

November 5, 2010

BY ELECTRONIC SUBMISSION
AT WWW.REGULATIONS.GOV

Mr. Alastair Fitzpayne
Deputy Chief of Staff and Executive Secretary
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

**Re: Advance Notice of Proposed Rulemaking Regarding Authority to Require
Supervision and Regulation of Certain Nonbank Financial Companies**

Docket ID: FSOC -2010-0001

Dear Mr. Fitzpayne:

On behalf of the undersigned Federal Home Loan Banks (the “FHLBanks”), we are writing to comment on the advance notice of proposed rulemaking (“ANPR”) published by the Financial Stability Oversight Council (“Council”) in the Federal Register on October 6, 2010. We commend the Council for soliciting public input early in the process of developing a rule to guide whether to designate a nonbank financial company as a company that will be subject to enhanced supervision (“Significant Nonbank”) by the Board of Governors of the Federal Reserve System (“FRB”) in accordance with section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Act”).¹

The FHLBanks were established in 1932 under the Federal Home Loan Bank Act (“FHLBank Act”)² and serve approximately 8,000 member financial institutions within their designated districts as a source of liquidity and community lending. The FHLBanks’ member institutions are comprised of banks, savings institutions, credit unions, community development financial institutions, and insurance companies, which are also their shareholders. The

¹ Pub. L. No. 111-203 (July 21, 2010). Unless otherwise indicated, all citations are to the Public Law.

² 12 U.S.C. §§ 1421-1449.

FHLBanks' primary mission is to provide funding in the form of secured advances (with varying maturities) to their member institutions.³

The Council's Regulation Should Require an Evaluation of the Nature, Scope, and Quality of the Regulatory Structure Applicable to Nonbank Financial Companies that Are Candidates for Designation, and the Council Should Recommend to the FRB that It Issue Safe Harbor Regulations that Exempt Institutions, such as the FHLBanks, that Already Are Subject to Robust Prudential Supervision by a Primary Federal Regulator from Being Treated as a Significant Nonbank.

In Question 10 of the ANPR, the Council asks, among other things, how it should take into account the fact that a nonbank financial firm is already subject to financial regulation in the Council's decision as to whether to designate a firm. This letter responds to that question in relation to the FHLBanks.

The FHLBanks already are subject to a system of comprehensive prudential regulation by a primary federal regulator under a structure established by Congress in 1932 when it enacted the FHLBank Act, and amended by Congress in the Housing and Economic Recovery Act of 2008 ("HERA").⁴ HERA established the Federal Housing Finance Agency ("FHFA") to serve as the regulator for the FHLBanks, the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac").

Section 113(a)(1) of the Act provides that the Council (subject to a specified vote) may determine that a U.S. nonbank financial company will be designated as a Significant Nonbank if the Council determines that material financial distress at the company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the company, could pose a threat to the financial stability of the United States. Section 113(a)(2) of the Act sets forth ten specific factors for the Council to consider in determining whether to make such a designation. One such factor is "the degree to which the company is already regulated by one or more primary financial regulatory agencies."⁵ The FHFA is designated as a primary financial regulatory agency with regard to the FHLBanks.⁶

³ The FHLBanks have no shareholders other than members and former members, their stock is not publicly traded, and their employees have no stock options or other benefits that are tied to the performance of their stock. Each FHLBank is registered under the Securities Exchange Act of 1934 ("Exchange Act") and its periodic filings are available to the public.

⁴ Pub. L. No. 110-289 (July 30, 2008).

⁵ Section 113(a)(2)(H).

