VIA EMAIL TO REGCOMMENTS@FHFA.GOV

September 7, 2010

Alfred M. Pollard, General Counsel
Attention: Comments/RIN 2590–AA23
Federal Housing Finance Agency, Fourth Floor
1700 G Street, N.W.
Washington, D.C. 20552

Re: Proposed Regulation on Conservatorship and Receivership

Dear Mr. Pollard:

The twelve Federal Home Loan Banks ("FHLBanks") are writing to comment on the Federal Housing Finance Agency's ("FHFA") proposed regulation on Conservatorship and Receivership published on July 9, 2010 ("Proposal").[1] The Proposal states that it seeks to establish a framework for conservatorship and receivership operations for the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac" and together with Fannie Mae, the "Enterprises") and the FHLBanks (together with the Enterprises, the "regulated entities"), as contemplated by the Housing and Economic Recovery Act of 2008 ("HERA"). The FHLBanks appreciate the FHFA's attention to this topic and welcome the FHFA's invitation to provide comments on all aspects of the Proposal.

I. The Proposal Does Not Address the Differences Between the Enterprises and the FHLBanks, and the FHFA Should Exclude the FHLBanks from the Final Rule and Instead Issue a Separate Proposed Rule Specific to the FHLBanks.

HERA provides that the FHFA must consider the differences between the FHLBanks and the Enterprises when promulgating a regulation, given the special and unique issues associated with the FHLBanks, including the cooperative ownership structure of the FHLBank System and the joint and several liability of the FHLBanks for FHLBank System consolidated obligations ("COs").[2] Although we recognize the urgency of the Proposal with respect to the Enterprises, particularly in light of the pending securities law claims by their equity holders, it appears that adequate consideration has not been given to the unique issues related to the FHLBanks. For example, the Proposal fails to address the banking activities of the FHLBanks, such as the rights of depositors, and other special issues, such as assets held in safekeeping arrangements, trust or custodial accounts, and other third-party assets which may

[1] 75 Fed. Reg. 39462.

[2] 12 U.S.C. § 4513(f).

be in the possession of an FHLBank.[3] In fact, the preamble of the Proposal states that the "GSEs are not depository institutions," which is only true with respect to the Enterprises.[4]

The Proposal also does not appear to adequately address the joint and several liability of the FHLBanks for the COs issued by them. Under 12 C.F.R. § 966.9(a), each and every FHLBank, individually and collectively, has an obligation to make full and timely payment of all principal and interest on COs when due. Thus, if an FHLBank were placed in conservatorship or receivership and could not make payments on COs on which it was the primary obligor, Section 966.9(a) and the terms of the COs would require one or more other FHLBanks to make the applicable principal and interest payments on a continuing basis.

Currently, the FHFA has given itself broad authority under Section 966.9(d) to order an FHLBank to make any principal or interest payment on any CO, subject to a right of the paying FHLBank to reimbursement from the non-paying FHLBank, including the amount of any such assistance and any associated costs, including interest to be determined by the FHFA. The Proposal does not discuss how this reimbursement right, including the right to interest under Section 966.9(d), would be treated by the conservator or receiver.

For this reason, we respectfully request that the FHFA not issue any final regulation regarding FHLBank conservatorships and receiverships until after it completes a thorough analysis of the implications of the depository nature and joint and several liability structure of the FHLBanks on the conduct and operation of a conservatorship or receivership of an FHLBank. Any final rule addressing FHLBank conservatorships and receiverships should expressly address on what basis the FHLBanks may be expected to be repaid with respect to CO payments made on behalf of a non-paying FHLBank in conservatorship or receivership. This may require proposed revisions to Section 966.9 and possibly other regulatory provisions to ensure a coherent correspondence between actions taken under those regulations and the operation of a conservatorship or receivership of an FHLBank. In that regard, perfected security interests (including exceptions for preferences and fraudulent conveyances), safekeeping, or other trust holdings obtained on behalf of third parties in dealing with an FHLBank, should also be expressly addressed in the final rulemaking. Protecting the legitimate legal rights of third parties that deal with the FHLBanks needs to be addressed.

