



March 28, 2011

Alfred M. Pollard
General Counsel
Attention: Comments/RIN 2590-AA39
Federal Housing Finance Agency
Fourth Floor, 1700 G Street, NW.
Washington, DC 20552
Via email: RegComments@fhfa.gov

Dear Mr. Pollard:

The Corporation for Enterprise Development appreciates the opportunity to comment on the Advance Notice of Proposed Rulemaking (ANPR) concerning Federal Home Loan Bank (FHLB) membership - Comments/RIN 2590-AA39.

We appreciate the Federal Housing Finance Agency (the Agency) raising these issues. We are well aware that there is a dire need for financing affordable housing and community economic development, especially in this recessionary period with high unemployment and high deficits. We appreciate the publication of this rule which we see as part of the duty-to-serve rules expansion required of the Agency by the Housing and Economic Recovery Act of 2008 (HERA). We note, however, that a number of rules have yet to be published such as the duty-to-serve rules related to affordable and manufactured housing and the economic development data requirements. This delay has hampered our work in local communities.

In general, we support the direction of this ANPR. However, these are complicated questions and the impacts on different types of financial institutions need to be considered. For example, we are concerned that a Community Development Financial Institution (CDFI) that meets the membership threshold, joins its regional Bank and then takes an advance might no longer meet the membership criteria. The membership thresholds should be set in such a way to encourage community economic development and affordable housing investment, not penalize members who actively enjoy the benefits of membership to meet affordable and community economic development needs in the community. We

strongly encourage the Agency to be more proactive in collaborating with organizations that represent the needs of low-income families and communities to see how best the FHLBank System can meet their needs. Below are CFED's answers to questions posed in the ANPR.

1. *Should FHFA revise § 1263.10 of its regulations so that an insured depository institution that is subject to the 10 percent residential mortgage loans requirement when it is admitted for membership must also comply with that requirement for the duration of the time that it remains a member?*

The Federal Home Loan Banks have a community economic development and affordable housing mission that has been consistently affirmed and expanded over time. A one-time entry threshold is not compatible with that long-standing commitment. However, we believe that the residential mortgage loan requirement is anachronistic and not appropriate to all members. The financial sector and the nation have changed dramatically since 1932. The Agency may wish to offer a variety of different thresholds including multi-family rental housing, cooperatives and community economic development investments in distressed communities or for projects that hire low-income people. An expanded definition of community financial institution is appropriate for institutions that are meeting a community's broader financing needs. Meeting a community's affordable housing and community economic development needs should be required consistently over time, not just at entry.

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

No. CFED led efforts to allow CDFIs access to advances from the Federal Home Loan Banks. At the time, we were unaware of the 10% requirement and know that it is not appropriate for all CDFIs. Like Agency-designated community financial institutions (CFIs), some CDFIs are wholly focused on multi-family rental housing, small business, health and educational facilities or community economic development projects. Thus, a 10% residential mortgage requirement would not be appropriate. Such a requirement should be able to be waived as long as member CDFIs meet the community support requirements for CFIs. We concur with the Opportunity Finance Network (OFN) that CDFIs should qualify as CFIs. FHFA should take steps to allow their regulatory treatment as such. Classification of CDFIs

as community financial institutions would enhance their ability to access and use FHLBank member services.

The Gramm-Leach-Bliley Financial Services Modernization Act of 1999 (GLBA) created the community financial institution category within the FHLBank System. That legislation laid out just two characteristics to define CFIs: 1) CFIs must be FDIC-insured depository institutions and 2) CFIs must have assets less than \$1 billion, based on an average of total assets over the three years. In 2008, through HERA Congress specifically granted membership in the FHLBank System to CDFIs; the Agency's rules for CDFI membership include financial soundness standards in substitution for the requirements for a regulated financial institutions. FHLBank member CDFIs must meet requirements analogous to those required of CFIs and should be considered by the FHFA to qualify as meeting that part of the definition. When Congress enacted the expansion to CDFIs, I believe they felt they would automatically be CFIs.

