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June 23, 2020

Mr. Andre D. Galeano
Deputy Director
Federal Housing Finance Agency
Division of Federal Home Loan Bank Regulation
400 7th Street SW, 7th Floor
Washington, D.C. 20219

RE: Request for Information on FHLBank Membership

Dear Deputy Director Galeano:

On behalf of the Credit Union National Association (CUNA), thank you for the opportunity to comment on the Federal Housing Finance Association's (FHFA) Request for Information (RFI) on issues relating to Federal Home Loan Bank (FHLBank) membership. CUNA represents America's credit unions and their 115 million members, and we welcome the opportunity to participate in this process.

As member-owned, not-for-profit financial cooperatives, credit unions have become an increasingly prominent provider of mortgage credit in the United States. Accordingly, a fast-growing number of millions of consumers rely upon their credit union to help them purchase, renovate, or refinance their home, especially in these uncertain times. America's credit unions benefit from being a part of the FHLBank System. FHLBank-member credit unions have \$1.4 trillion in total assets, making up 88% of total credit union assets. The FHLBank partnerships are important for these credit unions, as FHLBanks provide credit union members with funding and liquidity to be effective lenders in their communities.

FHFA invites comments from the industry on several questions relating to FHLBank membership, including the safety and soundness and mission implications of both the current membership requirements and any potential future changes. CUNA appreciates the opportunity to provide FHFA our specific feedback, but most importantly, urges the agency to ensure that any new regulatory requirements in response to this RFI not negatively impact credit unions' ability to access liquidity or obtain FHLBank membership. Below is feedback in response to FHFA's specific questions.

1. *In addition to the statutory requirements of the FHLBank Act, what are the most important general principles and factors FHFA should consider in achieving the objectives of FHLBank membership?*

CUNA understands that FHFA is seeking to develop requirements to address questions regarding membership eligibility on a consistent basis, guided by the twin objectives of ensuring that the System remains safe and sound and able to provide liquidity for housing finance, and ensuring all members have an appropriate nexus to the housing finance and community development mission of the FHLBanks. We support the FHLBank's mission to provide reliable liquidity to its member institutions to support housing finance and community investment.

The most important objective of the FHLBank System is that its safety and soundness be preserved to protect its members. FHLBanks should not place too much risk in its membership base, and members should be well-regulated with a regulatory infrastructure in place.

However, we believe there are some ancillary services that the FHLBanks provide that should not require insured depositories to maintain membership. As an example, many states exclusively allow the FHLBanks to provide custodial services for public deposits. All insured depositories, regardless of membership, should have the authority to pledge securities and access letters of credit from the FHLBank System in order to accept public funds. In addition, the FHLBank System should consider creating a capital investment pool under the affordable housing initiative that could be leveraged by the FHLBank System to incentivize well run smaller institutions to support community housing needs.

2. *Are there classes or types of institutions not currently eligible for FHLBank membership under FHFA's current regulation whose eligibility would simultaneously further both of those objectives and, if so, how?*

Credit Union Service Organizations (CUSOs) are not currently expressly eligible to join the FHLBanks, and credit unions would greatly benefit from their membership.¹ We support any legislative and regulatory changes to expressly include CUSOs for membership.

A CUSO is an organization formed and/or owned by one or more credit union to provide a specific product or service within the credit union industry. CUSOs help credit unions provide innovative products and services, increase efficiencies, and gain economies of scale.

There are approximately 70 mortgage CUSOs in the United States. These CUSOs provide mortgage services such as origination, processing, underwriting, and servicing to other credit unions, often smaller in size that may not be able to effectively provide their members a mortgage program on their own. CUSOs directly lend to credit union members, as some

¹ CUSOs that are non-depository Community Development Financial Institutions (CDFIs) are eligible for FHLB membership under Pub. L. No. 110-289 Section 1206, 122 Stat. 2654, 2787 (2008).

credit unions outsource their mortgage operations, and also purchase loans for aggregation from their credit union clients.

CUSOs would not pose any risk to the FHLBanks, as other non-depository financial institutions might. CUSOs are owned by credit unions, which are financial cooperatives owned by the members they serve. While CUSOs are not independently examined by the National Credit Union Administration (NCUA), their credit union owners are subject to examination by state and/or federal regulators. NCUA actively communicates with and conducts periodic reviews of large CUSOs and evaluates any risks that CUSOs may expose credit unions to in credit union supervisory examinations. In addition, CUSOs are licensed at the state level for mortgage activity.

CUSOs would benefit from membership in the FHLBanks through the mortgage purchase programs available, providing another alternative to Fannie Mae or Freddie Mac. In addition, some CUSOs may elect to participate in the various FHLBank membership advance programs. Finally, CUSOs would benefit from the opportunity to participate in the FHLBank Housing Programs to further support affordable housing in the communities where their credit union members exist.

CUNA strongly encourages FHFA to support policy changes that would allow all CUSOs to be eligible for membership to FHLBanks, as this will help them better assist their member credit unions' community lending activities. CUSO membership would further FHFA's duty to ensure the operations and activities of FHLBanks foster liquidity and efficient, competitive, and resilient national housing finance markets.

3. *Would there be benefits to establishing financial condition review requirements that are substantially similar for all applicants, regardless of whether they are organized as an insured depository institution, insurance company, or Community Development Financial Institution (CDFI)?*

CUNA believes any financial condition review requirements should not place credit unions or CUSOs at a disadvantage. Credit unions are member-owned, not-for-profit financial cooperatives examined by the NCUA and as such, are low risk financial institutions. We understand the FHLBanks may wish to consider additional review requirements for applicants that, unlike credit unions or CUSOs, are higher risk. In short, any financial condition review requirements should be based on the risk the institutions may pose and should not be substantially similar for all applicants.