Because of the joint and several liability of the FHLBanks for COs, there is also the possibility that a troubled FHLBank might be merged with another FHLBank. Section 1209 of HERA amended Section 26 of the Federal Home Loan Bank Act ("FHLBank Act") to provide that any FHLBank may, with the approval of the Director of the FHFA and the boards of directors of the FHLBanks involved, merge with another FHLBank. Section 1209 also directs the FHFA to promulgate regulations establishing the conditions and procedures for the consideration and approval of any voluntary merger. To date, the FHFA has not proposed

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[3] For example, the FHLBank of Chicago holds a custodial account for the benefit of Fannie Mae.

[4] "The proposed regulation necessarily differs in some respects, however, from the FDIC regulations, because the GSEs are not depository institutions, and their important public missions differ from those of banks and thrifts." 75 Fed. Reg. 39462, 39464.

regulations regarding FHLBank mergers. We respectfully request that prior to issuing a final rule addressing FHLBank conservatorships and receiverships, the FHFA consider this issue and develop and publish proposed regulations regarding voluntary mergers of FHLBanks.

Finally, we are concerned further that the Proposal would leave important issues to be decided by the FHFA at the time that such issues may arise, without guidance of rules that have been commented upon by those parties that may be impacted. As such, the Proposal may fail to reduce uncertainty in areas where definitive guidance is needed.[5] In order to protect the interests of all parties with a stake in the FHLBanks, we respectfully request that the FHFA limit the scope of any final rulemaking resulting from the Proposal to the Enterprises, making it clear that such final rule will not apply to the FHLBanks. The FHFA could then focus on considering the issues that relate to an FHLBank conservatorship or receivership and issue a new proposed rule applicable to the FHLBanks for comment by all interested parties in accordance with the Administrative Procedure Act.

II. Specific Comments on the Proposal

In the event that the FHFA nevertheless seeks to apply the final rule to the FHLBanks, and without waiving any rights with respect to such an action, we offer the following comments for the FHFA's consideration on the Proposal. Many of the following comments raise issues specific to the FHLBanks and further support our position that that the Proposal does not adequately consider the differences between the FHLBanks and the Enterprises and that the FHLBanks should be excluded from a final rule resulting from the Proposal.

A. Section 1237.3 – Powers of the FHFA as Conservator or Receiver

Section 1237.3 of the Proposal sets forth a common set of actions that the FHFA indicates it may take as conservator or receiver of a regulated entity. This section does not properly distinguish between those actions the FHFA is authorized or directed to take exclusively in its conservatorship capacity as compared to its receivership capacity.

Under the Federal Housing Enterprises Safety and Soundness Act of 1992 ("Safety and Soundness Act"), the FHFA is required to liquidate a regulated entity in receivership and dispose of its assets.[6] Paragraphs (2), (3), and (4) of Section 1237.3(a) of the Proposal, however, provide that the FHFA may, as conservator or *receiver*, continue the missions of the regulated entity; ensure that the operations and activities of each regulated entity foster liquid, efficient, competitive, and resilient national housing finance markets; and ensure that each regulated entity operates in a safe and sound manner. Such provisions suggest that the FHFA, as *receiver*, would continue to operate a regulated entity in receivership, as if such entity had been placed in conservatorship. The Safety and Soundness Act limits these concepts exclusively to a regulated entity that is in conservatorship.[7] Any final rule should recognize

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[5] This approach may also raise concerns under the Administrative Procedure Act, 5 U.S.C. §553.

[6] 12 U.S.C. § 4617(b)(2)(E).

[7] The Agency may, as *conservator*, take such action as may be –

and reflect the important legal distinctions that Congress established between a conservatorship and a receivership.

