



July 14, 2009

**Federal Express and  
E-Mail to RegComments @FHFA.gov**

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

Attention: Comments/RIN 2590-AA18

Re: Comments on Federal Home Loan Bank Membership for  
Community Development Financial Institutions; RIN 2590-AA18

Dear Mr. Pollard:

The Federal Home Loan Bank of New York (“FHLBNY” or “Bank”) appreciates this opportunity to comment on the Federal Housing Finance Agency’s (“FHFA”) proposed rule to amend its membership regulations to authorize non-federally insured community development financial institutions (“CDFIs”) certified by the CDFI Fund to become members of the Bank. If enacted, the proposed rule would cover the evaluation of membership applications submitted by the following types of CDFIs: community development loan funds; community development venture capital funds; and state-chartered credit unions without federal insurance (collectively, the “Newly Eligible CDFIs”).

In general, the FHLBNY supports the proposed regulation’s extension of the potential opportunity to become members of the Bank to the Newly Eligible CDFIs. The Newly Eligible CDFIs’ mission of offering credit and financial services to underserved populations is consistent with our own mission to advance housing opportunity and local community development by maximizing the capacity of community-based member lenders to extend the availability of mortgage credit, and to foster strong and vibrant communities. Further, such CDFI membership could be beneficial to the overall growth of the FHLBNY and the Federal Home Loan Bank System (“FHLB System”).

However, while we, generally speaking, favor expanded membership opportunities for mission-compatible entities such as the Newly Eligible CDFIs, we also strongly encourage the FHFA to provide guidance and structure in its rulemaking that will allow the FHLBNY to preserve its safety and soundness, and protect all of our members who benefit from the Bank’s cooperative ownership structure. At this critical time in the history of financial institutions, we believe it is essential that no new risks be introduced to the FHLBank System -- and we believe that some of the Newly Eligible CDFIs may have the potential to pose a great deal of risk.

**The Newly Eligible CDFIs**

The Newly Eligible CDFIs are not subject to federal supervision, examination, and safety and soundness requirements, and, as the FHFA’s proposed rule indicates, community development loan funds and

community development venture capital funds that are CDFIs are not subject to regulatory oversight at all. In this regard, we note that regulatory examinations from the regulators of current members provide the Bank with detailed information regarding a member's financial condition conducted in conformance with a CAMELS analysis and rating.

Additionally, examinations provide an important assessment of a member's management and its ability to manage risk, which may not be evident from a review of financial performance metrics. Thus, Newly Eligible CDFI entities that are not subject to regulatory examination will present the FHLBank System with significantly increased underwriting and monitoring challenges. The FHLBanks will need time to develop the expertise required to effectively monitor those Newly Eligible CDFIs that have no regulatory oversight. (We note here that the FHLBanks can and do accept certain types of insurance companies and non-member "housing associates" as members. Because these entities are not federally regulated and are not backed by federal insurance, the Bank does impose more stringent requirements on these entities.)

The FHLBANY, therefore, urges the FHFA to carefully consider the foregoing observations as the membership regulations regarding the Newly Eligible CDFIs are established. In addition, the Bank urges the FHFA to incorporate the following membership and underwriting standards in the final rule.

#### **Newly Eligible CDFI Membership Standards**

Financial statements: The FHLBANY believes that the final rule should require Newly Eligible CDFI applicants to submit at least three years of independently audited, GAAP-compliant, annual financial statements. Quarterly statements for the past six quarters must also be made available.

Fund certification: The FHLBANY believes that the final rule should require all Newly Eligible CDFI applicants whose certification is more than one year old at the time of the filing of the membership application to obtain re-certification from the CDFI Fund and submit evidence of the new certification to the FHLBank as part of the application.

Housing mission: Each Newly Eligible CDFI applicant should have a minimum of 10% of its assets related to residential mortgage lending, either direct loans or mortgage-backed securities

#### **CDFI Underwriting Standards**

In General: In the proposed rule, the FHFA has requested comment on certain minimum underwriting standards. We believe it is imperative that the FHFA incorporate in the final rule minimum underwriting standards for establishing credit and collateral terms for Newly Eligible CDFIs. From those standards, each FHLBank could then establish additional credit and collateral terms that are specific to its Newly Eligible CDFI members to help further protect the FHLBank and the other members of the co-op. We propose that the FHFA incorporate the standards we enumerate below.

