



April 15, 2016

Alfred M. Pollard, General Counsel
Attn: Comments/RIN 2590-AA69
Federal Housing Finance Agency
400 Seventh Street SW
Eighth Floor
Washington, D.C. 20219

Re: Notice of Proposed Rulemaking and Request for Comments: Acquired Member Assets (RIN 2590-AA69)

Dear Mr. Pollard:

The Federal Housing Finance Agency (“FHFA”) has requested comments on its notice of proposed rulemaking on the Acquired Member Assets (“AMA”) regulation published on December 17, 2015 (the “Proposed Rule”).¹ The Federal Home Loan Banks (the “FHLBanks”) appreciate the opportunity to comment on the Proposed Rule.

The FHLBanks support the general approach of the Proposed Rule. However, the FHLBanks believe that the Proposed Rule would be significantly enhanced by providing the FHLBanks with additional flexibility in certain areas. As discussed below, additional flexibility would enable the FHLBanks to innovate their existing AMA programs and products, and develop new AMA programs and products, in order to respond to new and unanticipated developments as mortgage markets evolve, remain competitive in the industry, advance their mission goals, and better meet the housing finance needs of their members and the communities they serve. We believe that the proposed revisions to the regulatory text provided in Exhibit A attached hereto, explained by the following comments, will help provide the FHLBanks with this flexibility, while ensuring that the FHLBanks continue to operate safely and soundly.²

Part 1265 of the FHFA’s regulations states that the mission of the FHLBanks is to provide financial products and services, including but not limited to advances, to assist member institutions with housing finance and community lending.³ Moreover, under the recent advisory bulletin regarding the FHLBanks achievement of their core mission activities, AMA and advances are the only primary core mission assets thus adding to the importance of such asset

¹ The Proposed Rule is published at 80 Fed. Reg. 78689 (Dec. 17, 2015).

² In the preamble to the 2003 proposed rule to revise the AMA regulation, the FHFA recognized the need for a less prescriptive AMA regulation and to place increased responsibility over AMA on the FHLBs. Federal Home Loan Banks Acquired Member Assets, 68 Fed. Reg. 39027 (July 1, 2003).

³ 12 C.F.R. § 1265.2.

type.⁴ Under the existing AMA regulation, the FHLBanks created two programs: the Mortgage Partnership Finance[®] (“MPF[®]”) Program, and the Mortgage Purchase Program (“MPP”) (collectively, the “AMA Programs”) to provide eligible members with a competitive alternative to the secondary market outlets for residential mortgage loans, and in turn, increase borrowers’ access to competitive mortgage products. Since their inception, the AMA Programs have provided a reliable source of funding for members (participating financial institutions or “PFIs”), and have become increasingly important for small to mid-sized community banks, thrifts and credit unions (collectively, the “Community Lending Institutions”) that were impacted by the 2008-09 financial crisis and the regulatory changes that followed.

The mortgage market has evolved significantly since the AMA regulation was promulgated over 15 years ago. Today, FHLBank members operate in an environment with stronger underwriting guidelines, and increased capital requirements and liquidity constraints. Larger institutions dominate mortgage origination with their ability to access the secondary market through multiple avenues. The AMA Programs provide Community Lending Institutions with important access to the secondary market that enables them to effectively compete in the secondary market and further promotes their common housing finance goal of serving local communities. As of December 31, 2015, under the AMA Programs, there were over 1,200 approved participating members, approximately 83% of which were small-sized institutions with assets of less than or equal to \$1.128B, 11% of which were mid-sized institutions with assets between \$1.128B and \$5B, and 7% of which were large institutions with assets greater than \$5B. For the same period, Community Lending Institutions funded \$8.3B in mortgages, or 91% of total funded amounts, while large institutions funded \$0.8B in mortgages, or 9% of total funded amounts for the AMA Programs. The FHLBanks’ assistance to their members’ housing finance activities contributes substantially to the Community Lending Institutions’ ability to compete in the housing market and their ultimate success.

I. Suggested Revisions to the Proposed Rule.

A. Risk Sharing Arrangements.

To mitigate the impact of market changes on existing AMA Programs and facilitate the creation of new AMA programs, and respond to new regulatory requirements in the mortgage lending industry, the FHLBanks would benefit from the flexibility to evaluate alternative structures that provide credit loss protection and pursue such alternatives when necessary. The Proposed Rule, if adopted, would continue to require a credit risk-sharing structure whereby the member (i) bears the direct economic consequence of actual credit losses on assets acquired by an FHLBank from such member, (ii) provides credit enhancement to enhance such assets to at least investment quality, and (iii) fully collateralizes its credit enhancement obligation. The FHLBanks request that the FHFA consider adopting a credit risk-sharing requirement that

⁴ FHLBank Core Mission Achievement, Advisory Bulletin 2015-AB-05.

provides the FHLBanks with the ability to implement alternative risk-sharing structures and manage credit enhancement obligations.