We note that proposed Section 1237.3 discusses the powers of the FHFA upon its appointment as a conservator or receiver. It does not make reference, however, to an important limitation on the FHFA's authority with respect to an FHLBank receivership. Section 1214 of HERA amended Section 26 of the FHLBank Act as follows:

> At least 30 days prior to liquidating or reorganizing any Bank under this section, the Director shall notify the Bank of the facts and circumstances upon which such determination is based. The Bank may contest that determination in a hearing before the Director, in which all issues shall be determined on the record pursuant to section 554 of title 5, United States Code.

12 U.S.C. § 4617(b)(2)(E) provides that "[i]n any case in which the Agency is acting as receiver, the Agency shall place the regulated entity in liquidation . . .". The combination of these two provisions would appear to require the FHFA to give notice to an FHLBank that the FHFA was planning to place the FHLBank in receivership at least 30 days prior to taking such action. The FHFA should state its view with respect to the operation of these two provisions and address this point in any final regulation.

B. Section 1237.4 – Receivership Following Conservatorship; Administrative Expenses

In the event that an FHLBank were in a troubled condition or in default or danger of default, one or more other FHLBanks may voluntarily provide, or be required to provide by court order, or by FHFA direction or otherwise, some form of managerial, financial, or other assistance to such FHLBank. Such assistance may, among other things, be provided under an inter-FHLBank assistance agreement contemplated by 12 C.F.R. § 966.9(b)(2)(iv), an FHFA payment order under 12 C.F.R. § 966.9(d), or an adjustment of equities ordered by the FHFA under 12 C.F.R. § 966.9(e).[8]

As discussed above, the FHLBanks are jointly and severally liable for COs issued by any of the FHLBanks.[9] This relationship as recognized by 12 C.F.R. § 966.9 has the potential

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> (i) necessary to put the regulated entity in a sound and solvent condition; and
> (ii) appropriate to carry on the business of the regulated entity and preserve and conserve the assets and property of the regulated entity.

12 U.S.C. § 4617(b)(2)(D) (emphasis added).

[8] 12 C.F.R. § 966.9(b)(2)(iv) provides that an FHLBank shall immediately provide written notice to the FHFA if at any time the FHLBank negotiates to enter or enters into an agreement with one or more other FHLBanks to obtain financial assistance to meet its current obligations, including direct obligations, due during the quarter. Such agreement is subject to FHFA approval.

[9] Under 12 C.F.R. § 966.9(a), each and every FHLBank, individually and collectively, has an obligation to make full and timely payment of all principal and interest on consolidated obligations when due.

to result in a range of situations where one or more FHLBanks provide assistance to another FHLBank. Any final rule should expressly and clearly encourage FHLBanks to provide assistance without fear that their claims for repayment of such assistance will be prejudiced in the event of a receivership of a failed FHLBank.[10]

The Federal Deposit Insurance Corporation ("FDIC") has adopted a regulation providing that "administrative expenses" shall include both *pre-failure and post-failure obligations* that the receiver determines are necessary and appropriate to facilitate the smooth and orderly liquidation or other resolution of the institution.[11] The FHFA in any final rule should address the priority of an FHLBank that has paid the CO obligations of an FHLBank in conservatorship or receivership.

C. Section 1237.5 – Contracts Entered into Before Appointment of a Conservator or Receiver

1. Period for Exercise of Repudiation

Under the Safety and Soundness Act, the FHFA must determine whether or not to exercise its rights of repudiation within an undefined "reasonable period" following its appointment as conservator or receiver.[12] In Section 1237.5(b) of the Proposal, the FHFA seeks to establish an 18-month period as a reasonable period *in all circumstances* for the FHFA to exercise its repudiation powers. In the preamble to the Proposal, the FHFA cites its experiences with the Enterprises as the basis for establishing this 18-month period, but does not give an explanation for why such a lengthy period is necessary.

