January 29, 2019

<u>Submitted Electronically</u>

Alfred M. Pollard, General Counsel
Federal Housing Finance Agency
Eighth Floor
400 Seventh Street, SW
Washington, D.C. 20219

Re: Proposed Rulemaking and Request for Comments: Federal Home Loan Bank Housing Goals Amendment, Comments/RIN 2590-AA82

Dear Mr. Pollard:

The undersigned Federal Home Loan Banks (the FHLBanks) appreciate the opportunity to comment on the Federal Housing Finance Agency's (FHFA) proposed amendments to the housing goals regulation applicable to the FHLBanks (the Proposal), which was published on November 2, 2018.[1] The FHLBanks recognize their mission in supporting affordable housing extends to the Acquired Member Asset (AMA) programs and appreciate the simplification, flexibility, and the phase-in period the FHFA has provided in the Proposal. The FHLBanks believe there are some areas where clarification and adjustment are needed.

Generally speaking, the FHLBanks seek a final rule that does not result in Members becoming concerned that we would cease doing mortgage purchase business with them, or limit our business with them, if we have not met the housing goal. The FHLBanks' AMA programs, as risk sharing programs, are complex, unique and different from typical secondary mortgage market transactions. The process for Members to become AMA participants (classified as Participating Financial Institutions, or "PFIs"), from initial outreach to full implementation and participation is lengthy, and in some cases may take well over a year. It requires understanding different issues and operational aspects than what Members face in more traditional secondary market transactions. Once a Member makes the investment of resources to participate in an AMA program and begins actively selling its mortgage loans to its FHLBank on a regular basis, it is likely to begin to rely on the FHLBank as a stable outlet for its loans that meet the AMA requirements. If Members have doubts about the reliability of the FHLBank as an outlet for their mortgage production generally, they are likely to limit their activity with the FHLBank. This could result in a decrease in the level and effectiveness of an FHLBank's mortgage purchase program overall. The final rule should ensure that this and other unintended consequences are minimized.

[1] 83 Fed. Reg. 55114 (Nov. 2, 2018).

We also appreciate the FHFA's recognition of the differences between the AMA programs of the FHLBanks and the market dominant programs of Fannie Mae and Freddie Mac (the "Agencies").

Our specific comments are set forth below.

1. **Twenty percent prospective goal.** The FHLBanks agree that a prospective goal is more advantageous than the existing retrospective approach. While the 20% housing goal target may be achievable in favorable economic times, we are concerned it may be difficult to sustain in the long-term, especially during economic downturns in which adherence to the goal may compromise the FHLBanks' prudent management of the AMA programs and more specifically, the associated credit risk. We note that the data cited by the FHFA was from 2011 forward, after the most recent housing crisis. Additionally, given the banks cooperative structure and mission, it would be inconsistent to limit certain purchases of a Member's mortgage loans that did not fit within the low income targeting focus when such loans meet all of the AMA programs' other regulatory standards (e.g.. mortgage underwriting requirements and credit structure) in order to manage delivery tolerances solely to achieve housing goal compliance.[2] It is not clear from the Proposal if the FHFA is in favor of FHLBanks limiting purchases of otherwise-qualifying AMA loans in order to meet housing goals. We request more clarity on this issue from the FHFA in the final rule, as we assume this is not the intention.

   We recommend that, in addition to the 20% annual housing goal proposed in 12 CFR 1281.11(a)(1), the FHFA also establish in the proposed section 1281.11(d), a 10% housing goal floor that would provide the FHLBanks added flexibility to adjust to future disruptions or downturns in the mortgage markets. Specifically, the 20% goal would be reduced to 10% for those calendar years where (i) in the year, one or more PFI sellers of an FHLBank cease to be members of the FHLBank and they have, either individually or collectively, provided a minimum of 10% or more of eligible loans that were counted toward that FHLBank's housing goal for the prior year; or (ii) there is a material increase in the 90+ day delinquencies in either the Agencies' published MBS statistics or an FHLBank's AMA mortgage portfolio, as measured by loan count, from the same period in the prior year.

