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October 20, 2022

Sandra L. Thompson

Director

Federal Housing Finance Agency

400 7th Street, SW

Washington, DC 20024

RE: **FHLBank System at 100: Focusing on the Future**

Dear Director Thompson and FHFA Staff:

Thank you for the opportunity to address the September 29 “listening session” held at the offices of the Federal Housing Finance Agency (the Finance Agency) launching *The System at 100*. A copy of my remarks is attached here. The purpose of this letter is to elaborate on those remarks.

Our nation faces a host of challenges: lack of affordable housing, inadequate infrastructure, economic inequality, and climate change remediation. With such pressing needs, the nation can ill afford a $1 trillion asset government enterprise that is performing as suboptimally as is the Federal Home Loan Bank System. The timeliness and importance of this project, therefore, cannot be overstated.

In your opening remarks on September 29, both you and Mr. Stallings stressed the importance of engaging all stakeholders in *The System at 100* process. The listening sessions and the regional roundtable discussions to come are a fitting means of encouraging stakeholder engagement. I am looking forward to participating in the inaugural roundtable discussion on November 2.

Engaging *all* stakeholders, however, means identifying and engaging with potential stakeholders who may have never heard of a Federal Home Loan Bank and have little or no understanding of how the system operates. Within my limited sphere I am attempting to identify such potential stakeholders. I urge the Finance Agency to redouble its outreach efforts in identifying and educating potential stakeholders.

In this regard, the twelve Federal Reserve Banks may be an exceptional resource. Unlike the eleven FHLBanks, the Federal Reserve Banks keep their fingers on the pulse of their local economies, including rural, tribal, and urban communities. ***It is recommended that the Finance agency consult with the Federal Reserve Banks as part of its outreach to potential stakeholders.*** From this cohort of nontraditional stakeholders will come the most urgent and creative ideas for System reform.

Consistent with this and to assist the Finance Agency in enriching the public discussion, Brookings Institution and Boston University School of Law have undertaken two related initiatives.[[1]](#footnote-1) First, we have issued a call-for-papers to encourage academics, practitioners, regulators and others to offer their best research on the range of issues associated with *The System at 100*. In this regard, we have published a non-exhaustive list of twenty-seven important issues to stimulate interest. That list of topics is attached here.

Second, this February, Brookings and BU will be conducting a joint symposium in Washington to explore this issue further. Proceedings of the symposium and selected research papers will be published in the *Review of Banking & Financial Law*. FHFA staff is invited to contribute to the research and to participate in the symposium. We anticipate sharing the results of these efforts with the Finance Agency.

Just as our work will contribute to the Finance Agency’s deliberations, so too will the early inputs from cognate agencies of the government as described below. These include:

* Government Accountability Office
* Office of Management and Budget
* Congressional Budget Office
* Federal Deposit Insurance Corporation
* Federal Reserve
* Department of Treasury
* Department of Energy
* Department of Transportation
* Department of Housing and Urban Development, and
* U.S. Department of Agriculture.

The range of issues raised by *The System at 100* is broad and deep. None of those issues is more important than consideration of the proper *mission* for the FHLBs in the coming decades. For it is from that mission that all else flows. Closely following the System’s mission is the proper assessment of the financial sacrifice taxpayers are making in *subsidizing* the System. See attached article regarding the contributions of depositors and taxpayers to the System.

Having determined the System’s proper mission and the scale of its taxpayer subsidy, the Finance Agency will face the process of determining what can be achieved administratively versus legislatively. In this regard, the task for the Finance Agency in exercising its regulatory discretion is made more challenging in light of a recent Supreme Court ruling seemingly limiting the deference that courts will accord agency rulemaking.[[2]](#footnote-2)

Also, given *The System at 100’s* scope, it is likely that at the end of the process there will be perceived winners and losers. The possibility is present of challenges to the Finance Agency’s actions, no matter how well considered, its actions.