⁶ Section 2(12)(E). The Director of the FHFA is one of the ten voting members of the Council. Section 111(b)(1)(H). The Council may request or receive information from the FHFA, as a member of the Council, as necessary to monitor the financial services marketplace, to identify potential risks to U.S. financial stability, and to otherwise carry out the provisions of Title I of the Act. Sections 112(d)(1) and

The Act does not specify the weight that should be given to any of the factors specified in section 113(a)(2) in the Council's determination whether to designate a particular nonbank financial company as a Significant Nonbank. We believe that the Council in developing its proposed regulation should expressly underscore the importance of an existing structure of comprehensive prudential regulation by a primary financial regulatory agency and specifically authorize a determination by the Council not to designate a company as a Significant Nonbank based on this factor. In our view, by looking to the existence of an existing primary financial regulatory agency, in this case the FHFA, with robust prudential and supervisory powers, the Act recognizes the importance of avoiding redundant regulation which could effectively make the primary financial regulatory agency irrelevant and create regulatory inefficiencies that may adversely impact the functioning and stability of such companies and the markets they serve, including the important statutory mission of the FHLBanks.

In the case of the FHLBanks, for the reasons set forth below, we believe that an evaluation of the nature, scope and quality of the regulatory structure created by Congress in HERA coupled with the unique aspects of the operating structure of the FHLBanks, as established by Congress in the FHLBank Act, argues against a determination that an FHLBank is a Significant Nonbank.

Based on the same principles, we further request that the Council recommend to the FRB that it issue regulations under the safe harbor provision contained in section 170 of the Act that exempt each of the FHLBanks from FRB supervision as a Significant Nonbank.⁷

1. Comprehensive Prudential Regulation by the FHFA

Prior to the enactment of HERA, the FHLBanks were regulated by the Federal Housing Finance Board. Fannie Mae and Freddie Mac were regulated by the Office of Housing Enterprise Oversight. As part of its consideration of the appropriate regulation of housing-related government sponsored enterprises ("GSEs"), Congress decided in HERA to place all GSE regulation under a single primary federal regulator – the FHFA. The FHFA's activities are focused entirely on the prudential supervision of the FHLBanks, Fannie Mae and Freddie Mac,

(2). The Act also authorizes the Council under certain conditions to recommend additional standards regarding an activity or practice to the primary financial regulatory agencies with respect to entities subject to their jurisdiction. Section 120(a). Each primary financial regulatory agency is required to impose the recommendations of the Council unless the agency explains in writing to the Council why it determined not to follow the Council's recommendations. Section 120(c)(2).

⁷ Section 170 of the Act requires the FRB, in consultation with the Council, to issue regulations setting forth criteria to exempt certain nonbank financial companies from designation as Significant Nonbanks. The FRB is required to take into account in such regulation the statutory factors in Section 113 for the designation of Significant Nonbanks.

thereby ensuring that careful scrutiny and regulatory oversight are given to each of these entities at all times.⁸

In establishing the FHFA in 2008, Congress carefully considered the regulatory tools that the agency would need to carry out its responsibilities. With its authority under the FHLBank Act and the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (“Housing Enterprise Safety and Soundness Act”), the FHFA has plenary prudential and supervisory authority over the FHLBanks.

- The FHFA has the authority to establish FHLBanks and determine the districts they serve and may reduce or readjust the districts they serve from time to time.⁹
- The FHFA, in accordance with the FHLBank Act, determines what investments are permissible for FHLBanks.¹⁰
- The FHFA determines whether an FHLBank may engage in a new business activity.¹¹
- The FHFA has broad authority over the FHLBanks’ debt financing through issuance of consolidated obligations, the principal source of funds for lending by FHLBanks to their members.¹²
- The FHFA has wide-ranging authority to examine and take enforcement actions with respect to the FHLBanks.¹³
- The FHFA has broad authority to establish capital requirements for the FHLBanks both on a general and case-by-case basis.¹⁴
- The FHFA, in accordance with the requirements of HERA, has issued prompt corrective action regulations for FHLBanks.¹⁵
- The FHFA can place an FHLBank into conservatorship or receivership based on a wide range of grounds.¹⁶

⁸ The FHFA, as part of its regulation of the FHLBanks, also regulates the Office of Finance, which is a joint office of the FHLBanks that conducts their funding activities through the issuance of consolidated obligations as provided by FHFA regulations.

