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The Federal Home Loan Bank System and Resolution of a Failure

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Summary

The Federal Home Loan Bank system is a cooperative, government-sponsored enterprise, created to provide liquidity to the nation's lenders with a special focus on low and moderate-income housing and community development, all under the supervision of the recently created Federal Housing Finance Agency. Each Federal Home Loan Bank (FHLBank) essentially acts as a lender to lenders. The 12 regional banks engage in no direct lending to the public. Instead, member banks turn to the FHLBank for on-demand low interest loans, which the member bank can then use to issue mortgages or other loans to the general public. The 12 regional banks that make up the FHLBank system, though unfamiliar to many, have been key players throughout the financial crisis and are likely to continue to play an important role in the ongoing economic recovery.

The FHLBanks played an active role in efforts to stabilize the financial system throughout the financial crisis. As other sources of funding fell, financial institutions increasingly turned to the FHLBanks as a source for capital. FHLBank advances (loans to member banks) likely prevented a number of financial institutions from collapsing, and delayed the failure of other institutions long enough to allow a merger or acquisition by a third party. The FHLBanks are currently, however, suffering various degrees of financial difficulty due to declining home prices, rising delinquencies and foreclosures, and previous decisions that turned out badly.

The FHLBanks' recent financial troubles have led to questions as to what legal options would be available to handle the failure of one, or all, of the FHLBanks. Both the structure of the FHLBank system itself and federal law provide for certain procedures to stave off any system wide collapse. Were an FHLBank to fail, the existing internal cooperative structure of the FHLBank system may be able to stabilize the system as a whole. If internal corrections fail, however, statutory authority exists for a government intervention targeted at either stabilizing or liquidating the affected bank.

This report provides an overview of the FHLBanks, analyzes the current financial condition of the FHLBanks, and examines the legal issues that would be germane if one of the 12 regional FHLBanks were to become insolvent.

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Introduction

The Federal Home Loan Bank system is a cooperative, government-sponsored enterprise, created to provide liquidity to the nation's lenders with a special focus on low and moderate-income housing and community development, all under the supervision of the recently created Federal Housing Finance Agency. The Federal Home Loan Bank (FHLBank) essentially acts as a lender to lenders. The 12 regional banks engage in no direct lending to the public. Instead, member banks turn to the FHLBank for on-demand low interest loans which the member bank can then use to issue mortgages or other loans to the general public. The 12 regional banks that make up the FHLBank system, though unfamiliar to many, have been key players throughout the financial crisis and are likely to continue to play an important role in the ongoing economic recovery. Many of the FHLBanks, however, like so many other entities involved in providing or financing mortgages, are suffering serious financial stress as a result of the collapse of the housing market.

With the regional FHLBanks suffering various degrees of financial difficulty, and a number reporting capital shortages, concerns have been raised as to the stability of the FHLBank system as well as the consequences of an FHLBank failure.[1] Anxiety over a struggling FHLBank system may be warranted, as the banks as a whole are equal in size to failed mortgage giants Fannie Mae and Freddie Mac and just as interconnected with the national mortgage market. This report discusses the FHLBanks' creation, purpose, structure, and position within the overall financial system so as to clarify the functions of the FHLBank. The report then outlines the FHLBanks' current financial state and the statutory options for handling a potential failure.

Overview of the FHLBank

Historical Creation

Until the Depression, mortgages were designed to be refinanced every five to 10 years. During the Depression, depositors withdrew their money from banks, leaving banks unable to fund replacement mortgages for the loans that came due. Unable to refinance, many homeowners had insufficient resources to pay off the mortgages and defaulted. The weak economy and previous defaults and foreclosures depressed home prices and exacerbated the problem.

The Federal Home Loan Bank Act of 1932 created the Federal Home Loan Bank (FHLB) system to make loans, known as "advances," to member banks that lent the money as mortgages to homeowners.[2] The banks pledged existing mortgages as collateral for the advances and to assure that the funds were used to finance housing. Mortgage lenders wishing access to advances had to join the system and were regulated for safety and soundness by the Federal Home Loan Bank Board.