We also believe that each FHLBank should be required to submit a notice of new business activity to the FHFA before lending to each type of Newly Eligible CDFI (e.g., community development loan funds, venture capital funds, and state-chartered credit unions without federal insurance) due to the new risks such entities may introduce to the FHLB System.

State-Chartered CDFI Credit Unions Without Federal Insurance: The final rule should require that, for state-chartered credit union CDFI applicants without federal insurance, copies of the most recent safety and soundness exams must be provided at the time of application, with annual updates sent upon completion. In addition, these entities must be rated CAMELS 2 or better by their respective regulator.

Collateral: At a minimum, all Newly Eligible CDFIs should only be able to pledge "AAA-rated" securities.

Alternatives to GAAP-Compliant Audited Financial Statements: Only GAAP-compliant audited financial statements should be accepted to determine the financial condition of Newly Eligible CDFIs.

Financial Profile and Performance Ratios: At a minimum, Newly Eligible CDFIs must be held to the same financial fundamentals required for membership by all federally insured financial institutions. In addition, for Newly Eligible CDFIs that are not state regulated, a minimum of one NRSRO rating indicating credit quality that is equivalent to that of an instrument having at least the third highest credit rating from an NRSRO should be required for membership approval.

Other Relevant Documentation: Ownership of Newly Eligible CDFIs that are not regulated should be very carefully assessed for disproportionate ownership positions. Character of management or owner(s) must be evaluated. A personal guarantee should be required for any individual or entity with a controlling interest in the Newly Eligible CDFI. In addition, if the Newly Eligible CDFI is owned by another corporation, the same financial reporting requirements and underwriting standards that are required for the Newly Eligible CDFI should be required from the parent organization.

### **FHFA Specific Requests for Comment**

In addition to the foregoing comments, the Bank submits the following comments in response to the FHFA's specific requests for comments.

1. Is there any basis in the legislative history of HERA or otherwise on which it could reasonably rely to construe the new community financial institution ("CFI") provisions as applying to CDFIs as well as CFIs?

Since a CFI must, among other characteristics, have FDIC insurance, it does not appear that any of the Newly Eligible CDFIs -- all of which would, by definition, lack FDIC insurance -- would be eligible to take advantage of HERA's amendments to the advances and collateral provisions of the FHLBank Act that provided certain additional benefits to CFIs.

2. Should the final rule incorporate additional provisions relating to bank holding company membership based on CDFI status?

No. We agree that CDFI bank holding companies should not be incorporated into the proposed rule for the reasons cited by the FHFA. Allowing a bank holding company and its subsidiary into membership of an FHLBank would subject the FHLBank to concentration/"family" risk that would not be appropriate.

3. Should any member whose membership is transferred pursuant to Section 1263.18 (d) become a member of the Bank to which it transfers?

We are strongly opposed to “automatic” transfers of membership. Each Newly Eligible CDFI interested in membership should be required to undergo the full membership application process required by regulation and by each FHLBank.

4. Should the term “Gross Revenues” in the case of a CDFI applicant, mean “total revenues received from all sources, including grants and other donor contributions and earnings from operations?”

The term “Gross Revenues” should exclude all restricted funds and grants, and include only gross, earned revenues and unrestricted donor contributions and grants.

5. Is it appropriate to apply the current community support requirements to CDFIs or is it appropriate to adopt an alternative community support standard for CDFIs?

We concur that any Newly Eligible CDFI that becomes a member of an FHLBank should be able to satisfy the current community support requirements applicable to other members; therefore, no requirements unique to the Newly Eligible CDFIs should be established.

We appreciate this opportunity to comment on the proposed rule and thank you for your consideration of our views. If you have any questions, please contact Adam Goldstein, Senior Vice President and Head of Marketing and Sales, at 212-441-6703 or me at (973) 639-2029

Sincerely,



Michael M. Horn  
Chairman of the Board