⁹ 12 U.S.C. § 1423.

¹⁰ 12 C.F.R. Part 956.

¹¹ 12 C.F.R. Part 980.

¹² 12 C.F.R. Part 966.

¹³ 12 U.S.C. §§ 4517 and 4631-4636b.

¹⁴ 12 U.S.C. §§ 1426(a)(1)-(3) and 4612; 12 C.F.R. § 932.2 and 932.3.

¹⁵ 12 U.S.C. §§ 4614-4618; 12 C.F.R. Part 1229.

- The FHFA has broad authority to liquidate or reorganize an FHLBank, including by consolidating it with another FHLBank.¹⁷
2. Congressional Recognition of the Regulatory Implications of the Unique Structure of the FHLBanks

Congress recognized in the passage of HERA that the FHLBanks and their mission to support housing markets nationwide required comprehensive prudential and supervisory regulation as part of the overall GSE regulatory process. At the same time, however, Congress recognized the special regulatory considerations raised by the FHLBank System's unique structure. Accordingly, it required in section 1201 of HERA that, prior to promulgating any regulation or formal or informal agency action of general applicability relating to the FHLBanks, the FHFA must take into account, among other matters, the FHLBanks' (i) cooperative ownership structure, (ii) mission of providing liquidity to members, (iii) capital structure, and (iv) joint and several liability. These factors also should be foremost in the consideration of any other regulation of the FHLBanks in order to avoid any conflict with Congress' regulatory design for the FHLBanks.

3. An Evaluation of the Prudential Requirements of Sections 165 and 166 of the Act in Light of the Regulatory Authority of the FHFA and Unique Structure of the FHLBanks Argues Against Treating the FHLBanks as Significant Nonbanks.

The principal impact of being designated as a Significant Nonbank is to cause the designated company to be subject to a set of prudential standards and requirements to be developed and implemented by the FRB, either on its own initiative or pursuant to recommendations of the Council under sections 165 and 166 of the Act ("Title I Standards").

We believe that a careful analysis of the regulatory authority of the FHFA under HERA and an appreciation of the unique structure of the FHLBanks, as determined by Congress and the FHFA, when compared to the Title I Standards, clearly supports the conclusion that there is no need to subject the FHLBanks to an additional and duplicative level of regulation. The matters addressed in the Title I Standards are in all material respects either not relevant to the FHLBanks or have already been fully addressed by Congress in the FHLBank Act, HERA, or FHFA implementing regulations and supervisory authority.

- 3.1. Mandatory Standards

¹⁶ 12 U.S.C. § 4617(a).

¹⁷ 12 U.S.C. § 1446(a). *See Fahey v. O'Melveny & Meyers*, 200 F.2d 420 (9th Cir. 1952).

Section 165(b)(1)(A) requires the FRB to establish certain requirements that apply to large bank holding companies (those with consolidated assets of \$50 billion or more) (“Large BHCs”) and Significant Nonbanks.

3.1.1. Capital Requirements

Section 165(b)(1)(A)(i) of the Act requires the FRB to establish special risk-based and leverage capital requirements for Significant Nonbanks that are more stringent than the requirements that apply to nonbank financial companies and bank holding companies that are not subject to the Title I Standards, unless the FRB determines, in consultation with the Council, that such requirements are not appropriate. However, for such a company, the FRB is directed to apply other standards to create similarly stringent risk controls.

Section 165(b)(1)(A)(i) does not provide any guidance as to the specifics of such heightened risk-based and leverage capital requirements. Any such requirements would presumably take account of the requirements of section 171 of the Act, known as the Collins Amendment.

