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July 13, 2009

Via Electronic Mail: RegComments@fhfa.gov

Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
Fourth Floor
1700 G Street, NW
Washington, DC 20552
Attention: Comments/RIN 2590-AA18

RE: Federal Housing Finance Agency Proposed Rule: Federal Home Loan Bank
Membership for Community Development Financial Institutions

Dear Mr. Pollard:

The Federal Home Loan Bank of Dallas (the “Dallas Bank”) appreciates the opportunity to comment on the proposed rule (the “Proposed Rule”) regarding Federal Home Loan Bank (“FHLBank”) membership for community development financial institutions (“CDFIs”), which was issued by the Federal Housing Finance Agency (the “FHFA”) and published in the Federal Register on May 15, 2009.

The Dallas Bank recognizes the important economic development and community revitalization activities in which CDFIs engage, such as providing affordable home mortgage products and loans to persons and businesses in underserved populations. The Dallas Bank also appreciates the extent to which the mission of CDFIs is consistent with the FHLBanks’ mission of providing low-cost financing for funding economic and community development and supporting affordable housing for low-income persons.

In general, the Dallas Bank favors expanded FHLBank membership opportunities for such mission-compatible entities. The Dallas Bank believes, however, that the establishment of appropriate membership criteria is important for the FHLBank system. With these goals in mind, the Dallas Bank offers the following comments for your consideration.

General Comment Regarding Membership Requirements

The Dallas Bank believes that the membership requirements for CDFIs should as much as possible be consistent with the membership requirements for other types of entities that are eligible for FHLBank membership. By imposing the same membership requirements on CDFIs, the FHFA will help ensure that the FHLBanks treat all applicants for membership in an equitable and consistent manner. Also, the Dallas Bank believes that the current membership requirements have provided the FHLBanks with members that have mission-related objectives and at the same time meet minimum financial criteria that ensure FHLBanks can safely make advances to those members.

With respect to CDFI credit unions, the Dallas Bank concurs with the FHFA's proposal that they should be subject to basically the same requirements as federally-insured credit unions, with exceptions made or differing requirements imposed only where appropriate (such as requiring CDFI credit union applicants to meet the performance trend criteria as set forth in proposed 12 C.F.R. § 1263.11(b)(3)(iii)).

With respect to CDFIs other than CDFI credit unions, the Dallas Bank recognizes that these entities are not subject to the same degree of state or federal oversight as are insured depository institutions and insurance companies. Therefore, these CDFIs may not be able to provide the Dallas Bank with documentation similar to examination reports or periodic regulatory financial reports to aid the Dallas Bank in determining whether to accept the CDFI as a member or, if accepted as a member, to extend credit to the CDFI. Nevertheless, the Dallas Bank believes that in most areas these CDFIs should be subject to the same requirements as other applicants and should, to the extent possible, be required to provide documentation equivalent to the documentation that other applicants provide.

Definition of CDFI

The Proposed Rule defines a "community development financial institution" or "CDFI" as an institution that is certified as a community development financial institution by the Community Development Financial Institutions Fund (the "CDFI Fund") under the Community Development Banking and Financial Institutions Act of 1994. 12 C.F.R. § 1236.16(b)(ii) of the Proposed Rule requires CDFI applicants other than CDFI credit unions to provide as part of its application package the certification that the applicant received from the CDFI Fund. The Dallas Bank believes the requirement to provide the CDFI fund certification should apply to all CDFI applicants, including CDFI credit unions.

If a CDFI applicant's certification is more than three years old, the Proposed Rule requires the applicant to submit a written statement certifying that there have been no material events or occurrences since the date of certification that would adversely affect the CDFI's strategic direction, mission or business operations. The Dallas Bank believes that the final rule should require a CDFI applicant whose CDFI Fund certification is more than three years old at the time of membership application to obtain re-certification under the CDFI Fund requirements and to submit the new certification with the application.

The Dallas Bank believes that, based on how the FHFA drafted the Proposed Rule, an FHLBank must determine that a CDFI is certified by the CDFI Fund only when the CDFI is applying for membership in the FHLBank. If the FHLBank accepts the CDFI as a member, the FHLBank does not have to monitor whether the CDFI remains certified by the CDFI Fund. The Dallas Bank requests the FHFA's guidance on this matter. Does the FHFA expect that an FHLBank would monitor whether its CDFI members are certified by the CDFI Fund on an ongoing basis? If so, how should an FHLBank conduct this monitoring? If a CDFI member were no longer certified by the CDFI Fund, how would this affect its FHLBank membership and the treatment of any outstanding obligations?

