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October 24, 2016

Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
Office of Financial Analysis and Modeling
400 7th Street, SW
Ninth Floor
Washington, DC 20219

Re: (RIN) 2590-AA84
Notice of Proposed Rulemaking; Request for Comment
Federal Home Loan Bank New Business Activities

Submitted via Electronic Delivery

Dear Mr. Pollard:

On behalf of the National Association of Home Builders (NAHB), I appreciate the opportunity to provide comments on the Federal Housing Finance Agency's (FHFA) Notice of Proposed Rulemaking (NPR) on Federal Home Loan Bank New Business Activities.

NAHB is a Washington, D.C.-based trade association representing 140,000 members in more than 700 affiliated state and local associations in all fifty states, the District of Columbia, and Puerto Rico. NAHB's membership includes, among others, those who design, construct, and supply single family homes, build and manage multifamily projects, and remodel existing homes. Our builders are proud to construct over 80 percent of homes produced each year that provide shelter for this Nation's families.

BACKGROUND

The Federal Home Loan Banks (FHLBanks) are key participants in the housing finance market in the United States. Their mission is to supply low-cost funds to their members that make affordable residential mortgage loans to home buyers and provide financing for economic development of neighborhoods and communities. Ever since the FHLBanks were chartered by Congress in 1932, they have been a steady and reliable source of credit for home loans and affordable housing investments. Today, the 11 FHLBanks have approximately 7,200 members that depend on them to make housing and development financing available in all economic environments. NAHB believes the FHLBanks are critical to the housing finance system and feels they should play a significant role in the future. The

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FHLBanks are particularly important to community banks that provide a significant portion of financing to small businesses, including NAHB's home builder members.

The FHFA regulates and supervises all aspects of the operations of the FHLBanks. The agency is responsible for ensuring the FHLBanks operate in a safe and sound manner, maintain appropriate levels of capital and support their housing finance and community development mission. FHFA's supervision of the FHLBanks includes the regulation of when and how a FHLBank must seek approval by FHFA to engage in new business activities.

A FHLBank is required by statute to submit a New Business Activity Notice (NBA Notice) to FHFA whenever it seeks to undertake, transact, conduct, or engage in an activity not previously undertaken, transacted, conducted, or engaged in by that FHLBank. The current statute also requires an NBA Notice if the activity proposed will entail materially different terms and conditions, such that it involves the acceptance of new types of collateral or presents risks that neither the FHLBank nor its members have previously and regularly managed.

The current NBA regulation has been in effect since 2000 with no changes. However, in response to a Notice of Regulatory Review issued by FHFA in 2013, the FHLBanks, collectively, offered recommendations for changes to the NBA regulation intended to improve the FHLBanks' effectiveness and reduce their regulatory compliance burden. In December 2015, FHFA published a Notice of Proposed Rulemaking on Acquired Member Assets (AMA) and the FHLBanks, as well as other housing industry participants including NAHB, took the opportunity to propose revisions to the NBA regulations with regard to AMA. FHFA has incorporated in the NPR aspects of the suggested revisions to the NBA regulation received in response to the Notice of Regulatory Review and the Notice of Proposed Rulemaking on Acquired Mortgage Assets.

The NPR revises the scope of activities that will require the submission of an NBA Notice; limits the scope of requirements when an NBA Notice is required; and establishes new timelines for FHFA to respond to an NBA Notice. Specifically, the acceptance of new types of advance collateral and new activities that do not entail the management of "material risks" by the FHLBank would no longer be considered new business activities and would not require NBA Notices.

The current regulation defines a new business activity as one that entails risks not previously and regularly managed by the FHLBank or its members. The NPR suggests adding a materiality provision to the definition of a new business activity such that an NBA Notice would be required only if a new activity entails "material risks" that have not been previously and regularly managed by a FHLBank and proposes eliminating the reference to a FHLBank's members. FHFA does not define "material" in the NPR. The agency specifically notes that a determination of "material risks" is subjective and a FHLBank would be expected to consult with FHFA early in the process to determine whether the risk associated with a potential activity warrants the submission of an NBA Notice. FHFA retains the ability to assess the impact of these new activities through its regular examination process.