Section 171(b)(1) and (2) of the Act requires that the leverage and risk-based capital requirements for bank and thrift holding companies and Significant Nonbanks not be less than the leverage and risk-based capital requirements generally applicable to depository institutions under the prompt corrective action provisions of the Federal Deposit Insurance Act. Those provisions limit the permissible components of Tier 1 capital to common stockholders’ equity, noncumulative perpetual preferred stock and related surplus and certain minority interests.¹⁸

Such capital requirements clearly cannot be made applicable to FHLBanks. The FHLBanks’ capital structures are established by the FHLBank Act. The FHLBank Act only authorizes the FHLBanks to issue two classes of capital stock. One class is Class B stock, which is redeemable upon five years’ notice by the holder to the issuing FHLBank.¹⁹ Class A stock, the other component of capital stock, is redeemable upon six months’ notice by the holder to the issuing FHLBank.²⁰ The Class A and Class B stock may not be held by non-members (except for such successors in interest of former members).²¹ This underscores the unique operating and regulatory aspects of the FHLBank System: The FHLBanks do not have the traditional forms of common stock or perpetual preferred stock that normally comprise Tier 1 capital as those terms would apply under section 165(b)(1)(A)(i) of the Act.

¹⁸ See e.g., 12 C.F.R. Part 3, App. A, section 2.

¹⁹ 12 U.S.C. § 1426(a)(4)(A)(ii).

²⁰ 12 U.S.C. § 1426(a)(4)(A)(i).

²¹ 12 U.S.C. § 1426(a)(4)(B).

As a practical matter, the capital structure mandated by Congress for the FHLBanks will not permit the FHLBanks to have sufficient traditional Tier 1 capital to comply with any enhanced section 165(b)(1)(A)(i) risk-based or leverage capital requirements that may be adopted. Congress appears to have recognized this practical reality when it expressly excluded the FHLBanks from all provisions of section 171 of the Act.²² Thus, the designation of an FHLBank as a Significant Nonbank could not as a practical matter result in the imposition of Title I Standards for risk-based or leverage capital on the FHLBank.

3.1.1.1. FHFA Authority Regarding FHLBank Capital

Regulatory capital requirements are related to, among other things, the nature of the assets that an entity is permitted and encouraged to hold. Recognizing the unique business and mission of the FHLBanks, Congress has carefully calibrated the capital requirements applicable to the FHLBanks that have implemented a capital plan under the FHLBank Act to consist of (i) a 4% total capital to assets requirement, (ii) a 5% leverage requirement (with a 1.5 times multiplier for Class B stock), and (iii) a risk-based capital requirement.²³ These requirements were implemented in regulations issued by the predecessor of the FHFA (“FHLBank Capital Regulations”).²⁴ Under the FHLBank Capital Regulations, the FHFA for reasons of safety and soundness may require an individual FHLBank to maintain a higher total capital to assets ratio or a higher risk-based capital requirement.²⁵

In HERA, Congress acted to further strengthen the authority of the FHLBanks’ regulator to ensure that the individual FHLBanks maintain sufficient capital. The FHFA was authorized to establish a leverage requirement in excess of the 5% requirement specified in the FHLBank Act if a higher requirement is necessary to ensure that the FHLBanks operate in a safe and sound manner.²⁶ HERA also expressly authorized the FHFA to temporarily increase an individual FHLBank’s leverage requirement.²⁷ Furthermore, HERA grants the FHFA the authority to establish such capital or reserve requirements with respect to any product or activity of an FHLBank that the FHFA considers appropriate to ensure that the FHLBank operates in a safe and sound manner with sufficient capital and reserves to support the risks that arise in the

²² Section 171(b)(5)(B).

²³ 12 U.S.C. § 1426(a)(1)-(3).

²⁴ 12 C.F.R. § 932.2 and 932.3.

²⁵ 12 C.F.R. § 932.2(b) and 932.3(b).

²⁶ 12 U.S.C. § 4612(c).