The FDIC administers a conservatorship and receivership regime for insured depository institutions that is similar to that administered by the FHFA for the regulated entities. Under the Federal Deposit Insurance Act ("FDI Act"), the FDIC also must determine whether or not to exercise its powers of repudiation within a "reasonable period" following its appointment as conservator or receiver.[13] The FDI Act also does not define what constitutes a "reasonable period" for such purpose.

Under Section 966.9(d)(1), the FHFA may, in its discretion, at any time order any FHLBank to make any principal or interest payment due on any consolidated obligation.

[10] Under 12 C.F.R. § 966.9(d)(2), to the extent that one or more FHLBanks makes any payment on any CO on behalf of another FHLBank, the paying FHLBank is entitled to reimbursement from the non-complying FHLBank, which shall have a corresponding obligation to reimburse the FHLBank providing assistance, to the extent of such payment and other associated costs (including interest to be determined by the FHFA).

[11] 12 C.F.R. § 360.4.

[12] 12 U.S.C. § 4617(d)(2).

[13] 12 U.S.C. § 1821(e)(2).

The position taken by FHFA in the Proposal, which seeks to establish an 18-month period for the exercise of its repudiation powers in all circumstances, runs directly contrary to a number of court decisions interpreting an identical provision in the FDI Act. In those cases, the courts held that what constitutes a "reasonable period" of time to repudiate a contract depends on the particular facts and circumstance of each case.[14] Moreover, in at least one case, a federal district court found that the Resolution Trust Corporation ("RTC") did not repudiate a failed bank's leases within a reasonable period when the RTC's purported repudiation occurred approximately *six months* after its appointment as receiver — a period that is considerably shorter than *18 months* proposed by the FHFA in the Proposal.[15]

We believe an 18-month period for determining whether to repudiate seems excessive. We respectfully request that the FHFA establish a shorter period, such as six months, or leave the reasonableness determination to a case-by-case evaluation.

2. Treatment of Completed Sales

Proposed Section 1237.5 does not address the application of the FHFA's repudiation authority in regard to completed sales. The FHLBanks may engage in sales of certain assets and liabilities between individual FHLBanks. Moreover, FHLBanks engage in sale transactions with third parties. It is important to the FHLBanks and their counterparties to understand the circumstances under which the FHFA would not consider its repudiation power to be applicable to such sales.

Any new proposed rule applicable to the FHLBanks or any final rule resulting from the Proposal should clarify that the FHFA's repudiation powers as receiver or conservator of a regulated entity do not extend to repudiating completed sales. We note that in the preamble to the final rule adopting the FDIC's regulation regarding the treatment of financial assets transferred in connection with a securitization or participation ("Securitization Safe Harbor"),[16] the FDIC made the following statement:

> On the other hand, a transaction that purports to be a sale (not a participation) of all of a financial asset, even if it includes recourse against the seller, which would be characterized as a sale under the general legal view, *should not need to be encompassed by the rule; the FDIC would not be able to recover transferred assets as a result of repudiation*. *In the case of a completed sale, the FDIC would have nothing to repudiate if no further performance is required*. Even in the case of a sale transaction that imposes some continuing obligation, a repudiation by the FDIC would relieve the FDIC from future performance, *but generally should not result in a recovery of any*

[14] See, *e.g.*, *Resolution Trust Corp. v. CedarMinn Bldg. Ltd. Partnership*, 956 F.2d 1446 (8th Cir. 1992) and *Union Bank v. Federal Sav. & Loan Ins. Corp.*, 724 F. Supp. 468 (E.D. Ky. 1989).

[15] *Central Buffalo Project Corp. v. FDIC,* 29 F. Supp. 2d 164 (W.D.N.Y. 1998).

[16] 12 C.F.R. § 360.6.

property that was transferred by the institution before the appointment.[17]

We urge the FHFA to adopt a similar statement in the preamble to any new proposed rule applicable to the FHLBanks or any final rule resulting from the Proposal to provide reassurance to parties contracting with the regulated entities that the FHFA will not seek to use its repudiation powers to set aside completed sales.

