

October 24, 2016

Submitted Electronically

Alfred M. Pollard, Esq.
General Counsel
Attn: Comments/RIN 2590-AA84
Federal Housing Finance Agency
400 7th Street, SW
Washington, DC 20219

Re: Comments/RIN 2590-AA84; Federal Home Loan Bank New Business Activities

Dear Mr. Pollard:

On behalf of the undersigned Federal Home Loan Banks (**FHLBanks**), we appreciate this opportunity to comment on the proposed rule on new business activities¹ (**Proposal**) issued by the Federal Housing Finance Agency (**FHFA**).

The FHLBanks commend the FHFA for its thoughtful Proposal. We believe that if the FHFA adopts the proposed enhancements to the New Business Activity (**NBA**) regulation² in a final rule (**Final Rule**), the NBA process will be enhanced without adversely affecting the safety and soundness of the FHLBanks.

We offer the following comments to further the FHFA's objectives in the Proposal.

Discussion of Comments

1. Times Should Be Measured in Calendar Days.

The FHFA explains in the preamble that it adopted the business day standard for the Proposal so that each notice filing would have an equal amount of time.³ The FHLBanks appreciate the FHFA's drive for consistency across measuring periods, but instead recommend staying with calendar days, as the use of calendar days provides a bright-line measurement that obviates the need for the FHLBanks or the FHFA to ascertain how many business days may have occurred in a given period. Moreover, the FHLBanks have not had an issue in the past with using calendar days to measure periods found in the NBA regulation, and therefore do not believe that a change to business days is necessary.

¹ 81 Fed. Reg. 57499 (August 23, 2016).

² 12 C.F.R. Part 1272.

³ See Proposal at 57501.

2. Clarification of Preamble Text.

Materiality Determination

Proposed § 1272.1 defines “New Business Activity” as:

New business activity (NBA) means any business activity undertaken, transacted, conducted, or engaged in by a Bank that entails material risks not previously managed by the Bank. A Bank’s acceptance of a new type of advance collateral does not constitute a new business activity.

Newly included in this definition is the concept of materiality. The FHLBanks thank the FHFA for including this concept in the proposed definition.

In the preamble to the Proposal, the FHFA acknowledges that any assessment of materiality requires subjective judgment on the part of the submitting FHLBank. The FHFA then requested comment on:

whether the proposed inclusion of materiality language within the definition of new business activity is the most appropriate means of incorporating a materiality assessment into the regulation, whether materiality should be defined, and whether limiting the NBA review process to those activities presenting new material risks could present any safety and soundness concerns.⁴

The FHLBanks believe that materiality is an appropriate threshold, and do not recommend that it be defined, so as to preserve a reasonable level of flexibility for the FHLBanks to consider materiality according to the specific facts related to a proposed NBA.

Other Real Estate Related Collateral

The FHLBanks are pleased that the FHFA has recognized the FHLBanks’ significant experience in managing the risks of other real estate related collateral (**ORERC**) by proposing to exclude from the definition of “new business activity” the acceptance of new types of collateral for advances. The FHLBanks have substantial experience in identifying and managing the risks associated with ORERC, and they have well established processes for analyzing these assets and determining whether to accept these assets as collateral for advances. The FHLBanks agree that acceptance of ORERC assets as eligible collateral for advances should not require a new business activity filing with the FHFA. However, the preamble to this section of the Proposal suggests that the remaining universe of new types of advances collateral that might fall into the ORERC category is small. The FHLBanks are concerned that this statement may be inadvertently construed to limit ORERC to the types already presented to the FHFA for consideration. Thus, the FHLBanks would appreciate confirmation, perhaps in the preamble to the Final Rule, that by excluding from the definition of “new business activity” the acceptance of

⁴ Proposal at 57501.

new types of advance collateral, the FHFA did not intend to limit the exclusion to ORERC which the FHFA has previously considered.

3. Content of NBA Notices.

The Proposal represents a principles-based standard for the contents of NBAs. The FHLBanks agree that a more risk-focused, and less prescriptive, approach to the disclosure is a prudent approach.