²⁷ 12 U.S.C. § 4612(d).

operations and management of the FHLBank.²⁸ It would seem to be inconsistent with Congress' purpose, having developed such a precisely customized regulatory scheme, for another regulatory scheme and regulatory authority to be superimposed on the FHLBanks without a specific direction by Congress to do so.

In that regard, the authority to impose capital requirements on a company provides the ability to shape the activities that such a company conducts and the investments it holds. Given the unique role of the FHLBanks to support the U.S. housing finance markets, it would seem unlikely that Congress would intend for the detailed system of regulation that it painstakingly created for the FHLBanks in the FHLBank Act and HERA to be superseded by the Act. If that were the result, it would establish the potential for a system of regulatory conflict that would not seem to serve the purposes of systemic safety and soundness and stability.

3.1.2. Liquidity

Section 165(b)(1)(B) of the Act requires the FRB to establish liquidity requirements for Large BHCs and Significant Nonbanks. It does not provide any guidance regarding such requirements.

The FHLBanks are currently subject to comprehensive liquidity requirements imposed by the FHFA. The FHLBanks are required to maintain contingency liquidity to enable them to meet their liquidity needs for a minimum period of five business days without access to the consolidated obligation debt markets,²⁹ and since the advent of the 2008 financial crisis, to maintain sufficient liquidity for longer periods assuming disruption to the credit markets. The FHLBanks are also required to meet certain liquidity requirements in relation to the deposits they hold.³⁰ FHFA regulations also require an FHLBank to have a risk management policy which addresses the FHLBank's day-to-day operational liquidity needs and contingency liquidity needs.³¹ Each FHLBank is required to immediately notify the FHFA if it projects at any time that it will fail to meet its statutory or regulatory liquidity requirements or it actually fails to meet such requirements, and in such event the notifying FHLBank becomes subject to certain restrictions and supervisory actions.³²

3.1.3. Overall Risk Management Requirements

²⁸ 12 U.S.C. § 4612(e).

²⁹ 12 C.F.R. § 932.8.

³⁰ 12 U.S.C. § 1431(g).

³¹ 12 C.F.R. § 917.3(h)(3)(iii).

³² 12 C.F.R. § 966.9(b)(2)(ii) and (iii).

Section 165(b)(1)(A)(iii) of the Act requires the FRB to establish overall risk management requirements, but does not provide any further guidance. FHLBanks are subject to risk management requirements contained in FHFA regulations.³³ Each FHLBank is required to have a risk management policy approved by its board of directors that addresses its exposure to credit risk, market risk, liquidity risk, and operating risk.³⁴ Each FHLBank's senior management is also required to conduct an annual risk assessment that is reasonably designed to identify and evaluate all material risks that could adversely affect the achievement of its FHLBank's performance objectives and compliance requirements.³⁵

3.1.4. Resolution Plan

Section 165(b)(1)(iv) of the Act provides that the FRB is to require each Large BHC and Significant Nonbank to file a resolution plan with the FRB, the Federal Deposit Insurance Corporation ("FDIC"), and the Council for the rapid and orderly resolution of the company in the event of its material financial distress.³⁶ It would appear that the resolution plan requirement is intended to be linked with the orderly resolution provisions of Title II of the Act. Under Title II as a general matter the FDIC would act as the receiver for a bank holding company or a Significant Nonbank that is placed in receivership by action of the Secretary of the Treasury.

The Act expressly excludes FHLBanks from being made subject to the receivership provisions of Title II.³⁷ Congress presumably acted to exclude FHLBanks from Title II because the FHLBanks are subject to being placed in conservatorship or receivership by the FHFA under the Housing Enterprises Safety and Soundness Act.³⁸ Furthermore, FHFA regulations require that when certain financial measurements or other indicators of financial difficulty at an FHLBank are triggered, the FHLBank must submit a consolidated obligation payment plan for FHFA approval.³⁹ The FHFA has broad authority to address an FHLBank that is in financial difficulty that impairs its ability to make timely payments on its consolidated obligations by, among other things, allocating the FHLBank's consolidated obligation liabilities among the other FHLBanks.⁴⁰

³³ 12 C.F.R. § 917.3.

