

Cooperative Credit Union Association

Massachusetts • New Hampshire • Rhode Island

Creating Cooperative Power

January 12, 2015

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

Re: Notice of Proposed Rulemaking and Request for Comments – Members of Federal Home Loan Banks (RIN 2590-AA39)

Dear Mr. Pollard:

On behalf of the member credit unions of the Cooperative Credit Union Association, Inc. (“Association”), please accept this letter of comment regarding the Federal Housing Finance Agency’s (“FHFA”) proposed revisions to the regulations governing Federal Home Loan Bank (“FHLB”) membership. Collectively the Association is the tri-state trade association of Massachusetts, New Hampshire, and Rhode Island serving over 200 credit unions, who further serve approximately 2.6 million consumer members, and operates as part of the Credit Union National Association (“CUNA”). Approximately 76 member credit unions are members of the local Federal Home Loan Bank of Boston.

The Association commends the FHLB for issuing the Notice of Proposed Rulemaking (“NPR”). The Association notes that the FHFA began the process of considering changes to the FHLB system in 2010 in its Advance Notice of Proposed Rulemaking (“2010 ANPR”). It was at this time that the FHFA began to consider making changes to the membership requirements in the FHLB system. The 2010 ANPR was responded to with over 130 comment letters, the large majority of which opposed the proposed changes in membership qualifications. Many of the comment letters questioned the need for the revisions to the membership requirements proposed in 2010 ANPR. After consideration of the comments submitted, the FHFA submitted the NPR at issue, containing similar membership qualification revisions for the stated purpose of “implement[ing] more effectively the statutory eligibility requirements.”

As with the 2010 ANPR, the Association questions the need for the proposed revisions to membership qualification, and therefore opposes the proposed rule.

I. There is no compelling need to amend the rules that apply to the currently stable and successful FHLB system

The goal of the FHLBanks is to be a source of liquidity for member institutions in support of housing finance and community lending. Existing regulations protect taxpayers and support the FHLB's housing finance mission. FHLBanks have successfully met their mission and provided liquidity in the past. More recently, they were successful at providing liquidity in the nation's 2007-08 economic crisis. The FHLB system was quoted as being the "largest lender to U.S. depository institutions" in a 2008 report by the Federal Reserve Bank of New York, and quoted by former Acting Director Edward DeMarco as a "key provider of liquidity... [and] a reliable source of credit to their members, and that they could meet member liquidity needs safely and soundly." The FHLB system is operating successfully, and imposing additional restrictions may impair not only the system in fulfilling its purpose, as it has been doing, but potentially the U.S. economy.

The NPR proposes to amend membership qualifications such that each member and potential member must have at least 1% of its total assets in home mortgage loans, and it must maintain this ratio on an ongoing basis in order to remain eligible for Bank membership. Additionally, it requires each member subject to the 10% requirement to maintain 10% of its assets in residential mortgage loans on an ongoing basis, with calculation of the ratios based on a three-year rolling average, in order to maintain membership.

The changes to membership qualifications are unnecessary. The majority of members are already in compliance with the 10% of assets in residential mortgage loans requirement. The number in compliance is roughly 98%, with half of the remaining 2% at 9% of assets.

The NPR states that one of the reasons revisions are necessary to the membership qualifications is that a member or potential member could meet the current qualifications on the one-time basis currently in place, and subsequently cease making home mortgage loans and/or fall below the minimums currently required. However, in the NPR the FHFA notes that it does not have any evidence that significant numbers of members that were required to hold 10% of their total assets in residential mortgage loans in order to join the FHLB system have substantially reduced these holdings after becoming members. There is no data that this possibility is an actuality, or that it has created any issues within the system. There is no need to create a solution for a problem that does not exist, as the NPR does.

II. The FHLBA sets forth current statutory requirements, and any changes should be made by Congress

It is not clear that the FHFA has the authority to amend statutory provisions. The Federal Home Loan Bank Act (“FHLBA”) sets forth the criteria for becoming a member of the FHLB system. 12 USC §1242(a)(1) and §1242(a)(2) set forth the statutory requirements, which include the “makes long-term home mortgage loans” and “10%” requirements. The statute clearly states that in order to become a member of the FHLB system, these (among other) requirements must be met. It is the position of the Association that there is no discretion granted to the FHFA to change these requirements. The statute clearly delineates a point-in-time test, and does not support an ongoing test. This is so despite the NPR’s reference to 12 USC §1242(a)(3)’s one-year exception to the point-in-time test. This section creates an exception only to the otherwise clear requirements that an institution meet its requirements at a certain point in time, rather than creating authority for an ongoing test. The proposed revisions, including the ongoing test provisions, therefore, contradict current statutory authority. If changes are to be made to the current membership qualifications as set forth by statute, they must be made by Congress.