The FHLBank underwent significant reforms in 1989, 1999, and 2008. In 1989, the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) made major changes to the

[1] Mike Ferullo, *Profits Drop 50 Percent as Housing Woes Hit Federal Home Loan Banks' Portfolios*, BNA Banking Daily, July 8, 2009.

[2] P.L 72-304.

system in response to severe failures in the savings and loan industry.[3] FHLBank system membership was opened to any depository institution engaging in significant mortgage lending. The new Federal Housing Finance Board replaced the Federal Home Loan Bank Board in regulating members.[4] Each FHLBank had to set aside at least 10% of net earnings for low and moderate-income housing programs.[5]

The Federal Home Loan Bank System Modernization Act of 1999 expanded the membership and mission of the FHLBank system by dropping minimum mortgage asset requirements, and making voluntary membership available to a broader range of financial institutions.[6] The mission of the FHLBanks was also expanded by allowing the banks to secure advances with assets other than housing loans such as agricultural and small business loans.

In 2008, the Housing and Economic Recovery Act (HERA) instituted a new FHLBank system regulator in response to concerns that the FHLBank Board lacked sufficient powers and a desire to combine FHLBank system regulation with that for two other housing government-sponsored enterprises (GSE), the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac).[7] The new regulator, the Federal Housing Finance Agency (FHFA), was granted broad supervisory and regulatory powers, including the new authority to set risk-based capital requirements, liquidate an FHLBank, or act as either a conservator or a receiver of an FHLBank facing potential insolvency. HERA also made the FHFA Director a presidential appointee subject to Senate confirmation, who would serve a five year term and hold broad discretion over the regulation of the housing.[8] Regulation of FHLBank members depends on the form of legal organization, such as a state charter or federal savings association, that the member has selected.[9]

Structure

Similar to the Federal Reserve System, the FHLBank system consists of 12 regional member-owned and federally chartered banks, each with its own individual board of directors. There are regional FHLBanks in Atlanta, Boston, Chicago, Cincinnati, Dallas, Des Moines, Indianapolis, New York, Pittsburgh, San Francisco, Seattle, and Topeka. The Office of Finance is jointly owned by the FHLBanks and coordinates the sale of debt securities, the system's chief means of raising funds. Each regional bank has its own independently operating 13-member board of directors. Although member banks are free to elect the directors, the majority of each board must be officers of member banks, and at least two-fifths of board members must be independent (non-member bank) directors.[10]

[3] P.L. 91-351.

[4] P.L. 91-351 § 301.

[5] P.L. 91-351 § 303.

[6] P.L. 106-102 § 603.

[7] P.L. 110-289 § 1311.

[8] P.L. 110-289 § 1312.

[9] CRS Report R40249, *Who Regulates Whom? An Overview of U.S. Financial Supervision*, by (name redacted) and (name redacted), contains more details.

[10] P.L. 110-289 § 1202.

While each regional bank operates independently, all FHLBanks are responsible for the debts and obligations of the other banks.[11] This relationship of joint and several liabilities adds reliability to FHLBank debt securities and is one reason why the banks are usually considered a single GSE rather than a collection of separate entities.

Membership

All 12 of the regional banks are private cooperatives that are owned and operated by their individual member institutions. Membership in the FHLBank system is open to any federally regulated depository or financial institution that engages in "long-term" home mortgage lending.[12] To gain membership status, the eligible institution must purchase stock in the regional FHLBank that serves the state in which the institution's home office or principal place of business is found. Once an institution has purchased stock in its regional bank, it then becomes a partial owner of the regional FHLBank and is eligible to receive benefits such as dividend payments and FHLBank advances.[13] As of September 30, 2009, membership in the FHLBank system exceeded 8,000 institutions, with collective assets measuring more than $13 trillion.[14] Commercial banks represent over 70% of the total FHLBank system membership.[15]

GSE Status

The fundamental characteristic that allows the FHLBanks to provide low interest loans to member institutions is their collective status as a "government-sponsored enterprise" (GSE). Often described as a public/private hybrid, a GSE is a quasi-governmental, privately owned and managed, but federally chartered, financial lending institution whose activities are limited to certain public purposes.[16] For example, the three housing GSEs can only purchase mortgages that have already been originated and either borrowing funds to hold the mortgages or packaging the mortgages into mortgage-backed securities (MBS). These MBS can be either held by the GSEs or sold to investors. GSEs do not normally receive explicit government funding.

