

January 31, 2012

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General Counsel  
Federal Housing Finance Agency  
Fourth Floor  
1700 G Street, N.W.  
Washington, DC 20552

**Re: Federal Home Loan Bank Community Support Amendments; RIN 2590—AA38**

Dear Mr. Pollard:

I submit this letter in response to the request for comments issued by the Federal Housing Finance Agency (FHFA) on November 10, 2011, when it proposed amending its community support regulation to, among other things, require the Federal Home Loan Banks to monitor members' compliance with the community support requirements and determine whether members maintain access to long-term Bank advances. As an independent director of the Federal Home Loan Bank of Cincinnati (FHLBank), I am concerned that certain proposed items run counter to the FHLBank's cooperative structure and mission as a housing finance service provider. While my comments are specific to the FHLBank Cincinnati (FHLBank), they may apply more broadly to the 12-FHLBank System. I appreciate your consideration of my views on this important matter.

The FHFA seeks to shift the administration of its own regulation to the FHLBank. The new Proposed Rule would require the FHLBank to review the performance of each FHLBank member bank and thrift to evaluate their compliance with Community Reinvestment Act (CRA) ratings and first-time homebuyer support statements. Subsequently, the FHLBank would determine members' eligibility for access to long-term FHLBank advances, a process currently performed by the FHFA. Additionally, the Proposed Rule would eliminate the probationary one-year period currently set aside to improve a CRA rating of "Needs to Improve."

**Procedurally, the Proposed Rule would require the FHLBank to act as regulator of their members.** The rule proposes to delegate from the FHFA to the FHLBank responsibility for determining their members' compliance with the FHFA's community support requirements, which effectively would require the FHLBank to perform functions that are inherently regulatory in nature. The proposal notes that requiring the FHLBank to "make decisions on any restrictions on access to long-term advances would be consistent with their general advances and underwriting responsibilities." I disagree. Determining whether or not a member is in compliance with a regulation is a regulatory function. The FHFA is best suited to determine compliance with its own regulation. That responsibility should not be shifted to the FHLBank. Moreover, the FHFA already has in place a uniform procedure for this activity. Requiring each of the 12 FHLBanks to adopt its

own procedure, to be reviewed under FHFA supervision, creates unnecessary duplication for little, if any, gain.

**The proposal threatens to re-create a conflict of interest which Congress eliminated long ago.**

If the FHLBank is required to determine whether its members have sufficiently satisfied the FHFA's community support regulation in order for them to continue making long-term advances to those members, a clear conflict of interest would be created. As member-owned cooperatives, it would be inappropriate for the FHLBank to act as lender to, and regulator of its members. Such a result would appear to contravene the intent of Congress. In the aftermath of the 1980s Savings and Loan crisis, Congress abolished the Federal Home Loan Bank Board, splitting the regulatory and lending functions with the newly created Office of Thrift Supervision and within each FHLBank, respectively. This division recognized the inherent conflict of the FHLBanks acting as both lender and regulator.

**Additionally, the proposal inappropriately broadens FHLBank underwriting standards.** The FHFA suggests that "requiring the Banks to adopt policies and procedures for Community Support evaluations, to conduct the evaluations, and to make decisions on any restrictions on access to long-term advances, would be consistent with their general advances underwriting responsibilities." I disagree. The FHLBank undertakes its underwriting of advances and other credit products on the basis of prudent credit risk assessment to ensure repayment. Any broader considerations put at risk the integrity and safety and soundness of the FHLBank's underwriting standards and strong historic performance.

**Revise "first-time homebuyer" definition.** I appreciate the FHFA's recognition that the definition of "first-time homebuyer" has been expanded, through statutory amendment to the Cranston-Gonzalez National Affordable Housing Act, to include previous ownership of manufactured or substandard housing. The FHLBank uses the amended definition for application of its Affordable Housing Program and I would support inclusion of the revised definition within Part 1290 of the community support regulation.

**I oppose eliminating the probationary period under the community support regulation.** The current practice should be maintained that allows member banks and thrifts with a single CRA rating of "Needs to Improve" to continue to have access to long-term advances and the community investment products offered by the FHLBank while working to improve their ratings. As the proposal notes, a policy that would deny access "could restrict a member's ability to use long-term advances to address the deficiencies that led to the 'Needs to Improve' rating." I agree. It is counterintuitive to deny these products to members who need them for a purpose for which the products were designed.

**Eliminating the probationary period also would undermine the reliability of long-term advances.** Members would have less certainty about the availability of long-term advances if access can be denied at any time for CRA deficiencies. It would increase the risk that FHLBank liquidity

and long-term funding will not be available when needed to support a member bank and its community. This would undercut the FHLBank's housing finance mission. At a minimum, this provision should be amended to allow such members to continue to have access to the FHLBank's Affordable Housing Programs and Community Investment Cash Advance programs.

**Limited Impact.** As the proposal notes, this change would impact very few members. Only about two percent of FHLBank members that were subject to CRA evaluations from 2008 to 2010 received ratings of 'Needs to Improve' requiring them to be placed on probation. In Cincinnati, from 2008-2010, just four of 740 members received a "Needs to Improve" rating. The limited impact of affected members does not suggest a problem in need of a solution, and it would be counterproductive to deny those few members the tools they could use to improve their ratings and better serve their communities.

In conclusion, for the reasons described above, I recommend that FHFA amend the Proposed Rule to keep responsibility for determining compliance with the FHFA's community support regulation at the FHFA, thereby ensuring the FHLBank is not required to act as regulator of its members. I also urge the FHFA not to eliminate the probationary period for members with a single CRA rating of "Needs to Improve."

Thank you for your consideration of these comments.

Sincerely,

Dr. Donald J. Mullineaux  
DuPont Endowed Chair in Banking and Financial Services