July 15, 2024

Director Sandra L. Thompson
Federal Housing Finance Agency
Constitution Center
400 Seventh Street, SW
Washington, DC 20024

Re: RFI on Federal Home Loan Bank Mission

Dear Director Thompson,

The Coalition for Federal Home Loan Bank Reform (CFR), as well as additional undersigned organizations, applaud your leadership in conducting the first extensive review of FHLBanks in decades. We welcome this opportunity to assist the FHFA as it updates the mission of Federal Home Loan Banks to ensure that FHLBanks are more involved in meeting today's housing crisis and unmet community development needs.

The Coalition for Federal Home Loan Bank Reform is a non-partisan coalition of organizations dedicated to supporting reforms that will bring FHLBanks into the twenty-first century. The Coalition includes 14 national advocacy organizations who together represent thousands of local and state-level non-profits and over one million individual members in all states across the nation.[1]

While we view the current FHLBank System as overly focused on member profits, we believe a refocused System can make a significant difference in meeting the nation's critical affordable housing and community development challenges. A mission-focused FHLBank System would fully leverage all its activities, lending, and investments towards a revised housing mission and rely on membership-incentive programs to compel and help support their members to do more for fair and affordable housing and community development too. Regulatory reforms by the

[1] The Coalition includes: Consumer Federation of America, Center for Community Progress, National American Indian Housing Council, Grounded Solutions Network, Americans for Financial Reform, Community Opportunity Alliance, United Food and Commercial Workers International Union, National NeighborWorks Association, National Community Stabilization Trust, National Community Reinvestment Coalition, Local Initiatives Support Coalition, Center for Responsible Lending, Rebuilding Together, and the National Housing Resource Center. See also: Coalition for FHLB Reform https://www.fhlbreform.org/

FHFA – alongside reforms by Congress – can help the System take its place as a powerful tool in our housing finance System and tackle today's housing and community development needs.

Our main recommendations in this letter are:

1. ***FHFA should clarify the mission of the FHLBanks as providing liquidity for fair and affordable housing and community development.*** All of the System's resources and programs should be devoted to this mission, with some exemptions for small member institutions such as community banks, for whom general liquidity is a critical need.

2. ***Not all activities currently listed in the Core Mission Achievement (CMA) regulation should qualify as core mission activities***, and some activities should be discounted or weighted more heavily. In particular, we propose a bifurcation between advances supported by mission-based and those by risk-based collateral, with advances supported by Mortgage-Backed Securities (MBS) falling into the latter category.

3. ***In determining CMA, the FHFA should also review how the FHLBanks invest and leverage their capital*** – today valued at $73B, including $23B in excess of regulatory capital standards. While currently this capital is only used to boost profitability, excess capital should be leveraged to promote mission achievement by the FHLBanks. For example, this capital can be used as a credit-enhancement tool in a member-incentive program for CDFIs - that have a strong record of serving the whole of their community, including Black borrowers and majority-Black communities, MDIs, and other members most engaged in mission activities, or can be invested in a loan fund focused on regional unmet credit needs.

4. ***We recommend that FHFA develops membership-incentive programs that reward members that are mission-consistent***. We propose two program levels, where in the second tier, members would pay higher interest rates on advances or lose access to advance lending altogether. Only in the first tier, based on meeting the 10% residential asset test and on showing mission-consistent activities, members would receive subsidized advances as they currently do. In addition, small FHLBank members such as CDFIs - that have a strong record of serving the whole of their community, including Black borrowers and majority-Black communities, Minority Depository Institutions (MDIs), and community banks - who do the bulk of affordable mortgage lending – should be rewarded for their mission-consistent activities.

Background on the FHLBank System

Congress chartered the Federal Home Loan Bank (FHLBank) System in 1932 as a government-sponsored enterprise (GSE) with a public mission to help alleviate the nation's housing crisis.[2] At the time, savings and loans (also called thrifts) and insurance companies originated most mortgages.[3] Their capacity to make home loans was limited by their access to consumers' deposits. The government chartered FHLBanks with special government benefits and advantages, so this System could issue government-supported debt to provide liquidity for mortgage lending.

Since then, the origination and funding of mortgages has totally changed, but the FHLBank System remains stuck in its 92-year-old business model, albeit with a greatly expanded membership base and consequent dilution of its original core purpose. What has not changed is the government support for FHLBanks that has always been intended to support affordable housing and community development.[4] The 11 regional banks manage over $1.2 trillion in debt obligations on behalf of their 6,500 members, which include commercial banks, credit unions, insurance companies, and community development financial institutions (CDFIs).[5]

The FHLBank System only exists and is able to borrow so cheaply in capital markets because of its unique status and the tax and regulatory benefits of a GSE. These unique GSE benefits include the following:

- A $4 billion line of credit at the Treasury.

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[2] FHLBanks were chartered alongside other New Deal housing legislation such as the creation of the Federal Housing Administration in 1934. *See* George J. Gaberlavage, "The Federal Home Loan Bank System: A Chronological Review and Discussion of Key Issues" (Washington D.C.: Consumer Federation of America, June 14, 2017), https://consumerfed.org/reports/federal-home-loan-bank-system-chronological-review-discussion-key-issues/

[3] Weiss, Marc A. 1989. "Marketing and Financing Home Ownership: Mortgage Lending and Public Policy in the United States, 1918-1989" Business and Economic History. https://www.billboeckelman.com/history-of-american-home-financing/

[4] As noted in the RFI, the FHLB System's founding document, the Federal Home Loan Bank Act, does not explicitly describe the mission of the FHLBanks. However, the System's founding in the midst of the Great Depression with an assignment to expand housing finance established de facto its affordable housing and community development goals. Congress reiterated these goals in the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, when, once again, housing affordability, having steadily deteriorated over several decades, was an urgent matter, referring in the Act to the FHLBanks' "affordable housing and community development mission." In addition, the law requires the credit advance by the FHLBanks to be "fair." The FHLBanks are subject to the Fair Housing Act (42 U.S.C. § 3601 *et seq.*) and the Equal Credit Opportunity Act (15 U.S.C. § 1691 *et seq.*), which prohibit discrimination in credit and residential real-estate related transactions. Finally, under the Fair Housing Act, all federal agencies having regulatory or supervisory authority over financial institutions, including FHFA, are required to administer their programs and activities relating to housing and urban development in a manner that affirmatively furthers the purposes of the Fair Housing Act, which includes providing for fair housing throughout the United States. 42 U.S.C. § 3608(d).

[5] Office of Finance, "Federal Home Loan Banks: Combined Financial Report for the Year Ended December 31, 2022" (Washington D.C.: FHLBank Office of Finance, March 24, 2023), https://www.fhlb-of.com/ofweb_userWeb/resources/2022Q4CFR.pdf

- Exemption from all corporate federal, state, and local income taxes (the Congressional Budget Office estimates this subsidy to be around $800 million a year).
- SEC registration exemption (the Congressional Budget Office estimates that regulatory exemptions result in a subsidy of around $100 million a year).
- "Superlien" status as a creditor. This means that if a member depository financial institution fails, the Federal Home Loan Bank has first claim on collateral and on other assets to recover outstanding advances before the FDIC in the case of a liquidation. This means that they run virtually no risk of losses.[6]

Today, the overwhelming financial value from this government subsidy supports members' profits rather than public benefits as currently the System passes on most of this government subsidy to their membership as cheap advances and dividend payouts. The Congressional Budget Office (CBO) recently published a report that estimated that in 2024 the FHLBank System will receive *$7.3 billion dollars in government subsidies*.[7] The bulk of the subsidy amount flows from their GSE status which confers an "implied federal guarantee" on Federal Home Loan Banks debt: the perception that the federal government will never let FHLBanks fail. The CBO concluded that GSE status reduces FHLBank borrowing costs by 40 basis points.[8] As a result, the FHLB System can borrow at rates that are near the rates of Treasury-issued debt. These government subsidies do not show up as Congressional appropriations but do rely on implied federal guarantees, including the high costs of public bailout were the FHLBanks to fail.[9]

However, the public gets very little in return for $7.3 billion in government subsidies, as shown in **Figure 1**. In 2023, statutory and voluntary Affordable Housing Program (AHP) funding combined to around $390 million in spending towards affordable housing: by contrast, *the System spent 8.5x as much that year on paying out $3.4 billion in dividends to its members*. As a result, the bulk of FHLBank subsidies flow on directly to support members' profits, rather than being spent towards furthering fair and affordable housing and community development.