The FHLBanks note that proposed § 1272.3(b) requires the notifying FHLBank to indicate whether the FHFA has approved the relevant NBA for any other FHLBanks to conduct the same activity. The FHLBanks agree with the FHFA that such information is meaningful. However, it is possible that an FHLBank may not be aware if similar NBAs have been approved by the FHFA for other FHLBanks. The FHLBanks believe that this requirement may place an undue burden on the FHLBanks if the requesting FHLBank has no knowledge, or incomplete knowledge, of FHFA approval for a similar activity for other FHLBanks. It is more likely that the FHFA would have the best information as to NBAs approved for other FHLBanks.

Moreover, whether an activity constitutes an NBA under the Proposal requires an FHLBank to consider the risks as they apply to such FHLBank. As a result, an activity that constitutes an NBA as to one FHLBank may not constitute an NBA as to a different FHLBank, if, for example, the second FHLBank already engages in the activity, or if such activity presents an immaterial risk within the scope of the second FHLBank's existing business operations or risk profile.

In light of these considerations, the FHLBanks ask that the FHFA consider either deleting the informational reporting requirement of § 1272.3(b) in its entirety, or else qualifying the final sentence of § 1272.3(b) by adding “, *if known to the requesting Bank, and if applicable,*” to the end of the clause. The FHLBanks believe this approach would appropriately balance the FHFA's informational needs with the associated compliance burden imposed on the FHLBanks.

4. Consideration of Housing Mission Compared to Statutory Authority.

The Proposal contemplates adding a new standard of review for the types of NBAs that the FHFA may approve. Proposed § 1272.3(c) requires that an NBA notice describe “how the activity supports the housing finance and community investment mission of the [FHL]Bank.” Similarly, proposed § 1272.4(e) states:

In considering any NBA notice, FHFA will assess whether the proposed activity will be conducted in a safe and sound manner and is consistent with the housing finance and community investment mission of the Banks and the cooperative nature of the Bank System. FHFA may deny a NBA notice or may approve the notice, which approval may be made subject to the Bank's compliance with any conditions that FHFA determines are appropriate to ensure that the Bank conducts the new activity in a safe and sound manner and in compliance with applicable laws or regulations and the Bank's mission.

Although the FHLBanks operate their businesses for the benefit of their members and the communities they serve, not all FHLBank activities fit neatly within the FHLBanks' housing finance and community investment mission, and, in fact, the FHLBanks' overall mission as described below is broader.

Sections 11 and 12 of the Federal Home Loan Bank Act, as amended (**FHLBank Act**), when taken together with the Safety and Soundness Act, define the scope of FHLBank authority.⁵ The FHLBanks' mission includes "the mission of providing liquidity to members[.]"⁶

Additionally, the FHLBanks have undertaken a variety of approved and authorized business activities consistent with the FHLBank Act and applicable regulations. For example, FHLBanks have traditionally offered wire transfer, ACH, and securities safekeeping services to their members. Similarly, an FHFA regulation permits FHLBanks to act as trustees of any trust affecting the business of any member or certain other entities if conditions are met.⁷

As a defined term, NBA potentially covers "any activity" engaged in by an FHLBank, and the notice requirement in the Proposal is triggered if the NBA presents material risks that the FHLBank has not previously managed.⁸ By definition, this could include activities expressly permitted by applicable law or FHFA regulations, so long as that particular FHLBank had not previously "undertaken, transacted, conducted or engaged in" those activities, and regardless of whether such activities are directly connected to the FHLBank's housing finance and/or community investment mission. For example, if an FHLBank had not previously provided ACH services, wire services or trust services, or had not previously held in its portfolio certain classes of investments permitted in 12 C.F.R. § 1267.2, the FHLBank may be precluded from undertaking the activity without filing an NBA notice and securing approval from the FHFA. As proposed, it appears that the FHFA would separately require an FHLBank to file an NBA notice in regard to such a service to demonstrate that such service fits within the FHLBanks' housing finance and community investment mission instead of demonstrating that it is an authorized activity consistent with the FHLBank Act and any applicable regulations.

