



Office of General Counsel
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Naperville, IL 60563

12 January 2015

Alfred M. Pollard, Esq., General Counsel
Attention: Comments/RIN 2590-AA39
Federal Housing Finance Agency
400 Seventh Street SW, Eighth Floor
Washington, D.C. 20024

Re: Notice of Proposed Rulemaking; Request for Comments – Members of the Federal Home Loan Banks

Dear Mr. Pollard:

As the primary association for over 300 state and federally chartered credit unions, the Illinois Credit Union League is pleased to have the opportunity to comment and express our concerns about the Federal Housing Finance Agency's ("FHFA") Notice of Proposed Rulemaking ("NPR") and request for comments on "Members of the Federal Home Loan Banks" published on September 12, 2014. For the reasons described below, we respectfully request the withdrawal of this proposal.

For our member credit unions, access to Federal Home Loan Bank of Chicago ("FHLBC") advances is critically important because the liquidity allows them to offer an array of loan products that they would not otherwise be able to offer. The FHLBC's products such as advances, letters of credit and the Mortgage Partnership Finance[®] Program are tremendous resources that enable credit unions, as small, community based cooperatives, to effectively compete with much larger financial institutions, resulting in more choices and better service for our home buying and business loan customers.

The proposed rule is greatly concerning because it would impose, for the first time ever, on-going requirements for our credit unions to meet as a condition of remaining a member of the FHLBC. However, most concerning is that the NPR does not address how it would impact the stated core mission of the Federal Home Loan Banks ("FHLBs"), which, "is to serve as a reliable source of liquidity for the member institutions in support of housing finance and community lending," as stated by the FHFA in its own strategic plan. As a matter of administrative law, this proposed rulemaking goes beyond the permissible rulemaking allowed in the Administrative Procedures Act ("APA") as the FHFA's analysis of the statute is neither rational nor supportable. Additionally, this rule is likely to have the greatest impact on the smallest, community lenders which operate in the most underserved markets and have been highlighted by federal and state policymakers as the lenders that should be receiving the most support.

While the NPR goes to great lengths to justify an additional regulatory burden by showing how few members are out of compliance with the proposed percentages, and how close many of the

out compliance are indicating that they could easily comply, there is absolutely no analysis indicating what change this rule would have on the mortgage lending market. As noted in the comments submitted by FHLBC, imposing this rule would result in the loss of tens of billions of dollars from the mortgage lending markets. This is directly contrary to the intent of Congress, as shown by the long history of constantly expanding both the allowable members and purposes beyond just home mortgage lending.

There is no discussion or citation of facts which would indicate how these proposed rules would increase liquidity, availability or competition to provide a better mortgage lending marketplace for consumers. Indeed, the strongest rational cited in the NPR is an unsupported allegation that some members, which by the FHFA's own analysis could only be a tiny percentage, are circumventing the existing rules and using advances for impermissible purposes. However, there is no support that this is actually happening and no indication that if it is, it is having a negative impact on the mortgage lending market that this rule is intended to correct. Furthermore, the FHFA fails to address what, if any, impact a member who is not meeting the proposed rules is having, or even how they could have a negative impact given the restrictions of specific collateral that must be used to secure any advance. Such restrictions already guarantee that a member must have been involved in the desired lending, because they have to provide the collateral to prove it.

Additionally, the NPR is directly contradictory to the statute in that it focuses its requirements for member balance sheets solely on residential mortgage lending. Congress has explicitly expanded the acceptable purposes of advances to small business, agribusiness and community development lending. This rule, as written, could terminate the membership of a member, removing an important source of liquidity and causing a disruption in the market, even though they are heavily involved in statutorily permitted lending, the direct intent of Congress. This contradiction simply cannot be overlooked.

The NPR must also conform to the procedures of the APA in that the rule must not be contrary to the express intent of Congress. One example is given above, however there are numerous others. The NPR seeks to eliminate captive insurance companies, despite there being no such delineation within the statute. Indeed, insurance companies have been included as allowable members since the inception of the FHLB system in 1932. To redefine terms included in the statute with no rational basis is to effectively rewrite a statute, which is beyond the authority of an administrative agency.

Further, to change what is in plain language as an entrance requirement, the ten percent rule, to an ongoing requirement simply flies in the face of the statute. The status quo has existed for over 80 years and in all that time Congress, despite amending the statute numerous times, has never sought such a change. The tenuous connection to the exception of allowing a new institution a one year grace period to meet the requirement is inapposite. If anything, common sense dictates that this shows congressional intent was to be as broad and inclusive as possible, not rigid and limited.

