October 31, 2022

The Honorable Sandra Thompson
Director
Federal Housing Finance Agency
400 7th Street, SW
Washington, DC 20024

Dear Director Thompson,

The National Community Reinvestment Coalition (NCRC) appreciates this opportunity to share insights on the structure and role of the Federal Home Loan Bank System (FHLBs). This written response includes and expands upon the comments we shared during the listening session on September 30, 2022.

NCRC and its grassroots member organizations create opportunities for people to build wealth and participate more fully in the nation's economy. We work with community leaders, policymakers and financial institutions to champion fairness and end discrimination in lending, housing and business. NCRC was formed in 1990 by national, regional and local organizations to increase the flow of private capital into traditionally underserved communities. We have grown into an association of more than 700 community-based organizations that promote access to basic banking services, affordable housing, entrepreneurship, job creation and vibrant communities for America's working families. Our members include community reinvestment organizations; community development corporations; local and state government agencies; faith-based institutions; community organizing and civil rights groups; minority and women-owned business associations, and social service providers from across the nation.

We thank FHFA for embarking on a welcome and much-needed examination of the FHLBs and how they can better serve our nation's communities. The FHLBs function as profit-driven entities within the private market but benefit from significant public support. FHLBs were formed in 1932 to ensure liquidity in the residential housing market, and while they remain an important source of support for community banks, the dramatic changes to the housing finance landscape in intervening decades point to the need to redefine and reinvigorate their public missions.

A system that provides for more direct accountability to the broader community is needed, and should be installed through both reforms to FHLB governance and through reforms that implement more rigorous regulatory directives on use of funds. Further, while we are currently in a moment of widespread attention to housing affordability and supply pressures, those pressures have longstanding and systemic roots – housing affordability is not a momentary crisis, but rather should be viewed as an ongoing and central policy focus for federal government intervention. In 1989, Congress instituted the requirement that the FHLBs implement Affordable Housing Plans, to which they currently must dedicate ten percent of their income. As we detail below, this amount is insufficient, and the FHLBs should more fully commit to expanding our affordable housing opportunities. This need is especially critical among low income communities and among households of color, who lack intergenerational wealth. Another fundamental consideration in FHLB reforms is that of the banks' untapped potential to serve as vehicles for effective community development financing, in targeted ways designed to have a positive community impact – such as small business support, climate adaptation, and infrastructure development that aids LMI households.

The FHFA's review should contribute to a greater understanding of the extent to which the public supports the system, providing an accurate assessment of the present value of its various public subsidies. Thus, this process should include a calculation of the present value of: the taxpayers' guaranty of FHLB debt; the FHLBs' tax exemptions; and the "super-lien" *vis a vis* the Deposit Insurance Fund. FHFA should also analyze the impact of FHLB advances to member banks on depositor interest rates.

Our comments below are focused on six areas. The cumulative effect of these recommendations seeks to re-establish the FHLB System as a more transparent, community-accountable, truly public purpose entity. Our recommendations aim to assist FHFA in making concrete improvements to the FHLB system, so as to better support housing affordability and wealth building for modest-means individuals across the country and to sustain vibrant, economically thriving communities.

In summary, our recommendations are:

(1) Increase dedicated support to the Affordable Housing Program (AHP)

(2) Strengthen the FHLB regulations (including FHFA's Community Support Program requirement) to increase and track advances to support affordable housing and other community development-related activities of members.

(3) Provide for advances to better support small businesses, small farms, targeted climate adaption needs, and other community development-related activities of members, in addition to expanded support for affordable housing.

(4) Seek greater alignment between the FHLB affordable housing goals and those of the Government Sponsored Enterprises (while strengthening all goals).

(5) Enact a cultural shift in the governance of the FHLBs, by increasing the participation and decision-making authority of community-connected organizations, to ensure public purposes (as opposed to private industry) are at the forefront of decision-making.

(6) Consideration of any new class of members must be predicated on strong community reinvestment obligations; members must be held to standards that require them to serve the entire community of creditworthy borrowers and condition their advance activity based upon their service to the communities in which they operate.

(1) Significantly increase dedicated support to the Affordable Housing Program (AHP)

The implementation of a significantly higher across-the-board commitment to the AHP is a critical step toward a meaningful new FHLB system. Low income households across the country face acute cost pressures and an ongoing lack of affordable housing. Both the expansion of our nation's long term affordable rental housing stock and opportunities for affordable homeownership are pressing concerns that FHFA and the FHLB system should prioritize and address through significant reforms.

We believe it is well within FHFA's statutory authority and is consistent with the current public need, to include within a restatement of the System's mission language indicating that expanding and preserving the nation's affordable housing supply is part of its mission. A holistic approach to the housing issue will help refocus the System on its original purpose.