The FHLBanks understand the importance of ensuring that members bear a portion of the risk related to the performance of an asset or pool; however, the FHLBanks believe that alternative risk sharing structures would not only allow for diversification of risk at both the member and the FHLBank, but would also provide members with the opportunity to choose their economic exposure based on the quality of loans they originate. Further, the requested flexibility would allow the FHLBanks to restructure existing products and develop new competitive products to transfer risk, while also providing a mechanism for members to withstand market changes, increase liquidity (which potentially reduce their risk-based capital), and continue to invest in their communities.

1. *Insurance as Part of the Credit Enhancement Structure.*

In the preamble to the Proposed Rule, the FHFA requested comments on (a) the use and importance of supplemental mortgage insurance (“SMI”) and pool insurance as part of an allowable credit enhancement structure, and (b) rating standards for insurance providers. Insurance is an accepted form of credit enhancement in the mortgage market, both at the borrower level, as primary mortgage insurance, and at the investor level, as SMI or pool insurance. Both SMI and pool insurance allow a member and the FHLBanks to offset a portion of their risk, reducing the member’s required risk-based capital, and thereby providing additional loan capacity. Members are incentivized to underwrite high quality loans since insurance premiums increase as the quality of the loan decreases, thereby diminishing the member’s ability to offset its credit risk.

The FHFA has recognized that credit risk transfer is an acceptable method of risk management.⁵ As part of the FHFA’s goals for Fannie Mae and Freddie Mac (the “Enterprises”), the FHFA has significantly increased the targeted amount for credit risk transfers that the Enterprises must complete annually. The Enterprises have used various types of credit insurance, including mortgage insurance, to transfer credit risk to the capital markets. The FHLBanks believe that extending this flexibility to the FHLBanks would allow them the ability to similarly mitigate risks, and also achieve their regulatory mission goals, serve members and their communities.

To address the concerns about the stability of mortgage insurance providers, the FHLBanks request that the FHFA consider a broad range of insurance products that would support all or a portion of members’ credit enhancement obligation. For example, a member could secure its credit enhancement obligation to cover losses in excess of borrower’s equity and primary mortgage insurance by entering into a contract with a credit insurance provider whereby

⁵ 2016 Scorecard for Fannie Mae, Freddie Mac and Common Securitization Solutions (Dec. 17, 2015), *available at* <http://www.fhfa.gov/AboutUs/Reports/ReportDocuments/2016-Scorecard.pdf>.

the provider agrees to assume all or a portion of the member's credit enhancement obligation. The cost of the applicable insurance premiums would be borne by the selling member, and would incentivize the member to originate high quality loans because insurance coverage for lower quality loans would carry higher premiums. Under the MPF Program, the benefit of credit insurance to the member could be in the form of reduced collateral pledged to the FHLBank and/or reduced risk-based capital, which for smaller members would provide additional liquidity to further support their housing finance activities within their communities. For the MPP members, the use of an insurance structure may result in an overall better sale execution. Additionally, the option to retain credit insurance would allow for the reintroduction of prior AMA products discontinued due to the downgrade of mortgage insurance companies, the financial condition of which have since significantly improved. Notwithstanding the challenges faced by the mortgage insurance companies, these products functioned as designed. The credit risk sharing features of the AMA products protected the FHLBanks by requiring members to either forego credit enhancement fees or pledge collateral to secure credit enhancement provided by downgraded SMI carriers.

As an example of the above, certain multiline insurance companies have already expressed interest in providing credit insurance for the AMA Programs. Because of their diversified portfolios, multiline insurance providers are also positioned to withstand credit market fluctuations and provide the necessary credit coverage. Allowing diversified insurance companies to join current SMI and pool insurance providers in offering credit insurance as part of a risk sharing structure and as an alternative means of credit enhancement would improve the FHLBanks' ability to serve their members. When an FHLBank evaluates a new or enhanced AMA product that would rely on an insurance component, the FHLBank would incorporate into its product development process the methodology it would use to assess the financial strength of insurance providers. This would allow for prudent risk management and appropriate oversight.

With the removal of reliance on NRSRO rating requirements for insurance companies, the FHLBanks request that the AMA rule permit the use of the FHLBanks' internal credit ratings methodologies and risk management tools and techniques to evaluate the financial status of an insurance provider, including any downgrades, and to determine the claims-paying ability of the insurance provider. Similar to the Private Mortgage Insurer Eligibility Requirements⁶ standards used by the Enterprises, as approved by the FHFA, the FHLBanks' credit rating review may include, among other factors, reviewing the insurance provider's sources of capital and future ability to raise capital, operating expenses, credit losses, cash flow ratios and other factors. The FHLBanks will be required to demonstrate to the FHFA that their procedures are consistent with prudent standards of risk management and provide a reliable assessment of an insurance counterparty's risk exposure.

⁶ Fannie Mae, Private Mortgage Insurer Eligibility Requirements (Dec. 21, 2015), *available at* https://www.fanniemae.com/content/eligibility_information/private-mortgage-insurer-eligibility-requirements.pdf.

