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October 31, 2022

The Honorable Sandra L. Thompson
Director
Federal Housing Finance Agency
400 Seventh Street SW
Washington, DC 20024

RE: Comprehensive Review of the Federal Home Loan Bank System

Dear Director Thompson:

The Credit Union National Association ("CUNA") represents America's credit unions and their more than 130 million members. On behalf of our members, we are writing in response to the Federal Housing Finance Agency's ("FHFA") comprehensive review of the Federal Home Loan Bank System ("FHLBank"). CUNA applauds the role FHLBanks have played over the last 90 years in (i) serving as critical sources of liquidity for their respective members and (ii) offering a number of beneficial programs to their respective members, including, but not limited to, the Affordable Housing Program ("AHP"), the Community Investment Program, and the Community Investment Cash Advance Program, among others. CUNA welcomes the FHFA's efforts to conduct a comprehensive review of the FHLBanks' operations and mission.

Background

As member-owned, not-for-profit financial cooperatives, America's credit unions are at the heart of the FHLBanks' and Government-Sponsored Enterprises ("GSEs") respective statutory missions. The FHLBanks were chartered in 1932, with a mission "to provide reliable liquidity to member institutions to support housing finance and community investment."[1] In 1934, the Federal Credit Union Act was enacted so federally chartered credit unions could promote thrift among their members and meet the credit needs of low- and moderate-income borrowers who had difficulty getting financing from a traditional bank.[2] In 2008 during the Great Recession, the Housing and Economic Recovery Act of 2008 established the FHFA and included FHLBanks and GSEs within its supervision and jurisdiction.[3] In particular, the FHFA was statutorily empowered to ensure that FHLBanks and GSEs served as reliable sources of liquidity to their respective

[1] See *FHLBanks' Mission*, available at https://FHLBankanks.com/mission/.
[2] 12 U.S.C. § 1751 et al.
[3] See *FHFA's Key Legislation*, available at https://www.fhfa.gov/Government.

members as well as provided low-cost funding and opportunities for affordable housing, housing finance, and community investment purposes, among others.[4]

Today, credit unions continue to derive significant benefits from being a part of the FHLBank system as well as from the work of GSEs, and in doing so, continue to support consumers and commercial entities across the country with their financial services-related needs. A fast-growing number of consumers continue to rely upon credit unions for a plethora of purposes, including, but not limited to, the refinancing, renovation, or acquisition of their homes, particularly during times of market distress as seen during the COVID-19 pandemic and the current economic climate riddled with inflation. For context, 1,564 credit unions, of a total 4,853, are members of a FHLBank. These FHLBank-member credit unions account for $1.9 trillion (or 90% of all federally-insured credit union assets) and cover 117 million members (representing 88% of all credit union members).[5]

The FHLBanks provide credit union members with critical funding and liquidity, allowing them to effectively provide affordable credit to their communities. In many cases, credit unions serve as key providers of liquidity to consumers and entities located in rural communities that have few options for obtaining such forms of liquidity. In 2021 alone, credit unions originated more than $182 billion in first-lien mortgages, selling over 31% into the secondary mortgage market.[6] As of June 2022, 139 credit unions reported an aggregate of $7.6 billion in loans transferred pursuant to the FHLBanks' Mortgage Partnership Finance Program ('MPF"), which serves to provide members with competitive secondary market options through various mortgage product offerings.[7] Further, 2020 and 2021 HMDA data indicates that credit unions generally originated more mortgage loans to low-income and middle-income borrowers as opposed to community banks, mortgage banks, or larger institutional banks.[8]

The liquidity provided by the FHLBank system, together with several programs related to affordable housing and community development, have been instrumental in furthering credit unions' role in fostering increased residential mortgage originations to all sectors of society, ranging from low-income homeowners, persons of color, veterans, and other underserved groups. This data demonstrate that credit unions remain critical beneficiaries of the FHLBank system and are effective stewards of the funding and other services directed by the various FHLBank as they serve to advance their statutory mission. We hope that the remarks by credit union industry representatives reinforced the fact that credit unions are vital to the housing market; in particular, because of the role credit unions play in providing low-income to moderate-income consumers and families with opportunities to obtain credit for home acquisition, refinancing, renovation, and

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[4] *Id.*

[5] FHLBank Membership List (June 30, 2022); National Credit Union Administration (NCUA) Credit Union Call Report data (2022 Q2); CUNA analysis.

[6] NCUA Credit Union Call Report data (2021 Q4); CUNA analysis.

[7] NCUA Credit Union Call Report data (2022 Q3); CUNA analysis.

