



FHLB Tangible Capital

Issue 1: With the increase in interest rates, available for sale securities held on a commercial bank's balance sheets are experiencing mark-to-market unrealized losses that are charged to the AOCI (loss) account and ultimately tangible capital. The FDIC updated its capital regulations in 2014 and FHFA did not. This disparity in capital treatment makes this issue more complicated.

Issue 2: 12 CFR 1266.4 of the FHFA regulations mandate that if a member community bank has negative tangible capital under FHFA's 12 CFR 1266.1 definition, then a FHLB cannot make a new advance to the member unless the member's primary regulator (FDIC, OSS, or FRB) requests in writing that the advance be made. A FHLB may renew existing advances for successive terms of up to 30 days, unless the primary regulator directs otherwise. Outreach and education about this requirement to the primary regulators are underway in both the field offices and DC offices. It appears that the primary regulators (FDIC, OCC & FRB) no longer have delegations out to the field examiners to authorize continued FHLB lending which was common during the 2008 crisis.

Recommendations: FHLBs recommended to FHFA's Joshua Stallings that the preferred approach would be to have the FHFA promptly issue an Interim Final Regulation, effective immediately, with a

30-day request for public comment or alternatively the FHLBs could file a request to waive the FHFA's tangible definition under 12 CFR 1211. The new regulation would change the 1266.1 definition of tangible capital definition to be that of the primary regulator and if no primary regulator exists, as is the case with CDFIs, the FHFA's definition would apply. Providing an updated regulation which follows the primary regulator's capital rule would be the most effective way of communicating this issue to the primary regulators, but FHFA staff does not seem to support a regulatory fix at this time. It is difficult to ask the primary regulator to take action when no capital violation is present under their regulation.

Outreach and "re-educate" the primary regulators on the merits of "first responder" FHLB liquidity and the coordinated processes of 12 CFR 1266.4 (b) – (d) which have been used to mitigate insurance fund losses during times of market stress. Encourage that the primary regulators to consider a new examiner field delegation to encourage the dialogue between examiner and FHLB credit underwriters to determine if FHLB lending is advisable as contemplated by this regulation.