Further, the FHLBanks request that requirements for application of internal credit rating methodologies not apply to insurance providers that offer primary mortgage insurance (“PMI”). PMI coverage is standard practice in the mortgage industry and minimum requirements for SMI and pool level insurance, if applied to PMI providers, would not otherwise significantly enhance the credit quality of the loans prior to acquisition. Residential mortgage loan originators obtain PMI at the time of loan origination. As with sales to other investors, loans sold under the AMA Programs are covered by PMI prior to acquisition. The FHLBanks’ credit enhancement models account for PMI coverage to determine members’ credit enhancement obligation, and the FHLBanks have the additional flexibility through the underwriting guidelines for the AMA Programs to establish minimum requirements for PMI providers if and to the extent market conditions warrant such an action. The FHLBanks request that the flexibility to prudently manage exposure to PMI providers through their internal credit rating requirements continue to be available to them.

2. Collateral.

The FHLBanks request that the Proposed Rule continue to allow, but not require, risk sharing structures in which members pledge collateral to secure their credit enhancement obligations. AMA product structures should be allowed to offer a combination of collateralization, credit insurance coverage or other mechanisms for the member to meet its credit enhancement obligation.

3. Transfer of Credit Enhancement.

The Proposed Rule, if adopted, would allow a PFI to transfer all or a portion of its credit enhancement obligation to (i) its insurance affiliate for losses remaining after the PFI’s credit risk sharing portion is satisfied, (ii) a PFI in the same FHLBank district, or (iii) a PFI in another FHLBank district. The FHLBanks request that the FHFA broaden its proposal to allow PFIs to transfer all or a portion of their credit enhancement obligation to any PFI affiliates approved by an FHLBank. Further, the FHLBanks request that for affiliates of the transferring PFI, the credit enhancement obligation should not be limited to losses remaining after the PFI’s credit risk sharing portion is satisfied. The FHLBanks may allow such transfer either by establishing a form of credit enhancement structure for a particular product or by providing specific approval for the transfer. The FHLBanks would evaluate the safety and soundness of such parties in accordance with the FHLBank counterparty credit risk monitoring and management standards.

4. Disposition of AMA to Members.

The Proposed Rule, if adopted, does not expressly permit the transfer or sale of AMA loans, participations, rights or liabilities relating to an AMA loan or pool of loans to FHLBank system members. The FHLBanks request that the FHFA consider the flexibility to sell whole or partial interests in AMA loans or pools to their members across districts. For example, the FHLBanks expect that any such sales would be structured as private sales of whole or partial interests, or participation interests, in AMA. Transferring such interests would not only alleviate

market risk inherent in holding AMA loans on balance sheet, thus preventing the accumulation of excess AMA in the first place, but also increase liquidity for housing finance in furtherance of the FHLBanks' mission. Moreover, such flexibility would allow for the development of new risk sharing structures to enhance AMA Programs and products.

The FHLBanks also continue to monitor with interest the FHFA's efforts to develop the Common Securitization Platform. Once the Common Securitization Platform is operational, the FHLBanks would like the opportunity to take advantage of the platform on equal terms to that of any other secondary market providers. The FHLBanks will then evaluate whether the Platform would be a proper venue for AMA Program transactions.

B. Credit Enhancement Determination and Models.

1. *Measuring Date of Credit Enhancement.*

The FHLBanks request that the calculation date for the credit enhancement obligation be revised to allow for credit enhancement to be established according to the loan funding commitments for a given product in addition to the criteria provided in the Proposed Rule. For example, for AMA products provided under MPP that rely on pre-funding members' credit enhancement obligations, the AMA regulation should permit the participating FHLBank to determine the credit enhancement necessary to bring the AMA loan or pool to investment quality at the time that the AMA pool is closed. This approach provides certainty to sellers participating in MPP as to their ongoing financial obligations to the FHLBank with respect to the program and against the delivered loans. Under MPP, the participating FHLBanks price the pre-funded credit enhancement obligation so that it provides further economic incentive to members to better manage the credit risk of the AMA sold by returning unused credit enhancement funds according to the credit loss history over the life of the pool. Not only does this further reward originators for sound underwriting, but the participating FHLBanks have found that it continues to incentivize prudent mortgage loan servicing.

2. *Models and Calculation Methodology for Credit Enhancement.*

The FHLBanks request the Proposed Rule be revised to provide only general guidance as to appropriate models and methodologies used to calculate credit enhancement for an AMA pool since the FHFA has already provided specific guidance on evaluating and monitoring the performance of models, such as through advisory bulletins. The FHLBanks do not believe there would be a benefit for establishing modeling requirements in the regulatory text of the final rule in addition to existing FHFA guidance. The FHLBanks' suggested approach would not only allow for appropriate FHFA oversight to ensure that FHLBanks are operating safely and soundly, and properly accounting for and mitigating risks; but would also provide flexibility to make adjustments to models as the industry evolves.

C. Asset Eligibility Requirements.

1. *Exclusion of Government Loans from Conforming Loan Limit.*

The FHLBanks request that government insured or guaranteed loans be excluded from any conforming loan limit established in the final AMA rule as such loans are underwritten to strict standards established by government agencies. As long as the government loans meet the eligibility criteria of the agency that insures or guarantees the loans, the FHLBanks should be allowed to acquire these loans regardless of the conforming loan limit.

