

116TH CONGRESS
2D SESSION

H. R. 8872

To amend the Federal Home Loan Bank Act to enable captive insurance companies to apply for membership in the Federal Home Loan Bank System, to add additional membership criteria for captive insurance companies, to require a study on Federal Home Loan Bank membership, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 4, 2020

Mr. HOLLINGSWORTH (for himself and Mr. HECK) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Federal Home Loan Bank Act to enable captive insurance companies to apply for membership in the Federal Home Loan Bank System, to add additional membership criteria for captive insurance companies, to require a study on Federal Home Loan Bank membership, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Transparency in Fed-
5 eral Home Loan Bank Membership Act of 2020”.

1 **SEC. 2. DEFINITIONS.**

2 Section 2 of the Federal Home Loan Bank Act (12
3 U.S.C. 1422) is amended by adding at the end the fol-
4 lowing:

5 “(13) CAPTIVE INSURANCE COMPANY.—The
6 term ‘captive insurance company’ means an insur-
7 ance company whose primary business is the insur-
8 ance of its affiliates.

9 “(14) INSURANCE COMPANY.—The term ‘insur-
10 ance company’ means an entity that holds an insur-
11 ance license or charter under the laws of a State.

12 “(15) PARENT COMPANY.—The term ‘parent
13 company’ means the ultimate parent company.”.

14 **SEC. 3. CAPTIVE INSURANCE COMPANY ELIGIBILITY FOR**
15 **MEMBERSHIP.**

16 (a) IN GENERAL.—Section 4(a) of the Federal Home
17 Loan Bank Act (12 U.S.C. 1424(a)) is amended by adding
18 at the end the following:

19 “(6) ELIGIBLE CAPTIVE INSURANCE COMPA-
20 NIES.—

21 “(A) IN GENERAL.—A captive insurance
22 company shall be eligible to become a member
23 of a Federal Home Loan Bank only if the par-
24 ent company of the captive insurance company
25 meets the following requirements:

1 “(i) MISSION ALIGNMENT STAND-
2 ARDS.—

3 “(I) HOUSING INVESTMENT.—At
4 least 51 percent of the total assets of
5 the parent company are invested in
6 residential mortgage loans.

7 “(II) FORM OF INVESTMENTS.—
8 At least 60 percent of the total assets
9 of the parent company are held in real
10 estate assets, cash and cash equiva-
11 lents, and government securities (as
12 such terms are used under section
13 856(c)(4)(A) of the Internal Revenue
14 Code of 1986).

15 “(ii) CAPITAL STANDARDS.—Such
16 capital standards as the Director deter-
17 mines appropriate, by rule, which shall be
18 as close as practicable to those capital
19 standards applicable to insured depository
20 institutions (as defined under section 3 of
21 the Federal Deposit Insurance Act).

22 “(B) ONGOING MEMBERSHIP.—

23 “(i) REPORTING REQUIREMENT.—
24 Every 5 years after becoming a member of
25 a Federal Home Loan Bank, a captive in-

1 insurance company shall submit a report,
2 prepared by a third-party auditor, to the
3 Director containing information on compli-
4 ance by the parent company with the re-
5 quirements described under subparagraph
6 (A).

7 “(ii) PARENT COMPANY REQUIRE-
8 MENTS.—A parent company of a captive
9 insurance company that is a member of a
10 Federal Home Loan Bank shall—

11 “(I) maintain the mission align-
12 ment standards described under sub-
13 paragraph (A)(i);

14 “(II) maintain the capital stand-
15 ards described under subparagraph
16 (A)(ii);

17 “(III) be deemed a ‘regulated en-
18 tity’ under section 1314 of the Fed-
19 eral Housing Enterprises Financial
20 Safety and Soundness Act of 1992
21 (12 U.S.C. 4514); and

22 “(IV) be subject to such addi-
23 tional reporting requirements as the
24 Director determines appropriate, by
25 rule.

