ROC usa™
Resident Owned Communities
BETTER TOGETHER

July 14, 2009

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

Re: Response to Proposed Rule on Federal Home Loan Bank Membership for CDFIs

Dear Mr. Pollard:

ROC USA™ is a national tax exempt social enterprise dedicated to transforming the manufactured home community ("MHC") sector through resident ownership. Its subsidiary, Resident Ownership Capital, LLC d/b/a ROC USA Capital finances resident-owned communities and has a pending certification application with the Department of Treasury's CDFI Fund.

The country's 50,000 MHCs are home to 3.5 million American households, a majority of which are low-income. In fact, 30 percent of homes owned by low-income households are manufactured or "mobile" homes. In many rural markets, homes in MHCs represent the only source of affordable housing. However, owning a home in a MHC leaves these homeowners vulnerable to excessive rent increases and risk of loss due to MHC closure. When homeowners join together and buy their MHC, they gain the security of ownership that low-income homeowners need.

The CDFI Fund recognized the importance of resident ownership of MHCs, and the key role of FHLB of Boston members in financing such communities, in its 2008 report entitled: The Experience of New Hampshire Community Loan Fund in Mainstreaming Acquisition Loans to Cooperative Manufactured Home Communities.

In New Hampshire, 92 MHCs have been acquired by their residents since 1984, now representing twenty percent of all MHCs in the state and providing security of land tenure to over 5,100 homeowners. A total of $130 million in community acquisition loans have financed these purchases, including many loans from several banks which are members of the FHLB of Boston. The FHLB's Community Development Advance Program has been instrumental in developing this affordable homeownership market niche. Resident ownership of these communities has proven critical to stopping the depreciation of manufactured homes in formerly investor-owned MHCs, providing long-term housing security to homeowners and providing the opportunity to build household wealth. A 2005 study by the Carsey Institute of the University of New Hampshire found that homes in resident-owned MHCs sold faster and for prices, on average, 12% higher than homes in investor-owned MHCs.

To undertake resident ownership development and financing at scale nationally, the New Hampshire Community Loan Fund and two other national nonprofits, the Corporation for Enterprise Development (CFED) and NCB Capital Impact, formed ROC USA as a tax exempt limited liability company. NeighborWorks® America also provided significant grant support and plays an important governance role with ROC USA.

ROC USA formed two single member LLC subsidiaries: 1] Resident Ownership Network, LLC ("Network") to provide local development assistance through affiliate, certified nonprofit organizations; and, 2] ROC USA Capital to provide acquisition financing in participation with other nonprofit CDFIs and institutional and bank lenders.

Since the launch of ROC USA in May 2008, MHCs in eight states have been acquired by their homeowners using Network's local Certified Technical Assistance Providers, preserving 12 communities and over 900 affordable homes.

ROC USA Capital has financed four of these now resident-owned communities with a documented 83.4% low-income homeowner benefit. With Network's Certified Technical Assistance Providers active in 30 states, ROC USA Capital's business plan includes providing $150 million of financing over five years to preserve over 4,200 homes in 50 MHCs. At least 75% of the homeowners living n the MHCs financed by ROC USA Capital will be lower-income (having annual incomes at or below 80% of the area median income as set by the U.S. Department of Housing and Urban Development). Absent such community acquisition loans and the development services provided by ROC USA, homeowners in for-sale MHCs do not have the opportunity to secure long-term tenure (protection against asset loss) and or the continued affordability of their homes and rent stabilization (protection of asset value).

The following comments on the Proposed Rule address both the general eligibility requirements for CDFI membership in the FHLB system and a few comments on the particular lending ROC USA Capital provides to resident-owned MHC.

We urge the Federal Housing Finance Agency to consider the following broad goals in this rulemaking:

1. Make the barriers to FHLB membership as clear and suitably crafted as possible for CDFIs, consistent with safe and sound oversight of the FHLB.
2. Give the FHLB wide flexibility to administer CDFI membership, but impose targets to increase the likelihood that CDFIs actually borrow from the FHLB.

In general, we believe the proposed rules do a very good job of addressing our first recommended goal. We urge the Agency to give further consideration to our second proposed goal.

Other requested considerations are as follows:

1. Definition of Home Mortgage Loan at 1263.1

We seek amendment to the Proposed Rule to clarify that the community acquisition loans ROC USA Capital provides to resident-owned MHCs qualify as "Home Mortgage Loans". Clearly, multi-family loans secured by real estate comprised of five or more dwellings qualify. It is not clear as to whether the dwellings themselves have to be financed as part of the collateral. While ROC USA Capital provides long-term loans secured by real estate, the collateral secured by ROC USA Capital is land and community infrastructure (i.e. roads, utilities, community buildings) that provide the essential support for the manufactured homes which the low-income homeowner already owns. ROC USA Capital's borrowers are nonprofit resident corporations, co-ops or homeowners associations, rather than the individual homeowners who have title to their dwelling units. As such, we recommend adding clarity to the definition of "Multifamily Property" to encompass real property that is solely residential or primarily residential which includes five or more dwelling units, or five or more home-sites upon which manufactured homes are sited for long-term occupancy, whether or not such manufactured homes are included as collateral.

