



Capital *for* Opportunity and Change

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

January 12, 2015

Dear Mr. Pollard:

Thank you for the opportunity to comment on the proposed rule published in the *Federal Register* on September 12, 2014. As the first non-regulated Community Development Financial Institution (CDFI) to join the Federal Home Loan Bank of Boston (FHLBB), CEI has a particular interest in this proposed rule in particular and in any changes that may impact, positively or negatively, the ability of CDFIs to join and effectively use the resources of the Federal Home Loan Banks.

CEI is a 501(c) (3) private nonprofit community development corporation and community development financial institution. Founded in 1977, CEI has more than 25 years of experience supporting affordable rental and ownership housing and 38 years of supporting small businesses in rural Maine through the provision of flexible capital and targeted, comprehensive business management assistance. CEI has demonstrated its capacity to mobilize capital from a broad range of public and private sources, to develop products to meet a variety of capital and management assistance needs and to create and maintain affordable housing in rural communities. Since 1977, CEI has provided more than \$1.05 billion in financing to over 2300 enterprises with over 27,000 jobs; created/preserved over 1600 units of affordable housing; provided training and counseling to more than 43,000 individuals and small businesses; created/preserved over 5500 child care slots; and provided leadership on a range of state and federal policy initiatives, including Maine's judicial foreclosure diversion program. Overall, CEI has mobilized and leveraged nearly \$2.6 billion in private and public capital from diverse funding sources, and is the nation's largest allocatee of the high-impact New Markets Tax Credit program.

In January of 2013, CEI became the first non-regulated CDFI Community Loan Fund to join the Federal Home Loan Bank of Boston. We viewed membership as an opportunity to access low-cost, flexible and longer-term loans that would result in CEI's ability to significantly increase its scale and impact – in other words, to create or retain more jobs, housing and services for low-income communities and families. We are concerned that the proposed rule could result in CEI and

organizations like it being excluded from the FHLB system – a result that we view as negative not only from the point of view of CDFIs, but for the FHLB system as well.

In general, CEI believes that a healthy FHLB with more members is good for the system, and is concerned about erecting additional barriers to membership. In particular, we are concerned about the proposed requirement that members have and maintain at least 1% of their assets in home mortgage loans.

The “One Percent” rule

CEI is a CDFI that provides a wide array of loan products, including multifamily home mortgage loans and other housing finance products including predevelopment and construction loans. CEI also offers financing for small businesses, community facilities and commercial real estate projects. We had no difficulty demonstrating that we met the “makes” test when we applied for membership, and in fact did then and do now meet the proposed “one percent” requirement. However, CEI’s varied activities and the broad array of its products could lead to changes in the balance of its assets over time. Although CEI is relatively large in the CDFI world, with total assets of about \$74 million we are small compared to the majority of Member banks. One or two loans can therefore tip the balance either way – if a housing loan pays off and CEI makes a large commercial loan, for instance, we might no longer meet the 1% requirement.

One of the challenges for CEI, like other CDFIs, is lack of access to affordable, long-term capital that is appropriate to invest in longer-term mortgages that would both meet the 1% test and provide eligible collateral for future advances. Our strategy is to use FHLB advances to build a portfolio of qualifying loans. Some CDFIs with a similar challenge and plan could be excluded from membership at the outset because their housing-related assets don’t meet the 1% test, even though they are active in housing lending for predevelopment or construction. These are potential Members whose assets and FHLB activity could be expected to grow over time, given access to the FHLB system – but who will likely be discouraged from the start if this Rule is implemented.

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.”

CDFI membership in the FHLB system is still in its early stages. We ask that the FHFA bear this in mind and not impose a new Rule that would discourage CDFI membership.

Elimination of the appeals process

CEI also urges the FHFA not to eliminate the appeals process for institutions denied membership.

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.” We would point out that most FHLBs do not have significant experience processing membership applications from CDFIs. When CEI went through its application process with the FHLBB, there was a significant learning curve for both institutions that required much explanation and discussion. While the FHLBB did admit CEI to its membership, other FHLBs have been slower to bring on CDFI members, perhaps due to their unfamiliarity with the CDFI model.

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 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.

Conclusion

CEI is encouraged by the growth of CDFI membership in the FHLB system, and by our own membership and the opportunities it provides us. We urge the FHFA not to implement a Rule that could discourage or curtail CDFI membership in the system, but to allow the most flexibility possible as CDFIs and FHLBs increase their knowledge of one another and adapt their processes and systems to strengthen their connections and increase CDFI membership.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ronald L. Phillips". The signature is fluid and cursive, with the first name "Ronald" and last name "Phillips" clearly legible.

Ronald L. Phillips
President and CEO