2. *Manufactured Housing.*

The FHLBanks understand the FHFA's concerns provided in the preamble to the Proposed Rule with respect to manufactured housing loans. The FHLBanks believe that the AMA regulation should continue to permit investment in whole loans secured by manufactured housing regardless of the treatment of such loans under state law to allow the FHLBanks to continue to determine their respective members' needs regarding these loans under the AMA Programs.

3. *Restriction on Acquiring Certain AMA Loans.*

The FHLBanks request that the FHFA eliminate the restriction on acquiring AMA loans provided to a selling member's or an FHLBank's directors, officers, employees, attorneys, or agents. FHLBank loan purchase decisions are market-based and the pricing reflects the characteristics of the loans, in contrast to loans pledged as collateral for which the FHLBanks simply provide a collateral value. The risk of an FHLBank purchasing a loan which benefits any individual – regardless of their relationship to an FHLBank or a selling member – is largely mitigated by the market-driven basis of loan purchases. Operationally, if the proposed restriction is adopted, it would require the FHLBanks to oversee the process of removing transactions between the member and certain parties identified in the Proposed Rule, including a member's legal counsel and agents. The FHLBanks are concerned about the operational challenges for members and the FHLBanks in complying with the proposed restriction. It is very difficult and burdensome to identify or screen loan pools to eliminate loans to members' directors, officers, employees, agents and legal counsel, and ask an FHLBank's board of directors to specifically approve such loans if they are discovered, and then further request the FHFA to endorse any such board resolution, as the Proposed Rule would require. The FHLBanks are also concerned that this restriction would limit access to mortgages for their members' employees in rural areas and smaller communities who may not have other meaningful alternatives to access housing finance.

In the alternative, the FHLBanks propose limiting this restriction to apply only to mortgage loans made to the selling member's directors and senior officers, and a general board of directors resolution or a bank-wide policy be implemented in lieu of approving specific loans for identified individuals. This limitation further protects against the key risk present in such

circumstances – the risk that the selling member would advantage one of its directors or senior officers – without unduly burdening members or the FHLBanks. Additionally, all members participating in the AMA Programs must follow prudent underwriting standards and maintain repurchase responsibility for ineligible loans sold by the member. The FHLBanks’ proposal would directly address the FHFA’s concerns, and permit the FHLBanks to implement proper procedures to monitor compliance with this requirement.

D. Member Nexus Requirements.

Some FHLBank members originate mortgages through a mortgage banking affiliate. In order for such members to sell those mortgages as part of an AMA program, the Proposed Rule, if adopted, would continue to require a two step process whereby a member’s affiliate may originate a loan and then assign the loan to the member, who sells the loan to the FHLBank. This operating model introduces additional operational and accounting steps that may discourage a member’s willingness to participate in the AMA Programs. To improve members’ accessibility to the AMA Programs and reduce their operational burdens, the FHLBanks request that the AMA regulation provide the ability to acquire loans directly from member affiliates thereby streamlining the process by which the member could achieve the need for liquidity. While reducing additional operational burdens, members would continue to be responsible for meeting the requirements of the AMA regulation and AMA product structures. .

E. Suggested Revisions to Proposed Definitions for New Terms.

1. *Investment Quality.*

The FHLBanks request that the proposed definition of this term be revised to more closely align with the types of risks inherent in mortgage loan investments rather than securities. The definition of “investment quality” in the Proposed Rule would adopt a definition for investment quality as currently used under the FHLBanks’ investments regulations (12 C.F.R. § 1267). This definition does not account for the unique nature of the AMA Programs and the method by which the FHLBanks acquire loans either individually or as pools of loans over time.

Further, the definition does not fully capture different characteristics of mortgage loans as opposed to other types of assets, such as securities. For example, for mortgage loans, a certain level of delinquency is expected even without adverse economic and financial conditions. Even if a borrower makes full payments of principal and interest, such payments may not be “timely”; thereby a delinquency may occur which would not necessarily present an increased risk to the FHLBank. Although delinquencies are not initially expected, historical data shows that delinquencies occur and this factor is included in the risk calculations and tolerances of models used to calculate the credit enhancement obligation for a mortgage asset or pool.

To capture the unique structure of AMA Programs and products, and preserve the AMA regulation’s intent for FHLBanks to invest in loans of an acceptable credit quality to the FHFA,

the FHLBanks propose the following definition for the investment quality of an AMA loan or pool:

A determination made by the Bank with respect to an asset or pool of assets that, based on documented analysis, including consideration of the sources for repayment of an asset or pool of assets, including the credit enhancement obligation, there is a high degree of confidence that principal and interest will be paid in all material respects, even under reasonably likely adverse economic conditions.