[8] See *HMDA Data Publication*, available at https://ffiec.cfpb.gov/data-publication/2020 (2020); See *HMDA: Credit Unions Lend to Lower-Income Americans*, available at https://www.cutimes.com/2022/08/19/hmda-credit-unions-lend-to-lower-income-americans/ (August 2022).

other similar purposes, each of which is central to the FHLBank system's mission. With these guiding principles, we offer the following thoughts.

The FHLBanks' Mission

In recent years, there have been a small number of concerns raised regarding the FHLBank system's mission and role in the nation's housing finance ecosystem. The detractors cite cherry-picked facts such as the FHLBank system's aggregate 10% decline in funding for AHP expenditures or 44% decline in funding for housing and economic development advances via the Community Investment Program, each from 2020 to 2021.[9] Such claims misunderstand the role the FHLBank system plays in the domestic housing finance ecosystem and how the balance sheets of the FHLBanks operate. During the Listening Sessions, it was clear that community banks and credit unions appreciate and benefit from the role of the FHLBank system. Specifically, they benefit when the FHLBank system provides liquidity and advances to its members, particularly during times of market distress, and specifically, from the elasticity of the FHLBanks' balance sheets.

CUNA strongly supports the FHLBanks' mission to provide reliable liquidity to its member institutions to support housing finance, affordable housing, and community investment. Maintaining an ongoing commitment to housing finance should be the top goal for FHLBanks and their respective members. In particular, we emphasize the role the FHLBank system plays during times of market distress. Just last month, the *Wall Street Journal* reported that while U.S. commercial-bank deposits were down one percent sequentially from the end of the first quarter to the end of the second quarter, FHLBank advances increased approximately 40% during the same time.[10] Further, the percentage of FHLBank advances by commercial banks rose from a little over a third in the first quarter to nearly half.[11]

Throughout the Listening Sessions, community banks and credit unions often complimented the FHLBanks' role in providing advances and other forms of liquidity when other sources of liquidity were no longer available or viable during the Great Recession or the early onset of the COVID-19 pandemic, among other similar situations. In fact, several stakeholders in the Listening Sessions pointed out that the nature of the FHLBank system is to be elastic for the purposes of addressing its members' needs over time. The historic growth or reduction of advances provided by various FHLBanks' do not indicate a failure on the part of the FHLBank as some detractors assert; on the contrary, such elasticity reflects the goal of the system's design to be attentive and respond accordingly to market fluctuations while continuing to implement its mission of promoting affordable housing and community development.

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[9] See *FHLBanks' affordable housing funding decreased in 2021*, available at https://bankingjournal.aba.com/2022/09/FHLBanks-affordable-housing-funding-decreased-in-2021/ (September 2022).
[10] See *Banks' Funding Questions Aren't Going Away*, available at https://www.wsj.com/articles/banks-funding-questions-arent-going-away-11662634980 (September 2022).
[11] *Id.*

A key aspect of the FHLBank system has been the regional nature of each FHLBank, in which each FHLBank is enabled to specifically address the local needs of its respective jurisdiction and the communities located therein. CUNA strongly believes that individual FHLBanks must be able to exercise their respective discretion with respect to local projects and needs given that individual FHLBanks and their respective boards of directors are equipped with the local wherewithal and comprehensive understanding of the communities within their respective jurisdictions and any attendant potential risks. In fact, support for the regional nature of the FHLBank system was a universal theme during the Listening Sessions whereby various stakeholders, ranging from community banks to larger financial institutions, applauded the regional nature of the system and the ability for each FHLBank to provide local attention and responsiveness to local needs within a particular jurisdiction.

The FHLBank's Organization, Operational Efficiency, and Effectiveness

While we recognize that operational efficiency and effectiveness is always a work in progress when it comes to government programs, we hope that the FHFA will place specific focus on technological limitations with respect to member interactions with the FHLBank system. CUNA was pleased to submit written comments on October 13, 2022, in response to the FHFA's request for information on Fintech in Housing Finance ("FHFA Fintech RFI").[12] Our comments here supplement our comments submitted in response to the FHFA Fintech RFI.

Credit unions continue to report significant technological limitations during their dealings with the FHLBank System, including during the application for funds via FHLBank programs or as part of day-to-day logistics and/or interactions with the FHLBanks in the ordinary course of business. As such, CUNA applauds the FHFA for its July 2022 announcement regarding the establishment of the Office of Financial Technology ("OFT").[13] We look forward to seeing future initiatives and programs implemented by OFT for the purposes of advancing FHFA and FHLBank priorities related to the adoption and deployment of financial technology, including, but not limited to, more efficient engagement with market participants, industry, nonprofits, consumer groups, and academia to facilitate the sharing of best practices of housing finance fintech and innovation; additional and more efficient facilitation of interagency collaboration with other regulators to enable information sharing and partnership opportunities; and the establishment of outreach initiatives and programs through applicable regulated entities for the purpose of promoting awareness and understanding of housing finance fintech and innovation for FHLBank members and the general public, among other things.

