April 30, 2012

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Notice of Proposed Rulemaking Regarding Enhanced Prudential Standards and Early Remediation Requirements for Covered Companies

Dear Ms. Johnson:

The 12 Federal Home Loan Banks ("FHLBanks") appreciate this opportunity to comment on the notice of proposed rulemaking regarding enhanced prudential standards and early remediation requirements ("Enhanced Standards") under sections 165 and 166 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("DFA") for covered companies ("Proposal") published by the Board of Governors of the Federal Reserve System ("Board") in the Federal Register on January 5, 2012. The Enhanced Standards will apply to bank holding companies ("BHCs") with consolidated assets of $50 billion or more ("Large BHCs") and nonbank financial companies that are designated by the Financial Stability Oversight Council ("FSOC") for supervision by the Board ("Significant Nonbanks") (Large BHCs and Significant Nonbanks are hereinafter collectively referred to as "Covered Companies").

The FHLBanks appreciate the difficult challenges presented to the Board by the DFA, including the Board's responsibility to issue Enhanced Standards under DFA sections 165 and 166. We also appreciate the opportunity to express our views regarding the Proposal to the Board, and will make ourselves available at any time to provide additional insights about the FHLBank System, the cooperative structure of the FHLBanks, and the potential impact of enhanced prudential regulatory standards on the statutorily-mandated mission and structure of the FHLBanks. As discussed below, the FHLBanks believe they should not be designated as Significant Nonbanks by the FSOC, and the Board should expressly exclude the FHLBanks from the scope of this Proposal. In addition, the FHLBanks believe that, to the extent the Board and FSOC determine enhanced prudential standards should be applied to the FHLBanks, the Board and FSOC should consult with the FHLBanks' regulator, the Federal Housing Finance Agency ("Finance Agency"), and the Finance Agency should be the entity that promulgates prudential standards specifically tailored to the FHLBanks' unique mission and structure. Furthermore, FHLBank members and their affiliates should be able to continue to invest in FHLBank Consolidated Obligations and capital stock, without having such investments constrain the members' ability to borrow from an FHLBank due to single-counterparty credit limits applicable to Covered Companies. Finally, Covered Companies should be permitted to consider access to FHLBank advances in establishing an appropriate liquidity buffer and as part of their contingency funding plans.

Introduction: The Safe and Sound Management of the FHLBanks During the 2007-2008 Liquidity Crisis

During the liquidity crisis of 2007-2008, the FHLBanks demonstrated their ability to operate and grow safely and soundly during a large financial shock and fulfill their mission of providing liquidity to member institutions in support of home mortgage finance and community lending. Just as Congress intended, the FHLBanks were able to grow to meet member demand for advances through their funding structure that, by its nature, is designed to be stable and effective during a financial crisis.[1] As investors moved from money-market and lower-quality investments to higher-quality investments, including FHLBank Consolidated Obligations, the FHLBanks were able to safely fund the increased demand for advances from their members. Furthermore, as designed by statute, member institutions simultaneously infused the FHLBanks with capital by purchasing activity stock required as a condition of advance borrowings from an FHLBank. The leverage ratio of the FHLBank System, therefore, remained unchanged throughout the most critical period of the crisis.

Due to stringent statutory and regulatory collateral requirements, sound collateralized lending practices, and rigorous prudential supervision by the Finance Agency, the FHLBanks were able to meet the increased demand for advances without experiencing a single dollar of credit loss in lending to their members. In fact, since 1932, no FHLBank has experienced a credit loss on an advance to a member. The FHLBanks remain well positioned to respond to their members' liquidity needs while effectively managing credit risk associated with such lending activity. The FHLBanks regularly interact with and monitor their members, reviewing among other things, federal regulatory reports and records relating to FHLBank members.[2] The FHLBanks use the information available to them and, under certain circumstances, work closely with their members' primary regulators in meeting their members' liquidity needs in a prudent and responsible manner. In 2007 and 2008, the FHLBanks continued to provide liquidity to their members as long as there was sufficient collateral and, consistent with Finance Agency regulation and using their discretion, did so for capital deficient members, as long as the appropriate federal banking agency did not exercise its discretion to prohibit a member from additional borrowing from an FHLBank.[3]

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[1] We also note that the FHLBanks' balance sheets, in accordance with their structural design, have contracted significantly in the wake of the crisis.

[2] The FHLBank Act enables the FHLBanks to access certain regulatory "reports, records, or other information" relating to the condition of FHLBank members. 12 U.S.C. § 1442(a).

[3] For capital deficient but solvent members with positive tangible capital, the appropriate federal banking agency for a member may direct the member not to borrow additional amounts from its FHLBank. 12 C.F.R § 1266.4(d). For insolvent members renewing an advance, the same standard applies, 12 C.F.R. §1266.4(c); however, an FHLBank cannot make a new advance to a member without positive tangible capital unless the member's appropriate federal banking agency requests the FHLBank to extend such advance. 12 C.F.R. 1266.4(b).

Summary of Recommendations

The FHLBanks are subject to robust, comprehensive, and effective prudential regulation by a mission-specific prudential regulator, the Finance Agency. During the liquidity crisis, the FHLBanks operated prudently and effectively to provide liquidity to members, thereby helping to mitigate the impact of the market disruption. The FHLBanks did not present a threat to the stability of the financial system – quite the contrary. The FHLBanks should therefore be permitted to continue to serve their members' liquidity needs subject only to Finance Agency prudential supervision. Accordingly, as explained in detail below, the FHLBanks believe:

I. With Respect to Prudential Standards for the FHLBanks:

A. The FHLBanks should not be designated as Significant Nonbanks by the FSOC.

B. The Board should expressly exclude the FHLBanks from the scope of the Proposal.

C. To the extent the Board finds that additional prudential standards may be appropriate for the FHLBanks, the Board and FSOC should consult with the Finance Agency, and the Finance Agency should be the entity that promulgates prudential standards specifically tailored to the FHLBanks' unique mission and structure.