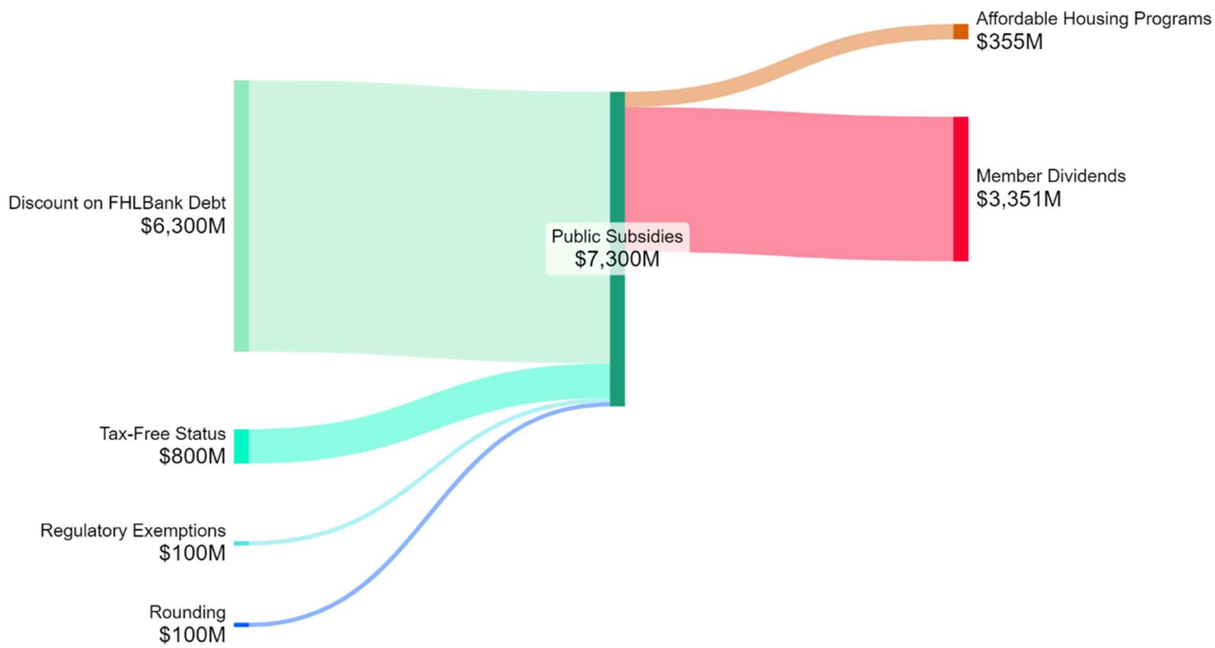
[6] US Government Accountability Office, "Federal Home Loan Banks: Actions Related to the Spring 2023 Bank Failures" (Washington D.C., March 8, 2024), https://www.gao.gov/products/gao-24-106957#:~:text=Why%20GAO%20Did%20This%20Study,respective%20FHLBanks%20before%20their%20failures

[7] Congressional Budget Office, "The Role of Federal Home Loan Banks in the Financial System" (Washington D.C.: Congressional Budget Office, March 7, 2024), https://www.cbo.gov/publication/59712

[8] The Congressional Budget Office noted in its report (p.2) that: "If the FHLBank System was private instead of public, it would carry a credit rating in the range of AA or AA instead of its current rating at AA+."

[9] The financial distress and resulting conservatorship of Fannie Mae and Freddie Mac, two other GSEs, demonstrates that this "implied" government guarantee can become very real under stress.

Figure 1: FHLBank Sources and Application of the Subsidy in 2023



Source: Coalition for FHLBank Reform. Based on CBO estimated subsidies, 2023 statutory AHP spending, and 2023 dividend payouts.[10]

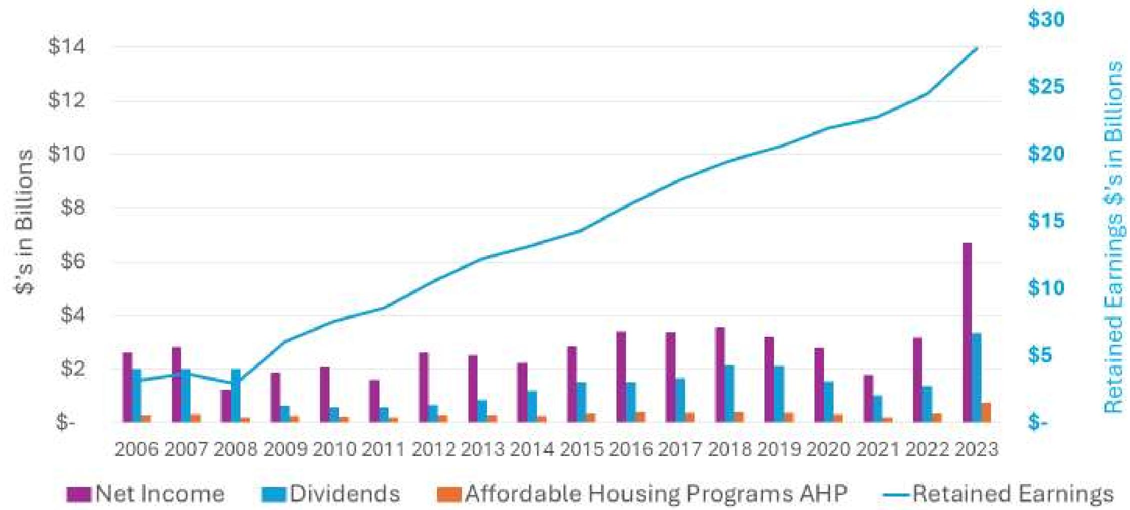
This disparity between public subsidies and private benefits has been persistent from 2006 to 2023, as shown in **Figure 2.** While dividends generally consumed at least 40 percent of net income, affordable housing got the statutory minimum of 10 percent. In recent years, with the intense scrutiny of their inadequate support of fair and affordable housing by the FHFA and members of Congress, the FHLBanks are slowly bringing up their voluntary affordable housing support to an additional 5% of net income beyond the 10% statutory minimum in 2024.[11] Given

[10] Cornelissen, Sharon, "Opinion: What is the Public Actually Getting for $7.3B in Housing Subsidies." (HousingWire, March 29, 2024). https://www.housingwire.com/articles/opinion-what-is-the-public-actually-getting-for-7-3b-in-housing-subsidies/

[11] Council of FHLBanks Press Release, "Federal Home Loan Banks Anticipate $1 Billion in Affordable Housing and Community Development Initiatives in 2024," (Washington, D.C., May 7, 2024), https://fhlbanks.com/wp-content/uploads/2024/05/AHP-1-BN-Press-Release-05-07-24.pdf

their historically high profits in 2023, in 2024 they are set to pay out a combined $1B in voluntary and mandatory AHP contributions. While this is good news for the nation's struggling communities, renters, and first-time homebuyers, we believe that much more should be done given the size of public subsidies and of this GSE.