2. *AMA Product.*

The FHLBanks recommend that this definition be revised to exclude AMA eligible loans held on balance sheet for a short period of time for the purpose of transferring the loans to off-balance sheet products such as sale to third party investors or securitization. Accordingly, the FHLBanks propose the following revised definition:

AMA product means a structure defined by the Bank's specific set of terms and conditions for AMA eligible loans that comply with this part, other than loans held on balance sheet for a short period of time for the purpose of transferring the loans to off-balance sheet products.

3. *Participating Financial Institution.*

The FHLBanks recommend that this definition be revised to reflect that participating financial institutions include members that are both sellers and servicers, members that are either sellers or servicers, and members that acquire the credit enhancement for AMA loans. Accordingly, the FHLBanks propose the following revised definition:

Participating financial institution means a member or housing associate of a Bank that is authorized to sell, credit enhance or service mortgage loans to its own Bank through an AMA program, or a member or housing associate of another Bank that has been authorized to sell, credit enhance or service mortgage loans to the Bank pursuant to an agreement between the Bank acquiring the AMA product and the Bank of which the selling institution is a member or housing associate.

4. *Pool.*

The FHLBanks recommend revising this definition to allow for variations in a grouping of loans where a pool may constitute loans purchased from multiple sellers for a single product or loans purchased from a single entity. The FHLBanks note that MPP has had aggregate pools

– *i.e.*, pools containing loans from multiple sources – since 2006. Accordingly, the FHLBanks propose the following revised definition:

Pool means a group of assets acquired under one or more loan funding commitments, contractual agreements or similar arrangements.

F. Additional Considerations.

1. *Grandfathered Transactions.*

The FHLBanks support the proposed grandfathering of transactions previously approved by the FHFA or its predecessors. The FHLBanks request that the grandfathering provision be clarified to ensure the grandfathering of open commitments to members under transactions that may not be fulfilled by the time the AMA regulation takes effect, as well as those programs that were themselves grandfathered when the current AMA regulation became effective. Otherwise, the inability of the FHLBanks to acquire loans under existing funding commitments to their members may hinder members' ability to transfer loans they are unable to retain on their balance sheet, and may also present an increased risk to the FHLBanks due to their contractual obligations to members. The FHLBanks further request that in the event the FHFA determines that previously approved programs or products do not meet the requirements of the final AMA regulation, the final rule provide for an extended implementation period to allow the FHLBanks to operate their existing programs and products until such time as the FHFA approves alternative programs or products.

2. *Administrative Transactions, Agreements, and Pricing.*

The FHLBanks propose revising the administrative transaction and agreements provision of the Proposed Rule (§ 1268.8(a)) to provide for more efficient execution of their AMA Programs and products. Historically, the FHLBanks have cooperated on or entered into third-party servicing arrangements in parallel related to their AMA programs. The FHLBanks propose updating § 1268.8(a) to provide for cooperation or engagement of other parties, without the necessity of delegating AMA program administration in its entirety.

The FHLBanks also suggest revising the delegation of pricing authority provision of the Proposed Rule (§ 1268.8(c)) to provide clearer authority to the FHLBanks to define the parameters for a delegation of pricing authority. This would allow FHLBanks to agree on provisions to reduce the likelihood that an FHLBank would refuse to acquire AMA, which could impair an FHLBank's ability to serve as a reliable source of housing finance for its members. We therefore propose revising this section to increase the flexibility of the FHLBanks to clarify the scope of their pricing authority delegation.

II. Regulatory Alignment.

A. Alignment with Housing Goals Regulation.

The FHLBanks request that the Proposed Rule be aligned with the anticipated changes to the FHLBanks' Housing Goals regulation⁷ to ensure that the FHLBanks have the flexibility needed to purchase AMA loans consistent with the FHFA's interest in expanding access to mortgage finance to low income families and low income areas. The FHFA has advised the FHLBanks that it is considering changes to the Housing Goals regulation to (i) establish the annual housing goals prospectively and provide the FHLBanks with certainty in managing their AMA operations and housing goals compliance; and (ii) provide a practical context for evaluation of housing goals compliance. The FHLBanks appreciate the FHFA's efforts to provide certainty and a practical context for evaluation, and believe that the FHFA should consider changes to the Proposed Rule in conjunction with the possible changes to the Housing Goals regulation.

The FHFA's focus on housing goals as a means of increasing liquidity for (i) single family owner-occupied purchase-money mortgages for low and very low-income families, and families in low-income areas, and (ii) single family owner-occupied refinance mortgages for low-income families, means that the FHLBanks will need to develop new AMA products to satisfy the targeting requirements imposed by the Housing Goals regulation. However, the Proposed Rule, if adopted, could alter the FHLBanks' ability to manage their risk and promote housing finance and, consequently, adversely impact the flow of credit to lower income borrowers and communities. Without the additional flexibility to meet housing goals, FHLBanks with smaller AMA Programs might elect not to offer any program to their members which could have an adverse impact on small or rural members with limited to no access to the secondary mortgage market. Accordingly, the FHLBanks request that amendments to the AMA regulation should provide flexibility for the FHLBanks to offer AMA products and purchase AMA loans to satisfy the targeting requirements and public policy objectives of the current and future Housing Goals regulation.

