



Federal Home Loan Bank  
NEW YORK

April 3, 2020

John J. Witkowski  
Independent Bankers Association of NYS  
President & CEO  
19 Dove Street, Suite 101  
Albany, New York 12210

Dear John:

Your support is needed for a Federal Home Loan Bank (FHLBank) legislative effort to assure our members' liquidity needs are met as they serve as economic first responders during the challenges presented by the COVID-19 crisis. One central element of our ability to do so is to ensure that FHLBanks can provide liquidity to our members as they deploy federal emergency credit programs in the communities they serve.

The CEOs of the 11 Federal Home Loan Banks have examined the emergency efforts to date and have determined that legislative amendments are needed to enable FHLBanks to better support our members during this crisis. Attached you will find five statutory provisions that all FHLBanks support. The amendments have been drafted in a manner to enable FHLBanks to provide targeted liquidity to members in this crisis; to provide statutory certainty for certain FHLBank products; to not increase the risk profile of FHLBanks; and to not diminish FHLBank access to capital markets so that we will continue to be a low-cost provider of liquidity on demand through this crisis.

The amendments will enable the FHLBanks to better support the membership in responding to the needs of their communities affected by the COVID-19 crisis. Attached please find information regarding the following amendments:

1. Broaden the availability of Small Business Administration (SBA)-Guaranteed Small Business Loans in American Communities by clarifying that the SBA guarantee extends to the FHLBank as the pledgee of guaranteed Small Business Administration loans.
2. Expand the asset size as to what qualifies as a Community Financial Institution.
3. Reinstate the authority to issue FHLBank Letters of Credit to support tax-exempt bonds (Section 149).
4. Codify the authority to issue FHLBank Letters of Credit in statute (including legislative history around the authority to support public unit deposits).
5. Authorize the FHLBanks to accept government guaranteed loans to support the COVID-19 Programs.

It is critically important that we all work together so these amendments are accepted in the next Federal response legislation, which could pass in the coming weeks. If you have any questions about this legislation, please contact me or members of our Government Relations team.

Sincerely,

A handwritten signature in blue ink that reads "José R. González". The signature is written in a cursive style with a long, sweeping tail on the "y" of "González".

José R. González  
President and CEO

Enclosure

## **FHLBank Economic Stimulus Provisions**

The following package includes 5 amendments and supporting fact sheets to enable the FHLBanks to better support the membership in responding to the COVID-19 crisis.

1. Broadening the availability of SBA-Guaranteed Small Business Loans in American Communities by clarifying that the SBA guarantee extends to the FHLBank as the pledgee of guaranteed Small Business Administration loans.
2. Expand the asset size as to what qualifies as a Community Financial Institution
3. Reinstate the authority to issue FHLBank Letters of Credit to support tax-exempt bonds (Sec. 149)
4. Codify the authority to issue FHLBank Letters of Credit in statute (including legislative history around the authority to support public unit deposits).
5. Authorize the FHLBanks to accept government guaranteed loans to support the COVID-19 Programs.

## **1. Broadening the Availability of SBA-Guaranteed Small Business Loans in American Communities**

- As part of the Gramm-Leach-Bliley Act of 1999, Congress specifically authorized FHLBanks to accept small business loans as collateral on advances made by the FHLBanks to community financial institutions.
- Current SBA regulations have rightly focused on the specific interests of the SBA and the lending institutions, but they do not now consider the particular needs of the FHLBanks in implementing the small business loan provisions of the Gramm-Leach-Bliley Act.
- This amendment would not permit a FHLBank to originate SBA guaranteed loans. Its purpose is only to ensure that the FHLBank provisions of the Gramm-Leach-Bliley Act are fully implemented.

### **Amendment to the Small Business Administration Act (15 U.S.C. § 636):**

#### **Federal Home Loan Bank Advances**

At the end of 12 U.S.C. § 636, add the following new paragraph:

“(31) Federal Home Loan Bank Advances

A Federal Home Loan Bank that, in the exercise of its authority under section 9 of the Federal Home Loan Bank Act [12 U.S.C. § 1430] to make advances collateralized by small business loans, accepts as collateral a loan guaranteed by the Administration may exercise all of the rights and remedies contained in any pledge or similar agreement between such Bank and the lending or participating institution that made or purchased the loan and, in the event of a default on the loan, shall possess the same rights and remedies as such a lending or participating institution would possess in the same circumstance.”