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[12]See *Fintech in Housing Finance – Request For Information*, available at https://www.fhfa.gov/PolicyProgramsResearch/Programs/Documents/Fintech-in-Housing-Finance-Request-for-Information.pdf?utm_medium=email&utm_source=govdelivery (July 2022).

[13] See *FHFA Announces Office of Financial Technology*, available at https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Office-of-Financial-Technology.aspx (July 2022).

However, while we recognize that the FHFA is making important progress related to innovation and the use of modern technology in its operations, we respectfully note that credit unions have faced technological limitations during their interactions with the FHLBank system, and request that the FHLBank system prioritize modernization of these systems as quickly as possible, given the importance of credit unions to the FHLBank system and broader housing finance ecosystem. Credit unions describe the FHLBanks' user interface and experience for members electronically engaging with applicable FHLBank offices as significantly outdated. Credit unions have also expressed frustration that there is not consistent acceptance of eNotes across the FHLBank system. Similarly, the MPF program delivery and reporting process is antiquated and difficult to work with. We urge OFT to prioritize modernizing each FHLBank's technological framework so that FHLBank members can take advantage of efficient technological processes during their day-to-day interactions with FHLBanks in the ordinary course of business.

The FHLBanks' Role in Promotion of Affordable, Sustainable, Equitable and Resilient Housing and Community Investment / Needs of Rural and Financial Vulnerable Communities

CUNA strongly supports the FHLBank system's statutory mission to support housing investment and meet communities' economic development needs, particularly the needs of rural and/or lower-income communities. Accordingly, we support the existing net income carve outs for affordable housing whereby each FHLBank is statutorily required to contribute ten percent of its net income to AHP.

During the Listening Sessions, several stakeholders encouraged the FHFA to increase this ten percent contribution requirement in order to increase the amount of funds available for AHP. While we recognize the importance of AHP and the services it provides to communities across the country, we respectfully note that there are several nuances involved with AHP as it relates to other voluntary programs and services offered by FHLBanks and various state governments and the federal government, as applicable. Solely raising the ten percent contribution requirement is a simple solution that does not address the nuances involved in AHP. As such, we encourage the FHFA to proceed cautiously on this front as it evaluates AHP and its interplay with other state and federal affordable housing programs and initiatives.

Statutory increases to the ten percent contribution requirement should be undertaken slowly, or, even better, not at all. As several participants in the Listening Sessions noted, many FHLBanks already offer additional (and often voluntary) affordable housing-related programs beyond the ten percent statutory contribution. Such programs are often based on local need and the presence or lack thereof of affordable housing assistance at the state and/or local level. Where state programs are insufficient or do not exist, FHLBanks fill the gap to address local needs and concerns. Certain FHLBanks which do not offer such supplemental affordable housing-related programs or initiatives are in the process of considering the implementation of such programs in the near-future.

It also worth noting that supplemental affordable housing-related programs are funded at the voluntary discretion of the applicable FHLBank based on the local needs of its applicable jurisdiction. Additional statutory carve-outs to net income, including raising the ten percent requirement of contributions to AHP will only serve to reduce each FHLBank's flexibility to be responsive to the unique needs of its applicable community. As noted earlier, and as universally reinforced throughout the Listening Sessions, the regional nature of the FHLBank system is a key feature of the system that allows each FHLBank to effectively respond to the needs of its applicable community. The FHFA should be mindful that none of its proposed changes to the statutory required net-income carve outs (or any such changes under consideration) would negatively impact the FHLBank system's ability to operate in a regional manner, and in doing so, respond to local concerns in an efficient and effective manner.

Further, the AHP contains several restrictive requirements that often result in limiting the full potential and benefits of the program on the whole. For example, many grants have monitoring requirements that can last 5-10 years, if not longer. This significant tail on these grants increases the overhead of such programs. Other programs at the state or federal level are often more flexible, tailored, or accessible, and in many cases, add further value to the program overall. For example, other programs that do not require the same length of monitoring are more accessible for smaller financial institutions that simply do not have the infrastructure to comply with such restrictive requirements. Further, we note that several participants in the Listening Session cited the administrative costs and burdens of compliance with the requirements under AHP. We sympathize with such concerns and strongly encourage the FHFA to focus on streamlining AHP as well as its additional programs, reduce bureaucratic red-tape, and upgrade the program so that it is more accessible to participants while also less administratively burdensome.