**Mission**

While the Federal Home Loan Bank Act of 1932 is not explicit as to the System’s mission, it is generally understood that the System’s mission initially was to promote housing finance. Later amendments to the Act have neither expressed nor implied a different mission. Scholars have noted, “While the law provides considerable scope for what the FHLBs *can* do, it provides little guidance on what they *should* do.”[[3]](#footnote-3)

As articulated by the Federal Home Loan Banks’ Office of Finance, the mission of the System is: “…to provide reliable liquidity to member institutions to support housing finance and community investment.”[[4]](#footnote-4) Others drop the reference to housing finance and merely state that the System serves as a source of liquidity to its members or, as stated by the American Bankers Association, serves as a “lender of first resort.”[[5]](#footnote-5)

Both of these mission statements are flawed. The first is flawed because it implies a nexus between System operations and housing finance that does not exist. The second is flawed because it presumes that the System has taken on the function of a central bank.

Whether the reference to housing is stated or implied it seems quite clear to all but the most ardent supporters of the System that any nexus between the System and housing that may have existed in the past is no longer present. This was confirmed by the General Accountability Office when, in a 2005 report, it stated, “Additionally, there is limited empirical information available regarding the extent to which the System is fulfilling its housing and community mission.”[[6]](#footnote-6)

As there remain some who cling to the idea that the System is vital to housing finance, it would be useful for the GAO to update its study and validate for the record of *The System at 100* that the System plays no vital role *vis a vis* housing finance. It is important to do so now in order that serious reform of the System can be undertaken undeterred by unrealistic claims by the System’s incumbents.

***It is recommended, therefore, that the Finance Agency, with the cooperation of the jurisdictional Congressional committees, petition GAO to update its previous findings.***

Current and potential stakeholders will weigh in regarding the System’s mission going forward. It would be faithful to the legislative purpose of the Act for that mission to focus on the *supply* of housing. A singular focus on the supply of housing would directly address the fundamental issue facing housing today…lack of adequate and affordable housing. Moreover, a derivative of emphasizing housing supply will be added focus on economic and community development and infrastructure as a core System activity.

Also, making supply of housing a core feature of the System’s mission would elevate affordable housing from a by-product of the System to its being a core output of its operations. Similarly, a focus on the supply of housing would incentivize those System members whose housing activities are *de minimis* to either step up their activities in this area or to forego using the System’s resources.

Some examples of policy changes that would flow from a revised mission are:

* A broadening of eligible collateral classes to include loans within the perimeter of the housing supply-chain.
* Eligibility of any asset that qualifies for CRA credit to be pledged for FHLB advances.
* Eligibility of loans to small businesses that create or preserve jobs as collateral.

The expanded System mission and expanded collateral classifications can be achieved in a sustainable way without compromising the safety and soundness of FHLBanks.

**Subsidy**

Another starting point for *The System at 100* should be a quantification for the first time of the robust government subsidy that sustains the System. It is beyond dispute that the System would not and could not survive without that government subsidy. It will be impossible to convince taxpayers that their investment in the System is justified without a baseline valuation of their investment.

The taxpayers’ subsidy of the System takes three forms:

First, is the *government guarantee* of the System’s debt. According to the literature, the fair value of a guarantee is the present value of the contractual cash flows under a loan *not* benefitting from the guarantee, less the present value of the net contractual cash flows of the actual loan benefitting from the guarantee.

Applying this to the FHLBs, it seems that calculating the “present value of the net contractual cash flows of the actual loan benefitting from the guarantee” should be straight-forward for the combined FHLBs. Calculating the “present value of the contractual cash flows under a loan *not* benefitting from the guarantee,” while more difficult, is certainly doable on making certain assumptions, for example using the interest rate on commercial paper.

An economist might say it this way:

**FV=PV(Pi)-PV(Pr)**

“FV” is the fair value of the implicit taxpayer guarantee of FHLB debt.

“P” is the amount borrowed by the FHLBs.

   “Pi” are the cashflows of the loan amount P at the unguaranteed interest rate i, and

   “Pr” are the cashflows of the actual loan amount P at the interest rate of r which does benefit from the guarantee.