Figure 2: Dividend Payouts, AHP Contributions, and Growth of Retained Earnings



Note: Net Income, Dividend Payout and AHP on the Left Axis. Retained Earnings on the Right. Source: George Collins and Policy Kinetics, FHLBank System Combined Financial Reports 2006-2023.[12]

The blue line in figure 2 represents the growth of retained earnings, scaled on the right-side axis in billions of dollars. We see that FHLBanks had more than enough financial capacity to devote more to AHP funding beyond the bare minimum if they had wished to do so. Since 2008, they have added billions of dollars every year in profits to their System's capital as retained earnings. The System is well beyond the safety and soundness requirements by FHFA. Indeed, in a 2024 FHLBank presentation to investors, it showed that in Q1 2024 the System had a 1.83% excess regulatory capital ratio, equivalent to *$23 billion in regulatory capital surplus!*[13]

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[12] Collins, George, "FHLBanks Retained Earnings Growth." (FHLB Outsider Observations, May 4, 2024), https://fhlboutsiderobservations.com/fhlbanks-retained-earnings-growth/

[13] FHLBanks Office of Finance, "Investor Presentation." (FHLBanks Office of Finance, June 2024), P. 7 https://www.fhlb-of.com/ofweb_userWeb/resources/fhlbankpresentation.pdf
FHLBanks hold $49 billion in excess risk-based capital; $23 billion in excess regulatory capital and $47 billion in excess leverage capital. See FHLBanks, "Combined Financial Report for the Quarterly Period Ended March 31, 2024" p. F-31 (FHLBanks, May 14, 2024) https://www.fhlb-of.com/ofweb_userWeb/resources/2024Q1CFR.pdf

Currently the System mostly uses these retained earnings as debt-free support for an investment portfolio to generate profits that largely go to members. We believe, however, that these additional retained earnings present a great opportunity to further FHLBank System mission achievement, by leveraging them for investments for fair and affordable housing and community development.

The FHLBank System Has Almost No Connection to Housing

The Coalition and the undersigned strongly applaud the FHFA's recommendation to Congress that statutory AHP contributions be raised to at least 20 percent of net income. The current 10% contribution was enacted as part of the 1989 FIRREA reforms. From 1989 to 2011, the System was also liable for an additional 20% annual deduction from their profits to pay part of the taxpayers' debt service on REFCORP obligations in the wake of the savings and loans crisis.[14] For over these two decades, FHLBanks have shown that they can sustain themselves safely and soundly, and even profitably, with a 30% total annual deduction from their profits. Given the FHLBank mission and the dire fair and affordable housing crisis, the Coalition and the undersigned support Congress significantly increasing the mandatory minimum AHP contributions from 10% to at least 30%. For example, an increase to 30 percent in AHP contributions would have led to $1.4 billion dollars in additional funding for fair and affordable housing in 2024, without requiring Congressional appropriations.

At the same time, statutory and voluntary AHP contributions will always remain a limited way in which FHLBanks can address critical housing and community development needs. AHP contributions should be part of a broader System fully aligned with its mission to support fair and affordable housing and community development. For a range of reasons, including the ways that housing finance has transformed over the last ninety years, the FHLBank System has drifted from its mission to support fair and affordable housing and community development. Most notably, advance lending has become increasingly disconnected from mortgage origination and housing and community development liquidity needs.

The rise of securitization and secondary markets for mortgages has radically transformed the ways that lenders originate mortgages. Today around 65 percent of mortgage debt in the United States is securitized into MBS, most of it is agency MBS that is guaranteed by Fannie Mae, Freddie Mac, or Ginnie Mae.[15] This rise of securitization has minimized the housing-specific liquidity needs that inspired the original FHLBank model. A diminishing share of mortgages today are held in portfolio.

[14] Gaberlavage, George J., "The Federal Home Loan Bank System: A Chronological Review and Discussion of Key Issues." (Washington D.C.: Consumer Federation of America, June 14, 2017), http://consumerfed.org/wp-content/uploads/2017/06/6-14-17-FHLB_Report.pdf

[15] Fuster, Andreas, Lucca, David, and Vickery, James, "Mortgage-Backed Securities." (Federal Reserve Bank of New York, 2022), https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr1001.pdf.

Membership composition of FHLBanks also no longer reflects who does mortgage lending. According to Pew Charitable Trust, between 2018 and 2022, independent mortgage companies (IMBs) originated 62 percent of home purchase mortgages, while community banks originated 16 percent, large banks 15 percent, and credit unions 7 percent of these mortgages.[16] As a result, most home mortgages today are originated *without direct access to FHLBank liquidity*. Many FHLBank members are no longer in the mortgage business. A Bloomberg investigation found that 42 percent of FHLBank members had not originated one single mortgage in the last five years.[17] Moreover, FHLBank members do not have a strong record of reaching borrowers and communities of color. Nonbank lenders cannot be members of FHLBanks but provide the vast majority of mortgages to consumers of color, including the government mortgages that often serve consumers of color. In 2021, 64% of all first-lien mortgages and 72% of loans backed by Ginnie Mae were originated by nonbank lenders.[18]

Why Mission Needs to be Recentered in FHLBank Reform

The nation also faces a critical need for a mission-focused FHLBank System, making stronger FHFA mission oversight of the System timely and long overdue.

The nation's renters, including would-be homeowners, face a housing affordability crisis. The latest data indicate that half of all renters are cost burdened, spending more than 30% of their incomes on housing costs, while over a quarter are severely cost burdened, spending more than 50%.[19] Black and Latino renter households are disproportionately impacted by this housing crisis. Black and Latino renters were more likely than white renters to be cost-burdened. In 2022 more than half of Black renters (57%) and Latino renters (54%) were cost-burdened, while about 45% of white renters were cost-burdened.[20] The increases in cost burdens limit the ability of renters to save for a down payment, move to homeownership, and build wealth.

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[16] Staveski, A., & Maguze, T. "Independent Mortgage Companies Are Critical to Small Mortgage Access." (Pew Charitable Trusts, 2024), https://pew.org/43sMsSR

[17] Buhayar, N., Perlberg, H., & Schoenberg, T., "How a Vegas Whale, and Many More, Tap Billions Meant for US Housing." (Bloomberg, October 20, 2023), https://www.bloomberg.com/news/articles/2023-10-20/savvy-financiers-tap-billions-meant-for-mortgages-from-1-4-trillion-fhlb-system

[18] Kate Berry, Big Banks, Nonbanks Largely Absent from FHFA Home Loan Banking Inquiry, American Banker (Oct. 11, 2022); Bonnie Sinnock, Nonbanks Made the Majority of Purchase Mortgages in 2021, American Banker (June 2022), https://www.americanbanker.com/news/nonbanks-made-the-majority-of-purchase-mortgages-in-2021.

[19] Airgood-Obrycki, Whitney, "Rental Housing Unaffordability: How Did We Get Here?" (Joint Center for Housing Studies of Harvard University, March 26, 2024), https://www.jchs.harvard.edu/blog/rental-housing-unaffordability-how-did-we-get-here

[20] Whitney, Peyton, "More Than 42 Million US Households Were Cost Burdened in 2022." (Joint Center for Housing Studies of Harvard University, January 19, 2024), https://www.jchs.harvard.edu/blog/more-42-million-us-households-were-cost-burdened-2022

Simultaneously, there's a severe shortage of entry-level homes, pressuring home prices in this segment of the market. Freddie Mac reports that there were only 65,000 new entry-level homes completed in 2020, less than one-fifth of the entry-level homes constructed per year in the late 1970s and early 1980s.[21]

In addition to the pressures described above, systemic racism and discrimination in housing, employment, and education have driven the persistence of gaping racial and ethnic homeownership and wealth disparities. Every year, there are over 4 million incidents of housing discrimination. In 2022, the nation saw the largest number of fair housing complaints ever, up 5.7% higher than 2021.[22] With respect to the homeownership gap, in 1960, when housing discrimination was legal, there was a 27-percentage point gap between Black homeownership (38%) and white homeownership (65%). In 2021, the racial homeownership gap was even wider at 29 percentage points, representing another barrier to wealth-building for households of color. The homeownership rate is 73% for white households, 51% for Latino households, and 44% for Black households.[23] These factors have contributed to a wide and persistent wealth gap. Since the Great Recession, the typical Black and Latino household has had between about $10 to $15 of wealth for every $100 held by the typical white household.[24] In 2022, the median wealth was $285,000 for white households, $61,600 for Latino households (20% of the typical white household), and $44,900 for Black households (15% of the typical white household).[25] The current shortage of fair and affordable housing and continued racial and ethnic homeownership and wealth gaps demonstrate that the FHLBanks can do much more to better serve the nation's housing and housing finance needs.

