ICBA
INDEPENDENT COMMUNITY BANKERS ASSOCIATION OF NEW MEXICO
NEW MEXICO

February 6, 2012

VIA E-MAIL TO REGCOMMENTS@FHFA.GOV

Alfred M. Pollard, Esq.
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 am submitting this letter in response to the request for comments issued by the Federal Housing Finance Agency on November 10, 2011, when it proposed amending its community support regulation to, among other things, require the Federal Home Loan Banks (FHLBanks) to monitor and assess the eligibility of each FHLBank member for access to long-term advances through compliance with the Community Reinvestment Act of 1977 (CRA) and first-time homebuyer standards (the Proposed Rule). I appreciate your consideration of my views on this important matter.

Our association, the Independent Community Bankers Association of New Mexico, represents New Mexico's community banking industry (commercial banks and thrifts) before state and federal legislative and regulatory bodies. We are, to my knowledge, the only state association that can claim one-hundred percent participation and membership of eligible banks in our state. Our organization was created in 1984 as a not-for-profit 501(c)(6) entity. Our forty seven member banks have more than 225 branch locations all across the state, employ in excess of 2,100 New Mexicans, and as of the end of the 3rd quarter in 2011 had $6.178 billion in outstanding loans.

Under its current community support regulations, the FHFA biennially reviews the performance of each FHLBank member bank and thrift to evaluate their compliance with the community support standards and determine their eligibility for access to long-term FHLBank advances. As part of this review, members must submit a form stating their most recent CRA rating and must provide information about their record of lending to first-time homebuyers. Member institutions such as credit unions and insurance companies that are not subject to CRA requirements need only demonstrate compliance with the first-time homebuyer standard.

PO Box 1810 Aztec, NM 87410-4810 Phone: (505) 327-2151 Fax: (253)-399-4348 E-Mail: info@icbanm.org

If members have a CRA rating of "Needs to Improve," they are placed on a probationary period and have two years until the next exam review to improve their rating. If it has not improved to "Satisfactory" or better by the next review, those members are restricted from accessing long-term advances, defined as those with a maturity of greater than one year, as well as the FHLBanks' affordable housing and community investment programs. Members with a CRA rating of "Substantial Non-compliance" and those which fail to submit the required data are not allowed a probationary period, but are immediately placed on restricted status until their rating improves or until the data is submitted. Once a member improves their rating or supplies the required forms, the member's access to long-term advances and other FHLB products is restored.

After reviewing the Proposed Rule, I **have serious concerns that it would require the FHLBanks to act as regulators of their members.** The rule proposes to delegate from the FHFA to the FHLBanks responsibility for determining their members' compliance with the FHFA's community support requirements, which effectively would require the FHLBanks to perform functions that are inherently regulatory in nature. The proposal notes that requiring the FHLBanks 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 inherently a regulatory function. The FHFA is best suited to determine whether its own regulation is being complied with. It should not be shifted to the FHLBanks.

Additionally, such a proposal threatens to re-create a conflict of interest which Congress eliminated long ago. If the FHLBanks are required to determine whether their 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 FHLBanks to act as both lenders to their members and regulators of them.

Not only would such a result be ill-advised, it would appear to contravene the intent of Congress. As the Savings and Loan Crisis was developing in the 1980s, the FHLBanks had been delegated supervisory responsibilities over their members by their then-regulator, the Federal Home Loan Bank Board (FHLBB). In the aftermath of the Crisis, Congress expressly reversed the delegation by abolishing the FHLBB, splitting the regulatory and lending functions at each FHLBank and creating the Office of Thrift Supervision in 1989. This was done at least partly in response to the perception that it was inappropriate for the FHLBanks to be both a lender and regulator. Congress' action should be respected and not undermined.

Furthermore, the FHLBanks have not sought supervisory authority over their members. Congress has charged the FHLBanks with a mission to promote housing finance and community development, which they accomplish primarily by offering advance and community investment products. They should be allowed to continue doing what they do best. Consequently, I strongly recommend amending the Proposed Rule to keep responsibility for determining compliance with the FHFA's community support regulation at the FHFA.

I also oppose the proposal to eliminate 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 FHLBanks while working to improve their rating. 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 strongly agree. These products are important tools for helping such members to improve their CRA rating and should not be denied.

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 they can be denied at any time for CRA deficiencies. It would increase the risk that when FHLBank liquidity and long-term funding are needed, they will not be available to support a member bank and its community. This would not further the FHLBanks' housing finance mission. At a minimum, this provision should be amended to allow such members to continue to have access to the FHLBanks' Affordable Housing Programs and Community Investment Cash Advance programs.

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. Therefore it makes little sense to deny those few members the tools they could use to improve their ratings and better serve their communities. I believe that constructive engagement during the probationary period is a more effective way to improve a member's CRA performance without undermining the value of FHLBank membership.

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 FHLBanks are not required to act as regulators of their 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 my comments.

Best Regards,

Jerry C. Walker
President & CEO

PO Box 1810 Aztec, NM 87410-4810 Phone: (505) 327-2151 Fax: (253)-399-4348 E-Mail: info@icbanm.org