Of the CDFIs that were not eligible for membership under the prior law, all but one has assets less than \$1 billion. If the law and the FHFA presuppose that small institutions have different circumstances simply by virtue of being small institutions, then this assumption should also apply to CDFIs.

Allowing CDFIs to be classified as CFIs would fulfill the objectives of creating that category of institutions: the goal was "to help smaller banks or thrifts, which may have limited single-family mortgages and other traditional assets to pledge as collateral, gain greater access to the liquidity offered by FHLBank advances. In so doing, the GLBA reforms were supposed to improve credit availability for economic development projects in rural areas and other underserved communities."¹ *Collateral Policies*

We reiterate the Opportunity Finance Network's assessment that insufficient collateral prevents many interested CDFIs from joining their regional FHLBanks:

Most CDFIs that have considered membership in the FHLB System but have decided not to pursue the opportunity have come to that conclusion because it would have been difficult, if not impossible, for them to collateralize and secure advances. As it reviews membership, the FHFA should consider ways to make that membership more valuable for CDFIs so they can better contribute to the goals of the System. Treating CDFIs as community financial institutions, as detailed above, would be an

¹ Transmittal letter of GAO-10-792, "Federal Housing Finance Agency: Oversight of the Federal Home Loan Banks' Agricultural and Small Business Collateral Policies Could Be Improved."

important step in that direction. The FHFA should also consider promoting other policies that would enhance CDFIs' capacity to be fully participating members of the FHLB system, including:

- Evaluating the appropriateness of high "haircuts" applied to alternative collateral, as recommended in the 2010 Government Accountability Office (GAO) report reviewing collateral policies for CDFIs;
- Considering shorter-term predevelopment loans or loans backed by government guarantees as eligible collateral from CDFI members.

Currently, only five CDFI loan funds had been admitted as members into the System and only one has taken an advance. Some FHLBs have not yet considered a single CDFI membership application. According to the Opportunity Finance Network, CDFIs have difficulty not with meeting the membership requirements, but with the ability to use advances and to take full advantage of member services and benefits. The FHFA should direct any changes in the System's partnership with CDFIs toward facilitating CDFIs' participation in the FHLBs' financial services and products, rather than toward revisiting membership regulations.

- 3. If FHFA does not subject insurance company and CDFI applicants to the 10 percent requirement, should FHFA amend § 1263.6(c) of its regulations, which currently requires all such applicants to have mortgage related assets that reflect a commitment to housing finance, to establish levels of mortgage-related assets that may be deemed to constitute a sufficient commitment to housing finance?*

Any Treasury-certified CDFI has strict requirements ensure that it meets the affordable housing and community economic development financing needs of the community. Maintaining the CDFI certification at the CDFI Fund should be all that is needed to demonstrate the commitment to mission-related investing that the Agency seeks.

- 4. Should FHFA revise § 1263.9 of its regulations to require that an institution that is admitted to membership must comply with the "makes long-term home mortgage loans" requirement both at the time that it is admitted for membership and for the duration of the time that it remains a member?*

The Federal Home Loan Banks have a community economic development and affordable housing mission that has been consistently affirmed and expanded over time. A one-time

entry threshold is not compatible with that long-standing commitment. However, we believe that the residential mortgage loan requirement is anachronistic and not appropriate to all members. The financial sector and the nation have changed dramatically since 1932. The Agency may wish to offer a few different thresholds including rental housing and community economic development investments in distressed communities or for projects hiring low-income people. An expanded definition of community financial institution is appropriate for institutions that are meeting a community's broader financing needs. That requirement should continue to be met consistently over time, not just at entry. This is especially important now that many financial institutions have merged, been sold or found new leadership. We cannot continue to assume that every financial institution continues to meet the affordable housing and community economic development needs of a community. The state of many local economies demonstrate that capital is not available.

