

Alfred M. Pollard, General Counsel  
Attention: Comments/RIN 2590-AA39  
Federal Housing Finance Agency  
400 Seventh Street SW., Eighth Floor  
Washington, DC 20024  
Via email: regcomments@fhfa.gov

January 12, 2015

Dear Mr. Pollard:

Opportunity Finance Network appreciates the opportunity to comment on the proposed rule published in the *Federal Register* on September 12, 2014.

We are disappointed to see that the overall impact of the proposed rule would be to erect barriers to Federal Home Loan Bank System membership. A healthy FHLB system depends on increasing the number of strong institutions in its membership, and a thriving FHLB system provides benefit not only to its community development financial institution (CDFI) members but also to the communities we serve. A profitable and vibrant System means additional funding for the Affordable Housing Program so critical to CDFI markets, for innovations like the Chicago FHLB's Community First Fund, and for other community development programs tailored to FHLB districts. Because these elements of the FHLB system help OFN and its members create opportunity for all, we are concerned by the proposed rule and its potential effects. Though OFN fears that the proposal could stifle the flow of capital to affordable housing and community development in many ways, our comments focus on the potential impact for the System's nondepository CDFI members.

OFN is the leading national network of community development financial institutions (CDFIs) investing in opportunities that benefit low-income, low-wealth, and other disadvantaged communities across America. OFN Members are performance-oriented, responsible investors that finance community businesses, spark job growth in the areas that need it most, and deliver both sound financial returns and real changes for people and communities. Our Network has originated more than \$30 billion in financing in urban, rural, and Native communities through 2011. With cumulative net charge-off rates of less than 1.7%, we have demonstrated our ability to lend prudently and productively in unconventional markets often overlooked by conventional financial institutions. OFN has long been actively engaged in helping the CDFI industry participate in the FHLB System, advocating for inclusion of CDFI-related provisions in the Housing and Economic Reform Act of 2008 and providing extensive comment on the proposed rule for nonregulated CDFI membership in 2009. In the last few years, we have joined with our colleagues at the Housing Partnership Network to facilitate information-sharing, best practices, and education among CDFIs seeking to join FHLBs and to use their membership benefits effectively.



When the FHFA issued the Advance Notice of Proposed Rulemaking on System membership in 2011, OFN noted that the System had too little experience with community development financial institution applicants to make modifications to the membership requirements. Three years later, we are pleased with the progress that CDFIs have made in the System, with nearly 30 nondepository CDFIs joining FHLBs. However, some FHLBs have zero, one, or two CDFI loan fund members, and even fewer borrowers; these numbers are still too low for the CDFI industry or the FHLB System to be able to anticipate unintended consequences of any changes to the membership regulations. If the FHFA hopes to advance the purposes of the Bank Act and increase the supply of affordable housing finance across the country, the FHLB System's CDFI members are critical to advancing those purposes in all its regions and markets. The FHFA should take steps that encourage, rather than thwart, increases in CDFI membership.

Specifically, OFN urges the FHFA not to implement changes that:

- Require CDFI applicants to have one percent of their assets in affordable housing finance, and comply with that requirement on an ongoing basis; and
- Eliminate an appeals process for institutions denied membership.

### **“One Percent” requirement**

In drafting its initial membership regulations for CDFIs, the FHFA recognized that it would be inappropriate for the FHFA to set a minimum threshold for home mortgage financing for CDFIs. The preamble to the final rule published January 5, 2010 (75 FR 677), says that:

“Although it is clear that a CDFI applicant must originate or purchase long-term home mortgage loans in order to become a member, the Bank Act and the implementing regulations do not set a minimum threshold for the amount of home mortgage loans that an applicant must make in order to satisfy that requirement. Similarly, neither the statute nor the regulations characterize this as an ongoing requirement for membership. . . Given the differences between the business of a typical depository institution and that of a typical CDFI, the amount of home mortgage loans that a CDFI applicant originates or purchases will likely be considerably less than the amount that a similarly sized depository institution would originate or purchase. FHFA expects that in assessing a CDFI applicant's compliance with this “makes long-term home mortgage loans” requirement 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.”



A primary reason that CDFIs find FHLB membership attractive is the availability of longer-term, lower-cost capital than they can access through other sources. The current lack of this long-term capital suited to home mortgage lending is a barrier precluding CDFIs from the engaging in a substantial amount of this kind of financing. A CDFI that hopes to expand its participation in the market would find FHLB membership an attractive strategy for doing so but might not meet even a low threshold at the time of membership. The initial membership regulations recognized that CDFIs that would otherwise be effective FHLB members could be in such circumstances.