   The FHLBanks believe a 10% floor (in addition to the 20% percentage target) would be a reasonable, sustainable, and meaningful alternative that serves to protect the integrity of the AMA programs in the long term. While the proposed rule permits the FHFA to exercise discretion to reduce a housing goal based on individually submitted plans, we are concerned about the timing of the exercise of such discretion and believe that establishing a floor in the regulation is a preferred approach. Alternatively, the regulation could set a range, with specific targets set periodically by the FHFA in a supervisory letter similar to the recent Liquidity guidance.

[2] There may be other safety and soundness reasons a FHLBank may place limits on certain AMA activities.

Even with a 10% floor, the regulation presents an unclear scenario for those FHLBanks that may find meeting the proposed housing target to be challenging. We are concerned about a regulation where the FHFA has acknowledged that on day one, certain FHLBanks will not be in compliance with the specified housing goals and that achieving those goals may be "infeasible" for those FHLBanks. Although we appreciate that the proposed regulation allows a FHLBank that may be challenged in meeting the housing goals an opportunity to propose an alternate housing target for FHFA review and approval, the proposed regulation does not specify a time period in which the FHFA must notify that FHLB of approval of their new housing target. As such, we propose a separate floor for any FHLBank that is below the target from the outset, as any new housing goal should be established such that all FHLBanks are in compliance with it from its effective date, or alternatively, the regulation should clearly state that a FHLBank that has submitted an alternative housing target to the FHFA for review and approval is not subject to the regulatory housing target during the review process. This addresses the question of whether the FHLBank would be considered noncompliant with the regulation during the review process. As a third alternative, the FHFA could commit to reviewing alternative housing target submission within a specified period of time. We expect that certain FHLBanks will submit alternate housing goals and plans that could be significantly different from the proposed goals and therefore understanding of the timing and regulatory posture is key.

Finally, the FHLBanks request clarification on how the FHFA will treat any noncompliance with the regulation while a plan for an alternative housing goal is under review by the FHFA, failure to obtain approval of an alternative housing goal target, failure to meet the housing goal and/or failing to submit an acceptable plan to gain compliance. We do not expect this to be outlined in the final rule, per se, but would appreciate supplementary guidance from the FHFA.

2. **Calculation and timing clarifications.** The FHLBanks believe that the language should be clarified throughout the proposed regulation to specify that the measurement for the goal is the percentage of the number of AMA loans purchased, not the percentage of the dollar balance of AMA loans purchased in each year. We also request clarification that a mortgage's status as being applicable for the housing goal is based on the time of FHLBank purchase or funding, rather than at the time of origination.[3] Finally, the FHLBanks request that the FHFA provide commitments as to the timeliness updates to the low-income and disaster designations, including FEMA and state agency declarations.

[3] For example, a mortgage to a very-low income family originated in December 2019 by a PFI that is not funded by a FHLBank until January 2020 would be counted for the housing goal of the FHLBank in 2020 (although the FHLBanks recognize that borrower income and area median income are based on information at the time of loan origination, as set forth in proposed 12 C.F.R. 1281.12). .

3. **Cap on mortgages to higher-income borrowers in low-income areas.** As the FHFA correctly noted in the Proposal, there is tension between housing investments in communities that have lacked consistent investment and concerns about the impact from higher-income households on existing residents. The FHLBanks agree that a limit on including mortgages from high-income families as counting toward the housing goal is appropriate. However, we also believe a 30% limit would be more appropriate given the HMDA data cited in the Proposal and the positive impact investments have made on community development.

