



November 30, 2023

Mr. James P. Sheesley  
Assistant Executive Secretary  
Attention: Comments/Legal OES (RIN 3064-AF90)  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street NW  
Washington, DC 20429

**Re: Comments on Notice of Proposed Rulemaking - Resolution Plans 12 CFR Part 360,  
RIN 3064-AF90**

Dear Mr. Sheesley:

**Introduction**

The Council of Federal Home Loan Banks (“Council”), a trade association that represents the views and positions of the 11 Federal Home Loan Banks (each an FHLBank, and collectively, FHLBanks) respectfully submits this comment letter regarding the Federal Deposit Insurance Corporation’s (FDIC) notice of proposed rulemaking for Resolution Plans Required for Insured Depository Institutions With \$100 Billion or More in Total Assets; Informational Filings Required for Insured Depository Institutions With at Least \$50 Billion But Less Than \$100 Billion in Total Assets (Resolution Plans and Resolution Submissions).

A foundational mission of the FHLBanks as stated by Congress in 12 USC § 4513(f) is to provide liquidity to its members; more than 4,200 of our members are FDIC-insured depositories. For more than 90 years, the FHLBanks have played a vital role in supporting the U.S. financial system by providing reliable, low-cost liquidity to its members during periods of stress. Such events include the Great Depression, the Savings and Loan Crisis, the Global Financial Crisis, the onset of the COVID-19 pandemic in March 2020 and, most recently, the March 2023 bank liquidity crisis.

**Inclusion of FHLBanks in 12 CFR Part 360**

We support the FDIC’s proposed amendments to the Resolution Planning to enhance the FDIC’s and FHLBanks’ readiness in the event of a receivership of a covered insured depository. When a covered depository fails, it is imperative that the FDIC be able to reliably access FHLBank liquidity on a prudent, collateralized basis to assist in a least-cost resolution, to maintain franchise value, and to mitigate adverse effects on economic conditions or financial stability — including the risk of runs on and contagion to other FDIC-insured banks, whether large or small. We appreciate that the FDIC considers the creation of a depository bridge bank as part of a viable resolution strategy.

In the Preamble to this proposed rulemaking, the FDIC correctly acknowledges the role of the FHLBanks in Resolution Planning:

In addressing the stabilization of the BDI (bridge depository institution), **the identified strategy may assume continuation of Federal Home Loan Bank advances** and the availability of short-term liquidity advances from the DIF to meet temporary liquidity needs, **provided that the identified strategy provides for timely repayment of those funds.** The identified strategy should not assume use of the DIF to avoid losses to creditors of the BDI; all DIF advances must be made through a loan with an assured means of timely repayment. (88 Fed. Reg. 64579, 64587 (Sept. 19, 2023) (emphasis added)).

The FHLBanks are supportive of having Resolution Plans or Submissions that contemplate continued FHLBank lending to a BDI if requested by the primary regulator or the FDIC receiver of the BDI, as applicable. Assuming Federal Housing Finance Agency (FHFA) non-objection, FHLBank lending, whether renewals or new money, should be permissible in such cases if made in the ordinary course of lending, fully collateralized, and underwritten in reliance on the FDIC or the receiver's ability and willingness to repay the advances or other FHLBank obligations.

To assist the covered depository institutions in preparing their Resolution Plan, the Council respectfully requests that the final regulation explicitly state this Resolution Plan assumption for FHLBanks. If this reference is located only in the Preamble to the proposed rule, we are concerned that this important concept may be overlooked in the Resolution Planning process. We respectfully recommend that FHLBank advance continuation should be expressly listed in 12 CFR § 360.10 in a new subsection (d)(13) to read as follows:

(13) *Federal Home Loan Bank advances, letters of credit.*

If the CIDI is a member of a Federal Home Loan Bank, a resolution submission must include a discussion of its approach for using Federal Home Loan Bank liquidity if applicable. The resolution submission may assume the continuation of Federal Home Loan Bank advances and letters of credit obligations via a bridge depository institution, if the resolution submission demonstrates that the obligations remain fully collateralized and provides for timely repayment.

