ROC usa™
Resident Owned Communities
BETTER TOGETHER

March 28, 2011

Mr. Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
1700 G Street, N.W., Fourth Floor
Washington, DC 20552

RE: Response to Advance Notice of Proposed Rulemaking on Certain Membership Eligibility Criteria for FHLB Membership

Dear Mr. Pollard:

ROC USA™, LLC is a national nonprofit social enterprise dedicated to transforming the manufactured home community ("MHC") sector through resident ownership. Its single member LLC subsidiary, Resident Ownership Capital, LLC d/b/a ROC USA™ Capital finances resident-owned MHCs and is a certified Community Development Financial Institution (CDFI) with the Department of Treasury's CDFI Fund. In July 2009, we commented on the Proposed Rule for CDFI Membership in the Federal Home Loan Bank System. In the final rule published by FHFA in early 2010 regarding CDFI membership, we were pleased to read that FHFA interprets the FHLB statute and supporting regulations to include the kinds of community acquisition loans ROC USA™ Capital makes as qualifying "home mortgage loans".

FHFA is now requesting comment on the following questions regarding FHLB membership which may impact CDFIs:

1. Should FHFA amend sections 1263.6 (b) and 1263.10 of its regulations to subject insurance company and CDFI applicants to the 10 percent residential mortgage loans requirement?;

2. Should FHFA amend section 1263.9 of its regulations to require institutions admitted to membership in the FHLB system to comply with the "makes long-term home mortgage loans" requirement both at the time of admission and on an ongoing basis? If so, what should the applicable standard be for "long-term home mortgage loans" and what measures should be adopted to test compliance on an ongoing basis regarding the requirement to "make long-term home mortgage loans"?

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3. Should FHFA amend section 1263.13 of its regulations to require that institutions admitted to membership in the FHLB system comply with the "home financing policy" requirement both at the time of admission and on an ongoing basis? If so, how should "home financing policy" be defined and what standards for ongoing compliance should be developed for different types of institutions?

4. Should FHFA retain or replace the "presumptive compliance" and "rebuttal" process in relation to "home financing policy", "character of management" and "financial conditions" requirements of the regulations?

Our comments on each set of questions follows:

1. **Should FHFA amend sections 1263.6 (b) and 1263.10 of its regulations to subject insurance company and CDFI applicants to the 10 percent residential mortgage loans requirement?**

   We believe it is appropriate to require each FHLB member to demonstrate that it meets the 10 percent test both at admission and on an ongoing basis throughout its term of membership. We understand the definition of "residential mortgage loans" to include the secured first position home mortgage loans ROC USA™ Capital originates and services. Therefore, we have no objection to meeting a 10 percent test on an ongoing basis. Whether this test is applied quarterly, annually or on a 3-year average basis, we are confident ROC USA™ Capital's assets will at all times meet such a test.

2. **Should FHFA amend section 1263.9 of its regulations to require institutions admitted to membership in the FHLB system to comply with the "makes long-term home mortgage loans" requirement both at the time of admission and on an ongoing basis? If so, what should the applicable standard be for "long-term home mortgage loans" and what measures should be adopted to test compliance on an ongoing basis regarding the requirement to "make long-term home mortgage loans"?**

We also believe it is appropriate to require each FHLB member to demonstrate that it makes long-term home mortgage loans both at the time of admission and throughout its membership term. We believe the minimum standard for "long-term home mortgage loan" should be loans with terms of five years. For CDFIs, we believe the measurement of long-term home mortgage loans should be based on origination volume on an annual basis. Most CDFIs are not structured with the capital base to hold large volumes of long-term debt in portfolio, so often adopt a strategy of originating long-term loans and selling such loans to other investors both quickly and after a seasoning period. ROC USA™ Capital's financing model, for example, is one which originates community acquisition/permanent loans with terms of 10-15 years, with ROC USA™ Capital holding on average twenty-five percent (25%) of each loan and selling on average seventy-five percent (75%) of each loan in a senior loan participation structure. Of course, we would want such loans to qualify as long-term home mortgage loans under FHFA rules. There are circumstances as well, however, when it is advantageous for ROC USA™ Capital, and its borrowers, to originate such a loan and sell the entire loan to another investor. In such cases, we believe CDFIs should not be penalized for originating such a long-term home mortgage loan and having sold the entire loan to another investor which is better positioned to hold the loan in portfolio for terms of 10 to 30 years.