The FHFA should also consider whether to adopt a regulation similar to the Securitization Safe Harbor. The FDIC has amended the Securitization Safe Harbor in connection with recent changes to Statement of Financial Accounting Standards Nos. 166 and 167 and currently has a proposed rule outstanding to further amend the rule.[18]

3. Treatment of Standby Letters of Credit

The FHLBanks issue standby letters of credit on behalf of their members and housing associates. The member or housing associate pledges collateral to the FHLBank to secure the member or housing associate's obligation to fully reimburse the FHLBank in the event of a payment on the standby letter of credit. If the FHLBank is required to make a payment for a beneficiary's draw, the reimbursement obligation for the payment amount is converted into a collateralized advance to the member or the housing associate. FHLBank outstanding standby letters of credit amounted to approximately $53 billion as of December 31, 2009.

The FHFA should make it clear in any new proposed rule applicable to the FHLBanks or any final rule resulting from the Proposal that it will not repudiate outstanding standby letters of credit issued by an FHLBank that is placed in conservatorship or receivership.

4. Affordable Housing Program Obligations

Each FHLBank is required to establish an Affordable Housing Program ("AHP"). Under the AHP, an FHLBank provides subsidies in the form of direct grants and/or below market rate loans to members who use the funds to assist in the purchase, construction or rehabilitation of housing for low or moderate income households. The AHP is an important aspect of the FHLBanks' mission of housing and economic and community development-related public service. A repudiation of an FHLBank's outstanding obligations arising from AHP relationships with member institutions could adversely impact important pending projects that benefit low and moderate-income households. The FHFA should make it clear in any new proposed rule applicable to the FHLBanks or any final rule resulting from the Proposal that it will not repudiate outstanding AHP obligations of an FHLBank that is placed in conservatorship or receivership.

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[17] 65 Fed. Reg. 49189, 49191 (emphasis added).

[18] 75 Fed. Reg. 27471 (May 17, 2010).

5. Contracts for Services to Other FHLBanks

In certain instances, an FHLBank provides services to one or more other FHLBanks and may provide services to the Office of Finance. If the FHLBank service provider were to be placed in receivership or conservatorship and its service contract was repudiated this could leave the Office of Finance or the FHLBank that receives the services in a position where it might have difficulty, particularly in the short term, in obtaining an alternative provider of those services, which might be important to its operations. Accordingly, we respectfully request that the FHFA establish, as a matter of policy or in any final rule, that prior to repudiating any contract under which an FHLBank in conservatorship or receivership provides services to one of more FHLBanks or the Office of Finance, it will consult with those FHLBanks or the Office of Finance and arrange for the replacement of those services for the other FHLBanks or the Office of Finance if a non-FHLBank provider cannot be found on a timely basis.

D. Section 1237.7 – Period for Determination of Claims

Section 1237.7 of the Proposal provides that the FHFA, as receiver, will determine whether or not to allow a claim within *180 days* from the date the claim is filed with the FHFA, as receiver.

Under the Safety and Soundness Act, the FHFA is required to establish a procedure for expedited relief outside of the regular claims process for claimants who allege (i) the existence of legally valid and enforceable or perfected security interests in assets of any regulated entity for which the FHFA has been appointed receiver, and (ii) that irreparable injury will occur if the regular claims procedure is followed.[19] The FHFA is required to determine whether to allow such claim within *90 days* of the date on which such claim is filed. Any final rule should set forth procedures for an expedited claims process as required by statute.

E. Section 1237.8 – Alternate Procedures for Determination of Claims

Section 1237.8 of the Proposal provides that claimants seeking "*a review of the determination of claims* may seek alternative dispute resolution from [the FHFA] as receiver in lieu of a judicial determination."[20] In addition, Section 1237.8 provides that the Director of the FHFA may by order, policy statement, or directive establish alternative dispute resolution ("ADR") procedures for this purpose.

