AMERICAN SHARE INSURANCE

November 28, 2016

The Federal Housing Finance Agency
Mr. Alfred M. Pollard, General Counsel
400 Seventh Street SW, Eighth Floor
Washington, DC 20219

Re: RIN 2590-AA85
Federal Home Loan Bank Membership for Non-Federally-Insured Credit Unions

Dear Mr. Pollard,

I am writing on behalf of American Mutual Share Insurance Corporation (ASI), an Ohio-based company that insures the deposits for state-chartered credit unions that are not federally insured in nine states across America. These state-chartered credit unions are subject to the same licensure, regulation and supervision by their respective State regulatory authority as those that are Federally-insured in such states.

By way of background, ASI is a licensed and legally operating share guaranty corporation under Ohio Revised Code Section 1761, and, rules thereunder, subject to annual licensure by the Ohio Department of Insurance and dual regulation by the Ohio Department of Insurance and the Ohio Department of Commerce. The company is also subject to regulatory oversight by the credit union authorities in its other eight states of operation.

ASI has been operating safely and soundly since 1974, only three years less than that of the federal share insurer for credit unions, the National Credit Union Share Insurance Fund (NCUSIF), which the National Credit Union Administration (NCUA) is empowered to administer.

In all but two states, credit unions can choose to be state-chartered or federally chartered. Under the Federal Credit Union Act, state-chartered credit unions may be federally insured, but it is *not* required. There are approximately 125 credit unions that are privately insured operating in nine states (Alabama, Maryland, Ohio, Illinois, Indiana, Nevada, California, Idaho and Texas).

The agency's proposed rules would carry out the provisions of Section 82001 of The Fixing America's Surface Transportation Act (The FAST Act of HR 22), which amended Section 4(a) of the Federal Home Loan Bank Act (Bank Act), so as to authorize certain credit unions without Federal share insurance (NFICUs) to become members of the Federal Home Loan Bank. ASI was very much in favor of this legislation when it passed and is very supportive of FHFA's April 12, 2016 guidance letter and proposed rule implementing §82001 of The FAST Act as it relates to this new source of membership.

The following are ASI's comments and suggested changes regarding specific provisions of the proposed rule for your consideration.

"Conversion" – not "Cancelation or Termination" – of Insured Status

In Section 1263.19(b) of the proposed rule, and elsewhere within the preamble to the proposed rule, there are references made to a credit union "terminating" or "canceling" its federal share insurance when changing its insured status from that of federally insured to non-federally insured. At 12 CFR §708b.2 of NCUA's rules, the act of changing insured status is considered "converting" which is defined therein as: "…the act of cancelling federal insurance and simultaneously securing insurance from another insurance carrier." Further, 12 CFR §708b.2 states that: "Terminate, termination, and terminating, when used in reference to insurance, refer to the act of canceling federal insurance and mean that the credit union will become uninsured."

We believe the use of terms such as "terminating" or "canceling" leads one to view a converting credit union as being "uninsured" after the change in insured status; whereas, such credit unions are merely exercising their right under the Federal Credit Union Act and NCUA's Rules, as well as their respective state laws, to convert from federal to an approved non-federal form of share insurance for their members' accounts. A converting credit union is never without coverage of their members' accounts; and, therefore, is never "uninsured." We request all references be changed accordingly.

Application Process

We support proposed §1263.19(a)(3) that would require a Bank to deem an NFICU's application to be complete after it has received any one of the following items: (1) a written statement from the applicant's appropriate State regulator confirming that the NFICU satisfies the requirements for Federal share insurance; (2) a written statement from the applicant's appropriate State regulator that it cannot or will not make that determination; or, (3) a written statement from the applicant NFICU that it has not received a response from the State regulator within the statutory six-month period, or that a response was received from the State regulator stating that the applicant credit union did not meet all the eligibility requirements for federal share insurance. We further support §1263.19(a)(1) that provides that an application can be "provisionally complete" having supplied all other necessary information required by the Bank until it receives this State regulator's written statement regarding the applicant being able to satisfy the requirements for Federal share insurance as noted above.

However, §1263.19(a)(2) further states: "After receipt of the 'provisionally complete' notice required under paragraph §1263.19 (a)(1), the applicant shall send to its appropriate State regulator a written request for a determination that the applicant meets all requirements for federal share insurance as of the date of the request sent under 1263.19(a)(1). In many cases, non-federally insured credit unions have already sought determination from the regulator in

making an initial application to the Bank for membership. Therefore, we would ask for clarifying language that a request to a regulator could be made before the receipt of a notice under (a)(1) and thus the tolling of the six month time period and a request to a state regulator could actually begin before an application is "provisionally complete."