II. With Respect to Prudential Standards as Applied to FHLBank Members and Affiliates:

A. The Board should expressly confirm that securities issued or guaranteed by the FHLBanks, including Consolidated Obligations of the FHLBank System, qualify as highly liquid assets under Proposed Section 252.51(g)(ii).

B. The Final Rule should expressly:

1. Exclude investments in FHLBank Consolidated Obligations and FHLBank capital stock from single-counterparty credit limits in Proposed Section 252.97(a)(2), and

2. Include FHLBank Consolidated Obligations as eligible collateral under Proposed Section 252.95(c)(2).

C. The Final Rule should expressly indicate that excess collateral subject to an FHLBank blanket lien is "unencumbered" for purposes of Subpart C.

D. The Final Rule should expressly indicate that a Covered Company may include access to FHLBank advances:

1. In short-term liquidity ratios as part of the liquidity buffer required by Proposed Section 252.57, and

2. As a primary funding source in the Contingency Funding Plan required by Proposed Section 252.58.

E. The Final Rule should clarify that, for purposes of Subpart D's single-counterparty credit exposure limits, an FHLBank member does not have "*control*" of an FHLBank by owning 25 percent of the FHLBank's capital stock.

I. Prudential Standards for the FHLBanks

A. The FHLBanks should not be designated as Significant Nonbanks by the FSOC.

The FHLBanks previously submitted comment letters to the FSOC on its proposed rule and advance notice of proposed rulemaking regarding the FSOC's authority to require supervision and regulation of certain nonbank financial companies ("FHLBank FSOC Comments"), which we hereby incorporate by reference.[4] For all the reasons explained in detail in the FHLBank FSOC Comments, the FHLBanks should not be designated as Significant Nonbanks by the FSOC. In the preamble to its final rule, the FSOC deferred to the Board any industry-based exemptions from potential Significant Nonbank designation.[5]

B. The Board should expressly exclude the FHLBanks from the scope of the Proposal.

The FHLBanks recognize that the Board is presented with a difficult timing issue as it seeks to fulfill the Congressional mandate to promulgate regulations to implement DFA Sections 165 and 166, without knowing precisely which entities and entity classes the FSOC will designate as Significant Nonbanks. The FHLBanks also recognize that the Proposal was developed with large, complex bank holding companies in mind and that, following the FSOC's designation of a nonbank financial company as a Significant Nonbank, the Board intends to "assess the business model, capital structure, and risk profile of the designated company to determine how the proposed enhanced prudential standards and early remediation requirements should apply."[6] In light of the Board's expressed intention to perform these assessments, the FHLBanks believe the Final Rule should specify that the Enhanced Standards will not apply to a newly designated Significant Nonbank until the Board has completed its assessment and made its determination as to whether and how the application of the Enhanced Standards should be tailored for a particular newly designated Significant Nonbank.[7]

In the case of the FHLBanks, we believe that this issue can most easily be addressed by removing the FHLBanks from the scope of the Proposal, which the Board has the discretion to

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[4] *See* Exhibit A. Letter from FHLBanks (December 19, 2011). and Letter from FHLBanks (November 5, 2010).

[5] *See* 77 Fed. Reg. at 21638, col. 3 and fn 6.

[6] 77 Fed. Reg. at 597, col. 3.

[7] *Id.* We note that certain provisions in the Proposal cannot be applied to the FHLBanks. For example. as the Board is aware, the capital structure of the FHLBanks is determined by federal statute, and the FHLBanks are prohibited from issuing the types of capital instruments that are treated as permanent Tier 1 capital for bank regulatory capital purposes. Congress acknowledged this distinction by specifically exempting the FHLBanks from the leverage and risk-based capital requirements of DFA Section 171.

do. Congress appears to have been concerned about, and sought to avoid having Title I of the DFA result in imposing duplicative regulation. Specifically the DFA provides as follows:

> **Sec. 169. Avoiding Duplication**
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> The Board of Governors shall take any action that the Board of Governors deems appropriate *to avoid imposing requirements under this subtitle that are duplicative* of requirements applicable to bank holding companies and nonbank finacial companies under other provisions of law. (*Emphasis added*)

In addition, under DFA Section 170(a), the Board is authorized to issue regulations setting forth criteria that could exempt the FHLBanks from designation as Significant Nonbanks.

The Board's exercise of its discretion under Section 169 and Section 170(a) is particularly appropriate in the case of the FHLBanks. The FHLBanks have a "cradle-to-grave" regulatory structure already in place and a dedicated prudential regulator, the Finance Agency, charged by Congress with regulating the management and operations of the FHLBanks. The Finance Agency exercises comprehensive regulatory oversight over the FHLBanks: it determines their permissible activities; it conducts regular, thorough examinations of their operations; it exercises full enforcement authority over them; and it may appoint itself as conservator or receiver for an FHLBank. The superseding primary role of the Finance Agency regarding the FHLBanks was recognized by Congress when it expressly provided that an FHLBank would not be subject to the appointment of the Federal Deposit Insurance Corporation as a receiver under Title II of the DFA.[8]

In 2008, with the enactment of the Housing and Economic Recovery Act of 2008 ("HERA"), Congress reviewed and enhanced the regulatory structure applicable to the FHLBanks, establishing a single regulator for the FHLBanks and the "Enterprises" (Fannie Mae and Freddie Mac). As mandated by Section 1313(f) of HERA, when promulgating regulations that apply to the FHLBanks, the Finance Agency is charged with considering the differences between the FHLBanks and the Enterprises with respect to the FHLBanks' cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability. In requiring the Finance Agency to engage in this analysis as a part of each Finance Agency rulemaking applicable to the FHLBanks, Congress highlighted the unique nature of the FHLBanks and the need to ensure that rulemakings take into consideration the FHLBanks' special structure and mission. Consistent with this Congressional intent, the Finance Agency is charged with ensuring the safety and soundness of the FHLBanks by tailoring rules to the specific mission and structure of the Banks, and we ask that the Board also tailor any rules applicable to the FHLBanks to our mission and structure.