In addition, the evaluation and approval standard for NBA notices contained in proposed § 1272.4(e) states that the FHFA will assess whether the proposed activity is consistent with the "cooperative nature of the Bank System." In the preamble, the FHFA states that the proposed standard stems from the FHFA's statutory oversight duties and reflects current FHFA practice, citing 12 U.S.C. § 4513(a) as the statutory basis for this standard. However, 12 U.S.C. § 4513(a) does not refer explicitly to the "cooperative nature of the Bank System" in outlining the FHFA's oversight duties, and the FHLBanks are not aware that this is a standard that the FHFA has previously used. The FHLBanks believe that the term "cooperative nature of the Bank System"

⁵ See 12 U.S.C. §§ 1431-1432, § 4513.

⁶ 12 U.S.C. § 4513(f)(1)(B).

⁷ See 12 C.F.R. § 1271.11.

⁸ See proposed § 1272.1.

is vague in the context of the NBA notice standard of review, and since it is not explicitly set forth in the statutory authority, respectfully request that the FHFA delete this term in the proposed rule.

To clarify that an NBA notice could be submitted for activities that generally enhance the business activities the FHLBanks engage in with members, or that assist or enhance members' ability to serve their customers and communities, to the extent permitted by the FHLBank Act (even if such activities are neutral and incidental as to the FHLBanks' housing finance and community investment mission), the FHLBanks request that the FHFA amend proposed § 1272.4(e) as follows:

(e) In considering any NBA notice, FHFA will assess whether the proposed activity will be conducted in a safe and sound manner and as applicable: 1) is consistent with the housing finance, and community investment and liquidity missions of the Banks, 2) is consistent with the Bank's authority under the FHLBank Act; 3) enhances the business activities that the Bank engages in with its members, or 4) enhances members' ability to serve their customers and communities. ~~and the cooperative nature of the Bank System.~~ FHFA may deny a NBA notice or may approve the notice, which approval may be made subject to the Bank's compliance with any conditions that FHFA determines are appropriate to ensure that the Bank conducts the new activity in a safe and sound manner and in compliance with applicable laws or regulations ~~and the Bank's mission.~~

5. Approval Authority and Timing.

The FHFA constrains its ability to extend its timeframe for review in proposed § 1272.4(b) to matters that it has determined present policy, legal, or supervisory action requiring further review in proposed § 1272.4(a)(3). In the preamble, the FHFA explains that further extension is available with respect to "NBA submissions that raise significant policy issues that the Director determines require additional time."⁹ To conform the Final Rule to the preamble (and to revert the measurement periods to calendar days as suggested in Section 1 of this comment letter), the FHLBanks request that § 1272.4(d) be amended as follows:

(d) Notwithstanding anything contained in this part, the Director may extend the 80 ~~business~~ day review period by an additional 60 ~~business~~ days if the Director determines that the notice submission raises significant policy issues that require additional time is required to consider ~~the notice~~. In such a case, FHFA will inform the Bank of any such extension before the 80th ~~business~~ day following the NBA Notice Date, and the Bank may not commence the NBA until FHFA has affirmatively approved the notice.

In addition, the FHLBanks request that the FHFA conform proposed § 1272.4(d) with proposed § 1272.4(b) so that a failure to approve or deny the activity by the FHFA within the prescribed extended time period will be deemed to be an approval of the proposed activity.

⁹ Proposal at 57503.

In the alternative to making the foregoing requested revisions to proposed § 1272.4(d), the FHLBanks request that the Final Rule eliminate proposed § 1272.4(d) in its entirety. Without proposed § 1272.4(d), the Proposal continues to afford the FHFA with ample time to review an NBA notice, including the option to extend the review period in § 1272.4(a). The FHLBanks do not believe that a further extension of the time allowed for review is appropriate, particularly because the FHFA has the power to stop the clock at any time by requesting additional information. Moreover, it is not clear what regulatory or public policy benefit is served by continuing to extend FHFA's review period beyond this already-extended time frame.

The FHLBanks are also concerned about the possibility of the Director overturning any previously-approved NBA notice. Proposed § 1272.7 states in part:

The Director reserves the right to modify, rescind, or supersede any such approval granted by the Deputy Director, with such action being effective only on a prospective basis.