This would appear to be consistent with the statutory authority in the Federal Home Loan Bank Act (12 U.S.C. 1422), which defines a "Home Mortgage Loan" as a mortgage upon real estate ... "upon which is located, or which comprises or, includes one or more homes or dwelling units..." The Proposed Rule provides within the definition of "Residential Mortgage Loan" at (8): "Loans that finance properties or activities that, if made by a member, would satisfy the statutory requirements for the CIP established under section 10(i) of the Bank Act (12 U.S.C. 1430 (i)), or the regulatory requirements established for any CICA program. We believe ROC USA Capital's loans meet the requirements of the CIP, as they are "targeted community lending" or "commercial and economic development lending activities, including non-residential mortgage loans and business loans, that benefit individuals or families earning up to 80% of the AMI or that are located in neighborhoods in which 51% or more of the households earn no more than 80% of the AMI".

However, we much prefer and recommend the more specific inclusion of community acquisition loans for resident-owned manufactured home communities where 51% of the homes in the community are owned by households who earn less than 80% of area median income in one of the definitions cited above. Such an addition will provide clarity to FHLB staff when considering any application for membership or advance requests for MHC acquisition/permanent loans.

ROC USA Capital's loans have a primary purpose of enabling homeowners in manufactured homes located in MHC to enjoy, as closely as possible, the full benefits of homeownership enjoyed by homeowners on fee simple land. This is why ROC USA Capital requires all resident corporations that borrow from ROC USA Capital to use

proprietary/long-term leases with their member homeowners. Such proprietary leases better enable homeowners to enjoy security and land tenure in MHCs and, as has been demonstrated in New Hampshire, gain access to conventional single-family mortgage loans for their homes, and as a result, asset appreciation.

Expansion of the definition of "Home Mortgage Loan" to include "a loan to an organization made up of owners of manufactured homes for the acquisition of real property upon which their homes are located" would appear to be both well within the intent and letter of the FHLB Act and supports "targeted community lending" and the community investment goals of the FHLB System as intended by including certified CDFIs as members.

2. Presumptions of non-compliance with Financial Condition Requirement for Insurance Company and Certain CDFI Applicants at 1263.16 (b)(2)

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.

In regards to the request for comment on what financial statements are appropriate to request of CDFI's, we believe audited financials and a copy of the CDFI's IRS Form 990 filings are appropriate. We do not believe that it is common for all CDFIs to prepare GAAS compliant financials, although ROC USA Capital does. We decline to comment on whether this level of accounting is appropriate requirement for all CDFIs and would defer to the opinion of the Opportunities Finance Network on that matter.

Net Asset Ratio. We believe that the 20% ratio of net assets to total assets as a standard is high for non-depository CDFIs, but ROC USA Capital will be able to meet this standard given our loan participation model and the accounting treatment of sold loan participations on our balance sheet.

Earnings. The standard of showing positive net income for two of the three most recent years is a fair standard and one which most CDFIs should be able to meet.

Loan Loss Reserves. We commend the rules recognition of the unique characteristics of CDFIs that leads to lower loan losses. The 30% reserve standard for loans that are delinquent 90 days or more is reasonable for ROC USA Capital's loan portfolio.

Liquidity. The operating liquidity standard of at least 1.0 for the current year and for at least one of the prior two years, measured by unrestricted cash and cash equivalents as a percentage of average quarterly operating expenses for the four most recent quarters, is reasonable and one ROC USA Capital expects to meet on an ongoing basis.

Self-Sufficiency or Sustainability Ratio. None is proposed in the Rule but comment is requested on whether or not to establish such a standard as one of the financial conditions for eligibility. There are many different measures, none of which is going to be ideal for the many different kinds of CDFIs that will wish to become members of the FHLB system. I don't recommend requiring any additional standard in this regard.

Presumption of Non-compliance on "Character of Management". 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.

3. Determination of appropriate FHLB district for membership at 1263.18

ROC USA Capital being a national lender with activity in 30 states requests that this section of the Proposed Rule be clarified as to the territory throughout which a member may make loans and provide collateral for advances from the FHLB in which membership is granted. We have no objection, nor comment, on the requirement that a CDFI member become a member of the FHLB in the district in which the member's principal place of business is located. However, we understand that once membership is approved in a particular district, advances from that FHLB may be used to make loans outside the district and on a national basis. The Proposed Rule simply is not clear on this question.

4. Collateral for Advances in Bank Act at 12 U.S.C. 1430(a)(3)

The authorizing statute is clear that the FHLB accepts, in addition to cash and securities, "whole first mortgages on improved residential property" as collateral for advances to members. This language would seem to work against ROC USA Capital's loan

participation model and the standard practice throughout the CDFI industry of managing risk and balance sheet liquidity through loan participations with conventional financial institutions and other CDFIs. It does not appear that ROC USA Capital could assign a mortgage as collateral for an advance in which ROC USA Capital holds a subordinate participating interest. The statute goes on to say that other real estate collateral determined to be acceptable to the particular FHLB may be accepted and approved on a case by case basis.