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[8] DFA § 201(a)(11)(C).

The Finance Agency has issued a proposed regulation that sets forth prudential standards for the management and operations of the FHLBanks. *See* Prudential Management and Operations Standards, Proposed Rule (76 Fed. Reg. 35791) ("Finance Agency Prudential Standards"). The Finance Agency Prudential Standards seek to address the same issues included in the Proposal (including liquidity, risk management, credit and counterparty risk, and remedies for noncompliance), and are intended to be tailored to the specific structure and mission of the FHLBanks. In addition, in accordance with HERA, the Finance Agency has issued regulations regarding capital classifications and prompt corrective action that are very similar to the early remediation provisions of section 166 of the DFA.[9] The Finance Agency also issued regulations that authorize it to mandate a temporary increase in the capital requirements for an FHLBank.[10] In other parallels to the Proposal, the Finance Agency, among other liquidity-related provisions, mandates short-term liquidity requirements for FHLBanks and requires each FHLBank to have a risk management policy that addresses day-to-day operational liquidity needs and contingency liquidity needs.[11] Accordingly, we believe that, to the extent the Board finds that the Finance Agency Prudential Standards should be enhanced, the Board should consult with the Finance Agency in the development and promulgation of those FHLBank-specific standards in lieu of applying the Proposal to the FHLBanks.[12] Absent such consultation, it would be unnecessarily burdensome on the Board (as well as duplicative and unnecessarily burdensome on the FHLBanks), to design and promulgate prudential standards specific to the FHLBanks' structure and mission when the Finance Agency is already positioned to effectively regulate the FHLBanks in this regard.

Based on the comprehensive regulatory scheme of the Finance Agency, Congress's call to the Board to take appropriate action to avoid imposing duplicative requirements, the Board's ability to consult with the Finance Agency to implement FHLBank-specific prudential standards, and the inapplicability of certain standards in the Proposal to the FHLBanks, we ask that the Board exercise its express authority to specifically exclude the FHLBanks from the Final Rule.

If, notwithstanding the above, the Board decides to adopt final rules that would be applicable to the FHLBanks, we ask that the Board expressly provide in the Final Rule that no provision of the rule will apply to the FHLBanks until after the Board has completed a review of the business model, capital structure, and risk profile of the FHLBanks and makes a determination as to whether and how (consistent with existing Finance Agency regulations) the application of the rules should be tailored to the FHLBanks.

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[9] 12 U.S.C. §§ 4614-4618; 12 C.F.R. Part 1229.

[10] 12 C.F.R. Part 1225.

[11] 12 C.F.R. §§ 932.8. 917.3(h)(3)(iii).

[12] Section 165(b)(4) of the DFA provides that before imposing prudential standards or taking certain other actions under section 165 that are likely to have a significant impact on a functionally regulated subsidiary or depository institution subsidiary of a Significant Nonbank, the Board shall consult with each FSOC member that primarily supervises any such subsidiary with respect to any such standard. While this provision is written in terms of subsidiaries of a Significant Nonbank, the intent of the provision would appear to call for consultation with an FSOC member regulator that primarily supervises an institution that is designated as a Significant Nonbank. In the case of an FHLBank that is designated as a Significant Nonbank this would involve consultation by the Board with the Finance Agency.

C. To the extent the Board finds that additional prudential standards may be appropriate for the FHLBanks, the Board and FSOC should consult with the Finance Agency, and the Finance Agency should be the entity that promulgates prudential standards that are specifically tailored to the FHLBanks' unique mission and structure.

The FHLBanks recognize that if the FSOC were to designate the FHLBanks as Significant Nonbanks, the Board would perform an assessment of the business model, capital structure, and risk profile of the FHLBanks and, by order or regulation, tailor the application of the enhanced standards to the FHLBanks by category, as appropriate.[13] Such individual tailoring would be essential for the FHLBanks and would need to be done before any enhanced prudential standards are applied to the FHLBanks. We also believe that any such tailoring should be done by the Finance Agency through the issuance of a proposed rule, rather than by order, to provide the FHLBanks and others with the opportunity to comment on any proposal before it is issued in final form.

If the Proposed Rule in its current form were to become applicable to the FHLBanks, without being specifically tailored to the FHLBanks' unique statutory structure and mission, the FHLBanks' operations and ability to fulfill their mission could be seriously compromised, which would not serve the purpose of eliminating threats to the financial stability of the U.S. [14] For example:

- The Proposal would require that a Significant Nonbank comply with BHC-based capital requirements within a specified period of being designated as a Significant Nonbank. It would not be appropriate for the Proposal's capital requirements to be applied to the FHLBanks for any period of time without first being specifically tailored to their mission and structure:

  - The capital structure of the FHLBanks is determined by federal statute, and the FHLBanks are prohibited from issuing the types of capital instruments that are treated as permanent Tier 1 capital for bank regulatory capital purposes.[15]

  - Congress acknowledged the FHLBanks' unique capital structure by specifically exempting the FHLBanks from the leverage and risk-based capital requirements of DFA Section 171. Congress also authorized the Board to apply different standards to a Covered Company when the Board determines that its risk-based capital requirements

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[13] 77 Fed. Reg. at 957.

[14] Section 165(a)(2)(A) of the DFA provides that in prescribing enhanced prudential standards under section 165, the Board may, on its own or, pursuant to a recommendation of the FSOC, differentiate among companies on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities, size, and any other risk related factors that the Board deems appropriate.