Mortgage-Related Assets and Long-Term Mortgage Loans Requirements

The Dallas Bank appreciates the FHFA's efforts to make membership standards consistent for all entities by requiring CDFIs to meet the eligibility requirements that other applicants for membership are required to meet with respect to (1) having mortgage-related assets that reflect a commitment to housing finance and (2) originating or purchasing long-term home mortgage loans. The Dallas Bank agrees that these requirements help ensure that the FHLBanks treat all applicants in an equitable and consistent manner and that these requirements are consistent with the FHLBanks' housing finance mission. The Dallas Bank also appreciates that, because some CDFIs do not file regulatory financial reports, the FHFA has given the FHLBanks discretion in determining whether CDFIs meet these requirements.

With respect to having mortgage-related assets that reflect a commitment to housing finance, the FHFA stated it expects the FHLBanks to assess this commitment in light of the unique community development focus of the business of CDFIs. Indeed, the Dallas Bank is aware of CDFIs in its district that are active in promoting economic growth in low- or moderate-income and rural communities through financing to entities in those communities that provide jobs for low- to moderate-income persons or that develop affordable single-family or multi-family housing. The Dallas Bank believes the activities of those CDFIs reflect a commitment to housing finance.

The Dallas Bank does not, however, believe that those CDFIs could qualify for membership under the Proposed Rule, given that those CDFIs do not originate or purchase long-term mortgage loans as defined and explained by the FHFA in the Proposed Rule. Rather, these CDFIs lend to developers of affordable single-family or multi-family housing; these CDFIs do not lend directly to the homebuyers themselves. The Dallas Bank requests the FHFA's guidance on this matter, specifically whether the FHFA believes a lender to developers of affordable single-family or multi-family housing could qualify as making long-term home mortgage loans.

Character of Management Requirement

The Dallas Bank respectfully requests that the FHFA amend the character of management requirement in the final rule. The Dallas Bank believes the written

certification from the CDFI applicant should also state that the CDFI applicant is in compliance with all material provisions of all material agreements entered into by such applicant.

Financial Condition Requirements

Generally

With respect to CDFI credit union applicants, the Dallas Bank agrees with the financial condition requirements imposed on these applicants by the Proposed Rule, especially since the requirements are generally the same financial condition requirements that apply to the Dallas Bank's current members (including federally-insured credit unions).

With respect to CDFI applicants other than CDFI credit unions, the Dallas Bank understands that these CDFIs are not subject to the same degree of state or federal oversight as are insured depository institutions and insurance companies. Therefore, these CDFIs may not be able to provide the Dallas Bank with documentation similar to examination reports or periodic regulatory financial reports to aid the Dallas Bank in assessing their financial condition. In some instances, however, as discussed below, the Dallas Bank believes that these CDFIs should be subject to the same financial condition requirements as other applicants, and should, to the extent possible, be required to provide documentation equivalent to the documentation that other applicants provide. Because the FHFA has included in the Proposed Rule new financial condition requirements for these CDFIs, some of the Dallas Bank's comments and questions below are made to ensure that, should the FHFA include these requirements in the final rule, the Dallas Bank applies the requirements properly.

Financial Statements

The Dallas Bank believes that requiring CDFI credit union applicants to provide audited financial statements (or certain specified alternative documents) is the appropriate way to allow the Dallas Bank to determine whether the applicant's financial condition is such that advances may be safely made to it.

With respect to the financial condition requirements for CDFIs other than CDFI credit unions, the Dallas Bank also agrees that they should be required to provide financial statements. The Dallas Bank believes that the final rule should require these CDFI applicants to provide audited financial statements for the prior three years and quarterly financial statements (which may or may not be audited) for the previous six quarters.