In addition to the FHLBank system, the other GSEs are Fannie Mae, Freddie Mac, the Federal Agricultural Mortgage Corporation (Farmer Mac), and the Farm Credit System.[17] Although a federally chartered organization generally receives increased governmental supervision and cannot bind the government in any way, Congressional sponsorship brings with it the authority to exercise specifically enumerated governmental powers and a number of significant financial

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[11] 12 U.S.C. §1431.

[12] 12 U.S.C. § 1424.

[13] In the past, members purchased additional FHLBank shares because the shares paid dividends at attractive rates.

[14] Office of Finance, Federal Home Loan Bank System, *Quarterly Combined Financial Report for the Nine Months Ended September 30, 2009*, Nov. 16, 2009, p. 203. Available at http://www.fhlb-of.com/analysis/pressframedyn2.html?source=2009q3cfr111609.pdf.

[15] *Id.*

[16] See CRS Report RS21663, *Government-Sponsored Enterprises (GSEs): An Institutional Overview*, by (name red acted), for more information.

[17] Both Fannie Mae and Freddie Mac were placed into a conservatorship by the FHFA on Sept. 8, 2008. For more information, see CRS Report RL34661, *Fannie Mae's and Freddie Mac's Financial Problems*, by (name redacted).

benefits. For instance, the FHLBank system enjoys a variety of special privileges such as exemption from federal, state, and local income tax.[18]

Although Fannie Mae's and Freddie Mac's stock is traded on the New York Stock Exchange, only members can purchase stock in their FHLBank. FHLBank shares are purchased from and sold to the FHLBank that issued them.

Perhaps the most important benefit enjoyed by the FHLBank, however, is the so-called implicit guarantee that the federal government backs FHLBank obligations. The value of this implicit guarantee is, however, ambiguous. On the one hand, all debt issued by the FHLBank system, Fannie Mae, and Freddie Mac must state that repayment is not guaranteed by the federal government.[19] On the other hand, Congress has assisted GSEs that were in financial difficulty. For example, when Fannie Mae was losing significant amounts of money in 1982, Congress passed the Miscellaneous Revenue Act of 1982 that provided tax benefits for Fannie Mae.[20] The Farm Credit System was aided with the Agricultural Credit Act of 1987, which authorized the issuance of $4 billion in bonds to support system members.[21] Furthermore, Section 1117 of the Housing and Economic Recovery Act of 2008 (HERA) authorized the Secretary of the Treasury to purchase any amount of GSE securities—debt or equity—necessary to provide stability to financial markets, prevent disruptions in the availability of mortgage finance, and protect the taxpayer.[22] This authority, which expired December 31, 2009, was used by the Secretary of the Treasury to enter into a contract with Fannie Mae and Freddie Mac to supply an unlimited amount of equity between 2010 and 2012.[23] Because of this implicit federal guarantee on FHLBank debts, FHLBank securities are considered to have little to no risk and regional FHLBanks can borrow funds from investors at very low interest.

FHLBank Role in the Financial Crisis

The FHLBanks played an active role in efforts to stabilize the financial system throughout the financial crisis.[24] As other sources of funding fell, financial institutions increasingly turned to the FHLBank as a source for capital both to help cover losses and to allow members to continue making mortgages. FHLBank advances to member banks likely prevented a number of financial institutions from collapsing, and delayed the failure of other institutions long enough to allow a merger or acquisition by a third party.

[18] 12 U.S.C. § 1433.

[19] See e.g., 12 U.S.C. § 1435 ("All obligations of the Federal Home Loan Banks shall plainly state that such obligations are not obligations of the United States and are not guaranteed by the United States.").

[20] P.L. 97-362 § 102.