[15] Federal Home Loan Bank Act Section 6 (12 U.S.C. 1426).

and leverage limits are not appropriate to the activities of a particular Covered Company. *See* DFA § 165(b)(1)(A)(i).

- The FHLBanks' capital structure is designed to allow the Banks to grow and shrink depending on the funding and liquidity needs of their members. Specifically, the FHLBanks are required to design their capital structures so that borrowing members hold an amount of stock of the FHLBank that is based upon a specified proportion of their borrowings of advances from the FHLBank. If a member wishes to borrow additional advances that would result in their stock holdings falling short of this proportion, it must purchase sufficient stock to satisfy that proportion. This model functioned successfully during the crisis, and any application of prudential standards not specifically tailored to this design objective and the FHLBanks' mission would have inhibited the FHLBanks' ability to achieve this success.

- The FHLBanks should not be placed into the standard risk-based capital framework, because that framework does not take into account the FHLBanks' strong credit risk protections in making fully collateralized advances. The FHLBanks were structured by Congress in such a way that they have never had a credit loss on an advance to a member.

- In 2011, the FHLBanks implemented a joint capital enhancement agreement pursuant to which each FHLBank directs a specified percentage of its net earnings each quarter to a restricted retained earnings account maintained by each FHLBank.[16] This mechanism is unique to the FHLBanks, and must be addressed in any capital requirements specific to them.

- If the Proposal's capital requirements were imposed on the FHLBanks in the present form, the FHLBanks would become immediately subject to the early remediation provisions of the Proposal based on their statutorily mandated capital structure, which could be misinterpreted by the market and otherwise adversely impact the FHLBanks. We do not believe this result is the intent of the Proposal.

- The FHLBanks have a unique role as primary liquidity providers to FDIC-insured depository institutions, credit unions, insurance companies, and community development financial institutions. The Proposal's liquidity buffer, contingency funding plan, and stress testing requirements do not address the complexities of this unique role and would not, therefore, significantly enhance the safety and soundness of the FHLBanks or effectiveness of the FHLBanks in achieving their mission.

- Because the FHLBanks' function and structure is distinct from that of any other entity, to provide a meaningful basis for analyzing the FHLBanks' liquidity planning and capital protection, stress test scenarios must be specific to the FHLBanks. The Finance Agency has a

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[16] This mechanism has been incorporated, with Finance Agency approval, into each FHLBank's capital plan.

full complement of regulations, supervisory tools, and expertise available to it, including the proposed Finance Agency Prudential Standards, regulations addressing risk management and other prudential responsibilities (12 C.F.R. Part 917), regulations and guidance regarding FHLBank liquidity requirements (including 12 C.F.R. §§ 965.3 and 932.8), and recently promulgated rules including those on FHLBank capital classifications and prompt corrective action (12 C.F.R. Part 1229), FHLBank conservatorships and receiverships (12 C.F.R. Part 1237), and FHLBank liabilities (12 C.F.R. Part 1270).

- We note that Proposed Subpart H does not specifically exclude the FHLBanks from the Proposal's debt-to-equity limits, but we appreciate the Board's recognition, in footnote 185, that the DFA expressly exempts the FHLBanks from any debt-to equity ratio requirement. We request that Subpart H be revised to include an express exemption that conforms to footnote 185.

- The provisions of the early remediation framework in Subpart I would need to be tailored to address the unique, Congressionally prescribed capital structure of the FHLBanks.

The Board's proposed prudential standards have embedded within them tools intended to restrain financial companies that pose a threat to financial stability, particularly in times of crisis. During the liquidity crisis, the FHLBanks demonstrated that their design was effective in helping to mitigate the impact of the crisis without application of additional prudential standards. The FHLBanks should not, therefore, be subject to rules that are not specific to fulfillment of their mission and structure, or that, for example, may inadvertently restrain their ability to provide liquidity at a critical moment. The FHLBanks' purpose and design is unlike any other entity, and prudential standards applied to the FHLBanks should acknowledge that.

For these reasons, the FHLBanks request that, to the extent the Board finds that additional prudential standards may be appropriate for the FHLBanks, the Board and FSOC consult with the Finance Agency to develop, for promulgation by the Finance Agency, prudential standards that are specifically tailored to the FHLBanks' unique mission and structure.

II. Prudential Standards as Applied to FHLBank Members and Affiliates

A. The Board should expressly confirm that securities issued or guaranteed by the FHLBanks, including Consolidated Obligations of the FHLBank System, qualify as highly liquid assets under Proposed Section 252.51(g)(ii).

The FHLBanks support the Board's inclusion of securities issued or guaranteed by a GSE in the definition of "highly liquid assets" that Covered Companies may use to satisfy the Proposal's liquidity buffer requirements. In issuing any final Rule, we request that the Board expressly confirm that securities issued or guaranteed by the FHLBanks, including Consolidated Obligations of the FHLBank System, qualify as highly liquid assets under Proposed Section 252.51(g)(ii). FHLBank Consolidated Obligations, like Treasuries, are recognized as safe and highly liquid investments and could serve as a source of emergency liquidity for investor Significant Nonbanks during times of crisis. In recent years, the FHLBanks have regularly issued over $1 trillion in Consolidated Obligations annually, and in 2008 during the credit crisis, the

FHLBanks issued over $3 trillion in Consolidated Obligations. At December 31, 2011, the FHLBanks had approximately $690 billion in Consolidated Obligations outstanding.

