

forced to pay damages even though none of the plaintiffs can prove they were actually harmed. Today, I am introducing legislation to clarify the law to protect State and local governments from such frivolous and costly claims.

Under the FLSA, nonexempt employees may file for liquidated damages—cash awards equal to the amount of unpaid wages—should their employer violate the minimum wage and/or overtime provisions of the FLSA. The alleged violations by the State of California were the result of budget impasses in 1991 and 1992. In 1991, a budget impasse prevented California, in accordance with State law, from paying some State employees on time. A Federal district court judge ruled that the failure to distribute paychecks on payday, notwithstanding the circumstances of the budget impasse, constituted a violation of the implied “prompt payment” requirement under the FLSA. The Ninth Circuit Court of Appeals went one step further and ruled that regardless of the circumstances, any delay in the disbursement of paychecks violates the FLSA. Thus, in the rare instance of a natural disaster which could delay the distribution of paychecks for even 1 day, a State or local government could be sued for liquidated damages.

During the 1992 budget impasse, the State of California paid its employees with registered warrants in order to avoid liability under the “prompt payment” requirement of the FLSA. These warrants, which accrued interest and are legal negotiable instruments in the State of California, were accepted by nearly all banks and employees were able to cash the warrants as they would their regular paychecks.

In spite of the fact that the plaintiffs could not prove actual harm, a Federal district court judge initially ruled in favor of the employees, finding that the State violated the “cash or cash-equivalent” requirement of the FLSA. Even though the judge is reconsidering his decision, the State of California remains exposed to extensive liability and court costs. If the State had intentionally paid its employees late or if the employees were actually harmed by the State's actions, then employees should be eligible for liquidated damages. However, the taxpayers in California should not be forced to pay for liquidated damages to State employees who have suffered no actual harm.

This legislation, which I am introducing with several of my colleagues from the State of California and the Economic and Educational Opportunities Committee, would amend the Portal-to-Portal Pay Act of 1947 to address the issue of liquidated damages. The legislation would relieve States and their political subdivisions from liability for liquidated damages if: First, the employer shows to the satisfaction of the court that the employees were paid with a legal, negotiable instrument; second, the employee cannot demonstrate to the satisfaction of the court that he or she suffered any actual harm; and third, the employer shows to the satisfaction of the court that its failure to provide prompt payment was the result of a natural disaster, failure to enact a budget, insolvency, or other condition beyond the control of the employer.

This House has already demonstrated its commitment to relieving States and local governments of the burden of unfunded mandates and ending the practice of frivolous lawsuits.

My legislation would continue the process which has already begun and end a clear abuse of the FLSA. I urge my colleagues to support this legislation.

THE FEDERAL HOME LOAN BANK  
SYSTEM MODERNIZATION ACT  
OF 1995

**HON. RICHARD H. BAKER**

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Friday, April 7, 1995

Mr. BAKER of Louisiana. Mr. Speaker, today I am introducing comprehensive legislation to provide the Federal Home Loan Bank System the tools it needs to expand on the significant contributions it has already made to the nation's housing finance delivery system. It is especially fitting today, as we debate the future of housing and housing finance in the 104th Congress, to work with an existing private entity to deliver a much need public purpose.

Since 1932, the Bank System has served as a link between the capital markets and local housing lenders, quietly making more money available for housing loans at better rates for Americans. Today the Federal Home Loan Banks' 5,400 member financial institutions provide for one out of every four mortgage loans outstanding in this country, including many loans that would not qualify for funding under secondary market criteria. The Bank System accomplishes this without a penny of taxpayer money through an exemplary partnership between private capital and public purpose.

More than 3,200 of the Bank System's current members are commercial banks, credit unions, and insurance companies that became eligible for Bank membership in 1989. They demonstrate the market's value of the Bank System by investing in the capital stock of the regional home loan banks. These institutions have recognized the advantages of access to the Bank System's credit programs and have responded to their local communities' needs for mortgage lending. As the financial marketplace grows larger and more complex, I envision the Bank System as a necessary vehicle for serving community lending needs especially in rural and inner-city credit areas.

The Federal Home Loan Bank System serves an active and successful role in financing community lending and affordable housing through the Affordable Housing Program [AHP] and the Community Investment Program [CIP]. The AHP program provides low-cost funds for member institutions to finance affordable housing, and the CIP program supports loans made by members to community-based organizations involved in commercial and economic development activities to benefit low-income areas.

The Federal Home Loan Banks' loans—advances—to their members have increased steadily since 1992 to the current level of more than \$122 billion. Since 1990, the banks have made \$7.1 billion in targeted Community Investment Program advances to finance housing units for low-and moderate-income families and economic development projects. In addition, the banks have contributed more than \$350 million through their affordable

housing programs to projects that facilitate housing for low- and moderate-income families.

While these figures are impressive, the Federal Home Loan Bank System needs some fine tuning to enable it to continue to meet the needs of all its members in a rapidly changing financial marketplace. My legislation recognizes the changes that have occurred in home lending markets in recent years which is reflected in the present composition of the Bank System's membership. Enacting this legislation will enhance the attractiveness of the banks as a source of funds for housing and related community development lending, and will encourage the banks to maintain their well-recognized financial strength. Specifically, my legislation: Articulates the Bank System's mission in statute to emphasize the System's important role of supporting our nation's housing finance system by providing long term credit and liquidity to housing lenders; establishes voluntary membership and equal terms of access to the System for all institutions eligible to become Bank System members, and eliminate artificial restrictions on the Banks' lending to member institutions based on their Qualified Thrift Lender status; equalizes and rationalizes Bank members' capital stock purchase requirements, preserving the cooperative structure that has served the System well since its creation in 1932; separates regulation and corporate governance of the Banks that reflect their low level of risk while ensuring the Banks can meet their obligations; and modifies the methodology for allocating the Bank System's annual \$300 million REFCORP obligation so that the individual Bank's economic incentives are consistent with their statutory mission to support home lending.

Taken together, these interrelated provisions address the major issues identified in a recent series of studies of the Bank System that Congress required from the Federal Housing Finance Board [FHFB], the Congressional Budget Office [CBO], the General Accounting Office [GAO], the Department of Housing and Urban Development [HUD] and a Stockholder Study Committee comprised of 24 representatives of Federal Home Loan Bank stockholder institutions from across the country.

My legislation will make the banks more profitable by enabling them to serve a larger universe of depository institution lenders more efficiently, and it will return control of the banks to their regional boards of directors who are in the best position to determine the needs of their local markets. At the same time, it will provide for the safety and soundness oversight necessary to ensure that this large, sophisticated financial enterprise maintains its financial integrity and continues to meet its obligations.

I first offered comprehensive legislation to modernize the Bank System in 1992. The legislation is the culmination of efforts over the last 3 years to address in a balanced way the concerns of the bank's member institutions, community and housing groups, and various government agencies. I look forward to passage of this important legislation to modernize an institution that works to improve the availability of housing finance and the opportunity of home ownership for all Americans.