American Bankers Association
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Via email to RegComments@fhfa.com

Alfred M. Pollard, Esq.
General Counsel
Federal Housing Finance Agency
400 7th Street, SW
Washington, DC 20024

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

Dear Mr. Pollard:

I am writing on behalf of the members of the American Bankers Association in response to the request for comments issued by the Federal Housing Finance Agency (FHFA) on November 10, 2011, through a proposal to amend the community support regulations impacting Federal Home Loan Bank (FHLB) member banks. The proposed revision would require the Federal Home Loan Banks to monitor and assess the eligibility of each FHLB member for access to long-term advances through compliance with the Community Reinvestment Act of 1977 (CRA) and first-time homebuyer standards. ABA strongly opposes the proposed changes for the reasons set forth below, and we urge the FHFA to withdraw this proposal.

Current requirements are appropriate and effective for ensuring Banks' CRA compliance

Under its current community support regulations, the FHFA biennially reviews the performance of each FHLB member to evaluate its compliance with the community support standards and determine its eligibility for access to long-term advances. As part of this review, members must submit a one-page community support statement with their most recent CRA rating and information about their record of lending to first-time homebuyers. Member institutions such as credit unions and insurance companies that are not subject to federal CRA requirements need only demonstrate compliance with the first-time homebuyer standard. However, there are states that do impose CRA requirements on state-chartered entities and **ABA urges the FHFA to apply CRA rating monitoring to state chartered credit union FHLB members in states (currently Massachusetts and Connecticut) which impose Community Reinvestment obligations on credit unions.**

Under current standards, a member with a CRA rating of "Outstanding" or "Satisfactory" is deemed to comply with the CRA requirement and eligible for long-term advances. 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 its rating or supplies the required forms, the member's access to long-term advances and other FHLB products is restored.

The proposed rule would require the FHLBanks to act as regulators of their members.

The rule proposes to delegate from the FHFA to the Federal Home Loan Banks responsibility for determining their members' compliance with the FHFA's community support requirements, which effectively would require the FHLBs to perform functions that are inherently regulatory in nature. We strongly disagree with the assertion in the proposal that requiring the FHLBs to "make decisions on any restrictions on access to long-term advances would be consistent with their general advances and underwriting responsibilities." Determining whether or not a member is in compliance with a regulation is inherently a regulatory function. The FHFA is best suited to determine compliance with its own regulations. The responsibility should not be shifted to the FHLBs, which have not sought (and to the best of our knowledge, oppose) such a shift in responsibility. To impose such an obligation on the FHLBs creates a conflict of interest making them both lenders to, and regulators of their member institutions. Moreover, moving the oversight responsibility from the FHFA to 12 separate Banks increases the risk of inconsistency.

The proposal runs counter to Congressional intent.

Not only would such a result be ill-advised, it would appear to contravene the intent of Congress. In the aftermath of the savings and loan crisis of the 1980's, Congress split the regulatory and lending functions that had previously existed at each FHLB, creating the Federal Housing Finance Board (a predecessor agency to the FHFA) to regulate the FHLBs and the Office of Thrift Supervision to regulate the federal thrift institutions which then comprised the majority of FHLB System members.. This was done at least partly in response to the perception that it was inappropriate for the FHLBs to be both a lender and regulator. While there have been further changes in agency and regulation since that time, the intent and action of Congress to divide lending and regulation functions should be respected and not undermined.

The proposal to eliminate the probationary period under the community support regulation is ill-advised and will harm communities.

Current practice allows FHLB members 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." We strongly agree. Clearly, this is a significant concern, since the FHFA recognizes in the proposal that this could have important ramifications to a member's safety and soundness. These products are important tools for helping such members improve their CRA rating and should not be denied. An immediate cut off of advances for a bank which received a less than "Satisfactory" rating would not only harm that bank's ability to improve its rating, but, more importantly, would penalize the community served by that bank by diminishing resources for serving the community.

As the proposal notes, this change would impact very few members. Only about two percent of FHLB 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. Constructive engagement during the probationary period is a more effective way to improve a member's CRA performance without undermining the value of FHLB membership.

To conclude, if the FHFA's goal is to better ensure that FHLB members are meeting the community reinvestment needs of their communities, they should focus on broadening the application of the community support review requirements to all FHLB members who must meet community reinvestment requirements, whether imposed under the federal CRA statute or comparable state statutes. More important, the FHFA should not transfer regulatory compliance for community support to the FHLBs, placing them in a position of regulating their own members – and contravening clear Congressional intent. Finally, the FHFA should not eliminate the probationary period for members with a single CRA rating of "Needs to Improve", as the probationary period ensures that banks have the tools necessary to improve their rating and to better serve their communities.

Again, we appreciate this opportunity to comment. Should you have any questions or wish to discuss any of these issues in more detail, please do not hesitate to contact the undersigned.

Sincerely,

Joseph Pigg
Vice President and Sr. Counsel