***It is recommended that the Finance Agency consult with the Office of Management and Budget, Office of Information and Regulatory Affairs, for its guidance in quantifying the present value of the guarantee of System debt.***

Second, is the subsidy that results from the statutory *exemption from federal, state, and local* *taxes* enjoyed by each of the FHLBs. Estimates place the value of this subsidy at 2.5 times the System’s contribution to affordable housing under AHP.

***It is recommended that the Finance Agency consult with the jurisdictional Congressional committees in asking that the Congressional Budget Office assess the value of this part of the FHLBs’ taxpayer subsidy.***

Third, is the subsidy that results from the System’s *“super-lien” vis a vis the Deposit Insurance* *Fund* on those occasions when member banks enter receivership. It is this feature of the subsidy that allows the FHLBs to claim to have never incurred a loss on an advance. The costs to the DIF and to the taxpayers from the exercise of this preferential position are, however, material.

***It is recommended that the Finance Agency consult with the FDIC to determine: a) the historical cost to the DIF of this subsidy, and b) the fair value of this element of the subsidy today.***

*The System at 100* and all of its deliberations will be better informed by a realistic quantification of the taxpayer subsidy extended to the FHLBs. The subsidy is the starting point for determining and measuring the public good that is to be expected from the System.

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As the above and the attached list of research topics reflects, the work ahead for *The System at 100* is considerable. I am confident that the staff of FHFA will not be deterred. At the first listening session on September 29, I urged that the border of Finance Agency’s legal authority need not be the border of its imagination.

Should the Finance Agency heed this advice, there will soon come the day when it realizes that to achieve the System’s full potential, requires Congressional action. In anticipation of that day and recognizing the near impossibility of Congressional action without consensus, attached is draft legislation creating a bipartisan legislative commission to complement the work of *The System at 100*.

Though premature today, the record established here and the ushering in of a more salubrious legislative climate may someday lay the foundation for such a commission and for its recommendations.

Sincerely,



Cornelius Hurley

Attachments

CC:

|  |  |
| --- | --- |
| Rep. Maxine Waters,  Chairwoman, House Financial Services Committee | Sen. Sherrod Brown,  Chairman, Senate Committee on Banking, Housing and Urban Affairs |
| Rep. Patrick McHenry,  Ranking Member, House Financial Services Committee | Sen. Patrick J. Toomey,  Ranking Member, Senate Committee on Banking, Housing and Urban Affairs |
| Gene L. Dodaro,  Comptroller General of the United States,  Government Accountability Office | Shalanda Young,  Director, Office of Management and Budget |
| Martin Gruenberg,  Acting Chairman, Federal Deposit Insurance Corporation | Phillip Swagel,  Chairman, Congressional Budget Office |
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Attachment A

**Remarks of**

**Cornelius Hurley**

**at the listening session**

***FHLBank System at 100: Focusing on the Future***

**Federal Housing Finance Agency**

**400 7th Street, SW**

**Washington, DC 20024**

**September 29, 2022, 12:30 PM**

Director Thompson and members of the FHFA staff, I commend your vision in calling us here today to launch a comprehensive review of the Federal Home Loan Bank System. This endeavor is a clarion call for meaningful reform of the System.

You have identified the issues that go to the heart of the System: mission, membership, collateral, and efficiency. But the most important of these is *mission*. It is from the System’s mission that all else flows.

Today’s mission raises two important questions. First: “Is the System achieving its mission?” And second: “Is the current mission suited for 2022 and beyond?”

Our first speaker today, Mr. Donovan, representing all 11 FHLBs, pointed out in a recent article that System advances “can” be used for many things including for (quote) “general balance-sheet management.”

Let us be clear. Members use their advances to enhance their earnings.

Advances can be used for anything. They can be used for automobile loans, commercial loans or to pay the CEO’s bonus. The upshot is that there is no connection between System advances and housing finance…none whatsoever.

Now, in the coming days and weeks, there will be much self-congratulatory talk about the Affordable Housing Program.

AHP is admirable. However, it is a quota, a by-product, an afterthought. It is not a key feature of the System’s operations. It should be. Also, AHP is woefully inadequate.

