Housing Partnership Network

Social Mission. Private Enterprise.

Alfred M. Pollard, General Counsel
Attention: Comments/RIN 2590-AA39
Federal Housing Finance Agency
400 Seventh Street SW
Washington, DC 20024

Via Electronic submission to: www.FHFA.gov

Dear Mr. Pollard:

The Housing Partnership Network (HPN) appreciates this opportunity to provide comments on the Notice of Proposed Rulemaking covering membership in the Federal Home Loan Bank system (RIN 2590-AA39) published in the *Federal Register on* September 12, 2014. We have serious concerns about the potential adverse effects of the rule on the housing and community development sector. We urge the Federal Housing Finance Agency (FHFA) to reconsider the rule.

HPN Overview

HPN is a member-driven business collaborative of 100 of the leading housing and community development nonprofits in the country. The entrepreneurial nonprofits in the network combine social mission with business acumen to develop solutions to the most challenging problems facing our country. Our members' business lines include multifamily and single family housing development, property management, lending, housing counseling, and a wide array of other resident and community services. The HPN approach begins with peer exchange among the leaders from these organizations. The senior leadership of the member organizations come together to discuss common challenges, share best practices, and disseminate innovations. Out of this process, they members have also come together to form collectively-owned social enterprise businesses that serve their organizations and enhance their organizations' economic sustainability.

The HPN members have a variety of relationships with the Federal Home Loan Bank (FHLBank) system. Leaders from the member organizations serve on the Boards of three FHLBanks and on the affordable housing advisory boards at several other FHLBanks. Most of HPN members' businesses have benefitted from the Affordable Housing Program (AHP) through grants in support of affordable housing developments or through the participation first time homebuyer programs funded out of AHP resources. Most relevant to these comments, many of our Community Development Financial Institution (CDFI) organizations are now members of the FHLBank system or are in active discussions to become members.

HPN has established a strategic priority to strengthen and expand the network's business relationships to the FHLBank system. The FHLBanks offer the promise of access to affordable longer term credit and the ability to bring more capital into the low-income communities that our members serve. HPN members can help advance and deepen the "[t]he FHLBanks's core mission…to serve as a reliable source of liquidity for their member institutions in support of housing finance and community lending.[1]" Our high-performing,

[1] *FHFA Strategic Plan: 2015-2019*, p. 10.

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high-capacity nonprofit organizations are the strong counterparties that should reassure the system that it can increase its role in supporting affordable housing and community development in low- and moderate-income communities in a safe and sound manner – and have a greater impact.

Concerns about the Proposed Rule's Impact on CDFI Membership

One of HPN's top policy priorities is to increase CDFI membership in the FHLBank system and CDFI utilization of FHLBank advances. Together with our colleagues at the Opportunity Finance Network, we have worked to organize and support those CDFIs interested in joining the FHLBank system. We are grateful for FHFA's approach to implementing the provision in the Housing and Economic Recovery Act of 2008 that allowed CDFIs to become members, and we are pleased with the progress to date. At last count, 28 non-depository CDFIs have joined their region's Federal Home Loan Bank and a dozen other organizations in active conversations around membership.

At the same time, much remains to be done. The receptivity to CDFI membership has varied across the system and there is an important ongoing dialogue and learning process through which FHLBanks are coming to understand the CDFI business models, CDFI risk management practices, and the quality of CDFI collateral. The CDFIs are learning more about how the FHLBanks underwrite risks.

Our principal concern is that the proposed membership rule will set back this progress. The provision in the proposed rule that would require a CDFI meet an initial and ongoing test that 1 percent of its assets must be housing mortgages is of most concern. In a letter to FHFA commenting on the proposed rule, John Bowman from Venable LLP, writing on behalf of the Council of the Federal Home Loan Banks, reported that an analysis of Federal Home Loan Bank data showed that three existing CDFI members of the system would fail the 1 percent test.

The proposed rule goes back on the policy established by FHFA when it finalized the CDFI membership rule in January 2010. In the final rule on CDFI membership, FHFA established 7 tests that a CDFI must meet in order to become a member of the system. One of these tests, derived from statute, required that to become a member of the system, a CDFI must "make long-term home mortgage loans." In the preamble to that rule, FHFA wrote:

> FHFA expects that in assessing a CDFI applicant's compliance with this 'makes long-term home mortgage loans' requirement that the Banks will view the extent to which the CDFI originates or purchases long-term home mortgage loans in light of their unique mission and community development orientation, and thus will deem such applicants to have satisfied this requirement if they, in fact, have originated or purchased home mortgage loans and can document that fact. *Moreover, an applicants' compliance with this provision need be assessed only at the time of membership.* [Emphasis added][2]

The new proposed rule is clearly a departure from the standard originally set for CDFI membership in the system. It is not clear why the FHFA needs to change this requirement at this time. One of the premises behind the proposed rule is evidently an effort to

[2] *Federal Register*, Vol. 75, No. 2, January 5, 2010, p. 684.