We also see long-standing, large-scale affordable housing and community development needs in rural communities nationwide. Fully 45 percent of rural renters and nearly a fifth of rural homeowners are housing cost burdened.[26] Simultaneously, these communities are threatened by the potential loss of hundreds of thousands of deeply affordable multifamily housing units

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[21] Freddie Mac, "Housing Supply: A Growing Deficit" (Freddie Mac, May 2021), https://rb.gy/pr0bch

[22] National Fair Housing Alliance, "2023 Fair Housing Trends Report: Advancing a Blueprint for Equity" (2023). https://nationalfairhousing.org/resource/2023-fair-housing-trends-report/

[23] National Association of REALTORS® Research Group, "2023 Snapshot of Race and Homebuying in America" (2023) https://www.nar.realtor/sites/default/files/documents/2023-snapshot-of-race-and-home-buying-in-the-us-03-02-2023.pdf ; Urban Institute, "Reducing the Racial Homeownership Gap." https://www.urban.org/policy-centers/housing-finance-policy-center/projects/reducing-racial-homeownership-gap

[24] Aditya Aladangady, Andrew C. Chang, Jacob Krimmel, "Greater Wealth, Greater Uncertainty: Changes in Racial Inequality in the Survey of Consumer Finances" (Federal Reserve Board FEDS Notes, 2023). https://www.federalreserve.gov/econres/notes/feds-notes/greater-wealth-greater-uncertainty-changes-in-racial-inequality-in-the-survey-of-consumer-finances-20231018.html

[25] *See id.*

[26] Housing Assistance Council, "Taking Stock: Rural Housing, Rural People and their Homes" (Housing Assistance Council, 2024), https://takingstockrural.org/taking-stock/rural-housing/

assisted by the U.S. Department of Agriculture's 515 direct mortgage program, as those loans reach maturity over the coming decades.[27]

Meanwhile, rural economies *are* growing and are home to dynamic industries, although they do face substantial challenges.[28] Household income and labor force participation in rural communities both lag their urban and suburban counterparts. Poverty rates are higher in rural America than in metropolitan areas, with both extreme poverty rates (above 20%) and persistent poverty (extreme poverty rates over three decades) greatly overrepresented. These features make rural communities especially vulnerable when they lack resources to address newly emerging community development needs, including investments to ensure communities, homes, and apartment buildings remain resilient amidst intensifying climate disasters, ranging from wildfire risks and heatwaves, to storms, flooding risks and hurricanes.[29]

Our comment letter builds on this understanding of the critical need for a FHLBank System that is robustly and creatively mission-focused. While our assessment of the current FHLBank System is critical, we believe reforms by the FHFA (and by Congress) can help the System take its place as a powerful tool in our housing finance apparatus.

Answers to RFI Questions

MISSION QUESTIONS

Mission Question One: How should the mission statement for the FHLBanks reflect the connection between the liquidity provided by the FHLBanks and their support for housing and community development?

Congress chartered the FHLBank System as a GSE and granted the FHLBanks specific advantages and tax benefits in order to facilitate members' activities that promote the System's core mission of providing *liquidity for fair and affordable housing and community development*. All of the FHLBanks' resources should be devoted to the furtherance of this mission, consistent with sound credit management, with appropriate exceptions for small member institutions for whom general liquidity is a critical need.

The mission of FHLBanks should be to provide, except in limited situations, liquidity *for* fair and affordable housing and community development, rather than to provide government-subsidized, cheap liquidity for its own sake. While FHLBanks may disagree, providing dividends is not a mission activity.

[27] *Ibid.*

[28] *Ibid.*

[29] Housing Assistance Council, "Before and After Natural Disasters" (Housing Assistance Council, 2024), https://ruralhome.org/rural-resilience-in-face-of-disaster/before-and-after-natural-disasters/

The FHLBanks should fulfill this mission by addressing unmet credit needs in housing and community development, including for low- and moderate-income households and households of color, especially those residing in underserved urban, rural, and Native Trust communities. They should accomplish this mission through:

1. Extending advances to member institutions to expressly finance fair and affordable housing and support community development investments that benefit these households and underserved communities. Mission-consistency of advances should be evaluated based on the type of collateral used: below we offer a more detailed distinction between "mission-based" versus "risk-based" collateral.

2. Using FHLBanks' balance sheets and excess capital that exceeds regulatory capital requirements to support and provide liquidity for fair and affordable housing and community development in underserved markets. This includes but is not limited to small-dollar mortgages, shared equity mortgage products, rural and manufactured housing loans, loan loss reserves for non-depository CDFIs, and homeownership-focused Special Purpose Credit Programs and first-generation homeownership programs. It may also include offering long-term funding for affordable rental housing construction and making investments in climate resiliency and disaster recovery for low- and moderate- income households and households of color.

3. Offering direct financial support, including but not limited to the Affordable Housing Program, to subsidize affordable first-generation homeownership opportunities, such as downpayment and closing cost assistance or interest rate buydowns, as well as to underwrite and subsidize targeted affordable rental housing and community development projects that primarily benefit low- and moderate-income households and households of color in underserved communities.

Mission Question Two: Are there components in addition to providing liquidity and supporting housing and community development that should be included in the mission statement?

We have provided our proposed mission statement for the FHLBank System above. We do not see the liquidity-supporting functions of the System and its mission of supporting fair and affordable housing and community development as separate components. Rather, as a Congressionally chartered GSE that only exists and functions based on billions in annual public subsidies, the full capacity of the System should be leveraged to support affordable housing and community development needs – with exemptions for smaller member institutions for whom general liquidity access is a critical need.[30]

[30] In particular, for smaller membership institutions such as community banks who do not have access to alternative sources of "lender of last resort" financing, most notably the Federal Reserve Bank discount window. *See also* Kate Judge, "The Unraveling of the Federal Home Loan Banks." (Columbia Law and Economics, 2024) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4626125

The *mission statement should also include an explicit focus on affirmatively furthering fair housing.* We agree with the National Fair Housing Alliance in their 2022 comment letter to the FHFA, which offers a range of recommendations for the FHLBanks to help affirmatively further fair housing.[31] Fair and affordable housing entails addressing unmet credit needs and promoting equitable access to housing, in ways that helps overcome historical barriers and disparities.

Under the Fair Housing Act, all Federal agencies having regulatory or supervisory authority over financial institutions, including FHFA, are required to administer their programs and activities relating to housing and urban development in a manner that affirmatively furthers the purposes of the Fair Housing Act, which includes providing for fair housing throughout the United States.[32] This could be accomplished through requiring periodic and comprehensive Equitable Housing Finance Plans of the 11 FHLBanks, more like the other regulated entities of the FHFA, Fannie Mae and Freddie Mac.[33] FHLBanks can also further fair housing goals through piloting and devoting resources to innovative housing programs and financing solutions, such as first-generation homeownership programs, small mortgage loans, or loan funds tailored to better meeting community development needs on Native American Trusts and land.

MEASUREMENT QUESTIONS

Measurement Question One: Are there characteristics other than those listed above that FHFA should consider in developing measures of mission achievement? Please provide the rationale for consideration of any other characteristics.

We support the FHFA in developing metrics and thresholds to more clearly assess mission achievement. We agree that measures should be objective and clearly defined, data-driven, comparable over time and across FHLBanks, and shared publicly. The metrics should show the results for each FHLBank and for the System as a whole. That way, the metrics can encourage the FHLBanks to compete to show which best serves the mission of fair and affordable housing and community development, rather than merely meeting statutory minimums.

[31] *See* NHFA, "Comment Letter to FHFA Re: Federal Home Loan Bank System." (NHFA, October 2022), https://nationalfairhousing.org/wp-content/uploads/2022/11/2022-10-31_NFHA-et-al-Comment-Letter-to-FHFA-re-FHLBs_FINAL.pdf

[32] 42 U.S.C. § 3608(d).