B. Alignment with New Business Activity Regulation.

The FHLBanks request that the New Business Activity ("NBA") regulation be revised jointly with the Proposed Rule to allow the FHLBanks flexibility to modify current AMA products and programs in step with an evolving mortgage marketplace. The FHLBanks need the ability to engage in new activities that comply with the AMA regulation without having to request special permission in every case. The current NBA regulation and FHFA practice requires unnecessary and burdensome NBA notice filings that significantly delay the FHLBanks' ability to improve their AMA Programs and products to benefit the FHLBanks, their members and the housing finance industry, even in the case of proposed changes that reduce the aggregate

⁷ 12 C.F.R. § 1281.

risks posed by the product. These delays hinder the FHLBanks' ability to be competitive in a fast-paced and continuously evolving industry, and impede members' ability to access market opportunities more readily available to their competitors.

The AMA Programs have provided significant benefits to FHLBank members. In addition, the FHLBanks have gained expertise in managing the risks associated with these programs. Accordingly, the FHLBanks are able to appropriately mitigate such risks while improving their AMA Programs and modifying existing products to better meet the needs of their members and remain competitive in the industry. In light of the substantial administrative burdens and delays imposed by the filings required under the NBA regulation, the FHLBanks request that the FHFA consider the filing requirements in the context of the level of risk associated with restructuring or developing AMA products and programs. In instances where there are no material risks or risks are low, the FHFA would still have an opportunity to review new AMA products and programs during the regular examination cycle or otherwise as it deems appropriate.

The FHLBanks propose that, in conjunction with the foregoing recommendations to the Proposed Rule, the FHFA consider revising the NBA regulation to streamline the NBA process for activities under the AMA regulation. The FHLBanks propose that a revised NBA Regulation:

- (a) Require a higher risk threshold for new activities to trigger a filing requirement;
- (b) Provide for an expedited review of filings related to AMA products and programs;
- and
- (c) Exempt from filing requirements:
 - i. Any product that is insured or guaranteed by a federal government agency;
 - ii. Modifications and variations of existing AMA products;
 - iii. FHLBanks that convert from one AMA product to another; and
 - iv. Adoption by an FHLBank of an AMA program already in use by another FHLBank.

III. Conclusion.

The FHLBanks appreciate the opportunity to provide comments to the Proposed Rule. The foregoing recommendations are aimed at achieving flexibility for the FHLBanks so that they may continue to provide liquidity to members, achieve their housing finance mission, and respond to changes in the secondary mortgage market with appropriate product innovation.

For the reasons discussed above, the FHLBanks respectfully request that the FHFA adopt these comments and the proposed revisions in the final rule.

Sincerely,

The Federal Home Loan Banks listed below

Federal Home Loan Bank of Atlanta



W. Wesley McMullan
President and Chief Executive Officer

Federal Home Loan Bank of Boston



Edward A. Hjerpe III
President and Chief Executive Officer

Federal Home Loan Bank of Chicago



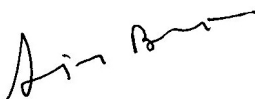
Matthew R. Feldman
President and Chief Executive Officer

Federal Home Loan Bank of Cincinnati



Andrew S. Howell
President and Chief Executive Officer

Federal Home Loan Bank of Dallas



Sanjay K. Bhasin
President and Chief Executive Officer

Federal Home Loan Bank of Des Moines



Michael L. Wilson
President

Federal Home Loan Bank of Indianapolis



Cindy L. Konich
President and Chief Executive Officer

Federal Home Loan Bank of New York



José R. González
President and Chief Executive Officer

Federal Home Loan Bank of Pittsburgh



Winthrop Watson
President and Chief Executive Officer

Federal Home Loan Bank of San Francisco



Dean Schultz
President and Chief Executive Officer

Federal Home Loan Bank of Topeka



Andrew J. Jetter
President and Chief Executive Officer

EXHIBIT A

§ 1268.1 Definitions.

As used in this part:

Affiliate means any business entity that controls, is controlled by, or is under common control with, a member.

AMA product means ~~an AMA structure defined by a~~ the Bank's specific set of terms and conditions for AMA eligible loans that comply with this part, other than loans held on balance sheet for a short period of time for the purpose of transferring the loans to off-balance sheet products.

AMA program means a Bank-established program to buy mortgage loans that meet the requirements of this part, which may comprise multiple AMA products.

Expected losses means ~~the loss given the expected future economic and market conditions in the model or methodology used by the Bank under § 1268.5 and applicable to an AMA product.~~

Investment quality ~~has the meaning set forth in § 1267.1 of this chapter~~ means a determination made by the Bank with respect to an asset or pool of assets that, based on documented analysis, including consideration of the sources for repayment of an asset or pool of assets, including the credit enhancement obligation, there is a high degree of confidence that principal and interest will be paid in all material respects, even under reasonably likely adverse economic conditions.

Participating financial institution means a member or housing associate of a Bank that is authorized to sell, credit enhance or service mortgage loans to its own Bank through an AMA program, or a member or housing associate of another Bank that has been authorized to sell, credit enhance or service mortgage loans to the Bank pursuant to an agreement between the Bank acquiring the AMA product and the Bank of which the selling institution is a member or housing associate.