## **Fact Sheet: Enabling FHLBanks to Expand the Availability of SBA-Guaranteed Small Business Loans in American Communities**

- The COVID-19 virus is having a profound effect on every aspect of the U.S. economy and American society. Absorbing a lot of the impact are small businesses which are the life's blood of our communities. In order to speed the recovery of these businesses and their ability to provide jobs, SBA-guaranteed small business loans are a necessity. The volume of the lending of these loans can be accelerated by using the authority of the FHLBanks to support small business lending.
- The expansion of small business lending is a goal in urging the economy through stimulus and the Federal Home Loan Banks can be part of the solution.
- In 1999, in order to aid in the expansion of small business lending The Gramm-Leach-Bliley Act of 1999 specifically authorized Federal Home Loan Banks to accept small business loans as collateral on advances made by the FHLBanks to their Community Financial Institution (CFI) member institutions. This was done to provide broadened access for community banks to facilitate funding of small business loans.
- Since enactment of the Gramm-Leach-Bliley Act, questions have arisen regarding the ability of FHLBanks to accept SBA guaranteed loans as collateral because of certain SBA regulations that affect the validity of the SBA guarantee when a FHLBank exercises its rights regarding the collateral, such as holding the collateral, selling or transferring it, putting it back to SBA for purchase if the loan is in default, and receiving the purchase proceeds of such loans in order to repay the lending institution's original indebtedness to the FHLBank.
- As financial institutions chartered by Congress to provide funding to member institutions, the FHLBanks need to possess the types of rights described above along with the valid SBA guarantee in order to operate in a financially safe and sound manner while increasing the flow of capital for loans to small business.
- The SBA regulations rightly focus on the specific interests of the SBA and the lending institutions, but they do not fully implement the small business loan provisions passed in the Gramm-Leach-Bliley Act.
- This amendment would not permit an FHLBank to originate SBA-guaranteed loans. Its purpose is only to ensure that the FHLBank provisions of the Gramm-Leach-Bliley Act are fully implemented and that the powers of the FHLBanks may be used to expand access to SBA-guaranteed loans by allowing those loans to be pledged by Community Financial Institutions (CFIs) to the Federal Home Loan Banks as collateral for Advances.
- Amends the SBA statute to expressly allow the SBA guarantee to remain with SBA loans pledged to the Federal Home Loan Banks.

## **2. Community Financial Institutions Liquidity support by expanding Access to Federal Home Loan Bank Advances**

- This amendment authorizes the FHLBanks to make advances secured by expanded collateral (including loans to small businesses, farmers, small agri-business operators and community development entities) to any FDIC- insured member with less than \$10 billion in assets.
- Currently, the use of the expanded collateral is limited to FDIC-insured members with less than \$1.224 billion in assets.

### **Amendment to the Federal Home Loan Bank Act**

The Federal Home Loan Bank Act (12 U.S.C. §1421 et seq.) is amended---

(1) in section 2 (12 U.S.C. §1422) by---

(a) striking subparagraph section (10) and inserting the following:

“(10) COMMUNITY FINANCIAL INSTITUTION.—

“(A) IN GENERAL. - The term "community financial institution" means a member which –

“(i) the deposits of which are insured under the Federal Deposit Insurance Act; and

“(ii) has, as of the date of the transaction at issue, less than \$10 billion in average total assets, based on an average of total assets over the 3 years preceding that date.

“(B) ADJUSTMENTS. - The \$10 billion limit referred to in subparagraph (A)(ii) shall be adjusted annually by the Director, based on the annual percentage increase, if any, in the Consumer Price Index for all urban consumers, as published by the Department of Labor.”; and

(b) adding at the end the following:

“(13) COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION.—  
The term “community development financial institution” means a community development financial institution certified as such an institution under the Riegle Community Development and Regulatory Improvement Act of 1994 [12 U.S.C. §4701 et seq.]”

(2) in section 4 (12 U.S.C. §1424), by striking subsection (a)(1)(B) and inserting the following:

“(B) is subject to inspection and regulation under the banking laws, or under similar laws, of the State or of the United States; and”.

## Fact Sheet: Enhanced FHLBank Support of Community Financial Institutions and their Small Business and Community Lending

- Amends the Federal Home Loan Bank Act to Broaden Community Institution Access to Federal Home Loan Bank Advances.
- Increases the Community Financial Institution asset size definition to \$10 Billion allowing more community lenders the ability to pledge, small business, small farms, small agri-businesses, and community development loans to the Federal Home Banks.
- This amendment authorizes the FHLBanks to make advances secured by expanded collateral (including loans to small businesses, farmers, small agri-business operators and community development entities) to any FDIC insured member with less than \$10 billion in assets. Currently, only FDIC-insured members with less than \$1.224 billion in assets are eligible to use the expanded collateral.

