

September 24, 2015

The Honorable Jeb Hensarling  
Chairman  
Committee on Financial Services  
2129 Rayburn House Office Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Maxine Waters  
Ranking Member  
Committee on Financial Services  
4340 O'Neill Federal Office Building  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Hensarling and Ranking Member Waters:

The undersigned associations, representing thousands of institutions that are dedicated to housing finance in America, are writing to express our concerns with a proposed rulemaking (the Proposed Rule) currently under consideration by the Federal Housing Finance Agency (FHFA). The Proposed Rule, which was published for notice and comment in September 2014, would make harmful changes to the Federal Home Loan Bank System's (the System) membership requirements. It also raises significant concerns regarding legislative intent and the fulfillment of the System's overall mission. Notably, members of both the House of Representatives and the Senate submitted letters during the notice and comment period, voicing their strong opposition to the changes proposed by FHFA.

We respectfully urge Congress to prohibit this Proposed Rule from taking effect. Congress should also direct FHFA to consult with stakeholders to evaluate an appropriate membership structure to allow the System to best serve its mission in the 21<sup>st</sup> Century.

The Proposed Rule has two primary components, both of which are problematic. First, the Proposed Rule would alter a mortgage asset ratio requirement that currently applies only at the time an institution applies for membership in the System. This proposed rule would convert this ratio into an on-going obligation, regardless of market conditions, size of institution or length of time an institution has been a member in the System.

The Federal Home Loan Bank Act (the Act) imposes this requirement only at the time a prospective member applies to join the System. Congress has amended parts of the FHLB Act eight times during its 83 year history, and has never sought to impose an on-going asset test to retain membership in the System. As proposed, this new mortgage asset ratio test effectively amends the Act. Converting the current test into an on-going obligation could result in current long term members leaving the System, many of which are in small and rural markets, thereby reducing access to capital for home mortgage lending. It also risks undermining member confidence in the System, forcing current members to consider the risk that they may one day find themselves on the wrong side of an arbitrary requirement.

The second component would prohibit all captive insurance companies from being part of the System, despite the Act's express language that "any . . . insurance company" is eligible for membership. FHFA justifies this step by noting that captive insurance companies did not exist when the Act was drafted. While this is technically correct, it is also misleading. Captive insurance companies are widely-recognized risk management vehicles and have been productive members of the System for more than two decades. As stated above, during this time, Congress has seen fit to make substantial revisions to the Act without modifying the definition of insurance company or otherwise establishing limits to insurances companies' eligibility. Further, in the wake of the financial crisis and uneven housing market recovery, captive insurance companies represent a new opportunity for private capital to expand homeownership opportunities for credit-worthy borrowers.

Many captive insurance companies are owned by or affiliated with mortgage Real Estate Investment Trusts (REITs). Mortgage REITs are required by law to invest the vast majority of their assets in real estate and mortgages, and currently are direct holders of roughly \$300 billion in mortgages and mortgage-backed securities (MBS) utilizing permanent capital raised in the public markets. Additionally, mortgage REIT-owned captive insurance companies acquire and hold mortgage and MBS with their own capital – fulfilling the secondary market role insurance companies of all types have held since the Act was signed into law. Notably, this influx of capital has helped partially replace the declining retained portfolios of Fannie Mae and Freddie Mac.

In turn, the System helps captive insurers, and by extension their parent companies, by providing flexibility in funding terms. The ability to match funding terms with expected asset maturities allows these companies to invest in a greater array of mortgages and MBS – including those to borrowers who remain underserved. In return, the System receives more collateral than other sources of funding, such as Wall Street repurchase agreements. It is worthwhile to note that the System has never lost money on an advance.

Since its creation more than 80 years ago, the System has been a stabilizing force in the housing finance market, providing a reliable source of capital for lenders and investors to direct toward helping consumers finance home purchases. Throughout this time, Congress has repeatedly retained for itself the authority to determine the scope and nature of eligibility for membership in the System. FHFA's disregard of this precedent is troubling and ultimately undermines its own mission to foster a stable, liquid, resilient national housing market. The Proposed Rule will cause harm not only to the System itself, but the communities and borrowers who rely on the capital it provides. Congress should take action and ensure that the System continues to serve its broad membership base and fulfills its statutory mission.

Sincerely,

**Habitat for Humanity International  
Independent Community Bankers of America  
Mortgage Bankers Association  
National Association of Real Estate Investment Trusts**

cc: The Honorable John Boehner, Speaker, U.S. House of Representatives  
The Honorable Nancy Pelosi, Minority Leader, U.S. House of Representatives  
All Members, House Committee on Financial Services