



July 15, 2024

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

Re: Request for Input: Federal Home Loan Bank Core Mission Activities and Mission Achievement

Dear Director Thompson:

On behalf of the Council of Federal Home Loan Banks (Council)¹, I am writing in response to the Federal Housing Finance Agency's (FHFA) Request for Input (RFI) issued May 16, 2024, related to the FHLBank System's mission statement, methods for measuring and evaluating mission achievement, and financial incentives for members² with a strong and demonstratable connection to the mission of the FHLBank System. Thank you for considering our views.

We appreciate the opportunity to provide input at this point in the rulemaking process given the potential significance of the issues raised in the RFI for the future of the FHLBanks and their members. Of highest priority to the FHLBanks is the opportunity to further discuss and work in collaboration with FHFA and other stakeholders in the FHLBank System regarding mission measurements and metrics prior to rulemaking on these critically important issues impacting the FHLBank business model and the future of the FHLBank System and its ability to continue to meet and exceed its mission of providing liquidity to the financial system and contributing to affordable housing and community development.

The FHLBanks look forward to ongoing engagement with you and FHFA staff on this matter, and they appreciate FHFA's commitment to solicit additional feedback if it proceeds with rulemaking in this area.

Executive Summary

FHFA has identified three issues that will be addressed in forthcoming rulemaking on the FHLBank mission, which include:

1. clarifying the regulatory statement of the FHLBank System's mission to reflect its critical role in the housing finance system,

¹ The Council is the trade association that represents the views and positions of the eleven FHLBanks.

² For purposes of this letter, references to "member" shall include "housing associate."

2. developing related metrics and thresholds that evaluate FHLBank mission achievement, and
3. identifying possible financial incentives that FHLBanks could provide to members with strong and demonstrable connection to the mission of the FHLBank System.

The mission of the FHLBanks is clear. As established by Congress, the mission is to provide liquidity to members and support housing and community development, and the FHLBanks have made significant contributions in supporting both critical objectives. In recent years, the FHLBank System has gone above the statutory requirements set forth by Congress toward supporting affordable housing and community development. The FHLBanks have also launched new voluntary programs with the community development financial institution (CDFI) community.

The Council respectfully suggests that FHFA consider this regulatory review as an opportunity to provide more flexibility that would enable the FHLBanks to continue to meet their mission of supporting housing and the economy by being a reliable source of liquidity to members of all sizes. The FHLBanks' ability to provide efficient and reliable liquidity drives the contributions that the FHLBanks make toward affordable housing and community investments, and additional regulatory flexibility could only enhance these contributions. These two components of the FHLBanks' mission are crucial and inextricably linked.

A result that is too prescriptive could create operational and implementation complexities that would hinder the ability of the FHLBanks to continue making meaningful contributions to the housing finance system and could hinder their collective impact and ability to channel private sector innovation to meet the greatest needs in the housing market. Additionally, rather than imposing a new system of assessing mission achievement as suggested by the RFI, the FHLBanks request an opportunity to work collaboratively with the FHFA on revisions to the Core Mission Assets (CMA) regulation, a well-established model for evaluating mission achievement. The FHLBanks believe that by adhering to the structure and requirements established by the Federal Home Loan Bank Act (as amended by Congress, Bank Act)³ all the FHLBanks' products and activities achieve their mission objectives.

As discussed in this letter and detailed in the 2023 FHLBank Impact Report (Impact Report)⁴, the FHLBanks have fulfilled their mission for nearly a century by providing reliable liquidity and supporting housing and community development.

Finally, with respect to member incentive programs, the FHLBanks believe that Congress is the proper party for considering such programs as the Bank Act already provides incentives to members.

How the FHLBanks Fulfill Their Statutory Mission

The FHLBanks fulfill their mission to provide liquidity to members and support affordable housing and community development⁵ through the services they provide to their members, the support they contribute to the communities they serve, and the impact these activities have on housing finance and economic stability. More specifically, the FHLBanks fulfill their statutory mission by providing liquidity to their members backed by eligible collateral, fully funding their annual AHP contributions,

³ 12 USC §1421 et seq.

⁴ <https://fhlbanks.com/wp-content/uploads/2024/06/2023-Impact-Report-FINAL.pdf>

⁵ 12 USC §1421 et seq.; 12 USC §4513(f)(1)(b) and (c)

and initiating voluntary programs to further support their members' housing and community development activities in their communities.