1 “(iii) FAILURE TO MEET MISSION
2 ALIGNMENT STANDARDS REQUIREMENT.—

3 If the Director determines that a parent
4 company no longer meets the mission
5 alignment standards described under sub-
6 paragraph (A)(i), the Director shall require
7 the parent company to file quarterly re-
8 ports with the Director for a 1-year period,
9 showing how the parent company is seek-
10 ing to comply with such mission alignment
11 standards.

12 “(iv) REPORT ON PARENT COMPANY
13 COMPLIANCE WITH CAPITAL STANDARDS.—

14 “(I) IN GENERAL.—Each captive
15 insurance company that is a member
16 of a Federal Home Loan Bank shall
17 issue a quarterly report to the Bank
18 containing information on the compli-
19 ance, by the parent company of the
20 captive insurance company, with the
21 capital standards described under sub-
22 paragraph (A)(ii).

23 “(II) REPORT ON NON-COMPLI-
24 ANCE.—If a Federal Home Loan
25 Bank receiving reports described

1 under subclause (I) determines that a
2 parent company has failed to meet the
3 capital standards described under sub-
4 paragraph (A)(ii) for 2 consecutive
5 quarters, the Bank shall notify the
6 Director of such failure.

7 “(v) FAILURE TO MEET CAPITAL
8 STANDARDS REQUIREMENT.—If the Direc-
9 tor determines that a parent company no
10 longer meets the capital standards de-
11 scribed under subparagraph (A)(ii), the
12 Director shall require the parent company
13 to file a capital restoration plan with the
14 Director and the Federal Home Loan
15 Bank with respect to which the parent
16 company’s captive insurance company is a
17 member.

18 “(vi) TERMINATION OF MEMBER-
19 SHIP.—A captive insurance company’s
20 membership of a Federal Home Loan
21 Bank shall be terminated, in accordance
22 with section 6(d)(2) of the Federal Home
23 Loan Bank Act (12 U.S.C. 1426(d)(2)),
24 if—

1 “(I) the parent company of the
2 captive insurance company does not
3 submit a capital restoration plan re-
4 quired under clause (v) that is sub-
5 stantially in compliance with section
6 1369C of the Federal Housing Enter-
7 prises Financial Safety and Sound-
8 ness Act of 1992 (12 U.S.C. 4622)
9 within the applicable period;

10 “(II) the Director does not ap-
11 prove such a capital restoration plan
12 required under clause (v);

13 “(III) the Director determines
14 that the parent company has failed to
15 comply with such a capital restoration
16 plan; or

17 “(IV) with respect to a parent
18 company that the Director has deter-
19 mined no longer meets the mission
20 alignment standards described under
21 subparagraph (A)(i), the parent com-
22 pany has not returned to compliance
23 with such standards before the end of
24 the 1-year period described under
25 clause (iii).

1 “(vii) REAPPLICATION.—A captive in-
2 surance company whose membership in a
3 Federal Home Loan Bank is terminated
4 under clause (vi) may not reapply for
5 membership in a Federal Home Loan
6 Bank until the end of the 5-year period be-
7 ginning on the date of such termination.

8 “(C) PARENT COMPANY SUPPORT.—

9 “(i) IN GENERAL.—The Director shall
10 require the parent company of the captive
11 insurance company, in the event that the
12 captive insurance company defaults on any
13 amounts owed to a Federal Home Loan
14 Bank, to pay the Bank the amount of any
15 such default.

16 “(ii) ENFORCEMENT POWERS.—For
17 purposes of enforcing this subparagraph, a
18 parent company shall be deemed a regu-
19 lated entity under sections 1371, 1372,
20 and 1376 of the Federal Housing Enter-
21 prises Financial Safety and Soundness Act
22 of 1992 (12 U.S.C. 4631, 4632, and
23 4636).