[33] *See* FHFA, *Final Rule: Fair Housing, Fair Lending, and Equitable Housing Finance Plans*, 89 Fed. Reg. 42768 (May 16, 2024). Under this rule, FHFA will now require the FHLBanks to provide limited Equitable Housing Finance Plans, which are not as comprehensive as those required for Fannie Mae and Freddie Mac. 12 C.F.R. § § 1293.31-1293.32.

Measurement Question Two: Should all activities in the CMA regulation qualify as core mission activities? Are there items that should be added to or removed from the list of core mission activities? Please provide the rationale for any additions or deletions.

Not all activities currently listed in the CMA regulation should qualify as core mission activities, and some activities should be discounted or weighted more heavily. Based on the mission statement above, the following activities should qualify as core mission activities, as each can be used to provide direct and needed support to underserved markets:

Advances: As the primary activity of FHLBanks is making advances to members, we believe advances must develop a stronger link to fair and affordable housing and community development needs.

We propose that collateral backing advances be bifurcated to ensure mission use of advance proceeds: (1) strict “mission collateral” equal to the amount of advances (excluding MBS), and (2) “risk collateral,” such as commercial and residential MBS or other real estate and government loans providing liquid security to satisfy FHLBank’s risk and liquidity needs. Below, we explain our rationale for which assets should be defined as “mission collateral” and which should be defined as “risk collateral.

We propose that collateral used for advance lending should be weighted differently for CMA, based on its respective impact on mission achievement. We believe that the use of whole, single-family and multi-family mortgages should be counted more heavily, and residential and commercial MBS, government or other real estate debt less heavily, in CMA as mission-consistent collateral for advance lending, because MBS securities used as collateral do not offer sufficient support for housing and community development.

Our position is that owning RMBS to pledge as FHLBank collateral is not additive in the housing finance market because RMBS is a $10 trillion, highly liquid market, already dominated by other government sponsored enterprises, namely Fannie Mae, Freddie Mac and Ginnie Mae. Today’s market for packaged mortgages loans is many multiples of FHLBank collateral. There is widespread global interest in buying American mortgage-backed securities (MBS) as an investment instrument.[34]

We think that the relative liquidity versus illiquidity of housing-related assets, and their direct connection to mission achievement, should be taken into account in CMA metrics and weighting, as well as in collateral requirements for advances.

Further, though advances to CDFIs and Minority Depository Institutions are currently a very small amount of lending activity, advances to those institutions should count more heavily towards mission activity than advances to other members.

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[34] *See* McMenamin, R., Paulson, A., Plestis, T., & Rosen, R. J., “What Do U.S. Life Insurers Invest in?” (Chicago Fed Letter, 2013), p. 309. https://www.chicagofed.org/publications/chicago-fed-letter/2013/april-309

AMA (Acquired Member Asset): The AMA program has a lot of potential to help meet fair and affordable housing needs, especially for small lenders and affordable mortgage borrowers. However, the program is currently small and must be rethought to have a bigger impact on affordability, rather than just offering secondary market access for a small share of high-quality mortgages that generally support borrowers with stronger credit scores and higher incomes. Currently, the AMA regulation only requires that each FHLBank makes at least 20 percent of its loan purchases for LMI populations, a share that is too low in our view.[35] With these caveats, we believe this program should be counted as a mission-related activity.

AMA programs should be counted more heavily towards CMA when they specifically help offer a secondary market for (1) smaller lenders for whom access to GSE securitization is prohibitive (e.g. because of costs to gain access and their relatively small scale of lending) and/or for (2) non-conforming fair and affordable mortgages, such as small-dollar mortgages, Special Purpose Credit Programs, First-Generation Homeownership Programs, or other specialized fair and affordable products, which would otherwise have no or limited secondary market access.

In addition, activities where individual FHLBanks aggregate whole mortgage loans from member lenders and sell them on to Fannie, Freddie or into a Ginnie security at a more economical execution than the member lender could achieve on its own, also should count as CMA.

Standby Letters of Credit: The measurement of CMA should make a distinction between letters of credit that support fair and affordable housing and community development and those letters of credit that support member acceptance of public unit deposits. The former should get a much higher score in terms of measuring CMA.

Intermediary Derivative Contracts: We don't believe that intermediary derivative contracts entered into by FHLBanks serve housing and community development goals. While they may provide opportunities for FHLBanks to achieve important business goals, they should not count as mission activities.

Debt or Equity Investments: Debt or equity investments in housing and community development activities that primarily benefit low- and moderate-income households and households of color, especially those residing in underserved urban, rural, and Native Trust communities should be weighted more heavily towards CMA.

Investments in the Section 108 Loan guarantee program should be counted as core mission activities. There has long been an opportunity to streamline issuance of these guaranteed loans with better execution for the borrower. Given that recipients of the funding have already received Community Development Block Grants (CDBG), and that their stream of entitlement funding is pledged against these loans, this financing could be helpful in completing or

[35] Federal Housing Finance Agency, "FHLBank System at 100: Focusing on the Future" (Washington, D.C., Federal Housing Finance Agency, November 2023), p. 56-57 https://www.fhfa.gov/sites/default/files/2024-01/FHLBank-System-at-100-Report.pdf

expanding vital housing or community projects with minimal risk to the FHLBanks.[36] Therefore, these investments should be promoted and incentivized. Similarly, with investments under the Native American Housing Assistance and Self-Determination Act, the connection to FHLBanks housing goals are clear as the program helps finance affordable housing for Native American Tribes.[37] FHFA should strengthen the incentive to support this and other worthy programs for Native American Tribes. Finally, if a new loan guarantee program is created for HOME as envisioned in S. 3793/H.R. 7075, these investments should also count for mission activity.[38]

Retained Earnings Investments: FHLBanks should get additional credit for innovative mission-related pilots and investments they make by using their capital to support fair and affordable housing and community development. Currently, retained earnings, including those in excess of regulatory requirements, only get invested to generate more profits for the System. FHLBanks should get credit for using part of this capital to develop loan funds or credit-enhancements to support fair and affordable housing and community development, which would help support mission achievement. Further, as per our discussion of secondary mortgage markets above, investments of retained earnings into MBS should not count towards CMA.

CDFI and MDI Member Support: FHLBanks should be assessed on e*nhanced access to advances* for mission-focused members (including CDFIs and MDIs), such as through the creation of alternative credit support programs that would offset collateral eligibility and valuation policies and related loan-to-value (LTV) haircuts by individual FHLBanks, which currently reduce the availability of loan funds for use in underserved communities.

As the FHFA noted in its November 2023 report, non-depository CDFIs often cannot access the same level of advances as other members even when identical collateral is pledged.[39] This discrepancy occurs, in part, because individual FHLBanks apply steeper LTV haircuts based on their risk assessment of the institutions. Other FHLBank lending and collateral policies also contribute to making it harder for non-depository CDFIs members to access advances on a comparable basis with prudentially regulated members.[40] As a result, just 28 non-depository CDFI members (out of 70 in total) had advances outstanding as of Q2 of 2023,[41] which limited

[36] HUD, "Section 108 Loan Guarantee Program (Section 108)" (U.S. Department of Housing and Urban Development, June 12, 2024), https://www.hud.gov/program_offices/comm_planning/section108
[37] HUD, "NAHASDA" (U.S. Department of Housing and Urban Development, 2024), https://www.hud.gov/program_offices/public_indian_housing/ih/codetalk/nahasda
[38] 118th Congress, "S.3793 - HOME Investment Partnerships Reauthorization and Improvement Act of 2024" (Introduced Bill), https://www.congress.gov/bill/118th-congress/senate-bill/3793/text?s=4&r=1
[39] *Ibid*. p. 41.
[40] FHLBanks Office of Finance, "Lending and Collateral Q&A" (Federal Home Loan Bank System, March 22, 2024), Federal Home Loan Bank System: Lending and Collateral Q & A 2023 Q4" (Washington D.C.: FHLBank Office of Finance, March 22, 2024) page 6. https://www.fhlb-of.com/ofweb_userWeb/resources/lendingqanda.pdf
[41] Federal Housing Finance Agency, "FHLBank System at 100: Focusing on the Future" (Washington, D.C., Federal Housing Finance Agency, November 2023), p. 41 https://www.fhfa.gov/sites/default/files/2024-01/FHLBank-System-at-100-Report.pdf

the potential of advances to further support the System's housing and community development mission.