The FHLBanks provide critical liquidity to their members, including banks, credit unions, insurance companies, and CDFIs. FHLBank members actively and continuously depend on, plan for, and incorporate FHLBank liquidity into their financial strategies. FHLBank advances and mortgage finance activity play a critical role in supporting community economic development, mortgage lending activity, maintaining mortgage market liquidity across varying economic cycles, and reducing mortgage costs. The ability of members of all sizes and charter types to rely on ready access to FHLBank liquidity maintains the diversity and vibrancy of the U.S. financial system. This liquidity supports mortgage lending, community economic development, and maintains mortgage market stability, ultimately benefiting the broader U.S. financial system. The FHLBanks have worked throughout their 90+ year history to support liquidity and the overall stability of the financial services sector during all economic cycles.

Members' access to advances allows them to support the borrowing needs of their customers, which in turn helps support economic growth and prosperity in their communities. This includes homeowners' access to competitively priced fixed-rate mortgages (such as the popular 30-year, fixed-rate mortgage), as well as broadening access to credit that supports job creation and economic growth.

The connection between the FHLBanks' mission and their products has always been assured through the collateral Congress has authorized members to pledge. These are typically one- to four-family residential mortgage loans, along with other types of housing and real estate-related collateral such as mortgage-backed securities, commercial real estate loans, and U.S. government and agency securities. This strong link to housing helps FHLBank members provide funding for housing and economic development in their districts and is the nexus to how the FHLBanks achieve their mission objectives.

Most FHLBanks operate Acquired Member Asset (AMA) programs in which they directly purchase fixed-rate 15- to 30-year mortgages secured by one- to four-family residential properties from their members. These programs give members another option to access liquidity, further enlarging the amount of funding available to provide mortgage loans to borrowers. Additionally, these programs support local financial institutions, including small institutions that often lack access to other secondary market outlets, as well as larger lenders who seek a competitive alternative to existing secondary market options.

Through the statutory Community Investment Program (CIP) and the Community Investment Cash Advance Program (CICA)⁶, the FHLBanks offer discounted advances for housing and economic development. At the end of 2023, the FHLBanks had \$9.5 billion outstanding CIP advances and \$2.5 billion outstanding CICA advances.

The FHLBanks' support for housing and community development goes beyond increasing Americans' access to financing. The FHLBanks' programs, including advances and grants, support the purchase, rehabilitation, and construction of affordable housing as well as assist homeowners affected by natural disasters.

⁶ 12 USC §1430(f)

Pursuant to statute, the FHLBanks contribute 10% of their net income annually to the Affordable Housing Program (AHP).⁷ Due to significant growth in the FHLBanks' core liquidity business, the FHLBanks' 2022 income resulted in \$355 million in statutory AHP contributions, available for use in 2023. Through their members, these resources supported a total of more than 20,500 housing units, more than 10,700 first time homebuyers, and more than 14,500 families. AHP contributions also supported nearly 200 projects with 20% of units dedicated to homeless households. The FHLBanks' 2023 income resulted in AHP contributions of \$752 million, available for use in 2024, a 112% increase from the previous year, allowing the FHLBanks to have a bigger impact this year. For perspective, the FHLBanks' 2023 AHP assessments are double when compared to Fannie and Freddie's *combined* allocation of \$382 million to the Housing Trust Fund in 2023.

Since the inception of AHP, the FHLBanks have contributed more than \$8 billion to mission efforts. These funds, combined with the discretionary contributions the FHLBanks make to programs and initiatives within their districts, position the FHLBank System among the largest single private source of funding each year for housing initiatives in the country, and the FHLBanks have committed to doing more than is currently required by law. Since 2022, the FHLBanks have created three dozen new programs to address the needs of their districts. In 2023, each FHLBank committed to voluntarily contributing 50% more than the statutory AHP requirement to AHP or discretionary programs. As a result, the FHLBank System is expected to contribute approximately \$1 billion to these efforts in 2024.

Recently, the FHLBank System published the Impact Report that describes the national impact of the FHLBanks fulfilling their statutory mission and includes more than 50 examples of programs and initiatives FHLBanks are supporting through their members in communities across the country. By any measure, FHLBanks fulfill the mission Congress has required and they are proud of the value delivered for FHLBank members, homeowners, renters, local businesses, and communities across the country which is significant and outsized compared to other government sponsored enterprises (GSEs).