Pool means a group of assets acquired under ~~a given master commitment or similar~~ one or more loan funding commitments, contractual agreements or similar arrangements.

Residential real property has the meaning set forth in § 1266.1 of this chapter.

§ 1268.2 Authorization for acquired member assets.

(a) General. Each Bank is authorized to invest in assets that qualify as AMA, subject to the requirements of this part and part 1272 of this chapter.

(b) Disposition of AMA. Each Bank is authorized to sell whole or portions of interests, participations or other obligations for AMA loans to other Banks and to members of a Bank.

~~(c)~~ Grandfathered transactions. Notwithstanding paragraph (a) of this section, a Bank may continue to hold as AMA assets that were previously authorized by the Federal Housing Finance Board or FHFA for purchase as AMA, provided that the assets were purchased, and continue to be held, in compliance with that authorization. A Bank may continue to acquire such assets as AMA pursuant to the terms of any loan or pool funding commitment or similar agreement that was open as of [insert effective date of the final rule].

§ 1268.3 Asset requirement.

Assets that qualify as AMA shall be limited to the following:

(a) Whole loans or interests in whole loans that are eligible to secure advances under § 1266.7(a)(1)(i), (a)(2)(ii), (a)(4), or (b)(1) of this chapter, excluding:

(1) Single-family mortgage loans where the loan amount exceeds the limits established pursuant to 12 U.S.C. 1717(b)(2), unless; the loan is government guaranteed or insured; and,

(2) Loans made to an entity, or secured by property, not located in a state; ~~and~~

~~[(3) Loans that would not be eligible to serve as collateral for an advance under § 1266.7(f) of this chapter; made to any director or senior officer of the selling participating financial institution, as identified by the selling institution, unless the board of directors of the Bank has approved such acquisition of such loans by general resolution or Bank-wide policy.]~~

(b) Whole loans secured by manufactured housing, regardless of whether such housing qualifies as residential real property, unless such loan would not be eligible to serve as collateral for an advance under § 1266.7(f) of this chapter;

(c) State and local housing finance agency bonds; or

(d) Certificates representing interests in whole loans if:

(1) The loans qualify as AMA under paragraphs (a) or (b) of this section and meet the nexus requirements of § 1268.4; and

(2) The certificates:

(i) Meet the credit enhancement requirements of § 1268.5;

(ii) Are issued pursuant to an agreement between the Bank and a participating financial institution to share risks consistent with the requirements of this part; and

(iii) Are acquired substantially by the initiating Bank or Banks.

§ 1268.4 Member or housing associate nexus requirement.

(a) General provision. To qualify as AMA, any assets described in § 1268.3 must be acquired in a purchase or funding transaction only from:

(1) A participating financial institution, or an affiliate thereof, provided that the asset was:

(i) Originated or issued by, through, or on behalf of the participating financial institution, or an affiliate thereof; or

(ii) Held for a valid business purpose by the participating financial institution, or an affiliate thereof, prior to acquisition by the Bank; or

(2) Another Bank, provided that the asset was originally acquired by the selling Bank consistent with this section.

(b) Special provision for housing finance agency bonds. In the case of housing finance agency bonds acquired by a Bank from a housing associate located in the district of another Bank (local Bank), the arrangement required by the definition of “participating financial institution” in § 1268.1 between the acquiring Bank and the local Bank may be reached in accordance with the following process:

(1) The housing finance agency shall first offer the local Bank right of first refusal to purchase, or negotiate the terms of, its proposed bond offering;

(2) If the local Bank indicates, within a three-day period, it will negotiate in good faith to purchase the bonds, the housing finance agency may not offer to sell or negotiate the terms of a purchase with another Bank; and

(3) If the local Bank declines the offer, or has failed to respond within the three-day period, the acquiring Bank will be considered to have an arrangement with the local Bank for purposes of this section and may offer to buy or negotiate the terms of a bond sale with the housing finance agency.

§ 1268.5 Credit risk-sharing requirement.

(a) General credit risk-sharing requirement. For each AMA product, the Bank shall implement and have in place at all times, a credit risk-sharing structure that:

(1) Requires a participating financial institution to provide the credit enhancement necessary to enhance an eligible asset or pool to the credit quality specified by the terms and conditions of the AMA product, provided, however, that such credit enhancement results in the eligible asset or pool being at least investment quality, as defined in § 1268.1; and

(2) Meets the requirements of this section.

(b) Determination of necessary credit enhancement. (1) ~~At the earlier of 270 days from the date of the Bank's acquisition of the first loan in a pool, or the date at which the pool reaches \$100 million in assets, Pursuant to the pool's funding commitment,~~ the Bank shall determine the total credit enhancement necessary to enhance the asset or pool to at least investment quality and to be consistent with the terms and conditions of a specific AMA product. The enhancement shall be for the life of the asset or pool and may be reduced in accordance with the terms and conditions of the AMA product, so long as the asset or pool is projected at the measuring date to retain investment quality with the reduction. The Bank shall make this determination for each AMA product using a model and methodology that the Bank deems appropriate, provided, however, that the Bank's use of the model and methodology complies with to the requirements and conditions of paragraph (e) of this section.