To level the playing field for non-depository CDFIs, MDIs, community Banks and other small mission-focused members while maintaining important safety and soundness standards across the System, each FHLBank could, for example, use a portion of its retained earnings or the interest revenue generated from retained earnings to fund a loan loss reserve. The reserve pool would serve as a first-loss back stop on specific advances that support the System's housing finance and community development mission. FHLBanks could establish such a pool individually or collectively. FHLBank resources used to capitalize these types of pools or other innovative instruments should count as a mission contribution in the year that a commitment of funds is made. To further define and operationalize this concept, we recommend continued dialogue with CDFI-FHLB Working Group members.

Measurement Question Three: In developing multiple measurements, what additional aspects of mission achievement should FHFA assess? What additional measurements should FHFA adopt to assess support for housing and community development, including support for lower income households or other groups with identified needs?

All metrics and public disclosures on FHLBank mission achievement should incorporate an understanding of *equitable* impacts across service regions. Metrics should highlight to what extent FHLBanks succeed in targeting unmet credit needs of underserved communities and populations, in particular low- to moderate-income households and households of color. Mission achievement should not just focus on housing-related activities in general, but on how FHLBank activities affirmatively further fair housing, support fair and affordable housing, and address unmet credit needs in community development. To the extent possible, the metrics should show results disaggregated by income, race, and ethnicity of the borrowers served by the collateral pledged.

For each FHLBank, FHFA should also measure the participation of financial institution members in mission-related investments such as participation in CIP, CICA, AHP and voluntary program sponsorship and letters of credit, and should disclose this information to the public. FHLBanks' executive compensation should be based on a minimum threshold of participation in these core mission investments. For example, at least 10-20% of a FHLBank's members should be providing CIP and CICA in any given year.

Finally, the metrics should show the results for each FHLBank and for the System as a whole. That way, the metrics can encourage the FHLBanks to compete to show which best serves the mission of fair and affordable housing and community development, rather than merely meeting statutory minimums.

a. Should some core mission activities be weighted differently from others? For example, in assessing support for housing and community development, should advances or other activities involving members with a stronger mission focus (as discussed below) be given greater weight?

b. Should all FHLBank advances count as core mission activities, or should there be limits or exclusions for advances (or other activity) involving members that have only a limited connection to housing and community development? How might this be measured? Should the type of collateral securing an advance be considered in evaluating advances? (Alternatively, this type of approach could be used for calculating one or more additional measurements.)

c. How should an FHLBank's AHP contributions that exceed the statutorily required minimum or voluntary program contributions be reflected in the mission achievement measures?

As discussed in the previous question, we believe that some core mission activities should be weighted more heavily, while others should be discounted, based on their respective mission relevance.

We do not think that <u>all</u> FHLBank advances should count as core mission activities. It is difficult to determine what advances are used for, given the complications of balance sheets and outstanding liabilities and activities of members. Collateral that supports advance lending should be divided into "mission collateral" and "risk collateral." Notably, we propose that MBS should be seen as risk collateral rather than mission collateral for the FHLBanks, as discussed above. The CIP and CICA programs should count towards core mission activities with each FHLBank expected to have a certain percentage of their members providing these discounted long-term loans for housing and community development activities. CIP/CICA could be simplified to include lines of credit for acquisition or CDFIs instead of being tied to specific projects.

Core mission activities targeted towards low- and moderate-income households and households of color, especially those residing in underserved urban, rural, and Native American communities, should be weighed more heavily. Those examples include mission-consistent standby letters of credit, debt or equity investments as discussed above, Section 108 investments, and Native American housing and community development investments.

Finally, statutory AHP and Voluntary affordable housing initiatives that respond to regional fair and affordable housing and community development needs, specifically those targeting the demographics and underserved areas flagged above, should be counted more heavily towards CMA. The annual Community Lending Plans should establish metrics and hold FHLBanks accountable to meet them.

We believe that FHLBanks should receive credit for financially supporting voluntary program contributions. To do so, it is important that all regional FHLBanks publicly report on how they have allocated AHP contributions and voluntary programs every year, in ways that are transparent and quantifiable, disaggregated by income, race, and ethnicity, and at a level of detail that goes beyond a narrative description. Such a public disclosure would also introduce greater public accountability in the equitable and fair distribution of FHLBank contributions across its service regions, and towards serving underserved households and communities.

In assessing funds beyond the 10% statutory minimum for AHP, a FHLBank should share how many AHP applications it received and how much in assistance was requested. The FHLBank should provide a description of why it chose to limit AHP funds to the level it did when there were significant high-scoring requests that were not funded. We understand that FHLBanks have choices: they can expand their AHP and/or create voluntary programs. Why they chose one approach over another should be clear to their members, applicants, and the public.

Measurement Question Four: As discussed in the System at 100 Report, the FHLBanks receive certain advantages from their status as GSEs. Another approach to assessing mission achievement could tie measurement to the value of GSE status. If FHFA were to pursue this approach, how might the value of the GSE status be measured and how should mission achievement be compared to that value?

In 2024 the Congressional Budget Office published a report that estimated that the System's GSE status and its benefits amounted to $7.3 billion dollars or more in government subsidies a year.[42] As we detailed earlier in this comment letter, the bulk of the subsidy amount flows from the way their GSE status confers an "implied federal guarantee" on Federal Home Loan Banks debt: the perception that the federal government will never let FHLBanks fail.

The CBO concluded that GSE status reduces FHLBank borrowing costs by 40 basis points for a government subsidy of around $6.9 billion per year. The total value of GSE status will fluctuate from year to year, based on advance lending volume. Based on the various advance lending volumes at the 11 separate FHLBanks, the value of this public subsidy can also be calculated for each of the banks individually.

We believe that the ratio of the public subsidies enjoyed by virtue of GSE status to public benefits provided through mission-consistent activities, could be a metric to keep FHLBanks accountable towards their mission.

For the broader public, it would offer an easy-to-understand way to measure the public contributions of FHLBanks in relation to the public benefits they receive as a GSE. In particular, the public can expect *at least an equivalent* support for affordable housing and community development, throughout the mission-related activities we have outlined above.

[42] CBO, "The Role of Federal Home Loan Banks in the Financial System" (Congressional Budget Office, March 2024), https://www.cbo.gov/publication/60064

Further, we believe that the FHFA or the FHLBanks should try to calculate the amount of the subsidy that FHLBanks pass through to specific member institutions. The advances lent to members account for the largest part of the FHLBanks' operations, so whether those members are supporting housing and community development through their general business practices is relevant to the question of whether the government subsidy is having its intended purpose. The calculation could be performed simply by measuring the discount on debt the FHLBanks receive and applying that to the amount each member borrowed. The payments of dividends to those members should also be included in this calculation. We think that when the FHFA or the FHLBanks calculate a subsidy for each member, they should set up a mechanism to help ensure that members are supporting mission activities as least as much as the subsidy.

Measurement Question Five: Are there other approaches FHFA should consider?

Fiduciary Duty to Include Public Mission: The FHFA should also consider updating the examiner guidebook and board instructions on how to assess the fiduciary duty of board members. Even though as a GSE, FHLBanks were founded with a public mission, they operate as a private cooperative. Executive leadership, boards, and management should not be permitted to focus almost exclusively on stockholder interests, which in this case results in the lowest cost of funds and the highest possible dividends.