What I want to know is why so many of the FHLBs treat the 10% AHP requirement as a ceiling on their contributions and not as the floor that it is? What I want to know is why the System’s lobbyists so fiercely oppose any increase in the AHP quota.

In 2021, the FHLBs paid out dividends to their members that were five times what they contributed to affordable housing. Why isn’t that ratio reversed? Isn’t member access to cheap taxpayer-subsidized funding sufficient reward for membership in an FHLB?

And if that is too much for the members to tolerate, consider this.

The present value of the government’s guaranty of the hundreds of billions of FHLB debt is worth many, many billions of dollars. It is the value of *that* taxpayer subsidy that should be the yardstick against which the System’s contribution to affordable housing is measured … not some arbitrary after-the-fact percentage.

Consider too that member banks choose to pay interest to their FHLBs instead of paying interest to their own depositors … further widening the economic inequality gap. This is not a flaw of the System…it is a feature.

So, the answer to the first question: “Is the System fulfilling its mission?” is, emphatically, “No.”

Now, the second question, “What *should* the mission of the FHLBs be?” is more challenging.

Some would shrink the System to serve only community banks, some would consolidate the eleven FHLBs, others would eliminate the System entirely.

I have a different approach.

Homes are served by roads, bridges, sewer systems, electricity, schools, broadband, etc., what we commonly refer to as “infrastructure.” And what is the value of a home if it is not affordable?

Shouldn’t the outdated 1930’s mission of the System … a mission that has been overtaken by mortgage securitization and the Fed … be redefined? Shouldn’t it reflect today’s housing ecosystem including, especially, affordable housing, reinvestment in our communities, and the role played by nonbanks?

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Now, the reason for this comprehensive review is not to heighten taxpayer and depositor awareness … although it does. It is not to make minor adjustments … although it will. It is to bring about meaningful change.

Of course, you will determine what *must* be done. But the border of your legal authority need not be the border of your imagination. I urge you to explore what *can* be done!

To assist, Brooking Institution and Boston University earlier this month announced a call-for-papers and a symposium to be held in 2023 focused on FHLB reform.

Scholars, practitioners, regulators, and ordinary citizens are invited to contribute their best research and creative ideas to help FHFA *and Congress*.

Let the ideas generated here be the seeds for a national discussion. The force of those ideas will compel the creation of a bipartisan national commission to advance those extraordinary ideas that may be beyond your authorized grasp today.

The late senator, Robert F. Kennedy, famously encouraged us: “Some men see things as they are and ask, ‘Why?’ Others dream of things that never were and ask, ‘Why not?’”

My banker friends see the Federal Home Loan Banks and they say, and I quote, “Don’t mess with success.” I say, we can, we must, do better.

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*Cornelius Hurley was an independent director of the Federal Home Loan Bank of Boston from 2007-2021. He lectures at Boston University School of Law.*

Attachment B

**Topics for Brookings/Boston University**

**Call-For-Papers**

**Re:**

**Federal Home Loan Banks**

**1. How do FHLBanks currently impact housing finance?**

**2. Is the FHLB mission correct, how should it be articulated, and if it should be revised then what should it be?**

**3. How should the FHLBs’ mission on affordable housing be structured?**

**4. How effective is the governance of the FHLB system through its cooperative structure and the system of 11 independent regional banks?**

**5. What is the value of the government’s implicit guarantee of FHLBs’ debt and their tax exemption? Is the value distributed appropriately among FHLBs, their member/owners, and the American public?**

**6. What, if any, risk to the financial system do the FHLBs pose and is that risk properly mitigated by the Dodd-Frank regulatory regime?**

**7. What is the impact (current or potential) of the FHLB system on the availability and cost of credit for borrowers from lenders that are not members of the FHLBs?**

**8. What should be the criteria for membership in the FHLB system (insurance, REIT, hedge funds, Fintechs, subsidiaries/parent rules, etc.)?**

**9. What is the appropriate role and scope of FHLBs’ investments and what risks and benefits do they present?**

**10. Does eligibility as FHLB collateral add value to that asset class? Should statutes and regulations governing collateral be changed?**