"reinforce the connection between members and the Banks' housing mission.[3]" We would submit that this test is met to a considerable degree on an ongoing basis by the need for members of the system to pledge housing-related collateral against advances. More importantly, Congress has been moving to expand the mission-related activities of the system beyond housing finance with its designation of certain member institutions as Community Financial Institutions (CFIs). CFI status allows an institution to pledge small business loans, agricultural loans, and community development loans as collateral. HPN supports legislative changes that would extend the definition of a CFI to include CDFIs. Further, the FHFA has recognized that the mission of the banks goes beyond housing finance by defining core mission assets as those that benefit households having a targeted income level and including debt or equity investments that support economic development, community services, job creation, or area revitalization or stabilization. [4] Finally, throughout the history of the FHLBank system there has not been a test imposed on member institutions with respect to what they do with the proceeds of advances – that is, there is not a requirement that these be housing related. CDFIs make enterprise level loans to housing developers, as well as an array of other beneficial investments in low income communities ranging from community facilities, charter schools, grocery stores and other health food options, and small businesses, all of which support the core mission of the system.

A rule that requires ongoing compliance with an asset test will increase costs of compliance to some extent and could affect the choices a CDFI makes between management strategies to meet the test and other strategies related to mission, business success, or risk mitigation. Decisions to lend into a non-housing asset class, to sell mortgages, or to participate in mortgages with other investors, for example, could be affected by an organization's proximity to the 1 percent threshold.

In short, concerns about the effects of the proposed rule on CDFI membership in the FHLBank system argues for the FHFA to reconsider this rulemaking.

Limitations of the Types of Members

HPN and its members have additional concerns about the potential effects of the rule on other types of mission-oriented businesses' access to the FHLBank system. HPN and an affiliated loan fund are both certified as CDFIs by the Department of the Treasury. In addition, HPN owns – along with our members – a captive insurance company and a Real Estate Investment Trust (REIT). At some point, we would be interested in exploring mechanisms that would allow one or all of these entities to become members of the FHLBank system as a means to channel capital to the various member organizations, affordable housing properties, and communities these entities serve. We would support preserving the existing rules that would allow mission/social purposed entities organized as a captive insurance company or a REIT to have access to the types of capital available through the FHLBanks.

The Housing Partnership Insurance Exchange (HPIEx) is a captive insurance company created, owned, and operated by nonprofit housing developers. HPN serves as general manager and part owner of the captive and oversees its contractual relationships with brokers, fronting carriers, reinsurers, claims managers and actuaries. This social enterprise

[3] *Federal Register*, Vol. 79, No. 177, September 12, 2014, p. 54850.
[4] *Federal Register,* Vol. 65, No. 137, July 17, 2000, p. 43981.

was launched in 2004 to address the insurance crisis faced by our members after September 11th when insurers dramatically raised premiums and canceled coverage despite our members' exceptional loss history. The company provides property and casualty insurance; in January 2014, the company added workers compensation coverage to its offerings. HPIEx ensures its members superior coverage, customized loss control services and stable premiums which shield them from the volatile pricing in the conventional insurance market. Today HPIEx is owned by 24 HPN members and insures more than 60,000 apartments in properties with a total value over $7.5 billion. In a very preliminary set of conversations we have begun to explore the potential for HPIEx to become a member in an FHLBank. We are concerned that the rule's emphasis on excluding captive insurance companies from eligibility for membership would preclude this conversation and exploration. HPIEx demonstrates that a captive insurance company structure is not *per se* an inappropriate structure and can, in fact, serve the system's mission.

The Housing Partnership Equity Trust (HPET) is the country's first social venture REIT owned by nonprofits and devoted to preserving affordable rental housing. Established in 2012, HPET enables members to act with the same speed and flexibility as for-profit buyers looking to purchase rental properties that become available in the market. By aggregating capital from private markets, foundations, and member organizations, HPET participants can quickly bid on properties without needing to first assemble the complex financing packages typical in affordable housing transactions. Through the end of 2014, investments by HPET have already resulted in the purchase of six properties, representing over 1,100 units of affordable rental housing. Under current law, HPET could not become a member in its own right, but one could hypothesize a time in the future when either our CDFI or our insurance company – or one of our member CDFIs – could as a member of the Federal Home Loan Bank system provide capital to this worthwhile entity and set of activities. Providing access to REIT structure is not *per se* an activity inconsistent with the mission of the Federal Home Loan Banks.

Effects on Affordable Housing Program Funding

Finally, we would also raise a concern about the potential effects of the proposed rule on the overall revenues and profitability of the FHLBank system. To the extent that the new rule discourages membership in and borrowing from the Federal Home Loan Banks, it has potential to inadvertently shrink and reduce the system's revenues. A reduction in the FHLBank profitability would spill over into the housing and community development sector by reducing the funds available to the AHP program. The AHP program is often an important source of subsidy to complete affordable housing developments and support nonprofits working with low-income households to promote sustainable homeownership. Absent a compelling case to reduce the size of the system for safety and soundness reasons, the sweep of the proposed rule and its potential effects on the mission sector of the economy, we would urge you to reconsider.

We would recommend that FHFA do more analysis of these potential impacts on the system, on the amount of liquidity it provides, and on other mission related impacts the rule might have, and assess whether or not there is a less harmful, more nuanced way to address the public policy objectives that gave rise to this rule.

If you have any questions about these comments or would like additional information, please do not hesitate to contact our Vice President for Policy, Kris Siglin (siglin@housingpartnership.net).

Sincerely,

Tom Bledsoe
President and CEO
Housing Partnership Network