Administratively the NPR fails to address what is a seismic shift in regulatory burden and procedure. Not only does this rule seek to turn a one-time application into a yearly audit, but it puts the burden upon the FHLBs. In its own analysis in the NPR, the FHFA indicates that not all the relevant data which captures a members residential mortgage lending is readily available within existing filings presumably meaning the members will incur the time and expense of creating such documentation. Not only that, but, as admitted in the NPR, only a tiny percentage of the existing members would be out of compliance, yet every member would have to be audited for compliance

every year. All of this burden and expense, yet there is no explanation at all of how this will benefit consumers seeking a mortgage for their home.

This NPR will also place the largest burden and uncertainty upon the smallest financial institutions that serve the small, and typically most underserved, communities. Community based lenders have been a prominent focus of policymakers at all levels. Yet, this proposal will put the most hardship on these smaller institutions that do not have the same access to the secondary markets and sources of liquidity that larger institutions have. We have member credit unions who are not yet FHLBC members, but have been working towards that as a goal to better serve their customers and bring the same advantages of the products that large lenders can offer through their FHLBC affiliation. Additionally, the ongoing portfolio requirements are most likely to adversely impact community lenders the most during times of market fluctuation. As we have just seen recently, the market can change quickly and these new requirements could pose a grave danger to small institutions. With the heavy focus on residential mortgage lending, and the available secondary products that qualify, a smaller lender could have a large portion of its portfolio in a single asset class.

The practical consequences of the proposal would be very severe and disruptive. To begin with, a credit union's ability to rely on the liquidity provided by the FHLBC, particularly in times of economic distress, would be seriously undermined if the FHFA is allowed to establish requirements they must meet simply to remain an FHLBC member. This has never been the case in the 82-year history of the FHLBs. With the imposition of such a requirement, a credit union could never be assured that when the next financial crisis occurs they will have continued access to FHLBC liquidity.

We are also concerned about the proposed rule's disparate treatment of credit unions and community banks. While the proposal would require all credit unions maintain at least 10% of their total assets in residential mortgage loans, only banks with assets above \$1.108 billion would be subject to the same on-going requirement. Smaller banks, designated as community financial institutions, are not subject to the 10% test and thus requiring credit unions to continually satisfy this 10% requirement would be fundamentally unfair and would disadvantage smaller credit unions in particular. Additionally, the certification that these rules would have no impact on small or medium sized business by reason that they only apply to the FHLBs is specious, at best. For one, the FHLBs consist of their members, many of which are small and medium sized business and secondly, this proposal clearly and obviously will affect many small and medium sized business both on its face and as evidenced by the volume of comments from such businesses both now and during the Advanced Notice of Proposed Rulemaking comment period.

The overall intent of this proposal seems to restrict and narrow FHLB membership, resulting in fewer members. As some members have their memberships terminated, and others are forced to reduce their usage of the FHLBC, we are concerned about the destabilizing effects that would result. These actions will inevitably lead to smaller FHLBs with fewer assets, reduced profits, lower retained earnings, and a decreased market value of equity and capital stock. Additionally, as usage contracts and profits decline, fewer dollars will be available to support the FHLBC's affordable housing and economic development programs. Our member institution's ability to serve their members and community through valuable products such as the FHLBC's down payment assistance grants, Community Investment Cash Advances and Affordable Housing Program grants would be harmed.

This NPR not only fails to justify its substantial increase in regulatory burden, but directly contradicts the intent of Congress, and therefore cannot be made permanent as it is written. The changes sought are fundamental alterations of the FHLB system and the way that it has operated for decades, but is not based upon any changes in the statute by Congress. It seeks to limit and reduce memberships in the FHLBs, foist a significant regulatory burden on the FHLBs and their members and fundamentally redefine the implementing statutes, all without any justification. There is no indication in the NPR that these changes will increase either the availability of mortgage financing for consumers of the safety and soundness of the existing lending. In fact, all indications are that these rules would arbitrarily destroy billions of dollars in mortgage lending while increasing costs. For these reasons, we strongly urge the FHFA to withdraw this proposal and reconsider it.

We appreciate the consideration of our views.

Sincerely,



Steven C. Haubner
Assistant General Counsel
Illinois Credit Union League