FHFA also proposes to change the timeline for its review of NBA Notices in order for FHLBanks to make some new activities available to their members within a shorter time period.

NAHB COMMENTS

NAHB is pleased that FHFA is proposing steps to ease the compliance burden regarding NBA Notices. NAHB believes FHFA's proposal is a thoughtful attempt to allow the FHLBanks to be more innovative and responsive in addressing member needs. In general, the proposals should reduce barriers that may deter FHLBanks from engaging in activities that could benefit their members and the housing industry.

Exclude Acceptance of New Types of Advance Collateral from Definition of New Business Activity

NAHB believes excluding the acceptance of new types of advance collateral from the NBA Notice requirement provides significant flexibility to a FHLBank to support its members and housing associates by eliminating the burden of prior, perhaps lengthy, regulatory review of an NBA Notice as long as the collateral is legally permissible. Of particular importance to NAHB is the acceptance of acquisition, development and construction (AD&C) loans as collateral against advances. Some NAHB members continue to face challenges finding AD&C financing. To date, we understand that construction loans have been accepted as advance collateral by as many as four FHLBanks on a very small scale under the category of Other Real Estate Related Collateral. NAHB is hopeful that if more FHLBanks accepted AD&C loans as collateral against advances, more member banks would be incented to offer AD&C financing to home builders. To the extent that most FHLBanks have shied away from allowing AD&C financing as collateral for advances, the elimination of an NBA Notice and approval from FHFA in order to accept AD&C loans as advance collateral could be a step toward increased member engagement in this activity. NAHB would like to see more FHLBank members engage in AD&C lending and we believe removing new types of advance collateral from the NBA Notice requirement could encourage such activity because more FHLBanks would consider accepting AD&C loans as advance collateral.

NBA Notices Would Be Required for Activities that Entail Material Risks Not Previously and Regularly Managed by the FHLBank

FHFA's addition of a materiality consideration to the definition of a new business activity is a welcome modification. The proposal to require an NBA Notice only when an activity entails a "material risk" that has not been previously and regularly managed by the FHLBank empowers the FHLBank to assess the potential risk of new activities or revisions to existing activities using its own risk management tools and tolerances and make a determination about the need for an NBA Notice.

NAHB does not believe FHFA needs to define "material" for the FHLBanks. A FHLBank is required to have in effect, at all times, an enterprise-wide risk management policy that addresses the FHLBank's exposure to credit risk, market risk, liquidity risk, business risk and operations risk. NAHB believes this enterprise-wide risk management function is sufficiently well-developed and established at each FHLBank that in considering new activities or modifications of existing activities, a FHLBank can rely on its own enterprise-wide risk management functions to determine whether the risk of the activity is material or not. For this reason, NAHB would not support an expectation or requirement that a FHLBank must review a contemplated activity with FHFA for an opinion on whether that activity might warrant the submission of an NBA Notice. For any review to be meaningful, FHFA would need a full

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understanding of the proposed activity and an understanding of the risks presented by the activity. This would undermine the beneficial intent of the proposal which is, in part, to allow FHLBanks the flexibility to initiate and modify some activities without prior, and perhaps lengthy, FHFA approval.

NAHB believes it is sufficient to allow the individual FHLBanks to gauge whether a new or modified activity poses a material risk, since FHFA has the authority as regulator of the FHLBanks to assess whether new activities pose a material risk or may impact the safety and soundness of a FHLBank through the regular examination process.