As most of ROC USA™ Capital's loan portfolio, measured by both dollar volume and number of loans, are "long-term" in nature, we believe that an appropriate percentage of annual originations for CDFIs would be in the range of 10% - 20%. ROC USA™ Capital's loan portfolio will far exceed this range, but many CDFIs primarily make short-term loans of three years or less. To balance the interest of the FHFA in approving members which demonstrate a commitment to long-term home mortgage financing with the traditional capital constraints and lending practices of many CDFIs, we believe a 10% -20% standard is appropriate.

3. **Should FHFA amend section 1263.13 of its regulations to require that institutions admitted to membership in the FHLB system comply with the "home financing policy" requirement both at the time of admission and on an ongoing basis? If so, how should "home financing policy" be defined and what standards for ongoing compliance should be developed for different types of institutions?**

We believe it is appropriate that each member demonstrate its commitment to home financing with a written policy statement, both at the time of admission and on an ongoing basis. The basis for adherence to such a written policy, we believe, should be that the member remains in compliance with the "10 percent" and the "long-term home mortgage loan" tests.

The statute also speaks to a home financing policy that must be "consistent with sound and economical home financing". This provision opens up another set of questions for discussion and potential definition and/or regulation. For CDFIs, and ROC USA™ Capital is a good example, "sound and economical financing" often means taking a higher degree of credit risk in financing affordable housing than other types of FHLB members, both at the community and individual home level. For example, ROC USA™ Capital originates community acquisition/permanent loans for resident-owned MHCs with loan-to-value limits as high as 105%-110% percent. This loan product has been specifically tailored to the needs of ROC USA™ Capital's specific borrowers, the asset class of resident-owned MHCs and a 25-year track record with no loan losses using this particular risk parameter.

We do not believe it is possible for the FHFA to define "sound and economical financing" for each type of FHLB member and for each type of housing finance product members originate or purchase. Rather, we believe it is appropriate for FHFA to leave this determination to the member banks of the FHLB system. The member banks process applications for membership and monitor member compliance. At least with CDFIs, it seems appropriate that each of the member banks use appropriate discretion to approve written housing finance policies that demonstrate "sound and economical financing" in the context of the CDFI's particular housing loan products, markets served and affordable housing mission.

4. **Should FHFA retain or replace the "presumptive compliance" and "rebuttal" process in relation to "home financing policy", "character of management" and "financial conditions" requirements of the regulations?**

   ROC USA™ commented on this issue in our July 14, 2009 response to the Proposed Rule for CDFI membership in the FHLB System. We believe that nonprofit CDFIs should not be subject to a presumptive compliance and

rebuttal process for regulatory compliance. We again present our prior comments on this issue here:

> It is legitimate for the rules to require sufficient information to the satisfaction of the FHLB regarding financial condition as CDFIs are not regulated as banks in that respect. It does not follow, however, that a failure of CDFIs to have a certain CRA rating which leads to a "presumption of compliance" should automatically result in a "presumption of non-compliance." We suggest that the rules simply ask the applicant to establish that they meet the requirement. This still places the burden of proof on the applicant. However, it does not burden applicants with a statutory presumption against them which each FHLB may interpret differently regarding the level of evidence necessary to rebut the presumption. The rule may clarify how this may be established, such as annual audited financials, etc.
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> We suggest that the rules be changed to drop the "rebuttable presumption of non-compliance" and merely state that the applicant must establish that it does comply. We further suggest that the rule state that tax-exempt CDFIs may file their most recent IRS Form 990 and that if such filing fails to provide information regarding character of management or indicates there are any potential criminal, civil or administrative monetary liabilities, material pending law suits, or unsatisfied judgments against the CDFI applicant or any of its directors or senior officers in the past three years that are significant to the applicant's operations, the applicant must provide a written analysis acceptable to the FHLB as set forth in the proposed rule. The IRS is the regulator of all tax-exempt CDFIs as well as the Public Charities (or Public Trusts) Division of the state Attorney General in which the charity is headquartered. To regard CDFIs as unregulated and establish a presumption of non-compliance with this requirement because they have no CRA rating fails to acknowledge the very strict regulatory environment in which nonprofits already operate. Moreover, such a presumption possibly fails to take advantage of the existing regulatory frameworks.

Sincerely,

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