(2) A Bank shall document its basis for concluding that the contractual credit enhancement ~~required from each participating financial institution~~ with regard to a particular asset or pool will equal or exceed the credit enhancement level specified in the terms and conditions of the AMA product and determined in accordance with paragraph (b)(1) of this section.

(c) Credit risk-sharing structure. Under any credit risk-sharing structure, the credit enhancement provided by the participating financial institution shall meet the following requirements:

(1) The participating financial institution that is providing the credit enhancement ~~required under this this paragraph (c)~~ shall in all cases:

(i) ~~Bear the direct~~ bear an economic consequences of actual or an amount of credit losses on the asset or pool as determined by the Bank: and

~~(A) From the first dollar of loss up to the amount of expected losses; or~~

~~(B) Immediately following expected losses, but in an amount equal to or exceeding the amount of expected losses; and~~

~~(ii) Fully secure its credit enhancement obligation subject to § 1266.7 of this chapter; and~~

(2) The participating financial institution ~~also~~ may provide all or a portion of the credit enhancement, with the approval of the Bank, by:

(i) Fully securing its credit enhancement obligation subject to § 1266.7 of this chapter;

(ii) Contracting with an insurance affiliate of that participating financial institution to provide an enhancement, but only where such insurance is positioned in the credit risk-sharing structure so as to cover only losses remaining after the participating financial institution has borne losses as required under paragraph (c)(1)(i) of this section;

(iii) Contracting with another participating financial institution, or an affiliate thereof, in the Bank's district or another Bank's district ~~to provide a credit enhancement consistent with this section, in return for compensation~~; or

(ivii) Purchasing credit loss coverage insurance from an insurance provider approved by the Bank ~~Contracting with a participating financial institution in another Bank's district, pursuant to an arrangement between the two Banks, to provide a credit enhancement consistent with this section, in return for compensation.~~

(d) U.S. government insured or guaranteed loans. Instead of the structure set forth in paragraph (c) of this section, a participating financial institution also may provide the required credit enhancement by purchasing loan-level insurance that is issued by an agency or department of the U.S. government or is a guarantee from an agency or department of the U.S. government, provided that the government insurance or guarantee remains in place for as long as the Bank owns the loan.

(e) Appropriate methodology for calculating credit enhancement. A Bank shall use a model and methodology for estimating the amount of credit enhancement for a pool of AMA subject to the following requirements and conditions:

(1) The Bank shall validate its model and methodology for calculating the credit enhancement for AMA pools ~~at least annually, or more often if necessary,~~ as conditions warrant and make the results of such validation available to FHFA upon request;

(2) The Bank shall institute and maintain a process to monitor the performance of its model ~~to include tracking, back testing, bench marking, and stress testing the model and the results it produces,~~ and the Bank shall make information gathered from monitoring the model available to FHFA upon request;

(3) The Bank shall inform FHFA prior to making any material changes to an approved model and methodology, providing a description of the changes that the Bank intends to make and its reasons for doing so; and

(4) The Bank promptly shall make any FHFA-directed changes to its model and methodology.

§ 1268.6 Servicing.

(a) Servicing of AMA loans may be transferred to and performed by any institution, including an institution that is not a member of the Bank System, provided that the loans, after such transfer, continue to meet all requirements to qualify as AMA under §§ 1268.3, 1268.4 and 1268.5.

(b) The transfer of mortgage servicing rights and responsibilities must be approved by the Bank or Banks that own the loan or a participation interest in the loan.

(c) A Bank shall have in place policies and procedures to ensure that the transfer of mortgage servicing rights does not negatively affect the credit enhancement on the loans in question or substantially increase the Bank's exposure to risk.

§ 1268.7 Reporting requirements for acquired member assets.

Each Bank shall report information related to AMA in accordance with the instructions provided in the Data Reporting Manual issued by FHFA, as amended from time to time.

§ 1268.8 Administrative transactions and agreements between Banks.

(a) Delegation of administrative duties. A Bank may delegate the administration of an AMA program to another Bank whose administrative office has been examined and approved by FHFA, or previously examined and approved by the Federal Housing Finance Board, to process AMA transactions. The existence of such a delegation, or the possibility that such a delegation may be made, must be disclosed to any potential participating financial institution as part of any AMA-related agreements signed with that participating financial institution. A Bank may contract with one or more parties, including without limitation another Bank, to provide services related to the administration of its own or delegated AMA program, without the necessity of further disclosure.

(b) Termination of Agreements. Any agreement made between two or more Banks in connection with any AMA program may be terminated by any party after a reasonable notice period.

(c) Delegation of Pricing Authority. A Bank that has delegated its AMA pricing function to another Bank shall retain a right to refuse to acquire AMA at prices it does not consider appropriate, pursuant to contractual provisions among the parties.