[21] P.L. 100-233 § 201.

[22] P.L. 110-289 § 1117.

[23] At the time that Fannie Mae and Freddie Mac were placed in conservatorship, the Secretary of the Treasury agreed to purchase a maximum of $100 billion of senior preferred stock in each. This was later raised to $200 billion, and still later the dollar limit was eliminated and the performance period changed. See U.S. Treasury, "Treasury Issues Update on Status of Support for Housing Programs," December 24, 2009, available at http://www.treas.gov/press/releases/200912241534592 4543.htm.

[24] Adam B. Ashcraft, Morten L. Bech, and W. Scott Frame, *The Federal Home Loan Bank System: The Lender of Next-to-Last Resort?*, Federal Reserve Bank of New York, Federal Reserve Bank of New York Staff Reports, no. 357, November 2008, http://www.newyorkfed.org/research/staff_reports/sr357.pdf.

One result of the FHLBanks' role in the financial crisis has been an increased concentration of advances. For example, 62% of the San Francisco FHLBank's advances were to Citigroup, JP Morgan Chase, and Wachovia (currently owned by Wells Fargo).[25] This concentration increased the potential losses to FHLBanks if a member, such as Wachovia, were to become insolvent. In modern finance, banks seek to have a large number of relatively small borrowers instead of a few large customers because they are better able to sustain more small losses than one large loss.[26]

Another result has been that because of mergers, advances will decline for some banks and other banks will increase advances. For example, the Seattle FHLBank lost its largest member and largest advance user when JP Morgan Chase purchased Washington Mutual.

Current Financial State of the FHLBank System

The FHLBank system (along with Fannie Mae and Freddie Mac) continue to be in various degrees of financial difficulty due to declining home prices, rising delinquencies and foreclosures, and previous decisions that turned out badly. All three balance profitability against providing support for the housing finance system and affordable housing opportunities.

According to preliminary, unaudited 2009 financial reports, combined new operating income for 2009 was $1.9 billion compared to $1.2 billion for 2008.[27] Four FHLBanks reported preliminary net losses: Boston (-$187 million), Chicago (-$65 million), Pittsburgh (-$37 million), and Seattle (-$162 million). According to the FHLBank Office of Finance, most of these losses were due to declines of fair market value of certain assets.

In recent years, the FHLBanks' income has decreased for a number of reasons:

- Mergers between member banks have reduced the number of members and shifted membership (and borrowing) between the regional FHLBanks.
- FHLBank profitability has decreased because the difference ("spread") between FHLBanks' cost of borrowing funds and the interest rate charged on advances to members has been smaller than in previous years.
- The FHLBanks purchased private label MBS (MBS not issued by Fannie Mae, Freddie Mac or the federal government), which have not been as profitable as anticipated.

[25] Federal Home Loan Bank of San Francisco, *Securities and Exchange Commission Form 10-Q*, September 30, 2009. Available at http://edgar.sec.gov/Archives/edgar/data/1316944/000119312509231340/0001193125-09-231340-index.htm.

[26] This diversification strategy works if the risks of the small borrowers are independent of each other. If all the small borrowers (FHLBank system members) are doing the same activity, such as making subprime mortgages or lending to the same industry, there is no difference in risk to the lender between many small borrowers and one large borrower.

[27] Office of Finance, FHLBanks, "Office of Finance Announces Preliminary Unaudited 2009 Combined Operating Highlights for the Federal Home Loan Banks," Feb. 23, 2010, available at http://www.fhlb-of.com/analysis/pressframedyn2.html?source=2009ophighlights022310.pdf. Based on 2009, audited results are likely to be released around the middle of March 2010.

- The Chicago and Seattle FHLBanks developed programs to sell MBS in competition with Fannie Mae and Freddie Mac, but these programs produced losses and have since been terminated.

More specifically, the Chicago FHLBank signed a consent order to cease and desist repurchasing capital stock, and the Seattle FHLBank is officially considered to be undercapitalized.[28] Des Moines and Pittsburgh are, also, considered to be in less than satisfactory condition. Boston and Atlanta have suspended dividends to conserve capital. **Table 1** provides more details on the conditions of each of the 12 banks.