Currently, the FHLB statute and FHFA regulations provide that 10 percent of each FHLB's net income be committed to the AHP.[1] We call for the funding dedicated to the AHP to be, at a minimum, doubled, from 10 to 20 percent of income or more pending the evaluation of the present value of the System's public subsidies as described above. This designation of the banks' net income would serve to better implement their public mission and to better justify their public support.

We also call for the impact of dividends on the potential volume of AHP investment to be carefully scrutinized. Notably, as Senator Cortez Masto pointed out in her letter supporting a comprehensive review of the FHLBs, more than $1 billion was paid out in dividends in 2021 while year-end retained earnings of the FHLBanks was approximately $23 billion; the FHLBanks' AHP contribution was $315 million in 2022 and dropped to $201 million in 2021.

[1] See 12 U.S.C. § 1430(j)(5); 12 CFR § 1291.10.

Both the expansion of the AHP and the banks' other housing funding priorities should include deliberate and meaningful steps to fund programs designed to increase sustainable homeownership among LMI individuals, to address the racial homeownership divide, and to ensure that the stock of affordable rental units for LMI households is increased and that such housing is healthy, adequately maintained, and meets high standards for fair housing. Fair housing considerations include siting in highly resourced areas in alignment with HUD's AFFH obligation as well as tenant marketing and selection criteria (for example, avoiding discrimination on the basis of criminal records and source of income including housing vouchers). Moreover, the AHP application requirements should include asking member banks to describe their due diligence procedures that avoid the financing of abusive or neglectful property owners and managers of multifamily or single-family rental properties.

(2) Strengthen the FHLB's "standard of community investment or service" regulations to increase and track advances to support affordable housing and other community development-related activities of members.

The FHLB statute requires that the Director set forth "standards of community investment or service" for FHPB members. Eligibility for access to advances depends upon the member meeting such standards. Expectations for community investment and service are set forth by FHFA regulation, and by statute must take into account CRA performance and lending to first-time homebuyers.[2]

FHFA should send a clear message (with consequences for lack of performance) that support for low-income housing and community development must be a priority for *all* FHLB members including nondepositories, and that advances will be tracked accordingly. In addition to the statutorily-mandated Affordable Housing Program (AHP), the statutorily-mandated Community Investment Program (CIP) provides a framework for "community-oriented mortgage lending" (lending to moderate-income homebuyers and community development benefiting LMI communities and individuals), though the statute provides little in the way of standards for this program beyond basic affordability requirements. Banks may also implement Community Investment Cash Advance (CICA) programs.[3] Stronger across-the-board requirements pertaining to advances should be put in place to ensure that members use FHLB financing in furtherance of clear regulatory goals, in the service of LMI communities and households.[4]

[2] See 12 U.S.C. § 1430(g), requiring the director to "adopt regulations establishing standards of community investment or service for members of Banks to maintain continued access to long-term advances…[those regulations] shall take into account factors such as a member's performance under the Community Reinvestment Act of 1977 and the member's record of lending to first-time homebuyers."
[3] See 12 CFR Part 1292.
[4] Statutory requirements provide directives for the Affordable Housing Program can provide a starting point for some considerations that should extend across Bank advances, such as more robust reporting requirements, community-oriented advisory boards, and basic oversight standards. See, e.g., 12 U.S.C. § 1430(j)(9).

Currently, members must report back annually to the Bank on their use of advances[5] and, under FHFA regulation, must have in place "Community Support Programs (CSP)."[6] The Community Support Program requirement is a positive measure. However, regulatory implementation of the community investment or service requirement should be strengthened.

Importantly, the statute does not limit FHFA to considering only CRA ratings and first-time homebuyer lending; FHFA may also consider other aspects of member performance. The Community Support Program framework should be broadened (as well as refined to more specifically capture performance against metrics). It should include the full breadth of housing and community development activity supported by the FHLB system, in addition to those factors required by statute. FHFA should reject programs that fail to adhere to balanced, robust community support criteria and should ensure that use of funds supports activities that directly benefit communities. FHFA could consider setting benchmarks for each of the member institutions to demonstrate a measurable increase in activity or preserve a baseline of access, with clear metrics and performance goals put in place.

Currently, the CSP requires a Community Support Statement. In addition to providing the most recent CRA rating, the support statement requires data regarding the number and dollar amount of mortgage loans made to first time homebuyers.[7] The statement also requires a member bank to indicate whether it further supports first time homebuyers via underwriting or marketing tailored to underserved populations, housing counseling and other supports. These requirements provide an important baseline, but they need to be more robust. The form should ask for the percentage of homebuyers that are first time homebuyers. Eligibility for advances should depend on a member bank at least maintaining its baseline percentage of homebuyers that are first time. Moreover, the FHLB banks should consider increases in the percentage of first-time homebuyers as factors that would increase a member bank's advance.