By inserting a new section (d)(13), the remaining references in this sub-section would be re-numbered beginning with (d)(14) *Off-balance-sheet exposures*, resulting in a new subsection (d)(28). 12 CFR § 360.10(d) must also be conformed to include subsection (d)(28) in the filing specifications for group B covered depository institutions (CIDs).

This regulatory addition will make it easier on Resolution Plan or Submission report preparers because the assumptions concerning FHLBank advances will be expressly stated in the final regulation.

### ***FHLBank System at 100 Report and Outreach to FHFA***

To further address the FHLBanks' role, the Council asks that the FDIC engage with the FHFA to ensure that the FHLBanks may safely and soundly support the emergency liquidity needs of the FDIC and FDIC-insured member institutions, as mandated by Congress. In addition to lending to healthy

commercial banks on a fully collateralized basis, the FHLBanks have an important role to play in assisting in the facilitation of least-cost resolutions for the FDIC by providing (with primary regulator approval) emergency liquidity to troubled banks, as well as bridge banks, deposit insurance national banks (DINBs) established under 12 USC § 1821(m), and FDIC receiverships (assuming FHLBank membership remains). Clarifying the FHLBanks' role in resolution planning in this regulation aligns with the recent *FHLBank System at 100: Focusing on the Future* report, released on November 7, 2023 (System 100 Report), in which the FHFA encourages the FHLBanks to work closely with the FHFA, and the other primary banking regulators, as well as the FDIC.

The FHFA's suggestions in the System 100 Report regarding FHLBank lending to distressed banks will likely limit FHLBank members' access to FHLBank advances when they are most in need. To the extent that the Federal Reserve's discount window lending does not provide a complete substitute for the loss of access to FHLBank advances, members could find themselves with less access to liquidity during times of financial distress. FDIC-insured banks, whether large or small, should not be forced to fail by a FHFA "ability to repay" underwriting requirement. If there is adequate collateral pledged to the FHLBank, and the primary regulator and the FDIC concur that the troubled bank should try to be saved, FHFA regulations and exam mandates should not strip the final underwriting decision to lend away from the primary regulators and a FHLBank's board of directors.

While increased FHLBank underwriting and coordination with the Federal Reserve Banks as recommended in the System 100 Report has merits, the longstanding role of emergency lender for the FHLBanks to address run contagion and provide a liquidity backstop for the deposit insurance funds should not be disrupted. This is a very serious issue, especially in situations where a Federal Reserve Bank may not have pre-positioned collateral to provide emergency liquidity or the Federal Reserve Bank needs supplemental liquidity from a FHLBank in times of crisis. The Council would be pleased to work with the FDIC, the FHFA and the banking and credit union regulators, to constructively ensure that the FHLBanks remain a reliable liquidity source for troubled institutions.

The FHLBanks' special role of emergency liquidity lender to insured depositories is also recognized by Congress. Congress granted voidable preference protections so that FHLBanks may freely substitute collateral without fear of receiver claw back to support lending to troubled banks. These protections allow the FHLBanks to safely address liquidity runs, bank contagion and provide continued reliable, low-cost funds when requested by the FDIC or the other primary regulators of a troubled member. The importance of FHLBank liquidity after the 2008 financial crisis has now also been reaffirmed by legislatures in twenty-seven states and two U.S. territories. These jurisdictions have granted to the FHLBanks equivalent state law collateral protections for insurance company members in recognition of the FHLBanks' critical role as emergency liquidity lender. Therefore, if the FDIC expressly includes the FHLBanks in the FDIC's Resolution Plans, it also aligns with the public policy actions taken by these legislatures since 2008.

In closing, the Council appreciates having the opportunity to provide comment. We also thank the FDIC and its regulatory and receivership personnel for their professionalism and prompt action, done in conjunction with the FHLBanks, the Federal Reserve Banks and the Executive Branch, to promptly and effectively address the March 2023 bank liquidity and contagion issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan Donovan". The signature is fluid and cursive, with a large initial "R" and a long horizontal stroke at the end.

Ryan Donovan  
President and Chief Executive Officer  
Council of Federal Home Loan Banks

cc: Sandra Thompson, Director, FHFA