III. Amendments would hamper additional growth and stability of the FHLB system and its members

The FHLB system is a voluntary system that functions through a process of financial incentives and voluntary worthy behavior. It is important to the FHLB system to maintain a diverse and large membership. The variety of incidental powers that the FHLBanks have is appealing to members and potential members. Instituting additional regulatory burdens and strict tests that may limit one’s ability to become a member threatens the growth of the system.

The ongoing compliance tests proposed by the NPR are a disincentive for potential members to join the FHLB system. Additionally, increased regulatory burdens are an encumbrance to continued growth. Potential members that meet the current regulations, but which have concerns about the costs and burdens that would result from the proposal, may decide not to pursue membership within the system, thereby depriving the system of additional valuable assets, collateral, and funds for the affordable housing program.

The termination provisions also create instability within the system. The proposal sets forth strict rules which require that a Bank terminate the membership of any institution that remains out of compliance for two consecutive years. This creates instability in the system when an institution may fall below the ongoing requirements during the two-year period, has its membership terminated, but later re-qualifies for membership and must rejoin its Bank. This provision also strips the discretionary authority currently granted to the FHLBanks. The FHLBanks have successfully exercised their discretion under the current system in non-compliance situations, and should continue to be able to in any future potential non-compliance situations that arise.

Additionally, the regulation restricts access to secondary markets for FHLB members that do not meet the proposed tests. This had broad implications outside of this proposal and runs contrary to recent legislative proposals during debate over housing finance reform that would have expanded the FHLB's ability to serve as a source of secondary market access for small financial institutions. This concept was an important part of the legislative proposals, and it may appear in the newly sworn-in 114th Congress as part of a future housing finance reform effort.

Credit unions in particular value their membership in the FHLB system. In a letter to the National Credit Union Administration ("NCUA"), the Association stressed the value they find in the FHLB system as a liquidity source, and requested that it be included in any proposed rulemaking.¹ Credit unions have limited sources of liquidity, and FHLB membership is a powerful source. The proposed changes could harm the growth of the credit union system. The proposed changes setting forth strict ongoing membership compliance and percentage tests could harm the credit union system's access to this liquidity, FHLB advances, and mortgage purchase programs.

The largest concern of credit unions relates to the growing regulatory burden. The burden of complying with ever-changing regulatory requirements is particularly onerous for smaller institutions because most of the costs of compliance do not vary by size, and therefore proportionately are a much greater burden for smaller as opposed to larger institutions. If a smaller credit union offers a service, then it has to be concerned about complying with most of the same rules as a larger institution, but can only spread those costs over a much smaller volume of business.

The costly and pervasive impact of rules on credit union operations cannot be overstated. Because credit unions are financial cooperatives, owned by their members, costs that a credit union bears to meet the multitude of wide ranging regulatory training and compliance responsibilities are ultimately paid by their members. The diversion of funds to pay for compliance may mean members receive reduced rates and savings, and may limit the availability of certain loans for members. For some credit unions, it may also result in pressure on earnings.

Credit unions and other financial institutions under the proposed rule will need to continually monitor their balance sheets to make sure they are always meeting the housing assets test. This is costly, ineffective, and irresponsible when management could be using its flexibility and skills in managing a credit union's balance sheets to respond to changing market conditions.

¹ Association's letter to Secretary of the Board Mary Rupp of the National Credit Union Administration, dated September 28, 2012.

In summary, the FHFA fails to weigh the costs of its proposals against their unclear benefits, and the Association cannot support the proposal as it stands.

IV. If the FHFA moves forward with the regulation, then it should provide parity to credit unions

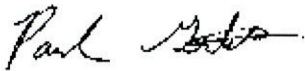
If the FHFA decides to move forward with a regulation, the Association urges that it consider parity so that community banks and credit unions are treated equally for purposes of maintaining membership. Currently, the statute does not allow credit unions to be considered a community financial institution (“CFI”) for purposes of securing membership. Credit unions should be treated as CFIs for purposes of maintaining membership under a new rule, and should not have to meet the 10% test on an ongoing basis. In the alternative, all credit unions below the same asset threshold as community banks should be treated as CFIs for purposes of maintaining FHLB membership. The Association suggests that the FHFA consider raising that threshold from \$1 billion to \$65 billion.

V. Conclusion

In conclusion, the Association strongly urges that the FHFA withdraw the proposed rule. In the alternative, if the FHFA moves forward with a new rule, the Association requests that it consider parity for credit unions and CFIs.

Thank you so much for your consideration of these views. The Association appreciates the opportunity to provide input on such an important topic and I remain available to address any questions or concerns at (800) 842-1242 that you or your staff may have at your convenience.

Sincerely,



Paul Gentile
President/CEO