³⁴ 12 C.F.R. § 917.3(a) and (b).

³⁵ 12 C.F.R. § 917.3(c).

³⁶ Section 165(d)(1).

³⁷ Section 201(a)(11).

³⁸ 12 U.S.C. § 4617(a).

³⁹ 12 C.F.R. § 966.9(c)(1).

⁴⁰ 12 C.F.R. § 966.9(e)(3).

A further indication that the resolution plan requirement would not be relevant to an FHLBank comes from the fact that, if the FRB and the FDIC determine that a resolution plan is not credible or would not facilitate an orderly resolution of the company that submitted it under chapter 11 of the Bankruptcy Code, the company must submit a revised resolution plan that is credible and would result in an orderly resolution under chapter 11.⁴¹ An FHLBank, however, is not subject to chapter 11; the resolution of an FHLBank would instead occur under the Housing Enterprises Safety and Soundness Act. Therefore, the statutory criteria for evaluating a plan of resolution provide no relevant guidance when applied to a FHLBank.

3.1.5. Credit Exposure Report Requirements

Section 165(b)(1)(v) of the Act calls for the FRB to impose credit reporting requirements on Large BHCs and Significant Nonbanks. Such reports are to address the nature and extent to which the company has credit exposures to other Large BHCs or Significant Nonbanks and the nature and extent to which other Large BHCs and Significant Nonbanks have credit exposure to the company.⁴²

FHFA regulations already impose limitations on an FHLBank's unsecured extensions of credit to a counterparty.⁴³ The regulations also require an FHLBank to submit monthly reports to the FHFA of its unsecured and secured credit exposure to counterparties.⁴⁴ In addition, the FHFA also has the authority to require other reports by FHLBanks regarding counterparty exposures.⁴⁵

3.1.6. Concentration Limits

Section 165(b)(1)(v) of the Act requires the FRB to impose concentration limits on a Large BHC's or Significant Nonbank's credit exposure to an unaffiliated company. The Act expressly provides that the concentration limits provision does not apply to an FHLBank.⁴⁶

3.2. Discretionary Standards

⁴¹ Section 165(d)(4)(A).

⁴² Section 165(d)(2).

⁴³ 12 C.F.R. § 932.9(a).

⁴⁴ 12 C.F.R. § 932.9(e)(1) and (2).

⁴⁵ C.F.R. § 914.2.

⁴⁶ Section 165(e)(6).

Section 165(b)(1)(B) gives the FRB discretion to establish certain additional requirements that would apply to Large BHCs and Significant Nonbanks.

3.2.1. Contingent Capital Requirement

Section 165(b)(1)(B)(i) of the Act permits the FRB to impose a contingent capital requirement. It does not provide any detail in regard to such a requirement. Presumably if this provision were to be implemented, it would involve the issuance of debt securities to the public that would be convertible under certain circumstances to equity securities of the issuer. The FHLBanks would presumably be unable to issue contingent capital instruments since members of the public are ineligible to hold equity securities of an FHLBank.⁴⁷

3.2.2. Enhanced Public Disclosures

Section 165(b)(1)(B)(ii) of the Act permits the FRB to require Large BHCs and Significant Nonbanks to make enhanced public disclosures in order to support market evaluation of the firm's risk profile, capital adequacy, and risk management capabilities. FHLBanks are already required by FHFA regulations to register a class of their equity securities with the Securities and Exchange Commission ("SEC") under the Securities Exchange Act of 1934.⁴⁸ The FHFA's securities registration regulation provides that the requirement to register and file reports with the SEC does not diminish or otherwise restrict the FHFA's authority to require reports or other disclosures by the FHLBanks.⁴⁹ Thus, the FHFA has the authority to mandate additional disclosures by an FHLBank as appropriate.