QUESTIONS ON THE MISSION STATEMENT FOR THE FHLBANKS

- Q1: 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?*
- Q2: Are there components in addition to providing liquidity and supporting housing and community development that should be included in the mission statement?*

Q1. Response: Mission Statement

In the RFI, FHFA states that the Bank Act “does not explicitly” describe the mission of the FHLBanks and explains that “clarifying the mission of the FHLBanks is an essential step in strengthening” the increased support for housing and community development that FHFA’s FHLBank System at 100 report calls for.

The mission of the FHLBanks is clear as most recently expressed in the Housing and Economic Recovery Act of 2008 (HERA)⁸ where Congress explicitly recognized the FHLBanks “mission of

⁷ 12 USC §1430(j)(5)(c)

⁸ 12 USC §4513(f)

providing liquidity to members” and “affordable housing and community development.”⁹ In fact, the Congressional findings of HERA state that the FHLBanks “have [an] important public mission[] that [is] reflected in the statutes and charter Act[] establishing the FHLBanks.”¹⁰ Thus, the FHLBank mission is found within the structure and requirements of the Bank Act itself. As the Bank Act clearly establishes the Congressional purpose, intent, and overall objectives of the FHLBank System, only Congress may revise them.

Q2. Response: Mission Statement

The original Bank Act and subsequent amendments make clear the FHLBanks’ mission as Congress expanded membership types and added specific housing and community development objectives. Furthermore, the Bank Act requires that all FHLBank members must demonstrate a strong nexus to housing prior to joining a FHLBank. These statutory requirements establish a clear and strong nexus between the FHLBanks, their members and their housing and community development mission.

The liquidity mission is foundational to the FHLBanks and integral to the stability of their members, as well as the overall U.S. financial system. Member institutions depend on their FHLBank for reliable, accessible, competitively priced funds. FHLBanks support them and the broader U.S. financial system by providing dependable, reliable, low-cost liquidity to their members secured by high-quality, primarily residential housing and real estate-related collateral. This enables more lending by FHLBank members to their customers and into their communities while also generating significant funding for affordable housing and community development. The connection between the two parts of FHLBank mission is clear and inextricably linked. It is because FHLBanks are able to provide vital liquidity and term funding to their members that they can attract their capital and generate income to support innovative initiatives to expand affordable housing and community development in their districts.

Further, the liquidity the FHLBanks provide to their members regularly supports the housing and community development activities of their customers and their communities. Every day, FHLBank members use advances to make mortgage loans to their customers, to help finance new housing projects and to rehabilitate existing housing stock. They use advances to make commercial loans that allow small businesses to expand their operations, hire new employees and build new facilities. They use the Mortgage Partnership Finance[®] Program (MPF[®]), the Mortgage Purchase Program (MPP) and Mortgage Asset Program (MAP[®]) to help customers buy a new home or lower the cost of their existing home through refinancing.¹¹ They use FHLBank Letters of Credit to lower the cost of new housing projects and back municipal deposits that enable local capital to be kept within their own communities. All of these activities are examples of how the FHLBanks and their members help the communities they serve grow, thrive, and become more desirable places to live and work for Americans.

The FHLBanks have long demonstrated their commitment to the affordable housing and community development activities of their members. The FHLBank System is among the largest single private source of funding each year for affordable housing in the United States. In addition to the statutory mandate to contribute 10 percent of their net income to the AHP, all the FHLBanks have committed to contribute at least 50 percent more to their affordable housing and community development activities than is required by Congress. Between 2018 and 2022, FHLBanks made over \$2 billion in