The FHFA appears to view the ADR provision of the Safety and Soundness Act as being applicable *after* the receiver makes a determination regarding a claim filed with the receiver, which at that point would permit a claimant to pursue a judicial determination in regard to its claim. We believe the Safety and Soundness Act treats ADR as an alternative to a *determination by the receiver*. It provides that "[t]he Agency shall establish such ADR

[19] 12 U.S.C. § 4617(b)(8)(A)(1).

[20] Emphasis added.

processes as may be appropriate for the *resolution of claims filed under paragraph (5)(A)(i)*."[21] We believe Congress intended the ADR to be an alternative to the normal process established under 12 U.S.C. § 4617(b)(5) for the receiver to make the initial determination on a claim.

As we read the ADR provision of the Safety and Soundness Act, the FHFA has the authority to adopt ADR rules that offer claimants two choices. First, a claimant and the FHFA may agree to nonbinding ADR and if the claimant is dissatisfied with the result, the claimant may seek a judicial determination of the claim under 12 U.S.C. § 4617(b)(6). Second, a claimant and the FHFA may agree to binding ADR and if the claimant is dissatisfied with the result, the claimant would be precluded from seeking a judicial determination of the claim under 12 U.S.C. § 4617(b)(6).

We respectfully request that the FHFA reevaluate proposed Section 1237.8 in light of the foregoing comments.

F. Section 1237.9 – Priority of Expenses and Unsecured Claims

Proposed Section 1237.9 provides that the lowest priority of claim is accorded to "[a]ny obligation to current or former shareholders or members arising as a result of their current or former status as shareholders or members, including without limitation, any Securities Litigation Claim." Members or former members of an FHLBank may have a wide range of transactions and relationships with a failed FHLBank that could result in obligations that constitute creditor rather than equity holder claims against the receivership. For example, members may maintain deposits with an FHLBank or enter into transactions under which they are otherwise treated as a creditor of an FHLBank. These transactions and relationships are separate and distinct from a member or former member's ownership of capital stock of an FHLBank. We do not believe that Congress, in enacting 12 U.S.C. § 4617(c)(1), intended obligations of a failed FHLBank to members or former members arising from transactions or relationships other than the ownership of capital stock in that FHLBank to be treated any differently than the same types of obligations to nonmembers. We recommend that the FHFA make this point clear by adding the following text to proposed Section 1237.9(a)(4):

> This paragraph (a)(4) shall not apply to any obligation to a current or former member that is not directly related to the current or former member's ownership of capital stock. Thus an obligation, even if related to a claimant's membership in the Federal Home Loan Bank that does not directly relate to ownership of capital stock, would not be subject to this paragraph (a)(4).

Eleven of the FHLBanks operate under capital plans adopted under 12 U.S.C. § 1426 that were approved by the Federal Housing Finance Board. These capital plans, in accordance with the FHLBank Act and implementing regulations, may provide for different priorities

[21] 12 U.S.C. § 4617(b)(7)(A)(i) (emphasis added).

among holders of various forms of capital stock of an FHLBank. We recommend that the FHFA recognize this fact by adding the following text to proposed Section 1237.9(a)(4):

> Payments to holders of capital stock of a Federal Home Loan Bank shall be made in accordance with the priorities established under the Federal Home Loan Bank's capital plan and applicable law and regulations.

G. Sections 1237.10 and .11– Limited-Life Regulated Entities

The establishment and operation of a limited life regulated entity ("LLRE") FHLBank may have an important impact on a range of interested constituencies, including members of the FHLBank in receivership, holders of FHLBank COs, and other creditors and counterparties of the FHLBank in receivership.