In addition, CDFIs may engage in off-balance sheet facilities as a source of funding (e.g., New Market Tax Credit transactions), which may not be readily ascertainable by a review of the CDFI's financial statements. Therefore, in addition to audited financial statements, the Dallas Bank believes the final rule should require an opinion provided by the CDFI's outside auditors that any off-balance sheet transactions

or facilities entered into by the CDFI applicant will not be consolidated with the CDFI applicant's balance sheet. By obtaining such opinion, the Dallas Bank may obtain reasonable assurance that such off-balance sheet transactions would not cause the CDFI applicant's financial condition to suffer a material adverse change that could negatively impact its creditworthiness.

Additional Information

The Dallas Bank appreciates that the FHFA has, in the Proposed Rule, given the FHLBanks the authority to request from CDFI applicants other than CDFI credit unions any other relevant document or information concerning the financial condition of the CDFI that is not contained in the applicant's financial statements. Given the nature of CDFI applicants other than CDFI credit unions (i.e., that they may not be able to provide documentation similar to examination reports or periodic regulatory financial reports), the Dallas Bank believes it is important that it be given flexibility to request a wide variety of documents or information concerning the applicant's financial condition. The Dallas Bank respectfully requests that the FHFA include as one type of information an FHLBank could request to assess a CDFI's financial condition, a rating, assessment, analysis or report of a CDFI performed by a party the FHLBank believes to be adequately experienced in rating, assessing, analyzing or reporting on CDFIs.

Minimum Financial Standards: Net Asset Ratio

The Dallas Bank requests that the FHFA confirm whether, for a CDFI applicant other than a CDFI credit union, the Dallas Bank should calculate the CDFI's current net asset ratio based on information derived only from the applicant's most recent financial statements. In other words, is the Dallas Bank required to review the CDFI's net asset ratio for various periods of time (such as for a certain number of quarters or years) as a condition for membership?

As stated above, proposed 12 C.F.R. § 1263.16(b)(2)(i) states that the applicant's net asset ratio should be based on information derived from the applicant's most recent financial statements. The Dallas Bank respectfully requests that the FHFA clarify what the Dallas Bank should consider as the applicant's "most recent financial statements." Should the Dallas Bank use (1) the audited financial statements for the CDFI's most recently completed fiscal year (or the prior fiscal year if that audit is not available yet); (2) if the audit for the CDFI's most recently completed fiscal year is not yet available, the unaudited financial statements for that fiscal year; or (3) the CDFI's most recent quarterly financial statements (if available)?

Minimum Financial Standards: Earnings

With respect to the minimum financial standard for earnings for a CDFI applicant other than a CDFI credit union, the Dallas Bank believes these CDFI applicants should be subject to the same standard as other applicants, i.e., positive net income in four of the six most recent calendar quarters.

If the FHFA chooses to finalize the minimum financial standard for earnings that is included in the Proposed Rule, then the Dallas Bank respectfully requests that the FHFA clarify what is meant by “two of the three most recent years.” Should the Dallas Bank review the CDFI’s earnings for (1) the current year-to-date and previous calendar years, (2) the previous twelve months and twelve-month periods previous to that timeframe, or (3) the CDFI’s most recently completed fiscal years? The Dallas Bank believes that some CDFIs might have fiscal years that are not calendar years.

Also, proposed 12 C.F.R. § 1263.16(b)(2)(ii) states that the applicant’s earnings should be based on information derived from the applicant’s most recent financial statements. The Dallas Bank respectfully requests that the FHFA clarify what the Dallas Bank should consider as the applicant’s “most recent financial statements.” Should the Dallas Bank use (1) the audited financial statements for the CDFI’s most recently completed fiscal year (or the prior fiscal year if that audit is not available yet); (2) if the audit for the CDFI’s most recently completed fiscal year is not yet available, the unaudited financial statements for that fiscal year; or (3) the CDFI’s most recent quarterly financial statements (if available)?