Even with the limitation that any such modification would be prospective in its effect only, the above provision creates uncertainty for the requesting FHLBank and its members because, on its face, the Director may revoke authorization for any previously-approved NBA at any time. The risk that a previously-authorized approval may be modified, rescinded, or superseded undermines the FHLBanks' ability to be reliable and predictable providers of housing finance and liquidity for their members and to invest in the resources needed to conduct their mission-related activities. Furthermore, if a previously delivered FHFA approval is modified, rescinded, or superseded, the affected FHLBank may have incurred substantial implementation costs and expenses for naught. The FHLBanks suggest that the better path would be to ensure that the Director is comfortable with an NBA notice before it is approved. Additionally, declining to include a power to revoke authority in the NBA regulation does nothing to change the Director's authority under the Safety & Soundness Act. For these reasons, the FHLBanks request that the FHFA revise proposed § 1272.7 to remove the above quoted language.

6. Consideration of Additional Exemptions.

The FHLBanks further ask the FHFA to consider eliminating two additional matters from the NBA regulation related to Acquired Member Assets (**AMA**) programs.

The FHLBanks ask the FHFA to consider excluding from the definition of NBA any AMA product that is insured or guaranteed by a federal government agency (*e.g.*, Federal Housing Agency, Veterans' Administration, Rural Housing Services). These products carry no credit risk to an FHLBank that offers or participates in such products. Therefore, the FHLBanks should be able to include these products in their AMA portfolios without being required to secure approval of an NBA notice.


The FHLBanks further ask that the FHFA consider waiving NBA notifications for FHLBanks that already offer AMA product(s) under any AMA program and wish to offer new or variants of other AMA products within such program that have already been approved in a different FHLBank's NBA filing. If another FHLBank wishes to add a new product, it currently must file a "me too" NBA notice to obtain FHFA approval prior to offering the new product. The FHLBanks request that FHFA consider eliminating this additional filing requirement. The risks presented by the AMA product to be offered will be well known to the applying FHLBanks (and, likely, to the FHFA due to a previously filed NBA) before the product can be offered. As the FHFA will retain its examination and oversight authority over the implementation and administration of a new variant AMA product once such product has been introduced by an FHLBank, we suggest that adding an additional NBA approval requirement does not further principles of safety and soundness, or regulatory efficiency.

Conclusion

The FHLBanks commend the FHFA for proposing enhancements to the new business activity notice process. We suggest that further enhancements, along the lines outlined above, may further the FHFA's objectives in improving the regulation. The FHLBanks appreciate the opportunity to offer these comments.

Sincerely,


Federal Home Loan Bank of Atlanta

By: 
Reginald T. O'Shields
Senior Vice President and General Counsel


Federal Home Loan Bank of Boston

By: 
Carol Hempfling Pratt
Senior Vice President, General Counsel
and Corporate Secretary

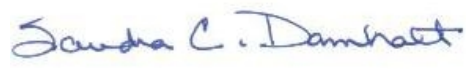
Federal Home Loan Bank of Chicago

By: 
Laura M. Turnquest
Executive Vice President, General Counsel
and Corporate Secretary


Federal Home Loan Bank of Cincinnati

By: 
Melissa D. Dallas
Vice President, Corporate Secretary
and Counsel


Federal Home Loan Bank of Dallas

By: 
Sandra C. Damholt
Senior Vice President and General Counsel


Federal Home Loan Bank of Des Moines

By: 
Aaron B. Lee
Senior Vice President, General Counsel
and Corporate Secretary

Federal Home Loan Bank of Indianapolis

By: 
Mary M. Kleiman
Senior Vice President and General Counsel

Federal Home Loan Bank of New York

By: 
Paul S. Friend
General Counsel

Federal Home Loan Bank of Pittsburgh



By: _____
Dana A. Yealy
Managing Director, General Counsel
and Corporate Secretary

Federal Home Loan Bank of San Francisco



By: _____
Suzanne Titus-Johnson
Senior Vice President, General Counsel
and Corporate Secretary

Federal Home Loan Bank of Topeka



By: _____
Patrick C. Doran
Executive Vice President, Chief Compliance
Officer and General Counsel