The FHFA should make clear that paying excessive dividends diminishes the ability of the FHLBanks to meet their mission. In assessing mission achievement, the FHFA should consider defining the fiduciary duty of boards and management to include the broader public who stands behind the implied federal guarantee of this GSE. Mission achievement as defined by the FHFA must be reflected in executive and board compensation.

Foreign Owned Members: The FHFA might also reconsider the membership of foreign-owned banks and insurance companies in the FHLBank System. Specifically, we wonder how foreign-owned banks and insurance companies contribute to the fair and affordable housing and community development mission in the United States if the capital from FHLBank advances gets offshored. Some examples of these members are the state-owned Industrial and Commercial Bank of China and US insurance companies such as Athene Annuity and Life Company, Forethought Life Insurance Company and Accordia Life and Annuity,[43] which use Bermuda-based parent companies to offshore capital.[44] To align the System more closely with its housing mission, FHFA should consider strategies to ensure FHLBank advances are put to work for the American taxpayers subsidizing the System.

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[43] Federal Housing Finance Agency, "Federal Home Loan Bank Membership Data Membership Listings" (March 31, 2024), https://www.fhfa.gov/data/federal-home-loan-bank-membership-data

[44] Apollo Global Management, "10-K Report to the Securities and Exchange Commission" (Period ending 12/31/2023), p. 22 https://www.sec.gov/ix?doc=/Archives/edgar/data/1858681/000185868124000031/apo-20231231.htm "a significant majority of Athene's aggregate capital is held by its Bermuda reinsurance subsidiaries."

McCarran-Ferguson's Impact on FHLBank Superlien: Insurance companies may pose a unique concern to FHLBanks' "superlien" because of the interplay between state and federal law with respect to insurance. One FHLBank disclosed that "our security interests under Section 10(e) [the superlien] may not apply when lending to insurance company members due to the anti-preemption provision contained in the McCarran-Ferguson Act."[45] We encourage FHFA to study the extent to which the System is exposed to added risk posed by McCarran-Ferguson's effect on the superlien when it comes to insurance borrowings, and consider rules requiring higher interest rates from insurance borrowers to compensate for any such risk.

Federal Reserve Discount Window: We appreciate the effort that the FHFA has taken to ensure that every FHLBank and every one of their bank members has a relationship, pre-positioned collateral and practice opportunities at the appropriate Federal Reserve regional bank.

MEMBERSHIP INCENTIVE PROGRAM QUESTIONS

Member Incentive Program Question One: What factors should the FHFA and the FHLBanks consider in determining each member's commitment to housing finance and community development?

There are many factors that the FHFA and the FHLBanks should consider in determining each member's commitment to fair and affordable housing and community development. Two factors that we encourage the FHFA and the FHLBanks to prioritize are:

- Member use of new services or products (designed to advance fair and affordable housing and community development activities) that the FHLBanks may develop in response to updates to the FHLB System's mission and related reforms that FHFA implements; and
- Member use of existing FHLBank services or products specifically to support affordable housing and community development needs.

Member Incentive Program Question Two: What metrics and activities should be used to determine each membership category threshold? Are there housing- or community development-related activities that should not count or should be discounted in the calculation? Are there some that should count for a greater amount? How would flow business that might not be reflected on the member's balance sheet be reasonably considered?

We propose two membership incentive categories. As a threshold eligibility criterion, each member should demonstrate that a substantial proportion of its core activities supports fair

[45] U.S. Securities and Exchange Commission, "Federal Home Loan Bank of Boston Form 10-K" (2022), p. 44 https://www.sec.gov/Archives/edgar/data/1331463/000133146323000054/fhlbbost-20221231.htm

and affordable housing and community development activities on a continuous basis. For example, as FHFA proposed in its "*FHLBank System at 100"* report, we believe that the FHLBanks should apply a 10% minimum residential asset test to all members on an *ongoing* basis.[46] Under this requirement, at least 10% of a member's activities must be in residential mortgage loans or equivalent mission assets at all times, with appropriate exemptions for smaller institutions. In administering this ongoing threshold test, the FHFA and the FHLBanks should require members to use average annual balances rather than year-end balances, which would help ensure against circumventing this condition.

Additional criteria that the FHLBanks should consider in establishing membership incentive categories include:

- Member use of new services or products (designed to advance affordable housing and community development activities) that the FHLBanks develop in response to updates to the FHLB System's mission or related reforms that FHFA implements; and
- Member use of existing FHLBank services or products, specifically to support affordable housing and community development needs;
- Additionally, while members should receive incentive credit for a broader range of mission activities, loan origination and direct community investments are key; the FHLBanks should design their incentive programs to encourage members to add mortgage capital to the market through origination activity, help support liquidity for mortgages by whole mortgage purchase, or engage in other investment and underwriting activities that directly support fair and affordable housing and community development. There should only be limited incentive credit for the purchase and holding of MBS, as MBS markets are well established and highly liquid, as also noted earlier in this letter.

Member Incentive Program Question Three: Member activity that supports the housing finance and community development mission may change over time. How frequently should members be evaluated and classified as to their incentive category? Should the members self-report their level of housing and community development activity and provide documentation or a certification to the FHLBank, or should the measurements be performed by the FHLBank? What should the steps or process be for re-assigning members whose engagement in housing finance and community development activities has shifted, resulting in a change of category?

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[46] Federal Housing Finance Agency, "FHLBank System at 100: Focusing on the Future" (Washington, D.C., Federal Housing Finance Agency, November 2023), p. 61 https://www.fhfa.gov/sites/default/files/2024-01/FHLBank-System-at-100-Report.pdf

As part of its mission oversight, FHFA should require the FHLBanks to establish standards for how they will incent and evaluate members to further support the System's fair and affordable housing and community development mission. Informed by the Duty to Serve (DTS) and Equitable Housing Finance (EHF) plans that Freddie Mac and Fannie Mae use to report on specific mission goals and activities, these standards should be in the form of a *strategic plan that each FHLBank submits to FHFA for review and approval every three years*, and that serves as an overall framework for the incentive programs. Components of this framework could include planning, reporting, evaluation, and (re)classification standards.

In the context of the incentive programs established and operated by each FHLBank, we propose annual self-certification by members. The self-certifications could occur in response to a questionnaire developed by each FHLBank and approved by the FHFA. We also propose that members self-report their incentive program activity to their respective FHLBanks annually, under a process developed through FHFA regulation or guidance. To reduce reporting burden, smaller member institutions should be exempt from this reporting requirement.

Member Incentive Program Question Four: What additional benefits should accrue to members in each category?

We propose the following two member incentive program categories and corresponding benefits for banks and insurance company members:

<u>*Tier 2:*</u> If a member does not meet FHFA's proposed ongoing 10% residential asset test, or does not meet other threshold criteria established by FHFA and the FHLBanks, or receives an "Unsatisfactory" or "Needs to Improve" rating on its most recent CRA evaluation, then the FHLBank could apply one of the following options:

- The member would continue to be eligible for advances loans but pay an interest rate that is 10-to-40 basis points higher, as determined by guidelines established by each FHLBank. The forty basis points correspond to the rate discount that the CBO estimates FHLBank members receive on advance loans through the FHLBank System. Each FHLBank would then collect this user fee to directly support priority fair and affordable housing and community development activities in its market area; **or**

- Alternatively, the member would not have access to advance lending, but retain basic membership and receive dividends paid on membership stock.

This approach would encourage all members to at least meet the 10% residential asset test. An analysis by FitchRatings showed that, as of September 30, 2023, 85 member banks, or 1.5% of the 5,850 bank members at that time, would fail to meet a 10% residential mortgage asset threshold.[47]

This approach may lead to fewer members taking advances, lowering overall system lending and individual FHLBank profits. However, we strongly believe the principal purpose of the System should be to leverage its GSE advantages to finance investments in fair and affordable housing and community development activities. If some System members do not meet a *de minimis* test for this goal, the System should not continue to be a source of cheap money for them.

Tier 1: If members meet FHFA's proposed ongoing 10% residential asset test AND substantially promote fair and affordable housing and community development activities in the FHLBank service area, members continue to enjoy access to government subsidized advances. The "substantially promotes" threshold should be determined by each FHLBank and based on evaluation criteria approved by the FHFA.