Minimum Financial Standards: Loan Loss Reserves

In the Proposed Rule, the FHFA requested comment on the appropriateness of the proposed loan loss reserve measure for CDFI applicants other than CDFI credit unions. The Dallas Bank believes that a CDFI applicant’s ratio of loan loss reserves to loans and leases 90 days or more delinquent should be higher than the 30 percent set forth in the Proposed Rule. While the Dallas Bank appreciates that CDFI-originated loans may have historically performed better than prime loans, the Dallas Bank believes that, given the current housing market conditions, a 30 percent loan loss reserves ratio is too low. Also, the Dallas Bank believes that it is inequitable to allow a 30 percent loan loss reserves ratio for these CDFI applicants when the required loan loss reserves ratio for many other applicants (including CDFI credit unions) is 60 percent. The Dallas Bank believes a loan loss reserves ratio of somewhere between 30 and 60 percent would recognize the good historical performance of CDFI-originated loans while making the loan loss reserves ratio requirement for these CDFI applicants more consistent with the requirement for other applicants.

The Proposed Rule does not appear to address the inclusion of non-accruals on the loan loss reserve obligations. The Dallas Bank understands that CDFIs do not generally measure their loan loss reserve levels in the same manner as insured depository institutions, and that they may rely on cash funded reserves paid from earnings and grant sources. The amounts of loan loss reserves are generally set by loss history and requirements imposed by funding sources. As a matter of gaining membership in the Dallas Bank, however, the Dallas Bank believes that CDFI applicants should be required to include non-accruals in determining appropriate loan loss reserves.

The Dallas Bank also believes that these CDFI applicants should be required to have the determined loan loss reserves ratio during four of the six most recent calendar quarters (as is required for other applicants).

If the FHFA retains the requirement in the Proposed Rule that the applicant's ratio of loan loss reserves should be based on information derived from the applicant's most recent financial statements, then the Dallas Bank respectfully requests that the FHFA clarify what the Dallas Bank should consider as the applicant's "most recent financial statements." Should the Dallas Bank use (1) the audited financial statements for the CDFI's most recently completed fiscal year (or the prior fiscal year if that audit is not available yet); (2) if the audit for the CDFI's most recently completed fiscal year is not yet available, the unaudited financial statements for that fiscal year; or (3) the CDFI's most recent quarterly financial statements (if available)?

Minimum Financial Standards: Liquidity

The Dallas Bank suggests that the requirement for a CDFI applicant to have sufficient liquidity to cover average operating expenses for one quarter may be too low in practice. Instead, the Dallas Bank believes that two quarters of operating expenses is a more appropriate measure.

With respect to the minimum financial standard for liquidity for a CDFI applicant other than a CDFI credit union, the Dallas Bank respectfully requests that the FHFA clarify what is meant by "for the current year, and for one or both of the two preceding years." For "current year," should the Dallas Bank review (1) the current calendar year to date, regardless of when the CDFI's fiscal year might end, (2) the timeframe since the end of the CDFI's last fiscal year or (3) the previous twelve-month period? For "one or both of the two preceding years," should the Dallas Bank review only the preceding calendar years or twelve-month periods, or if the CDFI's fiscal year is not a calendar year, should the Dallas Bank review the CDFI's preceding fiscal years?

Minimum Financial Standards: Nonperforming Assets

The Dallas Bank believes that the FHFA should require CDFI applicants other than CDFI credit unions to meet the same financial requirement with respect to nonperforming assets that applies to depository institutions and CDFI credit unions. In other words, a CDFI applicant other than a CDFI credit union must have, in the most recent calendar quarter, nonperforming loans and leases plus other real estate owned that does not exceed ten percent of its total loans and leases plus other real estate owned.

Minimum Financial Standards: Self-Sufficiency Ratio

In the Proposed Rule, the FHFA requested comment on whether it should include in the final rule a standard for the self-sufficiency ratio as part of the minimum financial condition standards for CDFI members and, if so, what the threshold standard should be.

The Dallas Bank believes it is essential for the final rule to include a self-sufficiency ratio as a demonstration of earned income. The Dallas Bank believes this to be a good indicator of management's strength and understanding of the need to generate funding. Requiring complete self-sufficiency, however, may be viewed as counter-

productive to the important technical assistance work required to keep CDFI certification. The Dallas Bank believes that the final rule should establish a self-sufficiency ratio of 0.6 (60 percent) or greater. The Dallas Bank believes that such a ratio is able to be achieved by CDFI applicants and also would provide reasonable assurance to the Dallas Bank.