**11. Can the FHLBs serve as a vehicle for Fannie Mae and Freddie Mac emerging from their conservatorships?**

**12. Do FHLBs’ advances compete with deposits at insured depository institutions?**

**13. How would one or more FHLBs be resolved in stress situations?**

**14. Can the FHLBs collateral requirements be better aligned with the objectives of the Community Reinvestment Act?**

**15. Can the FHLBs operations be tailored to achieve the purposes of the Federal Infrastructure Bank Act** [**(H.R. 8682)**](https://www.congress.gov/bill/117th-congress/house-bill/8682?s=1&r=1)**?**

**16. Should the affordable housing goals (AHP) of the FHLBs be adjusted?**

**17. Do the duties of FHLBs independent directors need to be clarified, i.e., are their duties owed to the private owners of the FHLBs or to the public interest?**

**18. How can the FHLBs better serve the needs of their smaller members and less populated communities?**

**19. Compare the relative claims of members and taxpayers on the equity of the FHLBs.**

**20. Are the capital rules as applied to FHLBs appropriate? How should the capital rules be adjusted in light of a possible changed mission for the FHLBs?**

**21. Are there products and services not currently provided by FHLBs that should be provided in the public interest, e.g., supporting lending in LMI communities, rural communities, first-time home buyers, etc.?**

**22. Should the FHFA rule allowing FHLBs to hold “alternate assets” be expanded in the public interest?**

**23. How can and should climate change remediation be incorporated in FHLBs’ operations?**

**24. What re the public policy implications of the purchase of most of FHLBs’ debt by government MMMFs?**

**25. Is the FHLBs’ “super lien” in the event of a member bank’s receivership cost justified?**

**26. What are the parameters of the FHFA’s regulatory authority in modernizing the FHLBs?**

**27. Can FHLBs advances to members be earmarked for particular purposes, e.g., housing, community development, infrastructure?**

Attachment C

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10/7/22 Am. Banker (Pg. Unavail. Online)

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American Banker (USA)

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October 7, 2022

Volume 1; Issue 1

**Imagining taxpayers’ response to FHFA’s Home Loan bank review**

Cornelius Hurley

As reported, the Federal Housing Finance Agency just wrapped up a series of “listening sessions” kicking off its comprehensive review of the Federal Home Loan Bank System, a sprawling government sponsored enterprise whose political muscle far exceeds its economic utility.

Over three days, the agency heard from eighty-five speakers. The vast majority of the presenters were closely connected to the Federal Home Loan bank system: member banks, insurance members, trade associations for members, Home Loan Bank directors, and clients. Two significant stakeholders in the system were glaringly absent, however.

Those stakeholders are depositors and taxpayers. Let’s assume that the spokesperson for the mythical trade association, the Depositors and Taxpayers of America (DTA), was invited to speak. This is how his or her presentation would have gone:

”Greetings Director Thompson and FHFA staff.

I am here today representing the tens of millions of depositors and taxpayers of this country. DTA and its members ask that, through this ‘comprehensive review’ of the Home Loan banks, you correct an injustice that has been going on for far too long. Allow me to explain.

By denying depositors of all ages a fair return on their deposits, banks, in cooperation with the Home Loan Banks, are contributing to the problem of wealth and economic inequality on a national scale.

It is well understood that banks are motivated to fund themselves as cheaply as possible. The lower their funding cost, the higher is their net interest margin, a key success metric for all depository institutions.

In this regard, banks have three sources of funding: equity, deposits, and other borrowings. Equity is expensive so banks look to depositors and “other” sources (federal funds, securities lending, brokered deposits, etc.) for funding.

Now, most banks, large and small, are members of their local Federal Home Loan Bank. Established by Congress in 1932, these 11 firms have total assets that exceed $1 trillion. They were conceived to support housing finance, but they no longer play that role. Although the word “bank” is in their titles, they are not banks in any normal sense of that word.