The CFTC, in a December 2011 final rule, included debt of GSEs, such as FHLBank Consolidated Obligations, in the list of permitted investments for customer funds held as collateral by futures commission merchants and derivatives clearing organizations. In its commentary regarding this final rule, the CFTC noted that comments to its proposed rule had been submitted by market participants in support of using FHLBank debt as a safe and liquid investment option and acknowledged how well the FHLBanks performed during the most recent financial crisis.[17]

We note that securities issued or guaranteed by the FHLBanks, including Consolidated Obligations of the FHLBank System, qualify as highly liquid assets because they are securities issued by GSEs. The term "U.S. government-sponsored entity" is defined in section 252.51(p) of the Proposal and means an entity originally established or chartered by the U.S. government to serve public purposes specified by Congress, but whose obligations are not explicitly guaranteed by the full faith and credit of the U.S. government. The FHLBanks satisfy this definition. Section 3 of the FHLBank Act directs the FHFA to establish the FHLBanks as federally chartered entities, and section 10 of the FHLBank Act establishes the primary mission of the FHLBanks which is to make advances to their members for the purpose of providing funding for residential housing finance and for small businesses, small farms and small agri-businesses.[18]

B. The Final Rule should expressly:

1. Exclude investments in FHLBank Consolidated Obligations and FHLBank capital stock from single-counterparty credit limits in Proposed Section 252.97(a)(2), and

2. Include FHLBank Consolidated Obligations as eligible collateral under Proposed Section 252.95(c)(2).

We acknowledge and support the Board's exclusion of the FHLBanks from the single-counterparty credit exposure limits of the Proposal. We appreciate the Board's implicit recognition that, if applied to the FHLBanks, the exposure limits would have significantly impeded the FHLBanks' ability to perform their core function: making advances to members in support of home mortgage financing and community lending.

The FHLBanks believe that Proposed Section 252.97(a)(2) should expressly exclude investments in FHLBank Consolidated Obligations and FHLBank capital stock from the Proposal's single-counterparty credit limits for Covered Companies. The credit quality of FHLBank Consolidated Obligations warrants their exclusion. This exclusion is critical not only

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[17] *See* Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions (December 19, 2011)(76 Fed. Reg. 78776, 78779).

[18] 12 U.S.C. §§ 1423 and 1430(a)(2). The FHLBanks also may make advances to certain nonmembers, including state housing finance agencies, to support residential housing lending. 12 U.S.C. § 1430b.

to ensure that the FHLBanks' Consolidated Obligations remain at least in parity with the debt of the Enterprises,[19] but also to ensure that FHLBank members are not indirectly limited in their ability to borrow from the FHLBanks due to a member's (or its affiliates') investments in Consolidated Obligations and FHLBank capital stock. The Board could implement this exclusion by replacing Proposed § 252.97(b) with the following:

> (b) *Exemption for Federal Home Loan Banks.* For purposes of this subpart:
> (1) A covered company does not include any Federal Home Loan Bank. and
> (2) Federal Home Loan Bank Consolidated Obligations and capital stock are excluded from the calculation of gross credit exposure in section 252.94.[20]

If Consolidated Obligations and FHLBank capital stock are not excluded from the Proposal's credit exposure limits, the Proposal could be interpreted to require that a Member Group's investment in Consolidated Obligations be aggregated with the member's FHLBank capital stock purchases to determine the Member Group's total credit exposure to the FHLBank.[21] (For ease of reference, "Member Group" is used in this discussion to mean an FHLBank member, its affiliates, and their affiliated Covered Company.) Members must hold capital stock and, as needed, purchase additional capital stock as a condition of every borrowing from an FHLBank (in a specified proportion to the borrowing). The Proposal's credit exposure limits could have the indirect effect of limiting a member's ability to borrow from an FHLBank, if a borrowing would cause its aggregate holdings of Consolidated Obligations and FHLBank capital stock to exceed those limits. Considering that the Board has included Consolidated Obligations within the definition of "highly liquid assets," presumably based on their implied government-support and low-risk characteristics, including the FHLBanks' joint and several liability, it would seem consistent to exclude Consolidated Obligations from the single-counterparty credit limits. Moreover, we note the FHLBanks are organized like cooperatives, and their capital stock may only be issued, transferred, repurchased or redeemed by the FHLBank at its stated par value (subject to certain conditions),[22] so an investment by a member in an

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[19] Under the Proposal, "Direct claims on, and the portions of claims that are directly and fully guaranteed as to principal and interest by Fannie Mae and Freddie Mac, only while under conservatorship or receivership of the Federal Housing Finance Agency," are expressly excluded from the credit exposure limits. *See* Proposed § 252.97(a)(2).

[20] We note that the Proposal implements DFA Section 165(e)(6) by expressly excluding the FHLBanks as Covered Companies for purposes of single-counterparty credit limits. We believe the purpose of the statutory and regulatory exemption is to ensure that FHLBanks are not limited in their ability to lend to members and fulfill the FHLBanks' mandated mission. The FHLBanks believe the statutory exemption should also be interpreted to extend to member exposure to the FHLBanks (in the form of members' investments in Consolidated Obligations and FHLBank capital stock). in order to take into account the entire functional relationship among the FHLBanks. their members, and their affiliated Covered Companies and to preclude any indirect limitation on a member's ability to borrow from an FHLBank. We believe that doing so is consistent with the statutory language of section 165(e)(6) of the DFA. which broadly states that subsection 165(e) "shall not apply to any federal home loan bank," indicating that Congress intended to exclude the FHLBanks from the single counterparty credit limits in their capacity as obligors as well as creditors.

[21] The FHLBanks recognize that the Board has reserved the right to exclude "any additional obligations issued by a U.S. government sponsored entity as determined by the Board." *Id.*

[22] 12 C.F.R. §§ 931.1 and 931.6 – 931.7.

FHLBank's capital stock does not create the market risk found in investments in other types of securities. By excluding from the single-counterparty credit limits low-risk investments in FHLBank Consolidated Obligations and capital stock, the Board would avoid the possibility that a Member Group's holdings of such investments could constrain the associated member's ability to borrow from its FHLBank.