In addition, the Support Statement should likewise ask how many loans and what percentage of loans are for businesses with less than $1 million in revenue and the number and percentage that are for start-ups of under one year in operation. The FHLB advances should be varied on a member's bank performance on these metrics over the years.

Special Purpose Credit Programs (SPCP) that focus on disadvantaged populations including people of color should also be encouraged via questions on the Support Statement. Banks that engage in

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[5] 12 U.S.C. § 1430

[6] 12 CFR § 1290.6; see also FHFA Form 060, available at https://www.fhfa.gov/PolicyProgramsResearch/Programs/AffordableHousing/Documents/Informational-CSS-Form60.pdf.

[7] FHFA template for community support statement, https://www.fhfa.gov/PolicyProgramsResearch/Programs/AffordableHousing/Documents/Informational-CSS-Form60.pdf

successful SPCPs as demonstrated by verifiable performance measures and data (Home Mortgage Disclosure Act data and Section 1071 small business/farm data) could be eligible for higher dollar amount of advances.

The federal bank agencies are considering providing favorable CRA consideration for SPCP. The FHFA should further encourage the use of SPCP through the community support statement and policies/procedures for awarding advance amounts.

A more meaningful and robust consideration of members' track records of community investments should also include a more rigorous look at CRA activity. Current regulations requiring the Banks to "Consider" CRA performance (at a threshold of "Satisfactory" or above) and service to first-time homebuyers of its members are too weak to be effective given the distribution of CRA ratings. We hope that a more rigorous new CRA regulation will aid in countering CRA ratings inflation, but the FHLB regulations should also be refined to encourage "Outstanding" CRA ratings for members

FHFA should explore whether other incentivizes can be put in place to improve members' performance in supporting affordable housing and community development. For example, advances could be tiered with the highest dollar amounts awarded to banks with Outstanding ratings and lower dollar amounts for those with Satisfactory ratings. The differences in the dollar amount for the awards should be meaningful in order to encourage Outstanding ratings. Banks with ratings below Satisfactory must not be eligible for advances until they pass their CRA exams.

(3) Provide for advances to better support small businesses, small farms, targeted climate adaption needs, and other community development-related activities of members, in addition to expanded support for affordable housing.

NCRC recommends legislative or regulatory changes to enable the FHLB System to more fully support a range of activities tailored to benefit low and moderate income communities. This would entail clearer authorization for all members to use advances to support small businesses, small farms, small agri-businesses, and community development activities.[8] At the regulatory level, FHFA should clarify that climate remediation measures (for LMI communities in particular) qualify as community development activities eligible for advances.[9]

[8] NCRC supports the recommendations articulated in proposed Senate Legislation, S. 1684, "the Federal Home Loan Banks Mission Implementation Act." That bill creates new grant programs to support community economic development in low-income communities, among other key changes.
[9] See 12 U.S.C. § 1430(a)(6), authorizing the Director to define the terms "small business", "agriculture", "small farm", "small agri-business", and "community development activities."

As stated above, advances should be prioritized and tracked in order to ensure that they flow in accordance with the FHLBs' mission. Fair lending oversight should also be rigorously applied, given historical and ongoing discrimination in the housing, farm lending, and other markets.

The FHFA should also consider encouraging or requiring FHLB banks to institute secondary market financing programs that support member banks small business lending. The FHLB Bank of Pittsburgh has operated a voluntary secondary purchase program since 2000 that supported more than 11,000 jobs.[10] For both housing and other forms of community development, we encourage FHFA to periodically examine and invite input on types of positive activities that tend to be in need in greater liquidity (for example, creation of community land trusts).

Data reporting systems must be improved. The 2021 FHFA annual report on the activities of the FHLB banks describes the overall dollar figures for the Community Investment Program (CIP) and Community Investment Cash Advance Program (CICA).[11] However, it does not present the dollar allocations for major categories of activities such as support for economic development or community facilities. It also does not describe the number and dollar amount of advances or loans for communities of various income levels. As well as improvements in data reporting along these lines, the FHFA should also incorporate reporting for climate remediation activities and small business/farm assistance if the FHFA adopts these categories as eligible for CIP and CICA financing as suggested by NCRC. As much as possible, the regulatory definitions of economic and community development used by the FHLB programs should conform with the CRA regulations (including updates proposed by the federal bank agencies' Notice of Proposed Rulemaking issued in the summer of 2022).

