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**National Association of Federally-Insured Credit Unions**

June 4, 2018

Alfred M. Pollard  
General Counsel  
Federal Housing Finance Agency  
400 7<sup>th</sup> St., SW, 8<sup>th</sup> Floor  
Washington, D.C. 20219

RE: Regulatory Review (No. 2018-N-03)

Dear Mr. Pollard:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally-insured credit unions, I am writing to you in regard to the Federal Housing Finance Agency's (FHFA) Notice of Regulatory Review. NAFCU and its member credit unions support the FHFA's efforts to streamline existing regulations to find efficiencies, eliminate obsolete and conflicting provisions, and find superior methods of accomplishing the same supervisory purpose. NAFCU recognizes the importance the Federal Home Loan Banks (FHLBs) play in the housing finance system and encourages the FHFA to explore ways to simplify the day-to-day operations of the FHLBs to make it easier for credit unions and other members to access liquidity as appropriate and necessary. Accordingly, the FHFA should revise its regulations pertaining to "other real estate-related collateral" to include municipal bonds and clarify its regulations regarding the types of organizations that are eligible for membership at the FHLBs.

### **General Comments**

Pursuant to Executive Order 13579, "Regulation and Independent Regulatory Agencies" (July 11, 2011), the FHFA has developed and implemented a plan to periodically review its existing significant regulations to determine whether any should be modified, streamlined, expanded, or repealed so that the agency's regulations are more effective and less burdensome. Under the FHFA's Review Plan, the agency reviews its regulations at least every five years, except for those regulations that were adopted or substantially amended within the two years prior to the release of a Notice of Regulatory Review. In April 2013, the FHFA conducted its first regulatory review and considered 44 regulations in that process. The FHFA received two letters in response

to the request for comment and has pursued amendments to certain rulemakings based on that feedback.

In general, NAFCU urges the FHFA to carefully consider a more comprehensive review of all of its regulations as well as guidance and interpretive documents to provide clarity to regulated entities. Moreover, in keeping with President Trump's Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs" (Jan. 20, 2017), the FHFA should make every effort to reduce its regulatory footprint through identifying and remediating inefficiencies in its processes. The FHFA should also be wary of its authority to issue directives to the government-sponsored enterprises (GSEs), Fannie Mae and Freddie Mac, without going through the formal notice and comment rulemaking process required by the *Administrative Procedure Act*. Credit unions and other institutions that utilize the GSEs should be entitled to comment throughout the entire process of any policy changes that affect their day-to-day lending procedures.

NAFCU also encourages the FHFA to comb through its regulations to find areas that require updated citations. Considering the FHFA's efforts to reduce regulatory burden and the Trump Administration's regulatory rollback agenda, there may be existing citations to regulations that are now obsolete. Such citations should be eliminated and the FHFA should review its regulations for inconsistencies on a more regular basis, perhaps even annually.

### **FHLB Regulations**

NAFCU and its member credit unions request that the FHFA permit the FHLBs to accept municipal securities as "other real estate-related collateral" without having to conduct the current, arduous process of determining a real estate nexus. The FHFA should also clarify its regulations as to which types of state-chartered organizations may become FHLB members. Clearer regulations and increased flexibility help the FHLBs operate more effectively and efficiently, which, in turn, helps credit unions access liquidity from the FHLBs as needed. NAFCU encourages the FHFA to make the modifications requested in this letter to improve the functionality of the FHLB system as well as the housing finance market overall.

#### *Other Real Estate Related Collateral*

The FHLBs provide both short and long-term advances to their members and housing associates to support their mortgage lending, community investment, and other operational needs. To obtain an advance, members must pledge mortgage-related assets and other assets as collateral. The *Federal Home Loan Bank Act* (Bank Act) requires the FHLBs to maintain a security interest in eligible collateral, including mortgage loans, mortgage-backed securities, other securities, cash or deposits, and other real estate-related collateral. "Other real estate-related collateral" must

have a "readily ascertainable value" and the FHLB must be able to perfect its interest in the collateral. *See* 12 U.S.C. § 1430(a)(3)(D). In Regulatory Interpretation 2003-RI-02, the Federal Housing Finance Board, FHFA's predecessor, explained that municipal securities may qualify as "other real estate-related collateral" so long as the proceeds of the security have been or will be used to finance the acquisition, development, or improvement of real estate.

That same guidance provides that, in the case of a mixed-use municipal security, the FHLBs must engage in an analysis to determine what percentage of the municipal security proceeds have been or will be used for purposes other than real estate improvements to determine the extent to which the security may qualify as "other real estate-related collateral." The FHLBs have found this analysis to be very complicated because not all security documents are complete – they contain varying levels of detail regarding the use of the proceeds. This discrepancy in the information provided on documents has made it very difficult to evaluate whether a security qualifies as "other real estate-related collateral." This requirement has imposed a huge burden on the FHLBs because, without the necessary information to complete this complicated analysis, they are forced to reject such securities even though the proceeds of most municipal securities are used to finance real estate or community economic development initiatives that are certainly real-estate related. Therefore, NAFCU recommends that the FHFA permit the FHLBs to accept municipal securities that have become an established form of eligible collateral through reliance on 2003-RI-02 without engaging in this cumbersome analysis to determine if they qualify as "other real estate-related collateral." The FHFA should formally add such municipal securities to the list of "other real estate-related collateral" in its regulations.

#### *"Duly Organized" Requirement*

The Bank Act's requirements for FHLB membership include that the institution is "duly organized" if it is "chartered by a State or federal agency" as a depository institution, insurance company, or for a CDFI applicant, if "incorporated under State or Tribal law." *See* 12 C.F.R. § 1263.7. The FHFA has yet to explain whether this encompasses the entities listed if they are organized under state law as, for example, a limited liability corporation. Entities, including those that clearly qualify for membership as they are expressly listed in the Bank Act, use a variety of organizational structures permitted under the laws of their respective states. The FHFA's language in this Section improperly narrows the scope of the "duly organized" requirement in the Bank Act, making it harder for these entities to become FHLB members. Thus, NAFCU encourages the FHFA to clarify Section 12.63.7 of its regulations so that this aspect of membership eligibility is not read in a restrictive manner that hampers the FHLBs' ability to conduct business with listed institutions that are organized under different structures.

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## **Conclusion**

NAFCU appreciates the opportunity to comment on this Notice of Regulatory Review. If you have any questions or concerns, please do not hesitate to contact me at (703) 842-2212 or [akossachev@nafcu.org](mailto:akossachev@nafcu.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Ann Kossachev". The signature is fluid and cursive, with the first name "Ann" and last name "Kossachev" clearly distinguishable.

Ann Kossachev  
Regulatory Affairs Counsel