The indirect limit on advances that could result from the inclusion of Consolidated Obligations and FHLBank capital stock as a source of credit exposure could also be artificially amplified because FHLBank Consolidated Obligations are FHLBank System obligations and are not ascribable to any particular FHLBank. If an FHLBank's member (or its Member Group) holds Consolidated Obligations in its investment portfolio, those Consolidated Obligations should not be counted solely as the obligations of that member's FHLBank for purposes of the single counterparty credit limits, because they are the joint and several obligation of all twelve FHLBanks. As joint and several obligations, Consolidated Obligations are not, and should not be considered, the obligations of a "single counterparty" for purposes of single counterparty credit limits, and should be exempted from the applicability of those limits.

Accordingly, we believe that the Final Rule should expressly exclude investments in FHLBank Consolidated Obligations and FHLBank capital stock from the single-counterparty credit limits in Proposed Section 252.97(a)(2). We believe that the Congressionally established mission of the FHLBank System – to provide liquidity to member institutions to support home mortgage finance and community lending – together with the characteristics and treatment of the FHLBank capital stock and FHLBank System Consolidated Obligations make this exemption from the counterparty credit exposure limits in the public interest and consistent with the purpose of section 165(e) of the DFA. FHLBank Consolidated Obligations should continue to be available to financial institutions as low-risk, highly liquid investments that do not, when coupled with a member's purchase of FHLBank stock, result in limits on a member's ability to borrow from an FHLBank or to further invest in Consolidated Obligations.

The FHLBanks also believe that Proposed 252.95(c)(2) should specifically identify FHLBank Consolidated Obligations as eligible collateral for use in determining net credit exposure under Proposed 252.95(c).

C. The Final Rule should expressly indicate that excess collateral subject to an FHLBank blanket lien is "unencumbered" for purposes of Subpart C.

Proposed Section 252.57(a) provides that a Covered Company may only include "unencumbered" assets in its liquidity buffer as that term is defined in Proposed Section 252.51(n). Pursuant to their long-standing, Congressionally-mandated collateralized lending programs, FHLBanks require certain members to pledge a blanket lien on member assets, in order to ensure that sufficient collateral is readily available when the members need to access their FHLBank borrowing capacity. The blanket lien is an important part of FHLBank pledge requirements that positioned the FHLBanks to lend quickly and efficiently throughout the liquidity crisis. During the crisis, Federal Reserve Banks and FHLBanks worked together to enter into subordination agreements, as needed, to allocate collateral subject to blanket liens.

The Proposal could be interpreted as disqualifying *all* of the highly liquid assets of an FHLBank member subject to an FHLBank blanket lien as counting toward a Covered Company's liquidity buffer, even if those assets are not required to support that member's then-outstanding FHLBank advances. This result could be highly burdensome to Covered Companies and their FHLBank member subsidiaries and would be contrary to the purpose of Proposed Subpart C. FHLBank members pledge their assets to an FHLBank pursuant to a blanket lien to obtain access to liquidity in the form of FHLBank advances and FHLBank borrowing capacity. It would be contrary to the purpose of Proposed Subpart C to curb a Covered Company's ability to use its assets to obtain access to FHLBank advances and borrowing capacity. Assets pledged to an FHLBank pursuant to a blanket lien constitute "excess collateral" when the assets are not required by the FHLBank as collateral for outstanding advances and other extensions of credit; we believe that such excess collateral should be deemed "unencumbered" for purposes of Subpart C, regardless of an FHLBank's blanket lien.

One solution would be to add the following to Proposed Section 252.51(n):

> For purposes of this Subpart C, highly-liquid assets pledged to an FHLBank pursuant to a blanket lien that the FHLBank does not require as collateral for outstanding advances and other extensions of credit are deemed *unencumbered.*

D. The Final Rule should expressly indicate that a Covered Company may include access to FHLBank advances:

1. In short-term liquidity ratios as part of the liquidity buffer required by Proposed Section 252.57, and

2. As a primary funding source in the Contingency Funding Plan required by Proposed Section 252.58.

Proposed Section 252.57 requires Covered Companies to maintain a 30-day liquidity buffer of highly liquid assets that are unencumbered. We believe access to FHLBank advances should be recognized in the Final Rule as a source of liquidity for purposes of the liquidity buffer that is includable in a Covered Company's short-term liquidity ratios. FHLBank borrowing capacity proved to be a vital source of liquidity during the liquidity crisis and should be recognized as a potential short-term liquidity buffer, either as a highly liquid asset or as another appropriate funding source. The FHLBanks believe the Covered Company should be permitted to determine the weight that FHLBank borrowing capacity should be given in fulfillment of the Company's liquidity buffer requirements.

Section 252.58 of the Proposal requires that every Covered Company establish and maintain a contingency funding plan ("CFP") that sets out its strategies for addressing its liquidity needs during a liquidity stress event. Among other things, a CFP must identify alternative funding sources that the Covered Company may use during a liquidity stress event. In

the Preamble, discount window credit as provided by the Federal Reserve Banks is explicitly identified as a potential source of funds in such an event.[23]

As discussed above, Congress has designed the FHLBank System to serve as a source of liquidity to depository institutions and other providers of residential housing finance, and the FHLBanks have successfully fulfilled this role for eighty years through several liquidity stress events, including the latest financial crisis. Based on Congressional intent and the historical record of the FHLBanks' performance, we believe that Covered Companies should be able to include access to FHLBank advances by their subsidiaries as a liquidity buffer and as part of their CFP. We ask the Board to explicitly indicate in the Final Rule that access to FHLBank advances may be included by a Covered Company as part of its required liquidity buffer and in its CFP.

We note that, to the extent an FHLBank member's borrowing capacity is based on highly liquid assets pledged to the FHLBank, members should not be permitted to count the same assets in satisfaction of the liquidity buffer requirement twice, once as unencumbered highly liquid assets (as discussed in Section II.C. above) and a second time as FHLBank borrowing capacity obtained by the pledge of those same highly liquid assets to an FHLBank. Covered Companies should be permitted to determine whether to count assets toward satisfaction of the liquidity buffer requirements either directly, as highly liquid assets, or indirectly, as FHLBank borrowing capacity. The Board should specifically prohibit double counting of assets in the final rule or subsequent guidance.

