



September 18, 2015

To: Members of the United States Senate

From: James Ballentine, Executive Vice President, Congressional Relations & Political Affairs

Re: FHLB Membership

On behalf of the members of the American Bankers Association (ABA), I am writing to express our concerns over pending rulemaking by the Federal Housing Finance Agency (FHFA) regarding Federal Home Loan Bank membership, and to urge the adoption of legislation to require FHFA to withdraw the proposal.

Background

In September of 2014 the FHFA issued a proposed rule which would dramatically alter the membership requirements for the Federal Home Loan Bank (FHLB) System. The proposal would revise the FHLB membership rules in two fundamental ways. It would impose, for the first time in the history of the System, on-going mortgage asset tests – with different tests for members of different sizes, and would alter the definition of insurance company to exclude captive insurance companies from membership in the System. Captive insurance companies would be forced out of the System even though the Federal Home Loan Bank Act – the authorizing statute – states that all insurance companies are eligible members.

ABA filed comments with the FHFA opposing both aspects of the rule. Our comments noted that neither the on-going mortgage asset tests, or the redefinition of captive insurance companies were supported by a plain reading of the Federal Home Loan Bank Act or by clear Congressional intent. This assertion was further reinforced by numerous comments filed in opposition to the proposal by Members of the House of Representatives and the Senate.

Policy Concerns

In addition to the clear contravention of Congressional intent, the proposed rule is deeply flawed from a public policy perspective. Imposing on-going asset tracking on members of the Federal Home Loan Bank System will create regulatory burden and drive up costs of membership in the System and ultimately the costs of those communities and individuals served by FHLB members. It will also lead to far less stability in the System, making membership and access to liquidity less certain. Further there is no demonstrated need for a change in membership tracking, as the current method has worked well for decades, and as FHFA has admitted, the

System remains mission focused and responsive to members' needs and those of the individuals and communities they serve.

With regard to captive insurance company members of the System, ABA acknowledges that there are concerns, particularly about otherwise ineligible entities using a captive insurance company to gain access to System funds. As we point out in our comments, there are better alternatives to address these concerns than to redefine captive insurance companies as something other than eligible members of the System against the plain meaning of the authorizing statute.

Legislation Needed

FHFA initially proposed a version of the asset-tracking membership tests in an advance notice of proposed rulemaking in 2010. ABA and others in the industry responded with many of the same objections we currently are raising. Given that FHFA nevertheless proceeded to issue the current proposal, and added to it the redefinition of captive insurance companies, it appears necessary that Congress weigh in to make Congressional intent clear to the agency.

We, therefore, respectfully urge Congress to pass legislation requiring the FHFA to withdraw the proposed rule, in a manner as provided for in Section 124 of S. 1484, legislation introduced by Senate Banking Committee Chairman Richard Shelby.