The Home Loan banks issue debt obligations in the hundreds of billions of dollars. They are the second largest issuer of debt after the U.S. Treasury Department. Their debt is subsidized by all taxpayers — the members of DTA. How so?

Buyers of that debt, consisting mostly of money market mutual funds, presume correctly that the federal government will bail the Home Loan banks out if they experience any stress. Therefore, there is a lower risk premium associated with their debt. The Home Loan banks also enjoy an exemption from paying taxes at any level and have a standing line of credit from the federal government.

So, banks in search of new funding face a choice. They can either: a) Borrow more money from their customers, which requires them to raise the interest they pay on deposits or b) Borrow from their Home Loan banks at a discount. In a rising rate environment such as we are experiencing now, banks often choose the Home Loan banks over their own depositor-customers, all of whom are members of DTA.

And the choice banks make is not a fair one. Banks are incentivized to turn their backs on their own customers. They follow the incentives.

Lest there be any doubt, this is how one Home Loan bank brazenly pitches advances to its member banks: “In many instances, a migration of just a small amount (3%-5%) parked in an existing savings or money market deposit account to a high-cost deposit special may be sub-optimal from a profitability perspective compared to utilizing just-in-time liquidity from advances.”

The injustice is that borrowings from the Home Loan banks are subsidized, unwittingly, by the membership of DTA. This happens in two ways. First, because of the government guaranty, the Home Loan Banks offer below-market rates. Second, the Home Loan banks incur zero credit risk in lending to the banks because, even in the rare event of a bank failure, the Home Loan bank has a priority over the FDIC (and the taxpayer) in that bank’s receivership.

The upshot is that it is cheaper for the banks to borrow from their Home Loan banks than from their own depositors. This should be of concern to depositors and taxpayers of all ages. It is why DTA has reached out to AARP and other affinity groups to raise their awareness of this important issue.

Luckily, the Home Loan banks’ mission and operations are undergoing a thorough review by its regulator, the Federal Housing Finance Agency. The director of the Agency and her staff appear to understand that all is not right in the cosseted world of the Home Loan banks.

It will take public awareness, advocacy, and political courage to stand up to the legions of lobbyists that the Home Loan banks have marshalled for this project. There is, however, an old saying in Washington that goes, ‘Something is always impossible…until it becomes inevitable.’

Meaningful reform of the Federal Home Loan banks is no longer impossible.

Thanks for the opportunity to testify today.”

Attachment D

117TH CONGRESS

2ND SESSION

**S. \_\_\_\_**

To address the issues surrounding the Federal Home Loan Bank System.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

IN THE SENATE OF THE UNITED STATES

March , 2022

Ms./Mr. \_\_\_\_\_\_\_\_\_\_\_ introduced the following bill which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**A BILL**

To address the issues surrounding the Federal Home Loan Bank System.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE**.

This Act may be cited as the ‘‘Federal Home Loan Bank Inquiry Commission Act’’

**SEC. 2. FEDERAL HOME LOAN BANK INQUIRY COMMISSION.**

(a) ESTABLISHMENT OF COMMISSION. — There is established in the legislative branch the Federal Home Loan Bank Inquiry Commission (referred to as the ‘‘Commission’’) to examine the structure, operations, products, costs and usefulness of the Federal Home Loan Banks.