Although 12 U. S. C. 1430 (a) (3) (as amended) provides for a member to pledge "other real estate related interest" including "mortgage participations," in the case of CDFIs, each FHLB is left to set its own lending and collateral policies which could change from bank to bank. Nothing in this rule clarifies for those banks that "other real estate related interest" including "mortgage participations" is acceptable collateral for a newly admitted CDFI.

It is appropriate, and within the intention of HERA amendments to allow CDFIs (as well as CFIs) to pledge mortgages securing loans for "community development activities", including those securing participation loans, as collateral for their advances. We do not believe that it was the intent of the statute to distinguish in this respect between CDFIs and CFIs.

Therefore, we suggest that clarifying that assignment of mortgages securing participation loans as "other real estate related interests" shall be considered acceptable collateral is important to how many CDFIs conduct their lending activity. It has been the standard practice of CDFIs to leverage more traditional lending from commercial banks through both providing subordinate loans and through loan participations. Each FHLB bank has its own guidelines now and will be forced to examine how they will help or hinder the admission of CDFIs.

We recognize that the assignment of a mortgage securing a loan with multiple participants raises concerns around the potential difficulty exercising the assignment. Therefore, we suggest that mortgages securing participation loans should be allowed as acceptable collateral when the mortgage being assigned is directly tied to the loan for which the advance from the FHLB is requested (i.e. no pooled participation loans would be acceptable). Moreover, we recommend that the participant in such a loan which draws an FHLB advance to fund its participating interest hold a senior and majority financial interest in the loan and have the unfettered right to assign the mortgage securing the loan as collateral for the FHLB advance (i.e. have secured this right from other loan participant(s) up front in any loan participation agreement). In this manner, the collateral will essentially serve as a "whole first mortgage". Additional guidance in the rules such as this will help the banks and member CDFIs avoid what could be a serious delay in effectuating the goal of admission of CDFIs set forth by the statute.

We concur with NCB Capital Impact and CFED both of which noted that it would be inappropriate to make a distinction between CFIs and CDFIs as both are small and serve

a community development need. The outcome of that distinction would be most consistent with congressional intent to treat CDFIs just like CFIs for all purposes. We defer to their analysis of the legislative history since CFED staff sought to expand that list to include community economic development activities over the years, met with numerous members of Congress and congressional staff to discuss the need for financing of community economic development activities and was directly involved in seeking and witnessing the addition of language including community economic development activities into §1211 of HERA. We concur that the community financial institutions exemptions were meant to include CDFIs that did not engage in housing activities. We concur that the CFIs exemption from the requirement of posting long-term single family mortgage loans as collateral were meant to include CDFIs that did not engage in housing activities. The law does note that CFIs must be FDIC-insured depositories. We do not believe Congress intended that CDFIs be FDIC-insured depositories in order that they too are allowed to post their community development loans as collateral. To construe the statute in this manner may result in making the statute less effective and end up excluding many CDFIs from membership because they have a community development product niche, not single family. This is the case with ROC USA Capital.

5. Community Support Standard

We strongly recommend that FHFA adopt a new rule regarding CDFIs when it comes to "community support". The new rule should state that any CDFI recognized as exempt by the IRS under section 501(c)(3) of the Internal Revenue Code for having a mission of "affordable housing" or "community development" or both be deemed to have met this statutory requirement. The FHFB regulation setting forth such "community support" standards at 12 CFR part 944 should not applied to CDFIs in a manner that creates a rebuttable presumption against their compliance because they do not have a CRA rating. Although banks have an obligation to demonstrate within the CRA system that they meet these goals for that particular lending, most CDFI have already met the standards set forth by the Internal Revenue Service of establishing that their entire operations meet affordable housing and community development standards necessary to be recognized as a tax-exempt charity. These CDFIs need to maintain this in all their activities to meet not only the "organizational" but also the "operational" tests set out by the IRS. Further, the IRS has increased its requirements for annual disclosures by these organizations regarding their compliance with these tests and compliance with the same types of best practice concerns addressed in the CRA review. As we discussed earlier, tax-exempt CDFIs report annually to the IRS on Form 990. The Form 990 requires the organization to report any changes in its organization or mission (organizational test) and details on its operations (operational tests) for the IRS to monitor its continued compliance.

We further believe that recognition of a CDFI's charitable mission of affordable housing and/or community development coupled with its continued oversight by the IRS for these purposes should alleviate any requirement that it provide first time homebuyer

education or the other list of activities required for CRA certification. Although this is one way that banks can meet CRA requirements, CDFI have many ways and combinations of ways they meet community support or "charitable" missions through community development activities. If there were CDFIs without 501(c)(3) recognition, an alternative community support standard that recognizes their unique mission and business practices would be appropriate.

We look forward to an even closer working relationship with the FHLB once we are certified as a CDFI and this rule is adopted. We appreciate the opportunity to comment on the proposed rules. Thank you for your consideration. If you have any questions about our comment, you may contact Cheryl Sessions, In-house Counsel and Director of Policy at 603-856-0761 or csessions@rocusa.org. She will engage our internal team for a response. Thank you.

Sincerely,

Paul Bradley, President
ROC USA, LLC