3.2.3. Short-term Debt Limits

Section 165(b)(1)(B)(iii) of the Act permits the FRB to impose short-term debt limits on Large BHCs and Significant Nonbanks. The FHLBanks use consolidated obligations (both short-term and long-term) for the vast majority of their funding needs. Under the FHLBank Act, short-term consolidated obligation borrowings by the FHLBanks are subject to the rules and regulations prescribed by the FHFA and are conducted under terms and conditions that the FHFA may approve.⁵⁰ The FHFA has exercised its authority in this regard by promulgating regulations governing the issuance of consolidated obligations.⁵¹ Using this express authority

⁴⁷ 12 U.S.C. § 1426(c)(5)(A).

⁴⁸ 12 C.F.R. § 998.2(a). Congress included a registration requirement for the FHLBanks under the Exchange Act in section 1112 of HERA.

⁴⁹ 12 C.F.R. § 998.3.

⁵⁰ 12 U.S.C. § 1431(a).

⁵¹ 12 C.F.R. Part 966.

over FHLBank consolidated obligations and its general supervisory authority, the FHFA is fully equipped to address any concerns regarding an FHLBank's use of short-term debt.

3.3. Other Title I Provisions

3.3.1. Early Remediation

Section 166 of the Act requires the FRB, in consultation with the Council and the FDIC, to issue regulations establishing requirements for the early remediation of financial distress of a Large BHC or Significant Nonbank. The FRB's regulations are to define measures of the financial condition of a company and to establish requirements that increase in stringency as the financial condition of the company declines.

Congress in HERA established a comprehensive prompt corrective action structure for FHLBanks.⁵² The FHFA has issued regulations implementing the prompt corrective action process.⁵³ Those regulations establish capital classifications for FHLBanks based on capital levels and other supervisory factors.⁵⁴ They impose a range of restrictions on an FHLBank that is deemed to be undercapitalized. These restrictions are made more stringent as an FHLBank's capital classification declines.⁵⁵ Ultimately, a critically undercapitalized FHLBank may be subject to the mandatory appointment of a receiver.⁵⁶

3.3.2. Increased Leverage Requirement

Section 165(j) of the Act provides that the FRB is to require a Large BHC or Significant Nonbank to maintain a debt to equity ratio of no more than 15-to-1 upon a determination by the Council that a such a company poses a grave threat to the financial stability of the United States and that the imposition of such a requirement is necessary to mitigate the risk that the company poses to financial stability.

Section 165(j)(1) specifically provides that this provision does not apply to an FHLBank. Leverage limits are already provided for FHLBanks by the FHLBank Act and FHFA regulations.⁵⁷

⁵² 12 U.S.C. §§ 4614-4618.

⁵³ 12 C.F.R. Part 1229.

⁵⁴ 12 C.F.R. § 1229.3 and 1229.4.

⁵⁵ 12 C.F.R. § 1229.6-1229.10.

⁵⁶ 12 C.F.R. § 1229.10(b)(2).

⁵⁷ See section 3.1.1.1. above.

3.3.3. Risk Committee

Section 165(h) of the Act provides that the FRB is to require each Significant Nonbank that is publicly traded and has total consolidated assets of \$10 billion or more to establish a risk committee. Although this provision would not apply to an FHLBank because the FHLBanks are not publicly traded, many of the FHLBanks have established a risk committee, and the FHFA has the power to require such governance through its wide-ranging prudential and supervisory authority.

3.3.4. Stress Tests

Section 165(i) of the Act provides for the FRB in conjunction with other regulators to conduct annual stress tests of Significant Nonbanks and Large BHCs. It also requires Significant Nonbanks and Large BHCs to conduct semiannual stress tests on their own.

