of § 933.6(a)(4) [now 1263.6(a)(4)] . . . [T]he applicants also will be required to be subject to inspection and regulation by an NAIC-accredited regulator, to ensure a minimum degree of inspection and regulation.* (Emphases added.)

Thus, Section 1263.6(a)(4) of the FHFA regulation requires an applicant for membership in a Bank to demonstrate that its "financial condition is such that advances may be safely made to it . . ." And in the case of insurance companies, the regulation relies on state insurance regulators to assess an insurance company's finances: "An insurance company applicant shall be deemed to meet the financial condition requirement of [Section] 1263.6(a)(4) if, based on the information contained in the applicant's most recent regulatory financial report filed with its appropriate regulator, the applicant meets all of its minimum statutory and regulatory capital requirements and the capital standards established by the National Association of Insurance Commissioners." Consequently, as long as an insurance company – including a captive insurance company – satisfies the applicable statutory and regulatory capital requirements set forth by a state of domicile and any other requirements, it is eligible for membership in a Bank.

But by carving out captives from the definition of insurance company because of "supervisory concerns," the FHFA would be questioning the ability of state insurance regulators to regulate a whole category of insurance companies.

Insurance companies are permitted to be members of the Banks as a way to diversity the membership base. Banning captive insurance companies from membership would lessen that diversity. Additionally, we understand that at least one captive insurance company that is a member of a bank services the loans of other members of a Bank, which helps both the lender-members and mortgage customers.

Captives are subject to significant state insurance regulation.

Captive insurance companies often underwrite the risks of both affiliated and unaffiliated companies. Just like other types of insurance companies, captive insurance companies are subject to state regulatory requirements regarding supervision, solvency, receivership and liquidation. The fact that a captive insurance company insures affiliates does not mean that it is not subject to regulatory requirements designed to ensure that it is financially sound.

In states that are significant captive domiciles, such as Vermont, captive insurance companies are substantially regulated. Vermont has advanced, stringent captive laws, along with a dedicated captive regulatory and examination staff, which should satisfy any supervisory concerns.

Conclusion

We urge the FHFA to withdraw the portion of the proposed rule that would prohibit a captive insurance company from being a member of a Bank. Captive insurance companies are regulated by the states, and the regulatory approach to assessing qualifications for an insurance company's membership in a Bank should remain intact.

Sincerely,

Rick Roberts
RIMS President

1065 Avenue of the Americas,13th Floor, New York, NY 10018
t 212.286.9292 ■ f 212.655.5931 ■ www.RIMS.org