E. The Final Rule should clarify that, for purposes of Subpart D's single-counterparty credit exposure limits, an FHLBank member does not have "*control*" of an FHLBank by owning 25 percent of the FHLBank's capital stock.

The FHLBanks believe the Board should modify Proposed § 252.92(i) to exempt from the definition of "control" an FHLBank member's ownership of FHLBank capital stock, even if that ownership exceeds one or both of the definition's 25% thresholds. As cooperative structures, the FHLBanks are owned by their members, who are also their customers/borrowers. The percentage of an FHLBank's capital stock that is owned by a particular member is largely a function of that member's borrowings from the FHLBank as a proportion of all members' borrowings; the percentage may fluctuate as those borrowings increase and decrease. Moreover, even if a member's stock ownership at a point in time were to exceed 25% of a class of the FHLBank's voting stock, or 25% of the FHLBank's total equity, the FHLBank is statutorily prohibited from giving that member preferential treatment (12 U.S.C. §1427(j)), and that member is statutorily precluded from voting its shares in the election of directors to the extent that such shares exceed the average number of shares required to be held (as of the end of the prior year) by all members in that member's state (12 U.S.C. §1427(b)(1)). Consequently, an FHLBank should not be considered "controlled" by (which, by virtue of §252.92(jj), would make the FHLBank a subsidiary of) a member whose stock ownership exceeds 25% of the FHLBank's

[23] 77 Fed. Reg. at 610.

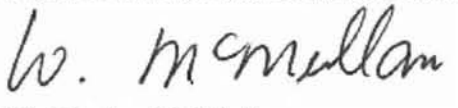
capital stock or 25% of a class of the FHLBank's voting stock for purposes of calculating that member's single counterparty credit exposure limits.

* * * * *

We appreciate this opportunity to provide comment on this important Proposal and further appreciate your consideration of our comments

Sincerely,

Federal Home Loan Bank of Atlanta



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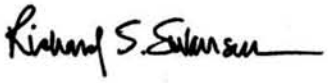

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Milton J. Miller II
President - Chief Executive Officer

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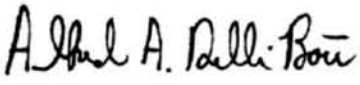

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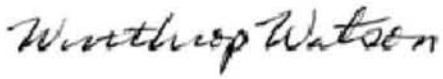
Federal Home Loan Bank of Pittsburgh



Winthrop Watson
President & Chief Executive Officer

Federal Home Loan Bank of San Francisco

Dean Schultz
President and Chief Executive Officer

Federal Home Loan Bank of Seattle

Michael L. Wilson
President and Chief Executive Officer

Federal Home Loan Bank of Topeka

Andrew J. Jetter
President and Chief Executive Officer

EXHIBIT A

Comment Letters from the FHLBanks

December 19, 2011
November 5, 2010

December 19, 2011

BY ELECTRONIC SUBMISSION
AT WWW.REGULATIONS.GOV

Financial Stability Oversight Council
Attn: Mr. Lance Auer
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

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

Docket ID: FSOC-2011-0001 RIN: 4030-AA00

Dear Mr. Auer:

On behalf of the undersigned Federal Home Loan Banks ("FHLBanks"), we appreciate this opportunity to comment on the second notice of proposed rulemaking ("Proposal") published by the Financial Stability Oversight Council (the "Council") in the Federal Register on October 18, 2011. We commend the Council for its careful approach to developing rules and guidance to implement Section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). We strongly support the goal of Section 113 of the Dodd-Frank Act, and of the Proposal, to identify those nonbank financial companies whose financial condition or financial activities may pose a threat to the overall financial stability of the U.S. and to bring those entities under appropriate supervision. We appreciate the additional guidance that the Proposal provides regarding how the Council will identify such entities and determine whether such entities should be supervised by the Board of Governors of the Federal Reserve System (the "FRB") and subject to the prudential standards of Title I of the Dodd-Frank Act (each such entity, a "Significant Nonbank").

Please note that we previously provided a letter dated November 5, 2010 (our "November Letter") in response to the Council's advance notice of proposed rulemaking (the "ANPR") on this issue, and we wish to incorporate by reference and resubmit through this letter the comments that we offered in our November Letter (attached as Exhibit A). We have carefully reviewed the Proposal and we believe that our November Letter comments remain applicable.

The FHLBanks Are Already Subject to Robust Prudential Supervision and Should Be Exempted from Designation as a Significant Nonbank.

As further described in our November Letter, the FHLBanks are unique financial institutions, created by Congress under the Federal Home Loan Bank Act ("FHLBank Act") with a specific mission to provide liquidity and community lending funds to its member-shareholder institutions in the form of secured advances. The FHLBanks are subject to a system of comprehensive prudential regulation established by Congress under the FHLBank Act, the Housing and Economic Recovery Act of 2008 ("HERA") and regulations of the FHLBanks' primary prudential regulator, the Federal Housing Finance Agency ("FHFA"), all targeted at preventing material financial distress of the FHLBanks and assuring that the nature and scope of activities of an FHLBank remain within safe and sound parameters given the FHLBanks' unique structure and characteristics.

The FHFA has broad supervisory authority over the FHLBanks to, among other things, determine what investments are permissible for the FHLBanks, limit an FHLBank's new business activities, monitor and supervise the FHLBanks' debt financing, establish capital requirements for the FHLBanks both in general and on a case-by-case basis, examine and take enforcement actions with respect to the FHLBanks, impose prompt corrective action requirements, and place an FHLBank into conservatorship or receivership.