<b>Institution Type</b>	<b>Number of Institutions</b>	<b>Total Assets</b>
IDIs < \$10 billion	5037	\$2,930,500,000

- The amendment would permit these institutions to use expanded collateral -- small business, small farms, small agri-businesses, and community development loans – for FHLBank advances. The result in the greater availability of reliable funding for such loans and greater access to credit for small businesses, farmers, small agri-business operators and community development entities.
- Broadening collateral eligibility for more community lenders recognizes the changes and consolidation that have occurred in the financial system and economy in the past several years. The asset sizes of smaller FDIC-insured members have increased.
- A \$10 billion threshold to differentiate community financial institutions from large institutions in the financial system has become common in the past several years, especially since the Federal Reserve began using that figure several years ago, and this amendment applies the same quantitative standard. As such, the amendment provides expanded lending opportunities for a broader range and greater number of FHLBank members that operate in local neighborhoods and rural communities where credit has not always been easily available.

### **3. FHLBank Letters of Credit on tax-exempt bonds (Section 149)**

- Allows FHLBank member banks to continue to serve traditionally underserved credit enhancement markets for small issuers of tax-exempt bonds traditionally ignored by larger credit enhancement providers.
- Helps local communities raise funds for water treatment facilities, industrial development, healthcare facilities, schools and other important initiatives.
- Increases the marketability and lowers the financing costs of tax-exempt bonds despite current uncertainty within the municipal bond market.

#### **Amendment to Section 149 of the IRC**

Section 149(b)(3)(A)(iv) of the Internal Revenue Code of 1986 is amended by striking “during the period beginning on the date of the enactment of this clause and ending on December 31, 2010” and inserting “on or after the date of enactment”.

Paragraph (3) of section 149(b) is amended by deleting

“(E) SAFETY AND SOUNDNESS REQUIREMENTS FOR FEDERAL HOME LOAN BANKS.—Clause (iv) of subparagraph (A) shall not apply to any guarantee (including a letter of credit) by a Federal home loan bank unless such bank meets safety and soundness collateral requirements for such guarantees (including letters of credit) which comply with the requirements which apply under regulations applicable to such guarantees (including letters of credit) by Federal Home Loan Banks.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to guarantees made after the date of the enactment of this Act.

## **Fact Sheet: Federal Home Loan Bank (FHLBank) Letters of Credit (LOCs) supporting tax-exempt bonds**

- The Housing and Economic Recovery Act of 2008 amended Section 149(b) of the Internal Revenue Code to add Federal Home Loan Banks (FHLBanks) to the list of Government Sponsored Enterprises permitted to credit-enhance non-housing tax-exempt bonds (the provision sunset 12/31/2010).
- There is now a critical need for legislation to support local governments and communities in maintaining and developing critical infrastructure and in meeting other pressing needs. This legislation will help local communities raise funds for water treatment facilities, industrial development, healthcare facilities, schools and other important initiatives.
- The legislation reauthorizes FHLBank members to serve traditionally underserved credit enhancement markets for small issuers of tax-exempt bonds traditionally ignored by larger credit enhancement providers.
- The legislation will allow FHLBank LOCs to support all types of tax-exempt bonds especially helpful for economic development and 501c3 activities.
  - FHLBank LOCs do not constitute a federal guarantee of tax-exempt debt
  - FHLBank LOCs are not directly or indirectly guaranteed by the United States – as stipulated in 12USC Section 1435. FHLBanks and their obligations are the joint and several liability only of the 11 FHLBanks.
  - FHLBanks are privately capitalized and rated by rating agencies.
- The legislation strikes an arbitrary provision freezing collateral requirement to an arbitrary date in 2008. The legislation will allow collateral requirements to evolve under the direction of the FHLBanks' regulator, the Federal Housing Finance Agency.

### **Example of how a FHLBank Standby Letter would work**

A hospital needs to issue \$7 million in tax-exempt debt to refurbish its emergency care facility. The hospital asks the community bank for a letter of credit (LOC) to back the bond in order to lower the cost. They need a Aaa or AA credit enhancement so the local bank asks its FHLBank for a standby letter of credit (SLOC).

- The member bank contracts with the hospital to provide credit support for the bonds. This includes a FHLBank LOC.
- The member bank charges a fee to the issuer.
- The member bank puts up collateral and pays a fee to the FHLBank for the SLOC. Collateral is required for the SLOC under regulation 12 CFR Part 1269.

The FHLBank member bank is providing the credit support, with a FHLBank LOC. The Aaa or AA rating lowers the all-in borrowing costs of the issuer.