Table 1. FHLBank Financial Status

As of December 31, 2008

FHLBank	Overall Status
Boston	Satisfactory overall. Moratorium on excess stock repurchases and restricted quarterly dividends.
New York	Satisfactory overall.
Pittsburgh	Overall condition is less than satisfactory. Suspended dividends and stock repurchases. At risk of failing its risk-based capital test.
Atlanta	Satisfactory overall. Temporarily suspended dividends and repurchase of capital stock.
Cincinnati	Satisfactory overall.
Indianapolis	Satisfactory overall.
Chicago	Less than satisfactory overall. Consent order to cease and desist repurchasing capital stock (October 10, 2007).
Des Moines	Less than satisfactory overall. Temporary suspension of dividends and excess stock repurchase. Needs to improve credit risk management, particularly with respect to its insurance company members.
Dallas	Satisfactory overall.
Topeka	Satisfactory overall.
San Francisco	Overall the FHLBank is considered satisfactory, but its earnings and capital are vulnerable if its large PLS [private label securities] portfolio deteriorates further. Risk profile has increased.
Seattle	Undercapitalized. Less than satisfactory. FHFA has supervisory concerns about the FHLBank's $5.6 billion PLS portfolio. The only FHLBank with negative retained earnings. Does not meet minimum risk-based capital requirements of $2.71 billion with permanent capital of $2.55 billion. Permanent capital decreased because of losses, and its risk-based capital requirement increased because of the PLS portfolio.

Source: FHFA, *FHFA 2008 Annual Report to Congress (Revised)*, pp. 53-73. Available at http://www.fhfa.gov/webfiles/2335/FHFA_ReportToCongress2008508rev.pdf. Also FHFA, "FHFA Reaffirms Undercapitalized Status of the Federal Home Loan Bank of Seattle," press release, Nov. 6, 2009. Available at http://www.fhfa.gov/webfiles/15171/Seattle_FHLB_release_110609%5B1%5D.pdf.

Notes: The "Overall Status" column is a summary of FHFA comments.

[28] 12 C.F.R. § 932.2 establishes capital requirements for FHLBanks. Total capital must be at least 4.0% of an FHLBank's total assets. Risk-based capital depends on an FHLBank's credit risk, market risk, and operations risk.

In the first nine months of 2009, FHLBank system assets decreased to $1,062 billion from $1,349 billion (21%) and total capital decreased to $45 billion from $50 billion (12%).[29] For the first nine months of 2009 system net income was $1.3 billion compared to $1.9 billion for the same period in 2008.[30] Decreasing mortgage market activity led to a reduction of bonds and notes outstanding (used mainly to finance advances to members) to $980 billion from $1,258 billion.[31]

Appendix Table A-1 contains more detailed financial information.

Handling an FHLBank Failure

The FHLBanks' recent financial troubles have led to questions as to what options would be available to handle the failure of one, or all, of the regional FHLBanks. Both the structure of the FHLBank system itself and federal law provide for certain procedures to stave off any system wide collapse. If necessary, however, FHFA has the same authority under HERA to seize control of one or more FHLBanks as it used to take over management of Fannie Mae and Freddie Mac.

Internal Corrections

The FHLBank system is structured in a way that protects the viability of the system as a whole. Each regional bank is jointly and severally responsible for the liabilities and debts of all the other banks.[32] Therefore, if one regional bank were to approach insolvency, the other regional banks would be required to cover the failing bank's debts. In most situations, the eleven remaining banks would likely be able to recover from such an incident without requiring any further federal involvement. However, if a number of regional banks fail, or if all 12 banks happen to be suffering severe financial stress at the time of a single failure, the cooperative structure of the FHLBank system may not be sufficient to produce a full recovery.