If a CDFI's primary objective is to secure advances from the FHLB system, it would be unable to collateralize that borrowing without long-term mortgage loans and so would likely increase its activity; for CDFIs to take full advantage of the System's membership, they must certainly provide some volume of home mortgage lending. But as the initial membership requirements, less than five years old, clearly state that the statute does not call for a minimum requirement, it is inappropriate for the FHFA to impose one.

The System's experience with CDFI borrowers is also too new to assess the impact that FHLB advances would have on the financial profile of a CDFI member, and how such borrowing might affect the proportion of housing loans on a particular CDFI's balance sheet. The FHFA itself concedes in the current proposal that "The agency currently lacks access to the data necessary to determine how many CDFI members could comply with an ongoing quantitative 'makes long-term mortgage loans' requirement." If the FHFA cannot determine the impact on this segment of its members, it should not proceed with applying the rule to them.

Beyond the issues specifically facing CDFIs, Congress has expanded the mission-related activities of the system beyond housing finance with its designation of certain member institutions as Community Financial Institutions (CFIs) and its move toward including CDFIs in that category. CFI status allows an institution to pledge small business loans, agricultural loans, and community development loans as collateral. 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. Finally, throughout its history, FHLBank system has not imposed requirements that require member institutions to use advances specifically for housing-related purposes.

Instead of implementing a change that could have an uncertain impact on a set of its members, and is contrary to the direction that both Congress and the agency have set, the FHFA should maintain the current procedure, grounded in statute, that recognizes the structural differences of nonregulated CDFIs and sets separate membership requirements for them that do not include a threshold of housing loans.



## **Appeals to FHFA of Membership Denial**

In its proposal, the FHFA requests comment on whether it should continue to permit applicants that have been denied membership to appeal those denials, saying “The concept of an appeals process may have been appropriate after the Finance Board first delegated to the Banks the responsibility for approving or denying membership applications in 1996, but is probably less necessary today, given the years of experience that the Banks have had in processing membership applications.” Most FHLBs do not have significant experience processing membership applications from CDFIs.

Section 1263.16(b)(1)(iii) of the regulations governing CDFI membership says that CDFIs may present “any other information that the applicant believes demonstrates that it satisfies the financial condition requirement of § 1263.6(a)(4).” In the preamble to the final rule, the FHFA explained that the purpose of this provision, “FHFA believes that it is important to make clear in the regulation that each CDFI applicant has the right to submit whatever information that it believes demonstrates its financial condition, regardless of whether the Bank has asked for such information. . . If the information in fact demonstrates that the applicant's financial condition is sufficiently sound to borrow from the Bank, FHFA expects that the Bank would approve the membership application.” The inclusion of this flexibility, and the direction from the FHFA that the FHLBs consider information provided by CDFI applicants, indicates that the FHFA understands that FHLBs make judgments in their assessment of CDFI eligibility that could require additional review. Though institutions may not have used the appeal process, the inconsistent experience with CDFI membership across the System suggests that the option for an appeal process should be maintained.

## **Principal Place of Business**

OFN appreciates the FHFA’s consideration of the unique circumstances that may define a CDFI’s “principal place of business.” A CDFI may operate primarily in a state that is not the one in which it was incorporated for a variety of reasons: a founding executive director leaves the organization and, with the CDFI’s growth, the new one is hired in a different location; a CDFI may have formed as an affiliate of another organization, and relocated with a transition to independence; a new organization may have incorporated with pro bono help from a colleague or board member located in another state from the CDFI’s offices; or other reasons. The FHFA is right to recognize that there are alternative means of recognizing the CDFI’s “principal place of business” that are not the state under whose laws they may have incorporated.

## **Conclusion**

OFN is pleased with the progress made in the partnerships between the Federal Home Loan Bank system and CDFIs in the five years since the FHFA promulgated regulations for CDFI



membership. The proposed rule would thwart and reverse that progress at a time when the System and its CDFI members are productively moving forward. A FHLB membership framework that ensures all members can fully participate strengthens the system, each FHLB, and all its members. To build and maintain this framework, we urge the FHFA to build rather than contract membership.

Thank you for your consideration.

Sincerely,

Mark Pinsky  
President and CEO