24 “(D) CLARIFICATION OF PRIORITY OF SE-
25 CURED INTERESTS.—Any security interest

1 granted to a Federal Home Loan Bank by any
2 captive insurance company, or by its parent
3 company or any affiliate company on its behalf,
4 shall be entitled to priority over the claims and
5 rights of any party (including any receiver, con-
6 servator, trustee, or similar party having rights
7 of a lien creditor) other than claims and rights
8 that—

9 “(i) would be entitled to priority
10 under otherwise applicable law; and

11 “(ii) are held by actual bona fide pur-
12 chasers for value or by actual secured par-
13 ties that are secured by actual perfected
14 security interests.”.

15 (b) RULEMAKING.—Not later than the end of the 1-
16 year period beginning on the date of enactment of this
17 Act, the Director of the Federal Housing Finance Agency
18 shall issue the capital standards and reporting require-
19 ments rules described under subparagraphs (A)(ii) and
20 (B)(ii)(IV) of section 4(a)(6) of the Federal Home Loan
21 Bank Act.

22 (c) APPLICABILITY.—Section 4(a)(6) of the Federal
23 Home Loan Bank Act, as added by subsection (a), shall
24 take effect with respect to a captive insurance company

1 on the effective date of the rules required under subsection
2 (b).

3 (d) CAPTIVE INSURANCE COMPANY ELIGIBILITY
4 TRANSITION PERIOD.—A captive insurance company that
5 has, or will have, the company’s membership in a Federal
6 Home Loan Bank terminated due solely to the change in
7 the treatment of captive insurance companies under the
8 final rule of the Federal Housing Finance Agency titled
9 “Members of Federal Home Loan Banks” (81 Fed. Reg.
10 3246; published January 20, 2016) may continue mem-
11 bership or have membership restored, as applicable, in the
12 same Federal Home Loan Bank during the period begin-
13 ning on the date of enactment of this Act and ending on
14 the day the Director issues the rules required under sub-
15 section (b), if—

16 (1) the Federal Home Loan Bank determines,
17 including based on information submitted by the
18 captive insurance company, that—

19 (A) the affiliate insured by the captive in-
20 surance company makes, owns, or acquires resi-
21 dential mortgage loans; and

22 (B) the captive insurance company will
23 comply with the membership eligibility require-
24 ments described in paragraphs (a), (b), and (c)

1 of section 1263.6 of title 12, Code of Federal
2 Regulations, during such period; and

3 (2) the captive insurance company continues to
4 be owned, or upon restoration of membership is
5 owned and continues to be owned, including direct
6 ownership by a controlling entity or indirect owner-
7 ship through one or more holding companies, by the
8 same entity that owned the captive insurance com-
9 pany on the date of enactment of this subsection.

10 **SEC. 4. STUDY ON IMPACT OF EXPANSION OF MEMBER-**
11 **SHIP.**

12 (a) STUDY.—The Director of the Federal Housing
13 Finance Agency shall conduct a study on the impact of
14 the expansion of the Federal Home Loan Bank System
15 to additional types of entities involved in the housing fi-
16 nance system. The study shall consider—

17 (1) how liquidity provided through the Federal
18 Home Loan Bank System could be increased in a
19 manner that is consistent with its mission;

20 (2) what initial and ongoing capital and report-
21 ing requirements for membership could be used to
22 minimize risk to the Federal Home Loan Bank Sys-
23 tem;

24 (3) how the Federal Housing Finance Agency
25 could use its oversight and authority to ensure that

1 expanded membership would not pose excessive risk
2 to the Federal Home Loan Bank System;

3 (4) mitigants and transaction structures to ad-
4 dress risk of an insolvency proceeding affecting the
5 parent of a captive insurance company member; and

6 (5) other topics relevant to developing a frame-
7 work for membership that promotes the mission of
8 the Federal Home Loan Bank System.

9 (b) REPORT.—Not later than one year after the date
10 of enactment of this Act, the Director shall submit to the
11 Committee on Banking, Housing, and Urban Affairs of
12 the Senate and the Committee on Financial Services of
13 the House of Representatives a report on the study re-
14 quired under subsection (a), including all findings and de-
15 terminations made in carrying out the study.

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