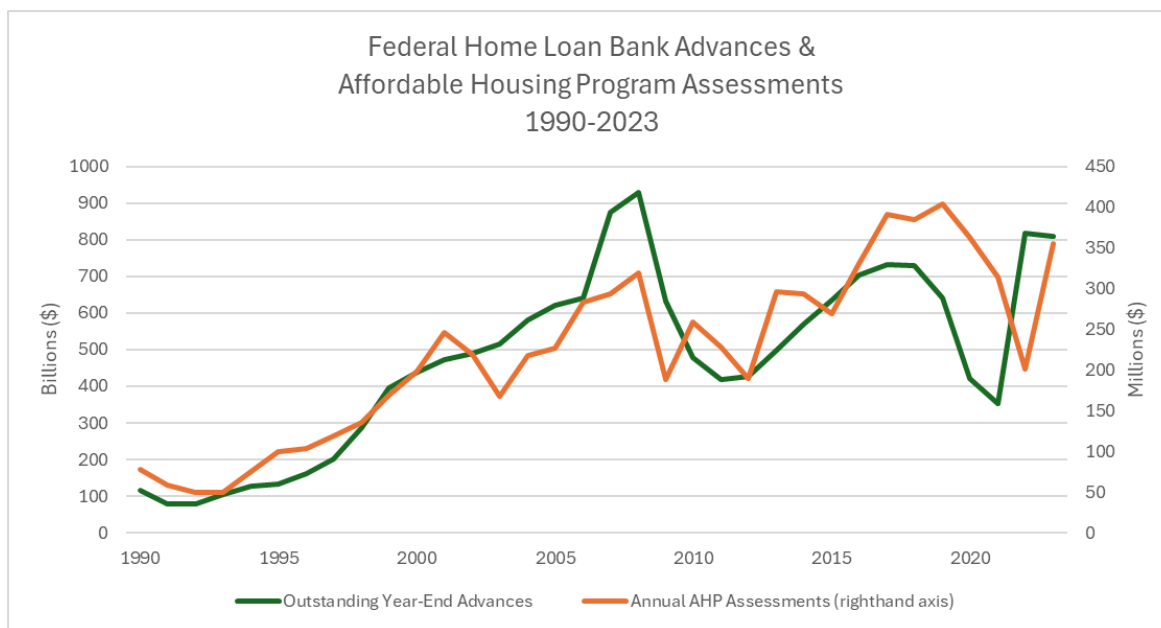
⁹ *Id.*

¹⁰ 12 USC §4501(1)

¹¹ “Mortgage Partnership Finance” and “MPF” are registered trademarks of the Federal Home Loan Bank of Chicago. “MAP” is a registered trademark of the Federal Home Loan Bank of New York.

contributions across AHP and their voluntary programs; they will contribute more than \$1 billion this year alone.

The chart below shows the close correlation between FHLBank advances and AHP contributions. As FHFA considers possible changes to the regulations governing core mission activities and mission achievement for the FHLBanks, it should take care to avoid any changes that diminish the value proposition of the FHLBanks for their members, which would reduce the FHLBanks' income and result in less funding available for their affordable housing and community development activities.



Working Together Toward the Future

The FHLBank System welcomes regulatory changes that increase flexibility and simplification of existing programs to respond to acute local housing and community development needs, broaden participation, and enhance impact by reducing administrative burden on nonprofits and other community partners, members, and the FHLBanks.

As the FHLBanks' prudential regulator, FHFA has the authority and responsibility to ensure the FHLBanks can meet their members' liquidity needs safely, soundly, efficiently, and responsibly in all economic conditions. As FHFA proceeds through the rulemaking process, we encourage FHFA to ensure FHLBanks have the regulatory flexibility necessary to address the current and future challenges to America's housing finance system; consider local and regional housing market differences and allow more flexibility in housing markets that have unique circumstances that support high or low-cost markets around the country; and avoid any changes that would impair or reduce the FHLBanks' discretionary programs. Importantly, we caution against making changes to the FHLBank System that could result in a contraction of the nation's availability of credit.

QUESTIONS ON THE MEASUREMENT OF MISSION ACHIEVEMENT

- Q1: Are there characteristics other than those listed on pp. 9-10 that FHFA should consider in developing measures of mission achievement? Please provide the rationale for any other characteristics.*
- Q2: 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.*
- Q3: 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?*
- 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 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?*
- Q4: 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?*
- Q5: Are there other approaches FHFA should consider?*

Q1. Response: Mission Measurement

FHFA should amend the CMA regulation to provide for a better evaluation of an FHLBank's mission performance rather than developing a new framework or various additional measurements of the FHLBanks' mission achievement. The housing market and the FHLBanks' products and activities have greatly transformed since 2000 when the CMA regulation was promulgated. The CMA regulation and related guidance currently do not appropriately reflect these changes.