(4) Provide greater alignment between the FHLB Affordable Housing Goals and those of the GSEs

The FHFA requires the FHLB banks to demonstrate that at least 20% of their mortgage purchases finance loans for low-income borrowers, very low-income borrowers and those in low-income areas.[12] This requirement is weaker than those applied to the Government Sponsored Enterprises (GSEs or Fannie Mae and Freddie Mac). Firstly, the income limits appear higher based on the stipulation that no more than 25% of the FHLB purchases can benefit families with more than 80% of area median income. In contrast, the GSE goals are capped at 80% of area median family income.[13] Secondly, in contrast to the FHLB banks, the GSEs have separate goals for low-income, very low-income borrowers and low-income

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[10] See page 45 of FHFA annual report on FHLB bank activity, https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/2021-LIHCDA-FHLBanks-Report.pdf

[11] FHFA, 2021 Low Income Housing and Community Development Activities of the Federal Home Loan Banks, https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/2021-LIHCDA-FHLBanks-Report.pdf

[12] See FHFA FHLB Annual report, pages 41 and 42.

[13] FHFA Finalizes 2022-2024 Single-Family and 2022 Multifamily Housing Goals for Fannie Mae and Freddie Mac, December 2021, https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Finalizes-2022-2024-Single-Family-and-2022-Multifamily-Housing-Goals-for-Fannie-Mae-and-Freddie-Mac.aspx

neighborhoods. Thirdly, GSE subgoal targets are higher; for example, at least 28% of the GSE purchases in the case of home mortgage loans must benefit low-income borrowers in contrast to the lower 20% for the FHLB banks. Fourthly, the FHFA instituted a separate goal for communities of color for the first time in late 2021.

The FHFA should align the goals of the FHLB banks to those of the GSEs as much as possible. At the very least, the income target should be lowered to 80% of area median income. The FHFA should also consider disaggregating the goals and increasing the percentage above 20% in the case of goal for home mortgage purchases for low-income borrowers. In addition, the FHFA should also institute a goal to support homeownership in communities of color as part of its effort to narrow racial disparities in wealth and homeownership.

Goals should be strengthened so as to ensure housing provides long term affordability and high habitability standards, without fueling institutional investors with a poor record in serving tenants.

(5) Enact a cultural shift in the governance of the FHLBs, by increasing the participation and decision-making authority of community-connected organizations, to ensure public purposes (as opposed to private industry) are at the forefront of decision-making.

More must be done to place key decision-making in the hands of community-related leaders and geographically underrepresented areas. This change from the top is a critical move to effectuate the shift from profit-seeking (and dividend-returning) behavior and emphasize the public utility nature of these government-created entities. Currently, Bank boards are drawn from their member institutions, with a marginal presence reserved for representatives with a track record of community work. (Banks also have an Advisory Council for their AHPs, which, in contrast to the boards, draws from "community and nonprofit organizations actively involved in providing or promoting low- and moderate-income housing in its district.") Bank boards should be more community-oriented. Additionally, the Banks' high level of executive compensation should be addressed.

(6) Consideration of any new class of members must be predicated on strong community reinvestment obligations; members must be held to standards that require them to serve the entire community of creditworthy borrowers and condition their advance activity based upon their service to the communities in which they operate.

At this point, NCRC would not be supportive of allowing independent mortgage companies to become FHLB members. With the exceptions of a few states such as Massachusetts and Illinois, independent mortgage companies do not have community reinvestment obligations at the federal or state levels. If the FHFA allowed mortgage companies to become members of the FHLB banks, it would be exacerbating an unlevel playing field in which some institutions, i.e., banks, comply with CRA and others do not. The vital mission of supporting affordable housing and community development would be more successful if all institutions allowed to join the FHLB system had CRA or CRA-like obligations.[14] Only then would all members of the FHLB system have affirmative and continuing obligations to serve all communities as required by CRA.

Further, independent mortgage companies currently do not comply with as rigorous safety and soundness requirements as banks. In the years preceding the financial crisis, independent mortgage companies were the primary originators of high cost, poorly underwritten subprime loans that caused massive defaults and foreclosures. We recognize the dominant position that nondepositories currently play in the mortgage originations and servicing.

All members of the FHLB system, which depends on implicit government support, should have comparable safety and soundness requirements in order to prevent exposing the system to undue risks. This principle would be severely compromised if independent mortgage companies, as currently regulated, are allowed to become members.

Thank you for this opportunity to share our recommendations. We would be delighted to speak with FHFA about our proposals in further detail. Please reach out to Megan Haberle, Senior Director of Policy, at mhaberle@ncrc.org or myself at jvantol@ncrc.org with any questions.

Best regards,
Jesse Van Tol
President and Chief Executive Officer
National Community Reinvestment Coalition

[14] Non-depository CDFIs do not comply with CRA but comply with Treasury Department data reporting requirements that enforce CRA-like reinvestment obligations.