Converting Credit Unions and Their FHLB Status

Further, we support proposed §1263.19(b) that would explicitly authorize a credit union, converting from federal insurance to private insurance, to remain a member of the Bank System without requiring it reapply for membership and to have to request a determination from its State regulator as to whether or not it meets the requirements for Federal share insurance. The proposed rule would require that the Bank determine that the member has elected to convert its Federal share insurance voluntarily—*i.e.,* that NCUA has approved the credit union's request to convert from Federal share insurance to nonfederal share insurance.

We support flexibility in documenting and validating a voluntary conversion, such as the Bank making this determination by obtaining a copy of NCUA's approval of the credit union's request to convert from Federal insurance to nonfederal share insurance in accordance with 12 CFR §§708b.203-206. A federally insured credit union cannot convert to non-federal insurance without NCUA's expressed written approval, and ASI cannot insure a credit union that has its insured status terminated by NCUA.

Information Sharing

We support the provisions in the proposed rule at §1263.31(b), that clarify that reports by local, State or Federal agencies, or any private entity providing share insurance to a member that is non-federally insured credit union (i.e. ASI), may be furnished by such agencies or entities to the Bank or FHFA upon request. ASI has received limited authority from its Ohio regulator to share ASI-authored insurance examination reports on its privately insured credit unions and other reports and communications relevant to the continued insurability of its privately insured credit unions with FHL Banks.

Financial Condition Requirement

The proposed rule would revise §1263.11(b)(3)(iii) to require that non-federally insured credit unions meet the minimum performance standard in the same way that CDFI credit unions must under the existing provision — that is, by having received a 1, 2, or 3 composite regulatory examination rating from its appropriate regulator within the past two years, as well as by meeting the performance trend criteria for earnings, nonperforming assets and allowance for loan and lease losses.

In general, we do not support this provision, because we do not believe non-federally insured credit unions with a composite rating of 1 should be treated differently than a state-chartered credit union that is federally insured, therefore, it should not be subject to a separate performance trend review if it has a composite rating of 1. This same view is shared by the Credit Union National Association.

We do, however, support allowing the Bank to make a presumption of financial condition and performance trend in states where composite regulatory examination ratings, and reports of examinations, are not made available by State regulators. The proposal further states that: "…a Bank may rely on the alternative provisions of §1263.17(d) to rebut any presumption of noncompliance with the 'financial condition' requirement that arises from a state credit union regulator's decision not to provide a Bank with access to the reports of examination for its regulated entities."

Collateral Requirements

In the years that ASI sought passage of parity for privately insured credit unions with respect to membership in the Federal Home Loan Bank System, one of the over-arching themes in discussing this issue with the Congress was that state-chartered credit unions without federal share insurance should not be discriminated against simply because they chose to exercise their right under the Federal Credit Union Act, and State law, to have insurance other than federal. In fact, The Fast Act states that given certain conditions being satisfied, that the applicant NFICU "…shall be treated as an insured depository institution [i.e. Federally-insured] for purposes of determining its eligibility..."

It is our understanding that the Banks are imposing different collateral requirements, such as whether it will require taking physical possession of collateral or re-classifying and downgrading the collateral of existing federally-insured members that become privately insured. This can create a tremendous imposition on a credit union's operations. The legislation specifically addressed this issue. It states:

> "(D) PROTECTION FOR CERTAIN FEDERAL HOME LOAN BANK ADVANCES.—Notwithstanding any State law to the contrary, if a Bank makes an advance under section 10 to a State-chartered credit union that is not federally insured—
>
> "(i) the Bank's interest in any collateral securing such advance has the same priority and is afforded the same standing and rights that the security interest would have had if the advance had been made to a federally insured credit union; and
>
> "(ii) the Bank has the same right to access such collateral that the Bank would have had if the advance had been made to a federally insured credit union."

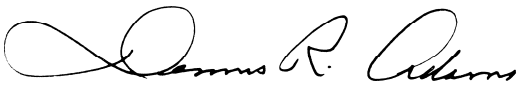
Further, FHFA's current rules, §§1266.7, 1266.8 and 1266.9, provide guidance on collateral for advances. Specifically, §1266.9 states in part that:

> "(1) A Bank may permit a member that is a depository institution to retain documents evidencing collateral pledged to the Bank, provided that the Bank and such member have executed a written security agreement pursuant to §1266.2(c) of this part whereby such collateral is retained solely for the Bank's benefit and subject to the Bank's control and direction."

Based on the statutory provisions and other FHFA rules, we would respectfully request that the FHFA clarify in the proposed rule that NFICUs receive the same treatment as other insured depository institutions for purposes of advances and collateral.

Thank you for your consideration of these views. We look forward to working with the FHFA and the Federal Home Loan Banks to ensure that privately insured credit unions fit seamlessly into the Federal Home Loan Bank System.

Respectfully submitted,



DENNIS R. ADAMS
President /CEO