Our November Letter further explained in detail that the application of the prudential standards of Sections 165 and 166 of the Dodd-Frank Act, as developed and implemented by the FRB, either (i) expressly do not apply to the FHLBanks, (ii) are already addressed under provisions of HERA, the FHLBank Act, or FHFA regulations and supervisory authority, or (iii) cannot as a practical matter be applied to the FHLBanks because of the FHLBanks' unique structure. We re-emphasize in particular the following:

- The FHLBanks' cooperative capital structures are established by the FHLBank Act. 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 Dodd-Frank Act in establishing special risk-based and leverage capital requirements to a Significant Nonbank.

- The FHFA, for reasons of safety and soundness, may impose a higher total capital to assets ratio or a higher risk-based capital requirement on an

individual FHLBank than current regulations require. The FHFA may also temporarily increase an individual FHLBank's leverage requirement.

- Contingent capital in the form of debt securities issued to the public that would be convertible to equity securities is not possible with respect to the FHLBanks, as members of the public are ineligible to hold equity securities of an FHLBank.

- The FHLBanks use short- and long-term consolidated obligations for the vast majority of their funding needs. The FHLBank Act and FHFA regulations govern the issuance of these consolidated obligations, and the FHFA has authority to address any concerns regarding an FHLBank's use of short-term debt.

- The FHLBanks are currently subject to comprehensive liquidity requirements imposed by the FHFA, including contingency liquidity requirements and requirements to meet certain liquidity requirements in relation to the deposits they hold. Each FHLBank is required to have a risk management policy addressing its operational and contingency liquidity needs, and each FHLBank is required to report immediately to the FHFA any projected or actual liquidity shortfalls.

- The FHLBanks are explicitly exempted from the leverage limits of Section 165(j) of the Dodd-Frank Act. The FHLBank Act and FHFA regulations impose separate leverage limits on the FHLBanks.

- FHFA regulations impose limitations on an FHLBank's unsecured extensions of credit to a counterparty and require an FHLBank to submit monthly reports to the FHFA of such FHLBank's unsecured and secured credit exposure to counterparties.

- The Dodd-Frank Act expressly provides that the concentration limits provision on credit exposure to an unaffiliated company does not apply to an FHLBank.

- The FHLBanks are required by FHFA regulations and Section 38 of the Securities Exchange Act of 1934 ("Exchange Act") to register a class of their equity securities with the Securities and Exchange Commission under the Exchange Act. As a result, each FHLBank files periodic and annual reports with significant public disclosures about its financial condition and results of

operations. The FHFA has authority to require additional reports or other disclosures by the FHLBanks as appropriate.

- The FHLBanks are not subject to the receivership provisions of Title II of the Dodd-Frank Act or Chapter 11 of the Bankruptcy Code. Instead, HERA established a comprehensive prompt corrective action structure for the FHLBanks with increasing restrictions on an FHLBank as its capital classification declines, and an FHLBank may be required to submit a consolidated obligation payment plan for FHFA approval when certain financial measurements or other indicators of financial difficulty at an FHLBank are triggered. Ultimately, the FHLBanks are subject to being placed in conservatorship or receivership by the FHFA.

Given the unique structure and characteristics of the FHLBanks as highlighted above, we are concerned that any application of the Proposal's analytical framework and determination process for Significant Nonbanks will unnecessarily overlap the existing comprehensive prudential regulatory framework to which the FHLBanks are subject, resulting in duplicative regulatory efforts by the Council. Such result would be contrary to the intent of Section 169 of the Dodd-Frank Act (codified as 12 U.S.C. § 5369), in which Congress required the FRB to take action to avoid imposing duplicative regulatory requirements on nonbank financial companies:

"Sec. 5369. Avoiding duplication.

The Board of Governors shall take any action that the Board of Governors deems appropriate to avoid imposing requirements under this part that are duplicative of requirements applicable to bank holding companies and nonbank financial companies under other provisions of law."

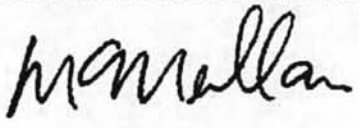
Therefore, we urge the Council to recommend to the FRB that it issue regulations setting forth criteria that exempt the FHLBanks from FRB supervision as Significant Nonbanks, as the FRB has authority to do under Section 170(a) of the Dodd-Frank Act.

* * * * * *

We appreciate your consideration of our comments.

Sincerely,

Federal Home Loan Bank of Atlanta



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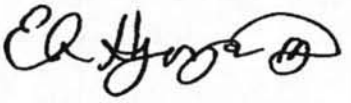

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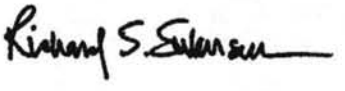

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Federal Home Loan Bank of Seattle

Mike E. Brandeberry
Senior Vice President, Chief Counsel and
Corporate Secretary

Federal Home Loan Bank of Topeka

Andrew J. Jetter
President and Chief Executive Officer

EXHIBIT A

November Letter

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

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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 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]

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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,

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(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]

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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

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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.

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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

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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

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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]

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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

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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

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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]

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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

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58 12 U.S.C. § 4517.

59 12 C.F.R. § 914.2.

60 12 C.F.R. § 998.3.

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.

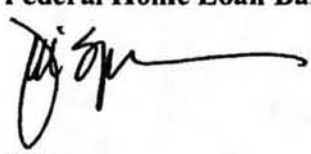
We believe that the foregoing factors would strongly support a recommendation by the Council to the FRB that it issue regulations that exempt the FHLBanks from FRB supervision as Significant Nonbanks.

* * *

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



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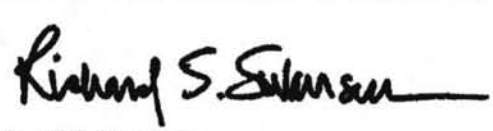

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