FHLBanks are also authorized to engage in voluntary mergers with the approval of the Director of the FHFA and the boards of directors of the banks involved.[33] There is no statutory requirement that the FHLBank system be comprised of 12 banks. Although there may not be more than 12, HERA amended the Federal Home Loan Bank Act to allow any reduction in the number of FHLBanks pursuant to a merger or liquidation.[34] The voluntary merger of a struggling bank with a stronger FHLBank would therefore be another internal option for handling a single FHLBank failure.

[29] Office of Finance, Federal Home Loan Bank System, *Quarterly Combined Financial Report for the Nine Months Ended September 30, 2009*, Nov. 16, 2009, p. 70, and 72. Available at http://www.fhlb-of.com/analysis/pressframedyn2.html?source=2009q3cfr111609.pdf.

[30] Id.

[31] Id.

[32] 12 U.S.C. § 1431.

[33] P.L. 110-289 § 1209.

[34] P.L. 110-289 § 1210.

Federal Intervention Under HERA

Where internal resources are insufficient, HERA provides the statutory authority for handling a financially troubled FHLBank in need of government intervention. Under the statutory scheme, HERA empowers the FHFA with a variety of options, allowing for various levels of government involvement, to respond to a potential FHLBank insolvency. Depending on the magnitude of the capital shortage, the agency has the authority to change the leadership of the banks, merge regional banks, liquidate individual banks, or place a regional bank under a conservatorship or a receivership.[35] Additionally, HERA gave the Secretary of the Treasury the temporary authority to lend or invest as much money as is necessary in the event of a mortgage or financial market emergency.[36]

In conjunction with its authority to set minimum risk-based capital levels, the FHFA may enforce established levels through corrective action. The type of action available to the FHFA depends on the degree of undercapitalization. HERA sets up four classifications for undercapitalization: adequately capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized.[37] The Director of FHFA is required to "closely monitor" the condition of any undercapitalized FHLBank.[38] If conditions worsen and the FHLBank becomes significantly undercapitalized, the FHFA must either order a new election for the board of directors of the affected bank, mandate the dismissal of directors or executive officers, or require the bank to hire "qualified executive officers."[39]

Should a bank become critically undercapitalized, HERA provides for the discretionary appointment of the FHFA as conservator or receiver of the FHLBank.[40] The statute lists a number of grounds for this discretionary appointment, including but not limited to, insufficient assets, an inability to meet obligations, or the realization of significant losses.[41] Where the statutory grounds are satisfied, the FHFA Director has the discretion to choose whether to place the bank in a conservatorship, a receivership, or neither. Generally speaking, a conservator is appointed to operate the institution, conserve its resources, and restore it to viability. A receiver is appointed to liquidate the institution, sell its assets, and pay claims against it to the extent available funds allow.

As a conservator or receiver, the FHFA would exercise a high degree of control over the failing bank. The agency would be authorized to operate and manage the institution while exercising "all rights, titles, powers, and privileges of the regulated entity, and of any stockholder, officer, or director of the regulated entity."[42] Explicitly granted powers include the authority to transfer assets, pay obligations, issue subpoenas, repudiate or enforce contracts entered into by the

[35] 12 U.S.C. § 1446.

[36] P.L. 110-289 § 1117. The authority expired Dec. 31, 2009.

[37] P.L. 110-289 § 1142.

[38] P.L. 110-289 § 1143.

[39] P.L. 110-289 § 1144.

[40] P.L. 110-289 § 1367(a).

[41] P.L. 110-289 § 1367(a)(2).

[42] P.L. 110-289 § 1367(a)(3).

FHLBank, and any other action "necessary to put the regulated entity in a sound and solvent condition."[43]

In limited circumstances, HERA removes the Director's discretion and mandates that an FHLBank be placed into a mandatory receivership.[44] Only where a bank's debts exceed its assets during the previous 60 days, or the bank generally has not been paying debts as they come due does HERA mandate that the bank be placed into a receivership.[45] Under a receivership the FHFA is authorized to liquidate and sell any assets held by the FHLBank. However, whether the FHFA establishes a discretionary conservatorship or receivership or a mandatory receivership, the affected FHLBank may challenge the appointment in court.[46]

Additionally, the FHFA has broad authority to liquidate or reorganize an individual FHLBank. The liquidation or reorganization of FHLBank assets may occur "whenever the Director finds that the efficient and economical accomplishment of the purposes [of the FHLBank] will be aided by such action."[47] Prior to taking action under this provision however, the FHFA must give the affected FHLBank 30 days' written notice of the basis for such a determination.[48] The affected bank may then challenge the determination through a hearing before the FHFA.