The FHLBanks' business model and products support their members' ability to originate mortgages, fulfill additional consumer lending needs, make small business loans, and manage their balance sheets. Each of these activities has a direct connection to housing finance and community development through the backing of collateral that Congress has specified as eligible, making them mission consistent. Further, they generate the net income needed to fund the affordable housing programs and the many voluntary programs that have been created in recent years. Importantly, the financial health and profitability of the FHLBank System is directly aligned with the FHLBanks' mission and affordable housing contributions. The Impact Report also shows the full impact of the FHLBanks' mission contributions, as it further highlights the FHLBanks' voluntary mission contributions (of at least 50% above the statutory requirement).

FHFA currently assesses the FHLBanks' mission performance in a variety of ways. Every year, FHFA examines the FHLBank's compliance with the CMA regulation¹² and evaluates the FHLBank's performance of mission achievement pursuant to the Core Mission Achievement Advisory Bulletin.¹³

¹² 12 C.F.R. §1265.2

¹³ Advisory Bulletin AB 2015-05: *FHLBank Core Mission Achievement*.

The FHLBanks' strategic plans are required to include plans for maximizing activities that further the FHLBanks' housing finance and community lending mission.¹⁴ FHFA conducts regular Affordable Housing Program and Safety & Soundness Examinations that examine all aspects of the FHLBanks' mission.

The FHLBanks recognize the value of publicly sharing their plans related to housing and community investment needs of their communities and to communicate their progress with those plans to ensure public transparency and drive accountability. The FHLBanks are already subject to numerous existing requirements that provide for this transparency to the public, including:

- a. Self-Reported
 - i. Targeted Community Lending Plan
 - ii. Equitable Housing Plan (*effective Feb 2026*)
 - iii. FHLBanks Impact Report and System Impact Report
- b. Independent Assessment
 - i. FHLBanks' Core Mission Asset ratio performance is included in FHFA's annual report to Congress.
 - ii. FHLBanks' respective Advisory Council report on its community lending and affordable housing activities

Q2. Response: Mission Measurement

The FHLBanks request that FHFA form a joint working group with representatives from the FHLBanks to work collaboratively on revisions to the CMA regulation and the evaluation of mission achievement. This approach proved effective previously when FHFA formed the Joint Core Mission Working Group in 2014 to establish the measurements for core mission achievement. This multiyear collaboration resulted in FHFA's issuance of the Advisory Bulletin on FHLBank Core Mission Achievement. Below are a few initial suggestions for CMA revisions. These should be thoroughly evaluated and analyzed by a joint working group before FHFA includes specific approaches as part of a proposed rulemaking. As the RFI notes, the CMA regulation does not take into account some FHLBank products and activities that support housing finance and community development, such as the FHLBanks' contributions to AHP above the statutory amount and other additional discretionary grant programs that directly fund community investment. Grants and rate subsidies sourced from FHLBank net income and targeted at low-income and at-risk communities can substantially boost the affordability of debt financing, making qualifying initiatives financially feasible. In some cases, the grant can be levered as equity financing to support debt financing that furthers an FHLBank's housing finance and community development efforts.

The FHLBanks request certain collateral, investments, and products, such as mortgage-backed securities, municipal bonds, and letters of credit, be reflected in its mission performance. For example, the FHLBanks create market liquidity for otherwise illiquid collateral that allow members to make home mortgages, small business and agricultural loans, and other forms of community development more broadly available. For example, letters of credit facilitate residential housing finance and community lending, assist with asset/liability management, and provide liquidity or other funding. At the end of Q1 2024, there was over \$215 billion in outstanding letters of credit across the FHLBank System.

¹⁴ 12 C.F.R. §1239.14

The current CMA ratio should include a more fulsome liquidity measure to better reflect the need for the FHLBanks to have cash available to support unanticipated member advance demand (particularly in challenging markets).

The FHLBanks recommend that any product created as a pilot or voluntary program pursuant to FHFA’s Advisory Bulletin on Pilot and Voluntary Programs¹⁵ (Pilot Program Advisory Bulletin) be included as a core mission activity.

The FHLBanks are concerned that a new set of strict metrics, may result in (a) a restriction of the FHLBanks’ ability to respond to their members’ community needs for products that do not positively impact these new performance metrics, (b) the creation of safety and soundness issues, and (c) a chilling of the innovation of new products and activities as encouraged by the Pilot Program Advisory Bulletin.