5. *Should FHFA replace the existing standard, which requires only that an institution demonstrate that it originates or purchases home mortgage loans, with one or more quantifiable standards, such as by requiring applicants and members to have a specified portion of their assets invested in long-term home mortgage loans or by meeting a minimum dollar volume of originations and purchases of such loans?*

Flexibility is absolutely needed. The membership of the System has changed dramatically. There are more commercial banks, credit unions and national banks than ever before. The complete focus on single-family homeownership is not consistent with the needs of local markets, the role of financial institutions in the global economy or the changing nature of the financial sector.

6. *If FHFA were to adopt a standard based on a minimum percentage of long-term home mortgage loans, what would be an appropriate level of long-term home mortgage loans or mortgage-backed securities to be held by depository institutions, insurance companies, or CDFIs, respectively?*

We recommend that standards be inclusive of both the affordable housing mission and the community economic development mission. We expect that a minimum affordable housing and/or community economic development standard would be at least ten percent of the member's advances or collateral.

7. *If FHFA were to replace the existing regulatory requirement with a quantifiable standard, should FHFA apply one standard to all eligible institutions and members, or separate standards for the*

three distinct categories of institutions that are eligible for membership?

CFED recommends establishing a single standard for all eligible institutions but allowing flexibility in the types of collateral held by the member financial institution.

8. *If FHFA were to establish separate quantifiable standards for the separate categories of eligible institutions, should it also establish separate sub-categories for different types of institutions within each category, such as for life insurance companies and property and casualty insurance companies?*

CFED recommends establishing a single standard for all eligible institutions but allowing flexibility in the types of collateral held by the member financial institution.

9. *Should FHFA revise § 1263.13 of its regulations to require that an institution that is admitted to membership must comply with the "home financing policy" requirement both at the time that it is admitted for membership and for the duration of the time that it remains a member?*

The Federal Home Loan Banks have a community economic development and affordable housing mission that should remain consistent over time. The standards for members should reflect these mission requirements. A one-time threshold is not compatible with that long-standing commitment. However, we believe that the residential mortgage loan requirement is anachronistic and not appropriate considering how dramatically the nation has changed since 1932. The Agency may wish to offer a few different thresholds including rental housing and community economic development investments in distressed communities or for projects hiring low-income people. An expanded definition of community financial institution is appropriate for institutions that are meeting a community's broader financing needs. That requirement should consistent over time, not just at entry.

10. *Should FHFA define the term "home financing policy" and, if so, how should that term be defined? Should it be defined to include only a written policy that describes in narrative fashion the manner and extent to which an applicant's past and current activities and investments support home financing, or should it also be defined to include certain business practices, such as having specified levels of mortgage related assets above which an acceptable housing finance policy could be presumed?*

FHFA should define the term "home financing policy." The definition should be fully inclusive of mortgages made to home-buyers of both single- and multi-family homes. It should include owners of condominiums and cooperatives, including manufactured home cooperatives. It should also include financing and development activities by private, public and nonprofit-sector housing developers, including mixed-use housing and investments that improve community livability quality of life. Community economic development investments should count in the standards.

11. *Should the regulations allow the specifics of a home financing policy to vary based on the type of institution? Should FHFA recognize that originating mortgage loans and investing in mortgage loans and mortgage related securities may constitute the core business of certain types of eligible institutions, such as thrift institutions, while those same activities may constitute only an incidental portion of the business of other eligible institutions, such as insurance companies?*

Yes.

12. *Should FHFA continue to use an institution's CRA rating as a proxy for compliance with the home financing requirement or should FHFA develop an alternative approach to assessing compliance with this requirement? One such alternative could be to develop a quantifiable standard, such as one based on a minimum level of housing related assets, which could be used either alone or in conjunction with a CRA rating, for determining whether an institution has an acceptable home financing policy.*

FHFA should develop an alternative approach that is inclusive of affordable housing and community economic development rather than relying on the CRA rating alone. The CRA standards are too weak as nearly all regulated entities receive a passing exam grade. However, if a financial institution obtains an outstanding rating, that could count as a proxy for the home financing requirement. A satisfactory should not.

