

November 25, 2016

Alfred M. Pollard, General Counsel
Attention: Comments/RIN 2590-AA85
Federal Housing Finance Agency
400 Seventh Street, SW, Eighth Floor
Washington, DC 20219

Re: Comments on Proposed Rule – FHLB Membership for Non-Federally-Insured Credit Unions;
RIN 2590-AA85

Dear Mr. Pollard:

I am writing on behalf of the California and Nevada Credit Union Leagues (Leagues), one of the largest state trade associations for credit unions in the United States, representing the interests of more than 370 credit unions and their nearly 10 million member-consumers. Our members include 12 state-chartered, privately-insured credit unions in California, with approximately \$4.1 billion in assets, and 7 state-chartered, privately-insured credit unions in Nevada, with approximately \$2.2 billion in assets. The Leagues welcome the opportunity to provide comments to the Federal Housing Finance Agency (FHFA) on its proposed rulemaking regarding Federal Home Loan Bank (FHLB) membership for non-federally-insured credit unions (NFICUs).

The Leagues thank the FHFA for issuing this proposed rule to codify previous guidance issued in April 2016 and provide assurances and clarity for NFICUs seeking FHLB Membership. The Leagues support the proposed rule and offer the following comments and recommendations.

Background

Until recently, state-chartered credit unions without federal share insurance were ineligible for FHLB membership, except to the limited extent that a credit union certified as a “community development financial institution” (CDFI) could meet the FHLB eligibility requirements applicable to CDFIs.

This proposed rule implements section 82001 of the December 2015 Fixing America’s Surface Transportation Act, which amended section 4(a) of the Federal Home Loan Bank Act (Bank Act) to authorize credit unions without federal share insurance to become FHLB members. Such credit unions must meet the membership eligibility requirements applicable to insured depository institutions and take enumerated steps to demonstrate they meet the requirements for federal share insurance.

Specifically, a NFICU shall be treated as an insured depository institution for the purpose of determining FHLB membership eligibility provided that its state regulator has first determined the NFICU met the requirements for federal insurance as of the date of its application for membership.

State Regulator Determination

Consistent with the statute and the FHFA’s previous guidance, the proposed rule requires that the state regulator of an NFICU applicant determine that the applicant actually satisfies all of the applicable eligibility requirements for NCUSIF share insurance under the Federal Credit Union Act and the implementing regulations of the NCUA. The FHFA notes that a determination that a NFICU applicant is “eligible to apply” for NCUA insurance or is operating and in good standing under state law is not sufficient to satisfy the statutory requirement.

Process

Under the proposed rule the FHLB would first obtain from a NFICU applicant all of the information generally required to process membership applications from federally insured depository institutions. Once a FHLB has obtained that information, the NFICU would be notified that its application is provisionally complete and that the NFICU should request from its state regulator a determination that it satisfies the requirements for obtaining federal share insurance as of the date of the request.

The NFICU's application will not be deemed to be complete until the FHLB has received one of the following items:

- (i) A written statement from the applicant's state regulator that the applicant met all of the eligibility requirements for federal share insurance as of the date of the request;
- (ii) A written statement from the applicant's state regulator that it cannot or will not make a determination regarding the applicant's eligibility for federal share insurance; or
- (iii) A written statement from the applicant certifying that the applicant did not receive a response from its state regulator within six-months of its request.

Although not provided for in statute, and in response to concerns that a state regulator may expressly decline to make such a determination, the FHFA proposes that a written statement from the state regulator that it cannot or will not make the determination will be considered the equivalent of a failure to respond in six months. When a state regulator issues such a statement, the FHLB can consider the NFICU's application as complete and then act on the application. This expedites the processing of the application by removing or reducing the six month waiting period for non-action by a state regulator.

The Leagues recognize and respect that a state regulator may not feel they can make a determination that generally is under the jurisdiction of a federal agency. Therefore, the Leagues fully support the "cannot/ will not" written statement approach and the FHLB's treatment of such as the equivalent of a failure to respond in six months.

Definition - Date of Application

The FHFA proposes that the "date of the application" be the date on which an NFICU has provided to a FHLB a "complete" membership application—i.e., an application that includes all information that is required to assess the applicant's compliance with the applicable statutory and regulatory membership eligibility requirements, including the determination by the applicant's state regulator (as described above) that it satisfies the requirements for obtaining federal share insurance.

The existing membership regulation uses the concept of a "complete" application to establish the starting point of the 60-day period during which a FHLB is generally required to make a determination on a membership application. The Leagues agree with the date of application definition as the date a FHLB receives a complete application. We agree this distinction is necessary to facilitate the "provisionally complete" application process and six-month timeline for obtaining a federal insurability determination from a state regulator.

Exam Reports

The Bank Act requires that the primary federal banking regulators make available to the FHLBs, in confidence, reports of condition and other information relating to the condition of any FHLB member or other institution with which a FHLB contemplates having transactions authorized by the Bank Act, such as applicants for membership. That provision, however, does not apply to state banking regulators and the supervisory reports that they prepare relating to depository institutions organized under state law.

This raises a question as to whether a FHLB may approve an application for membership received from an NFICU whose state regulator declines to provide the FHLB with access to the reports of examination for its regulated entities or to allow the credit unions it regulates to disclose the composite rating derived from those examinations.

Section 1263.17(d) provides that, if a depository institution applicant does not have a composite regulatory examination rating, does not have the minimum rating required by the regulations, or does not meet the performance trend criteria, the applicant may still meet the “financial condition” requirement if it or the FHLB prepares a written justification providing substantial evidence that is acceptable to the FHLB that it is in a sound financial condition. The preamble to the rule states that a NFICU applicant may utilize these alternative provisions when a state regulator does not provide a FHLB access to the reports of examination. The Leagues support this alternative, and strongly encourages the FHFA to aggressively seek agreements with each of the state regulators that will allow the FHLBs access to examination reports of NFICUs.

Effective Date

The FHFA has not proposed an effective date for the regulation. Since the proposed regulations are substantially similar to the guidance letters issued in April 2016, the Leagues recommend the regulation be effective immediately upon, or no later than 30 days from, publication of a final rule in the Federal Register.

Conclusion

The Leagues support the proposed rule which codifies previous guidance and provides assurances and clarity for NFICUs seeking FHLB Membership. We encourage the FHFA to seek working agreements with state regulators that will help expedite the processing of membership applications by NFICUs. Thank you for the opportunity to comment on the proposed rulemaking and for considering our views.

Sincerely,

Diana R. Dykstra
President and CEO
California and Nevada Credit Union Leagues