Q3. Response: Mission Measurement

The FHLBanks caution against prescriptive regulatory requirements and measurements given the complexity of the way programs are administered at each FHLBank through its member networks. Adopting additional assessment or regulatory burdens could have adverse impacts, some of which are already seen in the use or difficulty in accessing AHP programs. Introducing complexities like weighting to measurements would require significant analysis and coordination to ensure intended outcomes from such an activity. Weighting also leans into possible incentive structures, and there are historical basis and legal concerns that would make it prohibitive for either the FHLBank or FHFA to assess member business or mission strength fairly. We feel any approach that involves more complexity and weighting on data that may not be readily accessible to the FHLBank or FHFA should be avoided.

The FHLBs agree that AHP contributions that exceed statutorily required minimums including voluntary contributions should be appropriately reflected in the mission achievement measurements, as noted above.

As to the question about whether all FHLBank advances should count as core mission activities or if there should be exclusions, the FHLBanks feel strongly that given the absolute interconnectedness of the advance business to the housing and community development components of the mission, all advances should count toward core mission achievement. One example in the RFI suggested that members with less involvement or connection to housing and community development might not count. We disagree with the RFI’s suggestion as such an assessment could be deemed arbitrary. Therefore, the FHLBanks suggest that there should be no exclusions for any advance types. Additionally, to the question asking if the type of collateral securing an advance should be considered, the FHLBanks would recommend against this because collateral is not often tied to a specific advance, especially where an FHLBank may have a “blanket lien” on a member’s assets.

Q4. Response: Mission Measurement

The FHLBanks recommend that FHFA not tie mission achievement to the value of their GSE status. In March 2024, the Congressional Budget Office (CBO) published a report entitled *The Role of the Federal Home Loan Banks in the Financial System*. The CBO noted that the FHLBank System government ‘subsidy’ must be estimated since there is not an explicit subsidy appropriated by Congress. The CBO

¹⁵ FHFA Advisory Bulletin 2023-06: *FHLBank Framework for Pilot and Voluntary Programs*.

report also stated that it is difficult to quantify how the ‘subsidy’ impacts interest rates and consumers. The FHLBanks do not believe that their performance should be tied to their GSE status given the indefiniteness of the ‘subsidy’ calculations and the uncertainty of the subsidy impact. The CBO report concluded that the FHLBanks probably pass through almost all of their estimated subsidies to their members and through AHP. Competition in the market leads members to offer lower interest rates to consumers.

The FHLBank System at 100 report notes many regulations that need to be revised such as CICA and AHP to (a) expand access to the programs, (b) promote increased use of the products, and (c) enhance the FHLBanks’ ability to respond to an evolving economic landscape.¹⁶ The FHLBanks request FHFA focus first on those revisions to improve the products that are being utilized to measure the FHLBanks’ performance of their mission.

Q5. Response: Mission Measurement

In considering mission measurement proposals, the FHLBanks recommend that FHFA consider how regulatory improvements and greater flexibilities to the affordable housing programs, including AHP and voluntary programs and pilots, could be improved to help expand mission related activities with members and outcomes for communities. In addition, while the intent to ensure more direct underlying factors are tied to housing and community development is well understood, the impacts of doing that are a threat to the FHLBanks and their risk management programs, which concerns FHFA’s primary role in safety and soundness oversight. Collateral management and member underwriting and processing are centered on financial stability and business viability of the members the FHLBanks lend to through their liquidity programs. Attempts through mission rulemaking to force or limit advances or collateral accepted are likely to have adverse consequences to the FHLBanks and destabilize the risk management programs in place. Such efforts could also result in reduced usage of liquidity programs, which would mean less money to fulfill the affordable housing and community investment objectives. Such changes would also be incredibly difficult to measure or validate.

QUESTIONS ON A MEMBER INCENTIVE PROGRAM

- Q1: What factors should FHFA and the FHLBanks consider in determining each member’s commitment to housing finance and community development under a member incentive program?*
- Q2: 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?*
- Q3: 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?*
- Q4: What additional benefits should accrue to members in each category?*
- Q5: What provisions should be required for each FHLBank’s program to ensure it does not adversely affect the FHLBank’s safety and soundness?*

¹⁶ FHLBank System at 100 Report, p. 46 and 50.

Q6: 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?

General Response: Member Incentives

The member incentive program portion of the RFI requires much further input and engagement with members and the FHLBanks. The members' prudential regulators would also need to be coordinated with, and anything beyond the broad-based incentives that are currently offered through statutory programs like CICA would be difficult to directly incentivize.