We propose customized criteria especially for commercial banks and insurance companies, who currently are the largest users of advances in the FHLBank System. We agree with the detailed recommendations in NCRC's comment letter that for member commercial banks an effective means to measure performance would be to use CRA exams: with banks needing to score no lower than "Satisfactory" in the latest evaluation for them to maintain access to highly subsidized FHLBank advances[48] The 2023 final CRA rule, when implemented, would more rigorously rate banks on their lending, investments, and services related to affordable housing and community development.

For insurance companies, we agree with the thoughtful recommendations proposed by CFA, UFCW, LISC and others in their comment letter on insurance companies and FHLBank mission.[49] To measure whether property and casualty (P&C) insurance company members substantially promote fair and affordable housing and community development, they should be evaluated

[47] Fitch Ratings, "Potential FHLB Rule Changes Could Weaken US Bank Liquidity Profiles" (Fitch Ratings, December 14, 2023), https://www.fitchratings.com/banks/potential-fhlb-rule-changes-could-weaken-us-bank-liquidity-profiles-14-12-2023
Members who would fail to meet the existing 10% of asset threshold include commercial banks, thrifts and credit unions, with the majority being smaller community banks. An additional 454 small banks have less than $1.4 billion in assets, and are thus exempted from the existing test.
[48] NCRC, "Comment Letter to RFI on Mission," (July 2024).
[49] CFA, UFCW, LISC and others, "Comment Letter to RFI on Mission," (July 2024).

based on providing adequate and affordable P&C insurance coverage to affordable multifamily developments. Both P&C and life insurance companies should be evaluated based on how their investment portfolios promote fair and affordable housing and community development. For example, based on their investments in LIHTC credits, in fortified roofs and housing resiliency, and other social impact investments, as defined by the FHFA.

The membership incentive program above will help guide some of the largest membership institutions of the FHLBank System, who constitute its largest advance borrowers, towards contributing more to CMA for the FHLBank System, through their collateral uses, mortgage origination activity, investments, and other housing and community development related activities.

In addition, we acknowledge the importance of easier and more affordable access to advances for the FHLBanks smaller members, most notably CDFIs and MDIs. However, we believe that CDFIs and MDIs do not require a "membership-incentive" program – given how much they already are focused on mission-related lending! – but rather deserve a FHLBank System that is incentivized to prioritize their unique liquidity and programmatic needs. We highlight our proposal for expanded CDFI and MDI membership support above in our answer to Membership Question Two, such as through the creation of alternative credit enhancement programs for CDFIs and their unique collateral profile. We also refer to the comment letters by the CDFI-FHLBank Working Group.[50]

Member Incentive Program Question Five: What provisions should be required for each FHLBank's program to ensure it does not adversely affect the FHLBank's safety and soundness?

The FHLBanks should continue to assess each member's ability to repay advances, while taking into account FHLBank-sponsored provisions - including those proposed above - that reduce or mitigate risk and level the playing field for full participation by all members. We also wish to note that, historically, FHLBanks are proud to have not sustained a single credit loss on their books over their history of advance lending.[51] However, the appropriate goal of a mission-focused System should not be taking zero risk, but rather taking manageable risks in order to promote mission-advancing activities. The FHFA should encourage the development of new approaches to meeting affordable housing and community development needs and could do so

[50] CDFI-FHLB Working Group, "Letter in Response to Federal Home Loan Bank Core Mission Activities and Mission Achievement RFI" (July 2024)

[51] Office of Finance, "Federal Home Loan Bank System: Lending and Collateral Q & A 2023 Q4" (Washington D.C.: FHLBank Office of Finance, March 22, 2024), p. 3 https://www.fhlb-of.com/ofweb_userWeb/resources/lendingqanda.pdf

through the initial development of new activities through pilot programs with credit support provided by FHLBank interest earned on excess retained earnings.

Member Incentive Program Question Six: Should there be requirements that ensure members who obtain the benefits of such programs are not engaged in conduct inconsistent with the public interest, such as predatory, discriminatory, or unfair practices?

The FHFA should undertake efforts to assure that members do not obtain or use benefits of incentive programs in ways contrary to the public interest (e.g., to fund corporate acquisitions, or increase profitability and stockholder returns, etc.). While banks have rules regarding transfers of funds between holding company subsidiaries and the holding companies, many FHLBank members, including insurance companies have no such restrictions. The FHFA should consider a horizontal exam to consider further action to take in this regard.

In addition, consistent with federal law (Fair Housing Act, Equal Credit Opportunity Act, Federal Trade Commission Act prohibiting unfair or deceptive acts or practices, and the Consumer Financial Protection Act prohibiting unfair, deceptive, or abusive acts or practices), members should not be able to obtain benefits from the membership incentive program when they engage in activities that are discriminatory, unfair, deceptive, or abusive. Such activities contravene the mission of promoting liquidity for fair and affordable housing and community development.

As also indicated in a comment letter that NFHA submitted to FHFA in 2022, FHFA should also require the FHLBanks to ensure that member advances are not used to promote source of income discrimination in underwriting mortgages for multifamily rental housing.[52] P&C insurance members are also not evaluated based on their equitable insurance practices, such as based on whether they underwrite affordable and accessible insurance for affordable multifamily rental developments. We believe that such requirements would greatly improve the FHLBanks' ability to fully serve communities and renters with the greatest needs.

If you have any questions, please contact Sharon Cornelissen at scornelissen@consumerfed.org.

Thank you for your consideration.

Sincerely,

Consumer Federation of America
ACCAP
Affordable Housing Alliance

[52] *See* NFHA, "Re: Federal Home Loan Bank System" (October 21, 2022), https://nationalfairhousing.org/wp-content/uploads/2022/11/2022-10-31_NFHA-et-al-Comment-Letter-to-FHFA-re-FHLBs_FINAL.pdf

Americans for Financial Reform
CAARMA
Catholic Charities Housing Services
Center for Community Progress
Center for Economic Integrity
Center for Economic Justice
Center for Responsible Lending
Citizens Action Coalition of IN
Coastal Enterprises, Inc.
Columbia Consumer Education Council
Community Opportunity Alliance
Community Service Network, Inc.
Consumer Action
Consumer Credit and Budget Counseling, Inc d/b/a National Foundation for Debt Management
DC Consumer Rights Coalition
Delaware Community Reinvestment Action Council, Inc.
Desire Community Housing Corp
DHIC, Inc
Federation of Appalachian Housing Enterprises
Financial Pathways of the Piedmont
Florida Silver Haired Legislature Inc
Grounded Solutions Network
Housing Action Illinois
Housing Channel
Housing Opportunities of Fort Worth, Inc.
Inclusiv
INHS
The Leadership Conference on Civil and Human Rights
Local Initiatives Support Corporation (LISC)
Morningstar Urban Development Inc
Movin' Out, Inc.
National American Indian Housing Council
National Association for Latino Community Asset Builders (NALCAB)
National Coalition for Asian Pacific American Community Development (National CAPACD)
National Community Reinvestment Coalition
National Community Stabilization Trust
National Consumer Law Center (on behalf of its low-income clients)
National Fair Housing Association
National Housing Resource Center
National NeighborWorks Association
NeighborWorks Southern Colorado
New Hampshire Community Loan Fund
NWCS, Inc.
Ocean Inc
Olive Hill Community Economic Development Corporation, Inc
Oweesta Corporation
Parachute Credit Counseling, Inc.
Penquis

Philadelphia Association of Community Development Corporations
PolicyLink
Private Equity Stakeholder Project
Rebuilding Together
Rural Community Assistance Corporation
St. Petersburg Neighborhood Housing Services, Inc. d/b/a Neighborhood Housing Services
The Greenlining Institute
Trinity Empowerment Consortium, Inc
United Food and Commercial Workers International Union
Washington County CDA (MN)
Winder Housing Authority
Woodstock Institute