13. *Should FHFA amend its membership regulations to require that insurance company applicants be actively engaged in underwriting insurance for third parties and be actively examined and supervised by their appropriate state insurance regulator, and that insurance company members remain so engaged and so examined and supervised as a condition to remaining Bank members?*

Yes. Redlining in the insurance industry remains a serious problem and the FHFA should take steps to address it.

14. *Should FHFA amend the membership regulations to address the possibility that a member might not comply with, or might later fall out of compliance with, one or more of the new ongoing membership requirements after a transition period has expired, and if so, should FHFA require the Banks to terminate that institution's membership, either with or without a grace period, or should FHFA consider lesser sanctions, such as prohibiting further access to Bank services during a specified grace period, before requiring the Banks to terminate the membership of the noncompliant members?*

Yes. Financial institutions that do not meet the affordable housing and community economic development needs of their communities should not have the privilege of membership. If they are found to be out of compliance, their membership should be terminated after an appropriate grace period. The grace period should prohibit access to Bank services while the institution works to get back in compliance. However, flexibility should be allowed. If it was the use of advances that led to an organization to fall out of compliance, not a lack of commitment to affordable housing and community economic development, there should be no sanction.

15. *Should FHFA retain the existing structure of its membership regulations, under which the regulations establish certain standards of "presumptive compliance" and allow an opportunity for institutions that do not meet those standards to rebut the presumption of noncompliance, or should FHFA devise an alternative structure, such as one that incorporates "bright line" tests for each of the various eligibility requirements and does not create presumptions that an institution would be permitted to rebut?*

Yes. Maintaining the financial standards as a "rebuttable presumption" is critical. At least one new CDFI member of the FHLB system did not meet the financial ratios on their face, and would not have been able to become a member if not for the "rebuttable" presumptions and the opportunity to provide additional or different indicators of its financial condition.

16. *Should FHFA play a role in resolving close membership issues, or leave them to the discretion of the Banks?*

It is imperative that the FHFA play a role in resolving membership issues. The Agency must actively ensure that the FHLBanks and their members are meeting a community's affordable housing and community economic development needs. CFED has been disappointed by the new board member appointment process for the Federal Home Loan Banks. When the regulator made the appointments, we were able to promote candidates with deep levels of knowledge and experience for the seats dedicated to community

investment directors. Twenty seven individuals were appointed with CFED's recommendation; all had experience running CDCs, CDFIs or loan funds and had other experience developing and managing housing and community economic development projects. An active regulator is critical.

Conclusion

CFED strongly supports regulatory action to strengthen the investments of the members of the Federal Home Loan Banks in affordable housing and community economic development. This ANPR is a good step to investigate whether the FHLBank System is meeting this goal. We appreciated the economic development forum that the FHLBanks held in 2010 but wish there were more opportunities for similar discussions as well as follow-up actions. While the staff of FHFA meets regularly with the GSEs, including Fannie Mae, Freddie Mac and the Federal Home Loan Banks, in the past decade, there have been nearly no convenings among housing and community economic development practitioners and advocates to discuss issues pertaining to the GSE system. CFED hopes that the FHFA takes steps to redress this lack of knowledge sharing and discussion.

CFED continues to be eager to see full utilization of the Federal Home Loan Bank System as an enabler of greater economic development and affordable housing investments, especially in distressed and underserved communities. We would be glad to work with the Agency to be more proactive and inclusive in collaborating with organizations that represent the needs of low-income families and communities to see how best the FHLBank System can meet their needs. Thank you for the raising these issues and the opportunity to comment.

Sincerely,

Carol Wayman
Federal Policy Director
202.207.0125
cwayman@cfed.org