The authority given to the FHFA director which was used to place Fannie Mae and Freddie Mac into voluntary conservatorship based on their critical undercapitalization would apply to handling a critically undercapitalized FHLBank. HERA ensures that when any action is taken, the FHFA Director consider the differences between the FHLBanks and other GSEs like Fannie Mae and Freddie Mac. In other words, the Director is required by statute to consider the FHLBank's cooperative ownership, liquidity and affordable housing mission, capital structure, and joint and several liability before taking any formal or informal corrective action.[49]

Conclusion

The FHLBanks utilize the many benefits of their GSE status to provide their member banks with access to low-cost funding.[50] During the recession that started in 2008 and the current liquidity crunch, the FHLBanks are likely to continue to play a large role in the ongoing recovery of the national housing market. The mortgage crisis, however, has left some FHLBanks in a precarious financial situation, with billions in unprofitable MBS weakening their financial books. Were an FHLBank to fail, the existing internal cooperative structure of the FHLBank may be able to stabilize the system as a whole. If internal corrections fail, however, statutory authority exists for a government intervention targeted at containing the disruption by stabilizing or liquidating the affected FHLBank.

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43 P.L. 110-289 § 1367(b).

44 P.L. 110-289 § 1367(a)(4).

45 *Id.*

46 P.L. 110-289 § 1145(a).

47 12 U.S.C. § 1446.

48 P.L. 110-289 § 1214.

49 P.L. 110-289 § 1201.

50 How much of these low cost loans are passed on to the public is a matter for future research. *See*, Ashcraft, *supra* note 24, at 9.

Appendix. FHLBank Financial Condition

As of September 30, 2009 the FHLBank system had assets of slightly less than $1.1 trillion, with over 70% of those assets tied up in advances or mortgage loans.[51] The FHLBank exercises no oversight over their advances once they are distributed to member banks. A member bank is limited, however, on how much it can borrow from the FHLBank based on the amount of stock the bank has purchased and the percentage of mortgage-related assets it holds.

Table A-1. FHLBank Capital

Third Quarter 2009 and Year End 2008

	September 30, 2009		December 31, 2008	
	Required	**Actual**	**Required**	**Actual**
Atlanta				
Risk-based capital	$3,996,460	$9,085,387	$5,715,678	$8,942,306
Total capital-to-assets ratio	4.00%	5.56%	4.00%	4.29%
Total regulatory capital	$6,536,411	$9,085,387	$8,342,574	$8,942,306
Leverage ratio	5.00%	8.34%	5.00%	6.43%
Leverage capital	$8,170,514	$13,628,081	$10,428,217	$13,413,459
Boston				
Risk-based capital	$1,636,943	$3,856,074	$2,133,384	$3,658,377
Total regulatory capital	$2,417,934	$3,856,074	$3,214,127	$3,658,377
Total capital-to-asset ratio	4.00%	6.40%	4.0 %	4.6 %
Leverage capital	$3,022,418	$5,784,111	$4,017,658	$5,487,565
Leverage capital-to-assets ratio	5.0 %	9.6 %	5.0 %	6.8 %
Chicago		Not Available		
Cincinnati				
Risk-based capital	$580,517	$4,152,158	$542,630	$4,399,053
Capital-to-assets ratio	4.00%	5.39%	4.00%	4.48%
Regulatory capital	$3,079,342	$4,152,158	$3,928,243	$4,399,053
Leverage capital-to-assets ratio	5.00%	8.09%	5.00%	6.72%
Leverage capital	$3,849,178	$6,228,237	$4,910,303	$6,598,580

[51] Office of Finance, Federal Home Loan Bank System, *Quarterly Combined Financial Report for the Nine Months Ended September 30, 2009*, Nov. 16, 2009, p. 70. Available at http://www.fhlb-of.com/analysis/pressframedyn2.html?source=2009q3cfr111609.pdf.