The Proposal does not identify or address the wide range of issues that would be raised by a LLRE FHLBank. For example, would a LLRE FHLBank simply be a new FHLBank that would cover the same district and have the same membership that was served by the FHLBank in receivership, or would a new permanent FHLBank be established to serve that district contemporaneously with the LLRE? Would the LLRE FHLBank assume some or all of the primary obligations on COs of the FHLBank in receivership? Would the LLRE FHLBank assume the contracts of the failed FHLBank? Would the LLRE FHLBank be permitted to fund its operations by becoming a primary obligor on new FHLBank System COs? If so, how would such primary obligations be treated upon the termination of the LLRE FHLBank? If the LLRE FHLBank is intended to be a full operating institution, would its limited life of no more than five years impair its ability to provide effective services to member institutions in the district? How does the existence of the LLRE FHLBank impact the SEC disclosure obligations of the related FHLBank and the reporting obligations of the related FHLBank for FHFA reporting purposes? The FHFA should carefully consider the issues that would likely arise from the establishment of an LLRE FHLBank and address these issues in a new proposed rule directed at the FHLBanks.

H. Section 1237.13 – Payment of Securities Litigation Claims While in Conservatorship

Section 1237.13(b) of the Proposal appears to be focused on assuring that a LLRE will not be responsible for any shareholder claims relating to the failed regulated entity. The language in the last sentence of subsection (b) states that no shareholder or creditor of a regulated entity shall have any right or claim against the charter of the regulated entity once the FHFA has been appointed receiver and an LLRE succeeds to the charter. This language does not appear to apply to the FHLBanks because 12 U.S.C. § 4617(i)(1)(A)(i) provides for the FHFA to grant a temporary charter to an FHLBank LLRE. In contrast, a LLRE for Fannie Mae or Freddie Mac would succeed to the existing charter of the particular Enterprise. Thus, it appears that the final sentence of subsection (b) does not apply to the FHLBanks, even though the phrase "regulated entity" is used therein.

The provision of the Safety and Soundness Act from which the last sentence of subsection (b) of proposed Section 1237.13(b) is taken is clearly limited to the Enterprises and does not apply to the FHLBanks:

> (iii) no shareholder or creditor of a regulated entity shall have any right or claim against the charter of the regulated entity once the Agency has been appointed receiver for the regulated entity and a limited-life regulated entity succeeds to the charter pursuant to subparagraph (A).[22]

Subparagraph (A) is limited to the transfer of the charter of Fannie Mae and Freddie Mac and does not apply to the FHLBanks. Thus, the last sentence of proposed subsection (b) of Section 1237.13 should be amended to make it clear that it applies only to the Enterprises and not the FHLBanks.

III. Other Comments Regarding the Proposal

The preamble states that the Proposal parallels many of the provisions contained in FDIC rules for conservatorship and receivership. We note that the Proposal does not include provisions comparable to the FDIC's regulations regarding (i) qualified financial contracts,[23] (ii) treatment of financial assets transferred in connection with a securitization or participation, as discussed above,[24] or (iii) post-insolvency interest.[25] Nor does the Proposal address a range of policy statements that the FDIC has issued in connection with conservatorships and receiverships. We feel these regulations and policy statements are essential to promoting certainty for any entity that enters into certain transactions with an insured depository institution. We respectfully request that the FHFA consider whether any of these FDIC regulations or policy statements should be addressed in connection with an FHFA regulation on conservatorships and receiverships applicable to FHLBanks.

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[22] 12 U.S.C. § 4617(i)(2)(B)(iii).

[23] 12 C.F.R. § 360.5

[24] 12 C.F.R. § 360.6

[25] 12 C.F.R. § 360.7.

We appreciate your consideration of these comments.

Sincerely,

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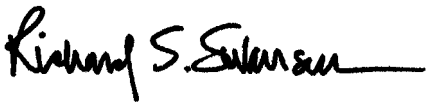

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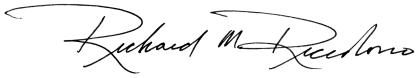

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