#### **4. FHLBank Letters of Credit**

- Federal Home Loan Bank Letters of Credit serve to support housing and community development and vital local, state and federal public financing.
- Such Letters of Credit also support member asset and liability management, support public unit deposits, and provide liquidity to members and the financial system.

#### **Amendment to the Federal Home Loan Bank Act**

12 U.S.C. Sec.1431 is amended by adding immediately following section (k) new subsection (l);

“(l) Letters of Credit – Each Federal Home Loan Bank is authorized to issue and confirm letters of credit, secured by collateral eligible to secure advances, to support any activity permitted under law or regulation applicable to the member or housing associate.”

## Fact Sheet: FHLBank<sup>1</sup> Letters of Credit (LOCs) Support Community Liquidity in Times of Crisis

- This legislation will codify long-standing FHLBank regulatory authority to offer letters of credit that support member institutions and the communities they serve.
- FHLBank LOCs support FHLBank member efforts in housing and community development and vital local, state and federal public financing.
- The most significant use of FHLBank LOCs is to support members holding public unit deposits. These are funds from state and local government that can be then put to use in those communities. FHLBank letters of credit benefit the municipality or local unit of government by
  - Ensuring that local units of government have the widest range of alternatives when they consider where to deposit their public funds. These LOCs are paid for by the FHLBank member institution, not the municipality
  - Guaranteeing that the FHLBank will pay the public unit depositor, upon demand, if the banker holding the deposits were to default on the deposit. It also allows the public unit immediate access to its funds without having to first liquidate securities, which are normally pledged to them.
- FHLBank LOCs provide an important tool for members by
  - Enabling bankers to hold public unit deposits at less cost by eliminating the need for the depository bank to match securities and monitor margin calls which reduces operational expenses. Unlike securities, the value of an LOC remains constant and does not change with market fluctuations.
  - Allowing bankers to retain securities for liquidity and other purposes.
- State treasurers often view the FHLBank LOC as having advantages over traditional securities collateral. Specifically, in the unlikely event of default, the public unit need only present documentation in accordance with the terms of the LOC to the FHLBank to receive full payment and thereby avoid the delays involved with an attachment and liquidation of securities. The LOC relieves the public unit of having to seek recovery of the securities in the event of default and instead places that burden on the FHLBank, which can seek to recover only after it has paid the public unit for the debt.
- FHLBanks have had great success supporting the collateral needs of member institutions with LOC issuances as FHLBank LOCs are used as collateral for public deposits throughout the United States. This legislation would bring DC law into parity with law in 48 states that allow FHLBank LOCs to be used as collateral for public deposits.

---

<sup>1</sup> FHLBanks are government-sponsored entities created by Congress in 1932, which are regulated by the Federal Housing Finance Agency (FHFA). There are eleven regional FHLBanks with more than \$1 trillion in total assets (9/30/2019). FHLBanks offer competitively priced financing, community development grants, and other banking services to approximately 6,700 member financial institutions

## **Enable the Federal Home Loan Banks to Accept as Collateral Loans Authorized by COVID-19 Programs**

- The amendment would enable the Federal Home Loan Banks to assist their members in the COVID-19 crisis by expanding the eligible collateral for Federal Home Loan Bank advances to include loans under programs or facilities established by the Secretary of the Treasury or the Federal Reserve to address the economic impact of the crisis.
- The acceptance of such collateral would be governed by the credit policies of each Federal Home Loan Bank.

### **Amendment to the FHLBank Act**

The Federal Home Loan Bank Act (12 U.S.C. Section 1421 et. Seq.) is amended in Section 10 (a) (3)(B) (12 U.S.C. Section 1430 (a)(3)(B) as follows:

Add “or loans” following “Securities”, so that the subsection begins: “Securities or loans issued, insured, or guaranteed by the United States Government or any agency thereof...”.

**Fact Sheet: Enable the Federal Home Loan Banks to Accept as Collateral Loans Authorized by COVID-19 Programs**

- The challenge for the Federal Government to quickly inject hundreds of billions of dollars of credit in businesses across the country is to harness the strength of financial institutions in all markets.
- Federal Home Loan Banks, operating through a network of 6,700 members that already provides liquidity to these institutions.
- As the new Federal programs are rolled out to support the economy, harnessing the strength of the FHLBank regional cooperatives will ensure that this is a Main Street program, not a Wall Street program.
- This amendment will add an important feature to Federal efforts by allowing loans made and supported by these new programs to be accepted as collateral for FHLBank loans to members (advances).
- Enabling local lending institutions that are members of FHLBanks to pledge those loans as collateral for advances from FHLBanks will allow that institution to provide more support for the communities they serve.