The FHLBanks believe that Congress must be engaged to consider whether the FHLBanks should establish a member incentive program, given the Bank Act statute contains certain incentives instituted by Congress. Further, some of the FHLBanks today provide incentives to members through pilot and voluntary programs, and FHFA outlined a flexible path under the current regulatory framework for the FHLBanks to do so through the Pilot Program Advisory Bulletin. The FHLBanks are concerned that FHFA's suggested creation of additional incentives – beyond the Bank Act's member eligibility and collateral requirements – could create complexities not intended by Congress, have a negative impact on member business relationships and could hinder the FHLBanks' ability to execute on their primary statutory mission of providing reliable liquidity to member institutions in support of housing and community development. Moreover, requiring the FHLBanks to implement new incentive programs may exceed FHFA's authority.

By virtue of their membership and ownership of eligible collateral, FHLBank members have already demonstrated their connection to housing and community development. Consideration should be given to the fact that the FHLBanks are not regulators, and there would be significant coordination with members' regulators as the FHLBanks have no authority for regulatory activity. Requiring the FHLBanks to perform quasi-regulatory activities in assessing the *extent* of members' connection is not only be inconsistent with the Bank Act and other primary financial institution statutes, but could also have unintended consequences, including adding complexities and costs to FHLBank operations. In a highly competitive wholesale funding market, the FHLBanks fear that mandating such a program could diminish the attractiveness of FHLBank liquidity when compared to less cumbersome funding alternatives.

If additional support for affordable housing is the goal, the FHLBanks believe adding cost and complexity to FHLBank advances is not the way to achieve it.

Qualified Thrift Lender (QTL) Test

Since the Gramm-Leach-Bliley Act (1999), members have had equal access to FHLBank advances and other products irrespective of the level of housing assets on their respective balance sheets or their other housing or mortgage activities. The prior statutory "class of membership" distinctions between QTL and non-QTL members were expressly eliminated by Congress and no additional limitations or requirements have been imposed by Congress.¹⁷ Government-mandated asset tests, such as QTL, forced the savings and loans industry to hold an abnormally high level of interest rate-sensitive assets,

¹⁷ The QTL test required savings associations to maintain at least 65% of their assets in residential housing. Currently, the only statutory limits on ongoing access to advances that apply to FHLBank members are (i) the requirement members use long-term advances to fund housing finance; and (ii) the community support requirement limiting members' access to long-term advances based on such members Community Reinvestment Act rating (where applicable) and record of support for lending to first time homebuyers. 12 USC §1430(a)(2) and §1430(g).

resulting in a systemic failure of a significant portion of the industry.¹⁸ Thus, caution should be exercised before implementing a mandated asset test for members.

Existing Statutory Incentive Program

Congress artfully designed an incentive program that reflects the FHLBanks' mission. Under the Bank Act, access to FHLBank liquidity is conditioned on members holding eligible collateral. Congress has incentivized member investments in certain assets that are predominantly housing- and real estate-focused by including them in the Bank Act's list of eligible collateral types. Congress further incentivized community financial institution members to support their communities through investments in small business, agricultural and community development-related assets by providing them with these additional collateral categories. These programs, as well as statutory affordable housing and community development programs, including CIP and CICA advances, reflect Congress's intent on incentivizing members to obtain access to FHLBank liquidity.

The FHLBanks are concerned that a non-statutory member incentive program may be inconsistent with the Bank Act's requirement for FHLBanks to treat all members fairly, impartially and in a non-discriminatory manner. A cornerstone of the FHLBank System is equal access to all members and, as such, the FHLBanks believe Congress should consider whether an additional member incentive program squares with the existing statutory regime. Notably, when Congress has in the recent past expanded the types of entities that may become members – in 2008 with respect to CDFIs, and in 2015 with respect to state-chartered credit unions without federal share insurance – it has done so on essentially the same terms as other types of members. Congress gave no indication that it intended different classes or tiers of membership.

The FHLBanks already have flexible authority to develop programs that support housing and community development. FHFA recognized this authority in issuing the Pilot Program Advisory Bulletin. The FHLBanks utilize this authority consistent with Congress' statutory intent.

If FHFA requires the creation of member incentive programs, any regulatory authority should be broadly written to make such programs optional, and to allow the FHLBanks to flexibly structure programs to meet their regional needs, as determined through member outreach and feedback. Finally, FHFA should make it clear that any such programs are permissible under the Bank Act, including section 7(j) of the Act.

