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January 6, 2015

Alfred M. Pollard, General Counsel
Attention: Comments/RIN 2590-AA39
Federal Housing Finance Agency
400 Seventh Street SW, Eighth Floor
Washington, D.C. 20024

Re: Notice of Proposed Rulemaking and Request for Comments- Members of
Federal Home Loan Banks (RIN 2590-AA39)

Dear Mr. Pollard:

The Independent Community Bankers of America (ICBA) ¹ welcomes the opportunity to provide comments on the proposed rulemaking regarding Members of Federal Home Loan Banks, as issued by the Federal Housing Finance Agency (FHFA). ICBA and the more than 6,500 community banks in America view the FHLB system, and access to it, as critical to the long term health and viability of the community banking system in the United States. Without ready access to the low-cost advances provided by the FHLBs to community banks, many of those banks would be forced to severely curtail home mortgage lending in the communities they serve. In some cases lack of access to low-cost funding from the FHLBs would mean some community banks would not be able to survive, resulting in more underserved markets, particularly in rural America.

The FHFA is proposing to create a quantitative minimum asset test that all FHLB member institutions must meet both at the time of application for membership in the FHLB System and on an ongoing basis. As proposed, an institution that

¹ *The Independent Community Bankers of America® (ICBA), the nation's voice for more than 6,500 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services.*

ICBA members operate 24,000 locations nationwide, employ 300,000 American, hold \$1.3 trillion in assets, \$1 trillion in deposits and \$800 billion in loans to consumers, small businesses and the agricultural community. For more information, visit www.icba.org.

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qualifies as a Community Financial Institution (CFI) would need to have at least 1% of its assets in home mortgage loans, and would be required to maintain those levels at all times. Institutions that are not CFIs are currently required to show they have 10% of their assets in residential mortgage loans. As proposed, those institutions would need to maintain those levels at all times to retain membership in the system. Additionally, the FHFA is proposing to change the definition of insurance company to exclude captive insurance companies from FHLB membership and provide any existing captive insurers five years to exit the System.

FHFA proposed a similar asset test in 2010. ICBA's comment letter filed in March of 2011 urged the FHFA not to move forward with the proposed rulemaking as it would be in direct contradiction of the will and actions of Congress. ICBA's position on this issue has not changed, and we strongly urge the FHFA to withdraw this proposed rule.

According to the FHFA, these changes are being proposed to ensure that member institutions have and continue to maintain a commitment to housing finance and keep out those institutions that would otherwise not have access to the FHLB system (captive insurers). In developing its justification for these new requirements, the FHFA takes a very liberal and questionable interpretation of the FHLB Act of 1932, and subsequent amendments. The FHFA has not provided any data, statistics, or staff analysis that would support any claims of risk to the FHLB System from members that may not meet these proposed thresholds. Nor has there been any failure of any FHLB in the 82-year history of the FHLB System, including during the recent 2007 recession where housing prices fell nationally and home foreclosures rose to levels not seen since the Great Depression. And, although 460 banks have failed since 2007 and 139 insurance companies have failed since 2008, no FHLB has suffered a loss from a collateralized advance from a failed member institution. This would tend to support ICBA's position that the current membership rules, as designed by Congress work as intended and further hurdles to membership are not needed. ICBA strongly urges the FHFA to withdraw this proposed rule.

As noted earlier, community banks depend on the ready access of funding for mortgage lending through the use of collateralized advances from their local FHLB. Many of these institutions must carefully allocate space on their balance sheets for various forms of assets including mortgage loans, consumer loans, loans to small businesses, agriculture loans, and commercial loans as well as investment securities. Given a member bank's asset size and market, the addition, or removal, of one or two loans can produce major swings to the percentages in any asset category, and could radically change the percentage of mortgage loans or mortgage-backed securities (MBS) held at any time. What's more troubling is that changes in the percentage of assets held in any category may not be driven by a change in strategy but rather something as uncontrollable as a mortgage loan or two being paid off. FHFA's proposal to implement an

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ongoing asset test to retain FHLB membership would force smaller institutions to either hold more MBS in portfolio or possibly pass up opportunities to make other types of consumer, small business or agriculture loans in order to maintain compliance. This would result in some community banks being unable to best serve their communities, all because of compliance with an arbitrary test imposed by a regulator. This is clearly not what Congress has intended, as evidenced by the fact that Congress specifically recognized that certain small institutions might have difficulty in obtaining sufficient mortgage collateral for advances. To address this issue, Congress expanded the list of eligible types of collateral that institutions could use for advances. The FHFA's proposed rule moves in the opposite direction.

As proposed, the 1% asset test could force 137² community banks that do not currently meet the proposed test to either add mortgage loans in their portfolio, purchase and hold more MBS, or make fewer consumer, commercial, small business, or agriculture loans in order to maintain their FHLB membership. If the FHFA increases this asset test to 5%, the number of community banks required to make the adjustments mentioned above would rise to 315. FHFA's proposed rule also ignores the fact that many small community banks sell mortgage loans on a wholesale basis, and as such their balance sheets will not be reflective of their entire mortgage lending activity. In many cases, these institutions are very active mortgage lenders, but do not retain many loans in portfolio so as to free up capital to make additional mortgage loans and for other types of assets. As noted earlier, ICBA cannot support any rule that would exclude from FHLB membership any institution that according to the statute should be eligible.

ICBA's March 2011 comment letter on the (then) proposed rule stated that the proposal appears to be a solution in search of a problem. That statement is still accurate. The FHFA staff has raised concerns that some members of the FHLBs no longer adhere to the requirements of supporting housing finance. The staff also points out that some insurance company entities may be accessing the FHLB System through loopholes and do not have a housing-related mission. ICBA recommends that the FHFA deal with those individual institutions through the existing regulatory structure rather than impose new burdensome requirements on all FHLB members. If the FHFA is concerned that institutions not meeting the proposed asset tests pose some type of safety and soundness risk to the entire System, ICBA notes that recent experience suggests otherwise. In fact, even with the failure of 460 depository institutions, and 139 insurance companies, the FHLB was able to carry out its mission of providing much needed liquidity in a time of crisis, without any bailout or direct support from the government, unlike some of the largest banks and other GSEs.

In summary, ICBA's position remains the same as it was in 2011. For the reasons listed above, the ICBA urges the FHFA to withdraw the proposed rule.

² ICBA analysis of FDIC call report data.

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ICBA appreciates the opportunity to comment on this proposal and looks forward to working with the FHFA to maintain the safety and accessibility of the FHLB System for all eligible institutions. If you have any questions regarding this comment letter please contact the undersigned at ron.haynie@icba.org.

Sincerely,

Ron Haynie
Senior Vice President, Mortgage Finance Policy

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