	September 30, 2009		December 31, 2008	
	Required	**Actual**	**Required**	**Actual**
Dallas				
Risk-based capital	$482,617	$2,935,312	$930,061	$3,530,208
Total capital	$2,690,454	$2,935,312	$3,157,316	$3,530,208
Total capital-to-assets ratio	4.00%	4.36%	4.00%	4.47%
Leverage capital	$3,363,067	$4,402,968	$3,946,645	$5,295,312
Leverage capital-to-assets ratio	5.00%	6.55%	5.00%	6.71%
Des Moines				
Risk-based capital	$893,215	$3,427,763	$1,967,981	$3,173,807
Total capital-to-asset ratio	4.00%	5.24%	4.00%	4.66%
Total regulatory capital	$2,617,039	$3,427,763	$2,725,172	$3,173,807
Leverage ratio	5.00%	7.86%	5.00%	6.99%
Leverage capital	$3,271,299	$5,141,644	$3,406,465	$4,760,711
Indianapolis				
Risk-based capital	$1,011,568	$2,811,390	$1,482,476	$2,701,217
Regulatory permanent capital-to-asset ratio	4.00%	5.79%	4.00%	4.75%
Regulatory permanent capital	$1,942,131	$2,811,390	$2,274,399	$2,701,217
Leverage ratio	5.00%	8.69%	5.00%	7.13%
Leverage capital	$2,427,664	$4,217,084	$2,842,999	$4,051,826
New York				
Risk-based capital	$558,940	$5,936,273	$650,333	$6,111,676
Total capital-to-asset ratio	4.00%	5.05%	4.00%	4.44%
Total capital	$4,704,173	$5,939,631	$5,501,596	$6,113,082
Leverage ratio	5.00%	7.57%	5.00%	6.67%
Leverage capital	$5,880,216	$8,907,767	$6,876,995	$9,168,920
Pittsburgh				
Risk-based capital	$3,182,084	$4,415,868	$3,923,143	$4,156,856
Total capital-to-asset ratio	4.0%	6.6%	4.0%	4.6%
Total regulatory capital	$2,660,423	$4,416,362	$3,632,237	$4,170,882
Leverage ratio	5.0%	10.0%	5.0%	6.9%
Leverage capital	$3,325,529	$6,624,296	$4,540,296	$6,249,310

	September 30, 2009		December 31, 2008	
	Required	Actual	Required	Actual
San Francisco				
Risk-based capital	$7,309	$14,468	$8,635	$13,539
Total regulatory capital	$8,448	$14,468	$12,850	$13,539
Total capital-to-assets ratio	4.00%	6.85%	4.00%	4.21%
Leverage capital	$10,561	$21,701	$16,062	$20,308
Leverage ratio	5.00%	10.27%	5.00%	6.32%
Seattle				
Risk-based capital	$2,591,371	$2,706,235	$2,707,000	$2,547,811
Total capital-to-assets ratio	4.00%	5.30%	4.00%	4.60%
Total regulatory capital	$2,163,496	$2,865,099	$2,334,468	$2,687,140
Leverage capital-to-assets ratio	5.00%	7.80%	5.00%	6.79%
Leverage capital	$2,704,370	$4,218,217	$2,918,085	$3,961,046
Topeka				
Risk-based capital	$559,458	$1,645,237	$1,389,373	$1,763,395
Total capital-to-asset ratio	4.0%	4.5%	4.0%	4.2%
Total capital	$1,749,665	$1,958,933	$2,342,249	$2,432,063
Leverage capital ratio	5.0%	6.4%	5.0%	5.7%
Leverage capital	$2,187,081	$2,781,551	$2,927,812	$3,313,760

Source: Federal Home Loan Banks, SEC Form 10-Q, Third Quarter 2009.

Note: Amounts are as reported under "Regulatory Capital" by each FHLBank and may be inconsistent.

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