While the FHFA continues its comprehensive review of the FHLBank system, CUNA encourages the FHFA to focus on the following recommendations:

The primary goal of the FHLBank system should be to serve as a timely source of liquidity to its members, particularly during times of market distress. Accordingly, any changes under consideration regarding the FHLBanks' balance sheets should be undertaken slowly, if at all. FHLBanks can serve such goals by ensuring liquidity and reasonable risk transfer for loans that Community Development Financial Institutions ("CDFIs") or other credit unions want to make. Ultimately, the bottom line at the heart of any changes to the FHLBank system under consideration by the FHFA must be to ensure (i) the FHLBank system's role as a provider of liquidity to its members and (ii) the safety and soundness of the FHLBank system overall.

Additionally, it is critical that FHLBanks operate in a financially and operationally safe and sound fashion to serve as a source of liquidity for the housing finance system. This focus must be maintained, even as other programs are instituted to address larger systemic issues in the housing finance system, such as the lack of affordable housing. Any newly allocated funding or created programs should first require a careful assessment of the potential collateral impact on the balance sheets of the FHLBanks and the FHLBank system as well as the impacts of any such risks to the

FHLBank system's members, many of whom are smaller community banks and similarly situated entities that do not have the infrastructure or funds to address additional risk. In addition, CUNA encourages the FHLBank system to consider creating a capital investment pool pursuant to or as a supplement to AHP and other affordable housing-related initiatives that could be leveraged by the FHLBank system to incentivize well-run smaller institutions to support community housing needs.

Lastly, under the Federal Home Loan Bank Act, a community financial institution ("CFI") is defined as an institution with deposits insured under the *Federal Deposit Insurance Act* and total assets less than the CFI asset cap.[14] This definition excludes credit unions. This error, which by all accounts is inadvertent, is carried forward into the implementing regulations.[15] CUNA strongly encourages the FHFA to support legislative efforts or to take regulatory actions to include credit unions within the definition of CFI. Credit unions are not-for-profit, member cooperates mandated to serve their respective membership. Thus, credit unions are, practically speaking, community financial institutions in terms of the structure and mission thereof. The expansion of the definition of CFI to include credit unions will enable them to benefit from the statutory and regulatory flexibilities afforded to such entities. For example, including credit unions in the definition of CFI would permit additional credit unions to invoke the flexibilities permitted under the membership requirement to have ten percent of total assets in residential mortgages.[16]

Credit unions have been steadily increasing their market share for residential mortgages; however, data from 2020-2021 indicates that a significant share of credit unions have less than ten percent of their total assets in mortgage loans, and as such, do not qualify for membership without use of that flexibility.[17] Further, CFIs are statutorily permitted to pledge an expanded set of options as collateral for advances by the FHLBanks, including, but not limited to, small-agri-business, community development loans, small businesses, and small farms, among other things.[18] The inclusion of credit unions within the definition of CFI would make it significantly easier for credit unions, particularly smaller credit unions supporting rural and/or underserved communities, to satisfy membership eligibility requirements and obtain advances from FHLBanks to fund a variety of critical initiatives and services for affordable housing and community development initiatives, each in furtherance of the FHLBank system's statutory mission.

Member Product, Services, and Collateral Requirements

While CUNA appreciates the impact of the MPF program and the secondary market access it provides to mortgage lenders, we emphasize that not every FHLBank offers the MPF program to its members. For example, the FHLBank – San Francisco has discontinued its secondary market program, which has resulted in some of its members being entirely excluded from access to the

[14] See 12 U.S.C. § 1422(10).
[15] See 12 CFR § 1263.1(*Community financial institution or CFI*).
[16] See 12 U.S.C. § 1424(a)(2)(A).
[17] See *FHLBANK Membership as of March 31, 2020, Federal Home Loan Bank Member Data*, available at https://www.fhfa.gov/DataTools/Downloads/Pages/Federal-Home-Loan-Bank-Member-Data.aspx (2020).
[18] See 12 U.S.C. § 1430(a)(3)(E).

secondary market. Given the diversity of the housing finance ecosystem, particularly with respect to the secondary markets via securitization and other means, all members of the FHLBank system should have access to the secondary market. All members of any FHLBank should be able to access the MPF program regardless of whether their home FHLBank participates. Lastly, as noted above, our members have expressed concern that the MFP program's requirements are very rigid as compared to requirements for similar state and/or federal programs. For example, the ability to seek flexibility with respect to such requirements, particularly during times of market distress, is far narrower than under similar programs offered by Fannie Mae and Freddie Mac. This lack of flexibility was particularly distressing during recent times of market distress such as the COVID-19 pandemic.