The FHFA has broad authority to examine the FHLBanks and can require stress tests under that authority.⁵⁸ The FHFA also has the authority to require FHLBanks to file reports which could include, stress tests, with the FHFA.⁵⁹ Furthermore, the FHFA has the authority to mandate additional disclosures, such as those relating to stress tests, by an FHLBank.⁶⁰

4. Application of the Safe Harbor to the FHLBanks

Section 170 of the Act authorizes the FRB to issue regulations, in consultation with the Council, setting forth the criteria for exempting certain types or classes of U.S. nonbank financial companies from supervision by the FRB as a Significant Nonbank. The FRB is required to take into account the factors set forth in section 113(a) of the Act in determining whether to exempt a U.S. nonbank financial company from supervision by the FRB.

As described above, the FHLBanks operate under a Congressionally mandated, carefully designed cooperative structure as GSEs with a public mission to provide liquidity to member institutions in order to support housing finance and community development. In 2008, Congress enacted a comprehensive legislative framework for the supervision of the FHLBanks by passing HERA. HERA gave the FHFA the full range of supervisory, enforcement and receivership authorities to monitor, supervise and regulate the FHLBanks. As the review of Title I Standards set forth above indicates, those standards in all material respects either (i) expressly do not apply to the FHLBanks, (ii) are already addressed under provisions of HERA, the FHLBank Act, or

⁵⁸ 12 U.S.C. § 4517.

⁵⁹ 12 C.F.R. § 914.2.

⁶⁰ 12 C.F.R. § 998.3.

Mr. Alastair Fitzpayne

November 5, 2010

Page 14

FHFA regulations or supervisory authority, or (iii) cannot as a practical matter be applied to the FHLBanks because of the FHLBanks' unique structure as mandated and recognized by Congress.

We believe that the foregoing factors would strongly support a recommendation by the Council to the FRB that it issue regulations that exempt the FHLBanks from FRB supervision as Significant Nonbanks.

* * *

We appreciate this opportunity to provide preliminary comments on this important rulemaking process and further appreciate your consideration of our comments.

Sincerely,

Federal Home Loan Bank of Atlanta



Jill Spencer
Interim President and Chief Executive Officer

Federal Home Loan Bank of Boston



Edward A. Hjerpe III
President and Chief Executive Officer

Federal Home Loan Bank of Chicago



Matthew R. Feldman
President and Chief Executive Officer

Federal Home Loan Bank of Cincinnati



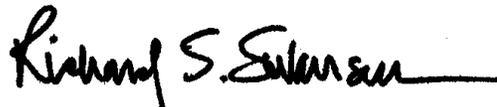
David H. Hehman
President and Chief Executive Officer

Federal Home Loan Bank of Dallas



Terry Smith
President and Chief Executive Officer

Federal Home Loan Bank of Des Moines



Richard S. Swanson
President and Chief Executive Officer

Federal Home Loan Bank of Indianapolis

Federal Home Loan Bank of New York

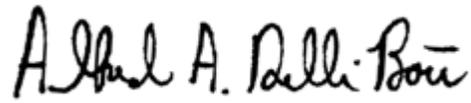
Mr. Alastair Fitzpayne

November 5, 2010

Page 15

A handwritten signature in black ink that reads "Milton J. Miller". The signature is written in a cursive style with a large, sweeping initial "M".

Milton J. Miller II
President and Chief Executive Officer

A handwritten signature in black ink that reads "Alfred A. DelliBovi". The signature is written in a cursive style with a large, sweeping initial "A".

Alfred A. DelliBovi
President and Chief Executive Officer

Federal Home Loan Bank of Pittsburgh



John R. Price
President and Chief Executive Officer

Federal Home Loan Bank of San Francisco



Dean Schultz
President and Chief Executive Officer

Federal Home Loan Bank of Topeka



Andrew J. Jetter
President and Chief Executive Officer

cc: Edward J. DeMarco, Acting Director, FHFA
Stephen M. Cross, Deputy Director, Division of FHLBank Regulation, FHFA