4. *Should the FHFA amend its regulations to bar from FHLBank membership particular types of otherwise-eligible entities that are mostly susceptible to being used as conduit vehicles by institutions that are not themselves eligible for membership? Which types of currently eligible entities are most susceptible to such use?*

As FHFA has stated, because the market advantages of the FHLBanks allow them to pass on low-cost funds to their members, FHLBank membership can be attractive, particularly for entities seeking long-term funding to originate or acquire mortgage loans or securities backed

by loans. Prior to 2016, real estate investment trusts (REITs) and similar mortgage and real estate-related investment funds that were not eligible for FHLBank membership were able to gain membership by establishing small captive insurance subsidiaries that became FHLBank members. FHFA concluded that this was a circumvention of the statutory membership eligibility requirements, and in 2016, prohibited captive insurance companies from being FHLBank members.² Since the FHFA's rulemaking, entities ineligible for FHLBank membership have tried to gain access to the System, and FHFA has addressed these situations on a case-by-case basis instead of through additional rulemaking.

CUNA believes the use of conduits must be prohibited by FHFA as this is a threat to the mission and safety and soundness of the FHLBank System. Classes of entities, not expressly authorized by Congress for membership, should not be allowed membership through conduits. While we do not agree that FHFA should impose limitations on all FHLBank members, such as by restricting the amount of advances an FHLBank may have outstanding to a single member, we believe advances should be evaluated for entities that are most susceptible to being used as conduit vehicles by institutions that are not themselves eligible for membership.

5. *What are the principal risks to the FHLBanks from doing business with members that are not subject to supervision by a prudential safety and soundness regulator, and are those risks materially greater than those associated with doing business with members subject to such oversight?*

CUNA believes that preserving the integrity of the FHLBank System is very important to all of its members. We also acknowledge that generally, there is greater risk to the FHLBanks in doing business with members that are not subject to supervision by a prudential safety and soundness regulator. Regulators, with ongoing and frequent supervisory examinations, can monitor the lending practices, capital requirements, portfolios, policies and procedures, and safety and soundness practices of depository institutions, ensuring they do not impose a great risk to the FHLBank System.

In limited circumstances, membership would be prudent and beneficial for entities that may not have a prudential safety and soundness regulator, such as with the membership of CUSOs. For example, CUSOs are not generally examined by the NCUA as credit unions are, but they are monitored by the agency and their credit union members are regularly examined. NCUA also actively evaluates the risk exposure CUSOs could bring to individual credit unions. Furthermore, CUSOs are licensed at the state level for mortgage activity. In this instance, CUSOs would not have a materially greater risk to the FHLBanks than depository institutions would, because there are checks in place regarding their operations.

² See 12 CFR 1263.6(e).

6. *Should FHFA require FHLBank members to demonstrate an ongoing commitment to housing finance in order to remain eligible for membership? If so, how should that commitment be measured and monitored?*

The objective and mission of the FHLBanks is to serve communities that need housing. Therefore, maintaining an ongoing commitment to housing finance should be the top goal for FHLBank membership. But, the question for consideration is how that commitment should be measured and monitored. While CUNA agrees there should be requirements for membership, we strongly believe that any requirements must be flexible so credit unions are not unintentionally excluded. The economic and housing market of individual communities is fluid, especially in current times. Sometimes, prescription regulatory requirements, while well-intentioned by federal policymakers, do not adequately reflect the needs that a credit union may be satisfying in their community.

Community needs change, particularly in the current environment. Credit unions must be nimble enough to address these needs. Therefore, any regulatory provisions should be illustrative with few mandatory requirements. There should be consideration and additional flexibility given to non-profit cooperatives, such as credit unions, that are owned by the members they serve. These institutions are automatically vested in their members' financial wellbeing and the financial health of their communities.

7. *An applicant's failure to meet the specific standards by which compliance with a membership eligibility requirement is determined may, in some cases (specifically, with respect to the "subject to inspection and regulation," "financial condition," "character of management," and "home financing policy" requirements), raise a mere presumption of non-compliance that the applicant may rebut by meeting additional criteria. The intent behind this approach is to facilitate the processing of membership applications by the FHLBanks by allowing them to exercise a degree of judgment in assessing the unique facts that may be presented by some applicants. Because those additional criteria allow the FHLBanks considerably more discretion than do the primary standards, however, they also are more subject to misinterpretation and misapplication, particularly when the FHLBanks are considering cases of first impression.*

Would the safety and soundness of the FHLBanks be enhanced if FHFA were to establish new standards that provided less discretion to the FHLBanks, and all of which must be met for an applicant to be admitted to membership? If so, what should those standards be?

CUNA supports standards that provide individual FHLBanks discretion, given that individual banks and their Boards of Directors have a more comprehensive understanding of the communities within their jurisdictions. We support the ability of FHLBanks to exercise judgment in assessing individual applicants' unique characteristics. Furthermore, we do not believe the safety and soundness of the FHLBanks would be necessarily enhanced if FHFA were to establish new standards that provide less discretion to the FHLBanks. If the FHFA is concerned with the safety and soundness of the FHLBank System, it should address non-depository financial institutions seeking membership that do not have any oversight from state or federal regulators.

On behalf of America's credit unions and their more than 115 million members, thank you for your consideration of our views. We look forward to working with the FHFA on any policy issues related to FHLBank membership that best serve credit unions and their members and help achieve the system's mission of responsibly providing mortgage credit to low- and moderate-income families. If you have questions or need additional feedback, please contact me at (202) 465-5769 or EEurgubian@cuna.coop.

Sincerely,

Elizabeth A. Eurgubian
Deputy Chief Advocacy Officer & Senior Counsel