FHLBanks are Not Member Regulators

The FHLBanks are concerned the member incentive programs being contemplated by FHFA could be construed by their member institutions as using the FHLBanks as a tool to change, or even regulate, member behavior. By requiring the FHLBanks to evaluate members' level of housing and community development activity and incentivizing certain member investment activities over others, the FHLBanks could be viewed as performing quasi-regulatory activities. While the FHLBanks did possess regulatory authority prior to the adoption of the Financial Institutions Reform, Recovery and Enforcement Act in 1989 (FIRREA), Congress specifically removed that authority through FIRREA.

¹⁸ The Resolution Trust Corporation (RTC), established and funded by Congress to resolve troubled savings and loans (S&Ls), closed 747 S&Ls with assets of over \$407 billion. The ultimate cost to taxpayers was estimated to be as high as \$124 billion. Federal Reserve History, Savings and Loan Crisis 1980-1989, Kenneth J. Robinson, Federal Reserve Bank of Dallas

The FHLBanks are concerned the perception of the FHLBanks as regulators could impair their relationships with member institutions, which are already subject to robust regulation by their own prudential regulators. The FHLBanks believe it is those regulators – not FHFA or the FHLBanks – that have oversight responsibility in evaluating the level of housing and community development activity and the balance sheet composition and investment activities of their regulated entities. Further, member regulators are in the best position to limit activities of their regulated entities that may be engaged in predatory, discriminatory, or unfair practices.

Unintended Consequences

Under the Bank Act, when an institution satisfies membership eligibility criteria and pledges eligible collateral and, through credit underwriting, an FHLBank determines that advances can be safely made, a member is able to access FHLBank products on an equal basis with all other FHLBank members. The Bank Act also conditions access to long-term advances on a member’s satisfaction of community support requirements. Additional assessments of member business activities are not contemplated by the Bank Act and, as such, FHLBank operations are not designed to perform them.

Depending on how designed, further analyses of members’ connections to housing and community development activities may require underwriting-type reviews not currently performed by the FHLBanks requiring costly systems enhancements. As noted above, the FHLBanks are designed to provide equal access to products once certain criteria are satisfied.

The FHLBanks believe pursuing a member incentive program beyond the well-established incentive program contained in the Bank Act should only be done deliberately, thoughtfully, and most importantly, by Congress.

Legal Considerations

Through this letter, the FHLBanks have attempted to constructively respond to the questions because they believe strongly in the FHLBank mission, and are proud of the impact they have through the fulfillment of the mission. However, the FHLBanks must call attention to the fact that FHFA has limits on what it may do with respect to the matters on which it has requested information.

The Bank Act’s purpose is clear from its operative provisions: Congress intended for the FHLBanks to provide liquidity to their member institutions, backed by collateral that it specified, to enable the FHLBanks to fulfill their housing and community development mission. No further clarification of the Bank Act intents and purposes is required.

Additionally, the Supreme Court recently held that an agency interpretation of a statute should not merely be a “permissible” interpretation that is a reasonable construction of the statute, but instead should be the best interpretation of the statute.¹⁹ Specifically, the Court stated that “[i]t . . . makes no sense to speak of a ‘permissible’ interpretation that is not the one the court, after applying all relevant interpretive tools, concludes is best. In the business of statutory interpretation, if it is not the best, it is not permissible.”²⁰ The Court further held that courts should determine whether the agency has

¹⁹ *Loper Bright Enterprises et al. v. Raimondo* (2024)

²⁰ *Id.* at 23.

adopted the best interpretation of the statute and should not defer to the agency's interpretation of the statute. Accordingly, a court will not defer to FHFA's interpretation of the Bank Act and HERA, but instead will adopt the best interpretation of those statutes. In the FHLBanks' view, the best reading of those statutes is that they establish a very clear and narrow mission for the FHLBanks, which has been confirmed by nearly a century of practice.

Conclusion

The Council appreciates the opportunity to provide these initial comments to the RFI. The FHLBanks hope to convene with FHFA to discuss these and other comments and approaches and provide the data informed analysis on these complex matters to better inform FHFA before drafting of any mission-related rule or other regulatory reforms. The FHLBanks look forward to continuing to work constructively with FHFA as it continues its comprehensive review of the FHLBank System.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan Donovan", with a stylized flourish at the end.

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