FHFA Proposes to Revise the Regulation to Require More Prompt Decisions on NBA Submissions

The current NBA regulation allows FHFA 60 days to respond to the initial submission of an NBA and, if it does not respond, the FHLBank may commence the proposed activity. The process allows additional time for review depending on FHFA's response. This lengthy review timeline impedes the ability of a FHLBank to offer new products or services to its members in an expeditious manner and seems particularly unwarranted when the new product or service is one that already has been approved for use by one or more of the other FHLBanks or is merely a modification or variation of a product or service already being utilized by the FHLBank.

The proposed revision would require FHFA to respond to NBA Notice submissions within 30 business days. If the FHFA does not respond with one of three actions by the 30th business day, i.e., approve the proposed NBA; deny the proposed NBA; or inform the FHLBank that the activity raises an issue that requires further evaluation, the NBA Notice shall be considered approved and the FHLBank may proceed to engage in the new activity. If FHFA determines the request raises new legal or policy issues that require further evaluation, then the agency is allowed 80 days for review.

NAHB is pleased the NPR would require a FHLBank to indicate whether the proposed activity is a modification to a previously approved activity for that FHLBank or is an activity that has been approved for any other FHLBanks. The preamble to the NPR suggests that activities already approved for other FHLBanks or modifications of an activity FHFA already has approved for a FHLBank will receive an expedited decision on an NBA Notice submission. However, the regulatory language for the proposed rule does not specify an expedited review for such activities.

NAHB believes the regulatory language in the proposed rule should explicitly state that an activity already approved for other FHLBanks should not require an extended review period beyond the initial 30 business days following the NBA Notice Date. An activity already approved for other FHLBanks should not raise significant new policy issues that require further evaluation.

The NPR allows for the Deputy Director to approve NBA Notices, but also provides that the Director has the right to modify, rescind, or supersede any approval granted. The uncertainty that this would impart on a decision granted by the Deputy Director undermines the intended benefits of this proposed change. NAHB recommends that the Director should approve the activity before a final approval is granted to the requesting FHLBank.

NAHB Urges FHFA to Consider Additional Exclusions from the NBA Definition

NAHB would like to reiterate two recommendations from our comment letter dated April 15, 2016 filed with FHFA in response to the Notice of Proposed Rulemaking and Request for Comment on Acquired Member Assets. We urge FHFA to exclude from the definition of NBA the purchase of any AMA product that is insured or guaranteed by a federal government agency (i.e. Federal Housing Administration, Department of Veterans Affairs, or U.S. Department of Agriculture's Rural Housing Service). These products carry no credit risk to a FHLBank and should not need NBA approval.

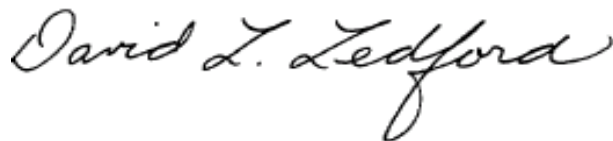
NAHB also urges FHFA to waive an NBA Notice requirement when a FHLBank already is engaging in one or more AMA programs and wants to begin to engage in a variation of the AMA program that is approved and in use by another FHLBank. We are pleased that FHFA has indicated this situation may warrant an expedited review. However, the risks presented by AMA products should be well-known by the FHLBanks and FHFA and the approval process, therefore, should be unnecessary. NAHB believes a detailed notice is excessive when FHFA can monitor and supervise the use of the AMA by the FHLBank through its examination and oversight authority and prevent the delay that may preclude a FHLBank from responding promptly to its members' needs.

CONCLUSION

NAHB believes FHFA has proposed positive steps toward streamlining the NBA Notice process, however, we encourage FHFA to consider our suggested enhancements in light of its statutory authority to supervise and regulate all activities of the FHLBanks on an ongoing basis.

Thank you for your consideration of NAHB's comments on this Request for Input. If you have questions, please contact Becky Froass, Director, Financial Institutions and Capital Markets, at 202-266-8529 or bfroass@nahb.org.

Sincerely,



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Housing Finance and Regulatory Affairs