4. **Fifty percent small Member participation goal and the community financial institution definition.** The FHLBanks agree that a focus of the AMA programs should include participation by smaller Members. Similar to the comment on the 20% housing goal above, the FHLBanks are concerned that a static percentage will ignore the continuing changes in the mortgage market. As you are aware, the level of activity in the mortgage markets by depositories (a major portion of those eligible for FHLBank membership and exclusively PFIs) has been steadily declining[4]. We believe 50% is a slightly high threshold given current conditions and market trends, and that 40% is more appropriate at this time. We suggest a range, with periodic determinations by the FHFA, based on market data reported by the Mortgage Bankers Association, American Bankers Association or the like would allow for the FHFA's objectives to be met while also keeping the goal reasonable as markets and membership's participation change over time.

   The FHLBanks also request clarification on the definition and timing of the measurement for qualifying as a Member that meets the small Member participation housing goal. With respect to the definition of "CFI asset cap," the reference to community financial institutions (CFI), as drafted, creates uncertainty regarding whether an institution must actually qualify as a CFI. The FHLBanks believe it is the FHFA's intention that all types of eligible PFIs would qualify, not only those who meet the CFI classification – for example, credit unions – as long as they are under the CFI asset size. Accordingly, we recommend the definition of "CFI asset cap" be revised to "Housing goals asset cap" or something similar, while retaining the definition by cross-referencing to the CFI asset cap definition in §1263.1. On the timing, we seek clarification that the three-year rolling average calculation, based on an institution's latest regulatory filing for assets at each calendar year-end, qualifies a Member as a small Member for the entire fiscal year. This method eliminates the uncertainty for the Member and the FHLBank, and allow for more transparent and clear tracking of qualifying PFIs. Under this proposal, a Member that

[4] Also, nonbanks' market share in federally backed mortgages (which often times assist lower-income borrowers and borrowers in low-income areas) has steadily increased. As noted in the Proposal, the Government National Mortgage Association's (Ginnie Mae) data shows that nonbanks' share of Ginnie Mae MBS issuances more than doubled from 36 percent to 77 percent as of November 2016.

qualifies as a small Member at the beginning of the year based on prior year-end assets would continue to be counted as a small Member for the entire fiscal year.

5. **Treatment of government-insured loans purchased in the MPF Program for subsequent securitization.** The FHLBanks believe the Proposal intended that all AMA purchases should be included in the loans that can be counted toward achieving the housing goals, and therefore we request confirmation and clarification regarding treatment of MPF Government MBS loans. First, as acknowledged in the Proposal, when MPF Government MBS loans are first purchased from a PFI, they are effectively MPF Government loans (and therefore AMA loans). The FHLBanks request confirmation that the MPF Government MBS loans qualify towards satisfying the FHLBanks' housing goals.

   Second, although the MPF Government MBS product is structured such that all MPF Government MBS loans are purchased by the Federal Home Loan Bank of Chicago directly from selling PFIs (regardless of FHLBank District), the FHLBanks request that each FHLBank will receive housing goal credit for its PFIs' MPF Government MBS loan deliveries. Each FHLBank that offers the MPF Government MBS product is responsible for initial approval of its PFIs, as well as ongoing monitoring of PFI eligibility. As noted in the Proposal, government backed mortgages provide options that may assist lower-income borrowers and borrowers in low-income areas achieve homeownership. Clarifying that each FHLBank will receive housing goals credit for its PFIs' MPF Government MBS loan deliveries promotes District appropriate homeownership among lower-income borrowers and borrowers in low-income areas by encouraging additional FHLBank participation.

6. **FHLBank-specific housing goals.** The Proposal allows for each FHLBank to propose alternative housing targets for FHFA review and approval, with the initial deadline for submission of such proposals being October 31, 2019, and then October 31 of every third year thereafter. The FHLBanks request clarification whether an FHLBank that does not submit alternative housing targets to the FHFA in 2019 would be precluded from doing so in 2020 and 2021, or whether the three-year housing goals cycle simply commences after the year in which an FHLBank first submits alternative housing targets.

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We appreciate your consideration of these comments.

Sincerely,

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