(b) COMPOSITION OF THE COMMISSION.— (1) MEMBERS.—The Commission shall be composed of 10 members, of whom (A) 3 members shall be appointed by the majority leader of the Senate, in consultation with relevant Committees; (B) 3 members shall be appointed by the Speaker of the House of Representatives, in consultation with relevant Committees; (C) 2 members shall be appointed by the minority leader of the Senate, in consultation with relevant Committees; and (D) 2 members shall be appointed by the minority leader of the House of Representatives, in consultation with relevant Committees. (2) QUALIFICATIONS; LIMITATION. — (A) IN GENERAL. —It is the sense of the Congress that individuals appointed to the Commission should be prominent United States citizens with national recognition and significant depth of experience in such fields as banking, regulation of markets, taxation, finance, economics, consumer protection, and housing. (B) LIMITATION. —No person who is a member of Congress or an officer or employee of the Federal Government or any State or local government may serve as a member of the Commission. (3) CHAIRPERSON; VICE CHAIRPERSON. — (A) IN GENERAL. —Subject to the requirements of subparagraph (B), the Chairperson of the Commission shall be selected jointly by the Majority Leader of the Senate and the Speaker of the House of Representatives, and the Vice Chairperson shall be selected jointly by the Minority Leader of the Senate and the Minority Leader of the House of Representatives. (B) POLITICAL PARTY AFFILIATION. —The Chairperson and Vice Chairperson of the Commission may not be from the same political party. (4) MEETINGS, QUORUM; VACANCIES. — (A) MEETINGS. — (i) INITIAL MEETING. —The initial meeting of the Commission shall be as soon as possible after a quorum of members have been appointed. (ii) SUBSEQUENT MEETINGS. —After the initial meeting of the Commission, the Commission shall meet upon the call of the Chairperson or a majority of its members. (B) QUORUM. —6 members of the Commission shall constitute a quorum. (C) VACANCIES. —Any vacancy on the Commission shall— (i) not affect the powers of the Commission; and (ii) be filled in the same manner in which the original appointment was made.

(c) FUNCTIONS OF THE COMMISSION.—The functions of the Commission are: (1) to examine the current structure and operations of the Federal Home Loan Banks specifically with respect to — (A) the cost of the Banks’ operations including the cost of the government’s implicit guaranty of the Banks’ debt; (B) the public interest served by the Banks; (C) the relevance of the Banks’ mission to current economic conditions; (D) the appropriateness of Bank membership requirements in light of changes in the financial services industry; (E) standards regarding collateral that is or may be eligible to be pledged at the Banks in return for advances; (F) the appropriateness of the Banks’ compensation structures in light of their status as government sponsored entities; (G) the costs and the benefits of consolidation of the Banks into one or more banks; and (H) the role if any that the Banks can play in remediating the effects of climate change; lending to small businesses and consumers; financing infrastructure and the supply chain of affordable and market rate housing; and, preserving naturally occurring affordable housing (NOAH); and, (2) to submit a report under subsection (h) building upon the work of other entities, and avoiding unnecessary duplication, by reviewing the record of the Federal Housing Finance Agency, the Committee on Banking, Housing, and Urban Affairs of the Senate, the Committee on Financial Services of the House of Representatives, other congressional committees, the Government Accountability Office, other legislative panels, and any other department, agency, bureau, board, commission, office, independent establishment, or instrumentality of the United States (to the fullest extent permitted by law) with respect to the current financial and economic crisis.

(d) POWERS OF THE COMMISSION. — (1) HEARINGS AND EVIDENCE. —The Commission may, for purposes of carrying out this section— (A) hold hearings, sit and act at times and places, take testimony, receive evidence, and administer oaths; and (B) require, by subpoena or otherwise, the attendance and testimony of witnesses and the production of books, records, correspondence, memoranda, papers, and documents. (2) SUBPOENAS. — (A) SERVICE. —Subpoenas issued under paragraph (1)(B) may be served by any person designated by the Commission. (B) ENFORCEMENT. — (i) IN GENERAL. —In the case of contumacy or failure to obey a subpoena issued under paragraph (1)(B), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court. (ii) ADDITIONAL ENFORCEMENT. —Sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192 through 194) shall apply in the case of any failure of any witness to comply with any subpoena or to testify when summoned under the authority of this section. (iii) ISSUANCE. —A subpoena may be issued under this subsection only— (I) by the agreement of the Chairperson and the Vice Chairperson; or (II) by the affirmative vote of a majority of the Commission, including an affirmative vote of at least one member appointed under subparagraph (C) or (D) of subsection (b)(1), a majority being present. (3) CONTRACTING. —The Commission may enter into contracts to enable the Commission to discharge its duties under this section. (4) INFORMATION FROM FEDERAL AGENCIES AND OTHER ENTITIES. — IN GENERAL. —The Commission may secure directly from any department, agency, bureau, board, commission, independent establishment, or instrumentality of the United States any information related to any inquiry of the Commission conducted under this section, including information of a confidential nature (which the Commission shall maintain in a secure manner). Each such department, agency, bureau, board, commission, office, independent establishment, or instrumentality shall furnish such information directly to the Commission upon request. (5) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission— (A) the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this Act; and (B) other Federal departments and agencies may provide to the Commission any administrative support services as may be determined by the head of such department or agency to be advisable and authorized by law. (6) DONATIONS OF GOODS AND SERVICES. —The Commission may accept, use, and dispose of gifts or donations of services or property. (7) POSTAL SERVICES. —The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States. (8) POWERS OF SUBCOMMITTEES, MEMBERS, AND AGENTS. — Any subcommittee, member, or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

