



January 7, 2015

Alfred M. Pollard  
General Counsel  
Federal Housing Finance Agency  
400 Seventh Street SW., Eighth Floor  
Washington, DC 20024

RE: RIN 2590-AA39, Notice of Proposed Rulemaking and Request for Comments- Members of Federal Home Loan Banks

Dear Mr. Pollard,

The Credit Union Association of the Dakotas (CUAD) appreciates the opportunity to provide comment to Federal Housing Finance Agency (FHFA) on the proposed rule to amend regulations regarding Members of Federal Home Loan Banks (FHLB). To provide a brief background, the Credit Union Association of the Dakotas represents sixty-eight state and federally chartered credit unions in the states of North Dakota and South Dakota, whose assets total over \$5.7 billion and who have more than 440,000 members. Of these, thirteen credit unions are members of a Federal Home Loan Bank.

The Credit Union Association of the Dakotas appreciates the FHFA's role in administering the Federal Home Loan Bank Act (Act). However, CUAD is opposed to the FHFA's proposed rule as it is contrary to the intent of Congress and the Act. Furthermore, the proposed rule makes significant and unnecessary changes to long-standing membership rules in the FHLB System. As stated by the FHFA in its proposed rule, "the primary purpose of the Bank Act, since its initial adoption in 1932, has been to support the nation's housing markets by establishing a system of Banks to provide wholesale funds to their member institutions for the purpose of financing those members' residential mortgage lending activities." *79 FR 54852, September 12, 2014*. If these rules are adopted as proposed, the changes will do little more than increase costs for the consumer and the communities that our credit unions serve, clearly contrary to the intent of the Act.

In the discussion of the proposed rule, the FHFA's justification for this proposal is "the Bank Act does not address whether an institution must engage in any particular minimum level of home mortgage lending in order to be considered to "make[ ] such home mortgage loans . . . as are long-term loans" as required under section 4(a). The statute also does not address whether a Bank member that ceases to comply with any of the eligibility requirements of section 4(a) may or must be permitted to continue as a member of a Bank." *79 FR 54851, September 12, 2014*. CUAD disagrees with the FHFA's interpretation of the Act. The Act clearly defines when membership can be involuntarily terminated under 12 U.S.C 1426(d)(2). Congress has already stated that "the board of directors of a Federal home loan bank may terminate the membership of any institution if, subject to regulations of the Director, it determines that—(i) the member has failed to comply



with a provision of this chapter or any regulation prescribed under this chapter; or (ii) the member has been determined to be insolvent, or otherwise subject to the appointment of a conservator, receiver, or other legal custodian, by a Federal or State authority with regulatory and supervisory responsibility for the member.” Expressio Unius Est Exclusio Alterius. If Congress had intended that membership in a FHLB could be involuntarily terminated if a member did not engage in a particular minimum level of home mortgage lending or if the member ceased to comply with any of the initial eligibility requirements, then Congress would have included those in the provisions relating to termination of membership. It is Congress, not the FHFA, who has the authority to define who can be members of Federal Home Loan Banks. Congress has already spoken on these issues and therefore the proposed rule as issued by the FHFA must be withdrawn.

To become a member of a FHLB under current regulations, an applicant (which includes credit unions) must meet certain general eligibility requirements. These requirements include being duly organized under Tribal law, or under the laws of any State or of the United States; be subject to inspection and regulation under the banking laws, or under similar laws, of any State or of the United States or, in the case of a CDFI, is certified by the CDFI Fund; make long-term home mortgage loans; its financial condition is such that advances may be safely made to it; the character of its management is consistent with sound and economical home financing; and its home financing policy is consistent with sound and economical home financing. There is also an additional eligibility requirement for insured depository institutions other than community financial institutions. In order to be eligible to become a member of a Bank, an insured depository institution applicant other than a community financial institution also must have at least 10 percent of its total assets in residential mortgage loans.

Under these current, and long standing regulations, to become a member of a FHLB the applicant must make long-term home mortgage loans. “An applicant shall be deemed to make long-term home mortgage loans, as required by section 4(a)(1)(C) of the Bank Act (12 U.S.C. 1424(a)(1)(C)) and §1263.6(a)(3), if, based on the applicant's most recent regulatory financial report filed with its appropriate regulator, or other documentation provided to the Bank, in the case of a CDFI applicant that does not file such reports, the applicant originates or purchases long-term home mortgage loans.” *12 CFR 1263.9*. Under the proposed rule, the FHFA seeks to change this one-time requirement to a continuous one. “An institution shall be deemed to make long-term home mortgage loans, as required by section 4(a)(1)(C) of the Bank Act (12 U.S.C.1424(a)(1)(C)) and § 1263.6(a)(3), if it maintains at least one percent of its total assets in long-term home mortgage loans. This requirement shall apply on a continuous basis to all members.” *79 FR 54874, September 12, 2014*.

Never before in the history of the FHLB system has a member been required to comply with an ongoing test. It is the position of CUAD that to require such a requirement is beyond the scope of the Act. If such an on-going requirement can be found to be within the scope of the Act, the FHFA has not provided sufficient justification for the need that there be an on-going requirement to maintain one percent of total assets in long-term home mortgage loans. The current system and regulations are a better approach to ensuring that the intent of Congress and the Act are carried out.



The FHFA also believes it necessary to expand the ten percent requirement as discussed above from a one-time test to a continuous requirement. Under the proposed rule, “an insured depository institution applicant that is subject to the 10 percent requirement of section 4(a)(2)(A) of the Bank Act (12 U.S.C. 1424(a)(2)(A)) and § 1263.6(b) shall be deemed to comply with that requirement if it maintains at least 10 percent of its total assets in residential mortgage loans. This requirement shall apply on a continuous basis to all insured depository institution members that are not community financial institutions and were not members of a Bank as of January 1, 1989.” 79 FR 54874, September 12, 2014.

Again, this proposed change from a one-time test to a continuous requirement is beyond the intent of Congress and the scope of the Act. Such an unnecessary regulatory change will only harm the FHLB system and the consumers and communities that are served by the FHLB members.

FHLBs serve as a competitive source of liquidity for all of our credit unions’ financing needs including housing, agricultural, commercial and consumer lending. The proposed rules will negatively impact the reliable provision of that liquidity. The FHFA’s proposal also makes continued access to FHLB advances and mortgage purchase programs contingent on arbitrary regulatory determinations and change the FHLB system by removing the certainty that FHLB will be a reliable source of liquidity in all market conditions. The proposal will also restrict credit unions’ access to the secondary mortgage markets.

The FHFA’s proposed rule does not advance the intent of Congress or the Act. If adopted as proposed, the rule will harm FHLB members and hurt housing, credit and economic growth, CUAD requests that the FHFA withdraw the new membership rules contained in its September 12, 2014 Notice of Proposed Rulemaking and work with FHLB members to preserve the FHLBs as a reliable partner of its members that benefits local lending institutions, communities, housing, homeownership and the nation’s economy.

Thank you for this opportunity to share our thoughts and concerns.

Respectfully,

A handwritten signature in black ink that reads "Robbie Thompson". The signature is written in a cursive, flowing style.

Robbie Thompson  
CEO/President

A handwritten signature in black ink that reads "Amy Kleinschmit". The signature is written in a cursive, flowing style.

Amy Kleinschmit  
VP of Compliance