CDFI Bank Holding Companies

In the Proposed Rule, the FHFA requested comment on whether it should include in the final rule additional provisions allowing bank holding companies to be members based on CDFI status. The Dallas Bank agrees with the FHFA's initial decision not to allow bank holding companies access to FHLBank membership based on CDFI status. The Dallas Bank concurs in the FHFA's belief that the appropriate vehicle for FHLBank membership for such enterprises is through the existing process for insured depository institutions.

Community Support Requirements

In the Proposed Rule, the FHFA requested comment on whether any CDFI that becomes a member of an FHLBank may have difficulties in complying with the current community support requirements located at 12 C.F.R. part 944. The Dallas Bank believes that CDFIs can comply with the current community support requirements and that separate community support requirements are not necessary.

The two main components of the community support requirements are (1) compliance with the Community Reinvestment Act of 1977, as amended (the "CRA") (such requirement being the "CRA standard") and (2) efforts to assist first-time or potential first-time homebuyers (the "first-time homebuyer standard"). Because CDFIs are not subject to the CRA, they would be excluded from compliance with the CRA standard, as are credit unions and insurance companies that are currently FHLBank members. CDFIs also would not be able to satisfy the first-time homebuyer standard solely through a CRA rating. The Dallas Bank believes, however, that, given the broad number of activities listed in 12 C.F.R. § 944.3(c) through which a member can satisfy the first-time homebuyer standard, considering the general mission of most CDFIs, most CDFIs would be able otherwise to demonstrate that they assist first-time or potential first-time homebuyers.

De Novo Insured Depository Applicants

The Dallas Bank believes that the membership requirements for de novo insured depository institution applicants found at 12 C.F.R. § 1263.14 do not apply to CDFI applicants, as CDFI applicants are not insured depository institutions. The Dallas Bank believes that because the FHLBanks are not yet familiar with CDFI applicants and because many CDFI applicants will be unregulated entities, CDFI applicants should not initially be allowed to take advantage of the membership requirements available to de novo insured depository institutions. Therefore, the Dallas Bank concurs with this drafting of the Proposed Rule.

New Business Activity Notice

The Dallas Bank respectfully requests that the FHFA concur in the Dallas Bank's belief that neither accepting a CDFI for membership in the Dallas Bank nor lending to a CDFI member based on certain eligible collateral would constitute a new business activity pursuant to 12 C.F.R. part 980. The Dallas Bank believes that any risks or operational issues with respect to lending to CDFIs will be adequately addressed through the membership requirements for CDFIs when the Proposed Rule is finalized and through the Dallas Bank's extensive experience in lending to entities such as insurance companies and federally-insured credit unions. The Dallas Bank does recognize that if it wants to accept a new type of collateral from a CDFI, in that case, the Dallas Bank may be required to file a new business activity notice regarding the Dallas Bank's acceptance of that collateral. If the FHFA does concur in the Dallas Bank's belief, the Dallas Bank respectfully requests that the FHFA address this in the final rule that it promulgates with respect to FHLBank membership for CDFIs.

FHLBank Director Eligibility

The Dallas Bank respectfully requests that the FHFA provide guidance as to whether an officer or director of a CDFI other than a CDFI credit union is eligible to be a member director of an FHLBank. The FHFA regulation regarding FHLBank director eligibility and elections found at 12 C.F.R. part 1261 (specifically, 12 C.F.R. § 1261.4) states that each member director, and each nominee to a member directorship, shall be an officer or director of a member that meets all minimum capital requirements established by its appropriate Federal banking agency or appropriate state regulator. While CDFI credit unions may be subject to minimum capital requirements established by a state regulator, other CDFIs such as community development loan funds and community development venture capital funds may not be subject to minimum capital requirements established by a Federal banking agency or a state regulator. Therefore, as currently drafted, 12 C.F.R. § 1261.4 seems to prohibit an officer or director of one of these CDFIs from being a director of a Federal Home Loan Bank. The Federal Home Loan Bank Act, on the other hand, in 12 U.S.C. § 1427(b)(1), prohibits an officer or director of a member that fails to meet any *applicable* capital requirement from being a director of an FHLBank. Assuming officers or directors of CDFIs are meant to be eligible to be FHLBank directors, revising 12 C.F.R. § 1261.4 to mirror the language of the Federal Home Loan Bank Act would achieve this result.

Thank you for your consideration of our comments.

Sincerely,



Terry Smith
President and CEO