Ultimately, the FHLBank system's goal should be to further its mission in a manner that is efficient for its members to take advantage thereof. As part of the FHFA's comprehensive review of the programs offered by FHLBanks, we strongly urge the FHFA to consider how the MFP program and other programs can be modified to promote flexibility and efficiency so that members can take advantage of the significant benefits offered by such programs in a timely and efficient manner. Further, the FHLBanks could extend some ancillary services to insured depositories regardless of 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.

Membership Eligibility and Requirements

When considering eligibility and requirements for membership in the FHLBank System, the FHFA must remain guided by the twin objectives of ensuring that the FHLBank 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.

The most important objective of the FHLBank System is that its safety and soundness be preserved to protect its members and to ensure the FHLBanks can provide access to liquidity under all market conditions. For this reason, the FHLBanks should not underestimate the risk associated with permitting members which are not should be well-regulated entities with oversight from state or federal regulators.

With that in mind, the FHFA should permit Credit Union Service Organizations (CUSOs) to join the FHLBanks as members if they otherwise qualify. 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 seventy mortgage-related 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 credit unions outsource their mortgage operations, and also purchase loans for aggregation from their credit union clients.

CUSOs are not currently expressly eligible to join the FHLBanks, and credit unions would greatly benefit from their membership.[19] 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. CUSOs would not pose additional risk to the FHLBanks, as other non-depository financial institutions might. 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 supports any legislative and regulatory changes to expressly include CUSOs for membership, and 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.

Finally, CUNA cautions the FHFA against attempting to establish any new, free-standing data collection and reporting requirements to maintain FHLBank membership, particularly for regulated and examined depository institutions. Credit unions already operate under multiple, complex regulatory frameworks requiring data collection and reporting to multiple state and or federal regulators. Additional prescription regulatory requirements, while well-intentioned by federal policymakers, only increase operating overhead, reducing the funds available to lend to borrowers and communities that need them, and furthers the consolidation of community-based financial institutions. Community needs change, particularly in the current environment, and credit unions must be nimble enough to address these needs. As non-profit cooperatives, credit unions are owned by the members they serve. These institutions are automatically vested in their members' financial wellbeing and the financial health of their communities.

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[19] 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).

Negative Tangible Equity and New Advances

Currently, the FHFA's regulations regarding new advances require the FHLBanks to consider a credit union's tangible capital in assessing its credit worthiness. The regulation currently prohibits making new advances to members with negative tangible capital unless the member's federal banking agency or insurer makes a written request that the FHLBank do so.[20] The regulation defines tangible capital as capital, calculated according to generally accepted accounting principals (GAAP), less "intangible assets."[21] This definition is out of step with the regulatory capital regimes established by NCUA and the other banking regulators.

The unique effects of the pandemic on the housing market and financial institutions' balance sheets in combination with a rising rate environment, has increased the likelihood that many financial institutions may have negative tangible capital under this definition. However, this is not truly an indicator that these financial institutions are not creditworthy. The FHLBanks already engage in a rigorous credit review process and credit unions are highly regulated and frequently examined by a prudential regulator. There is ample additional information available to a FHLBank about a credit union's financial stability that would allow the FHLBank to determine whether negative tangible equity is actually an indication of risk. The FHFA's express prohibition against making new advances to these credit union without a written request from their primary banking regulator is a significant regulatory huddle that threatens to increase liquidity pressures across the system.

In the short term, we would urge the FHFA to waive the regulatory requirement for the FHLBanks to treat negative tangible equity as a disqualifying metric of credit worthiness when considering new advances to members. In the longer term, we would strongly recommend that the FHFA modify its requirements to be in alignment with the capital requirements set by the NCUA and other primary banking regulators when determining a credit union's creditworthiness in connection with a new advice. The alignment of federal requirements will provide operational ease for credit unions, the FHLBanks, and reduce the likelihood of regulatory gaps and unintended consequences that result from different capital frameworks. Both of these are necessary to ensure that credit unions maintain timely and reliable access to liquidity in order to serve the housing needs of their members and community, as is mission of the FHLBank System.

[20] *Id*.
[21] 12 C.F.R. § 1266.1(*tangible capital*)(2).

Conclusion

Thank you for this opportunity to comment on the FHFA's review. If you have questions or if we can be of any assistance, please do not hesitate to contact me at (202) 503-7184 or esullivan@cuna.coop.

Sincerely,

E Sullivan

Elizabeth M. Sullivan
Senior Director of Advocacy & Counsel