(e) STAFF OF THE COMMISSION. — (1) DIRECTOR. —The Commission shall have a Director who shall be appointed by the Chairperson and the Vice Chairperson, acting jointly. (2) STAFF. —The Chairperson and the Vice Chairperson may jointly appoint additional personnel, as may be necessary, to enable the Commission to carry out its functions. (3) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The Director and staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this paragraph may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code. Any individual appointed under paragraph (1) or (2) shall be treated as an employee for purposes of chapters 63, 81, 83, 84, 85, 87, 89, 89A, 89B, and 90 of that title. (4) DETAILEES. —Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption. (5) CONSULTANT SERVICES. —The Commission is authorized to procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(f) COMPENSATION AND TRAVEL EXPENSES. — (1) COMPENSATION. —Each member of the Commission may be compensated at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission. (2) TRAVEL EXPENSES. —While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

(g) NONAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT. — The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

(h) REPORT OF THE COMMISSION; APPEARANCE BEFORE AND CONSULTATIONS WITH CONGRESS. — (1) REPORT. —On \_\_\_\_\_\_\_\_\_\_\_, 2023, the Commission shall submit to the President and to the Congress a report containing the findings, conclusions and recommendations of the Commission on the operations of the Federal Home Loan Banks. (2) INSTITUTION-SPECIFIC REPORTS AUTHORIZED.—At the discretion of the chairperson of the Commission, the report under paragraph (1) may include reports or specific findings on any financial institution examined by the Commission under subsection (c)(2). APPEARANCE BEFORE THE CONGRESS. —The chairperson of the Commission shall, not later than 120 days after the date of submission of the final reports under paragraph (1), appear before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives regarding such reports and the findings of the Commission. (4) CONSULTATIONS WITH THE CONGRESS. —The Commission shall consult with the Committee on Banking, Housing, and Urban Affairs of the Senate, the Committee on Financial Services of the House of Representatives, and other relevant committees of the Congress, for purposes of informing the Congress on the work of the Commission. (i) TERMINATION OF COMMISSION. — (1) IN GENERAL. —The Commission, and all the authorities of this section, shall terminate 60 days after the date on which the final report is submitted under subsection (h). (2) ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION. —The Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding the activities of the Commission, including providing testimony to committees of the Congress concerning reports of the Commission and disseminating the final report submitted under subsection (h). (j) AUTHORIZATION OF APPROPRIATION. —There is authorized to be appropriated to the Secretary of the Treasury such sums as are necessary to cover the costs of the Commission. Approved \_\_, 2022.

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1. <https://www.bu.edu/law/forum-on-the-future-of-the-federal-home-loan-bank-system> [↑](#footnote-ref-1)
2. West Virginia, et al. v. Environmental Protection Agency, et al. 597 US\_(2022). [↑](#footnote-ref-2)
3. https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=4135685 [↑](#footnote-ref-3)
4. https://www.fhlb-of.com/ofweb\_userWeb/resources/2021Q4CFR.pdf [↑](#footnote-ref-4)
5. https://www.americanbanker.com/opinion/as-the-federal-home-loan-banks-turn-90-we-shouldnt-mess-with-success [↑](#footnote-ref-5)
6. https://www.gao.gov/assets/gao-05-489t.pdf [↑](#footnote-ref-6)