April 26, 2010

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

Re: Comments on Proposed Rulemaking: Use of Community Development Loans by Community Financial Institutions; Secured Lending by FHLBanks to Members and Their Affiliates; RIN 2590-AA24

Dear Mr. Pollard:

The Federal Home Loan Banks of Topeka, Des Moines, and Pittsburgh appreciate this opportunity to comment on the Federal Housing Finance Agency ("Finance Agency") proposed rule referenced above and respectfully submit the following comments for consideration:

I. Eligible Collateral for Community Financial Institution Members

The districts of the Topeka, Des Moines, and Pittsburgh Federal Home Loan Banks ("FHLBanks") include a significant number of members that meet the definition of Community Financial Institution ("CFI"). Given the member demographics of our respective districts, we have each developed a level of expertise in CFI collateral over the years as part of our efforts to better serve CFI members. Based on these common interests and areas of expertise, we believe that we are well-positioned to comment on this proposed rule.

We support the expansion of eligible collateral for member advances to CFI members as set forth in §1211 of the Housing and Economic Recovery Act of 2008 ("HERA"). With the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Congress first allowed commercial banks to become FHLBank members and established an explicit statutory community investment authority for the FHLBanks to support their members and their communities. The Gramm-Leach-Bliley Act further expanded the ability of FHLBanks to support community and economic development by authorizing CFI members to pledge small business, small farm, and small agri-business loans (and securities backed by such loans) to secure FHLBank advances. The HERA expansion of eligible collateral for CFI members and HERA's express recognition of the FHLBanks' mission to support community development and its members' liquidity needs generally build on Congress's prior statutory actions to ensure that the FHLBanks are fully able to support their members and their members' communities.[1]

[1] HERA at 12 U.S.C. §4513(f)

Under §1266.1 of the proposed rule, "community development" is defined by reference to the Community Reinvestment Act ("CRA") rules of the federal banking regulators. Consequently, under the proposed rule, CFIs would be eligible to pledge loans meeting the CRA definition. Generally, under the CRA rules, "community development" is defined as: 1) affordable housing or community service targeted to low- or moderate-income areas or residents (with incomes less than 80 percent of area median income); 2) small business and small farms; or 3) activities that revitalize or stabilize disaster or other designated areas. 12 C.F.R. §25.12.

We believe that the proposed definition of "community development loan" is overly narrow.[2] The Finance Agency, in the preamble to the proposed rule, has recognized that the proposed definitions of "community development" and "community development loan" would only allow for "marginal expansion in the types of loans that CFI members can pledge as security for advances."[3] The HERA language does not include any reference to income targeting. Consequently, we do not believe that income targeting is an appropriate reference to define community development loans eligible to be pledged by CFI members as collateral for FHLBank advances.

Review of the existing Finance Agency regulations regarding FHLBank community investment and core mission activities provides guidance on the scope of activities that should be considered in establishing definitions of "community development" and "community development loan." Specifically, Section 952.1 of the existing Community Investment Cash Advance regulations defines economic development as:

> (1) Commercial, industrial, manufacturing, social service, and public facility projects and activities; and
> (2) Public or private infrastructure projects, such as roads, utilities, and sewers.
>
> See 12 C.F.R. §952.1.

Additionally, the existing Core Mission Activities regulation defines mission activities in addition to economic development to also include investments that support:

> . . .Community services;
> Permanent jobs; or
> Area revitalization or stabilization.
>
> See 12 C.F.R. §1265.3.

In order for our members to fully and effectively support their communities' needs for these critical facilities and infrastructure, they need access to sufficient liquidity. Consequently, we believe that the final regulation should define "community development" broadly to incorporate all of these activities.

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[2] Since the existing Advances regulation already permits CFI members to pledge small business, small farm, and small agri-business loans and securities backed by such loans to the FHLBank to secure advances, this portion of the CRA rule does not result in any expansion of collateral for CFI members.
[3] 75 F.R. 7990, 7992.

We recommend that §1266.1 of the proposed rule be revised so that the definitions of "community development" and "community development loan" in the final regulation read as follows:

> *Community development* means any of the following projects, facilities, or activities where such project, facility, or activity is the recipient of any form of federal, state, or local government support:
>
> (i) Commercial, industrial, manufacturing, social service (for example, nonprofit organizations), and public facility projects and activities;
> (ii) Public or private infrastructure projects (for example, roads, utilities, and sewers);
> (iii) Community services (for example, schools, colleges, and universities; hospitals and other health care facilities; recreational facilities; and community centers);
> (iv) Permanent jobs;
> (v) Area revitalization or stabilization; or
> (vi) Other economic development initiatives.
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> *Community development loan* means (i) a loan (or securities representing a whole interest in such loans) that has as its primary purpose community development as defined above or (ii) a loan (or securities representing a whole interest in such loans) to a state or local government unit or a nonprofit organization, but such loans shall not include consumer loans or credit extended to one or more individuals for household, family, or other personal expenses.

By revising the definitions in this way and requiring that in order for a project, facility, or activity to qualify as "community development," it must also be the recipient of some sort of governmental support, our CFI members will be able to pledge as collateral for advances loans for activities that have been recognized by their local authorities as critical to their communities. We believe that this is a more appropriate eligibility criterion than a specific income targeting criterion.

The ability of CFI members to pledge securities (for example, municipal bonds) backed by community development loans is expected to be particularly helpful to CFI members and can provide the FHLBanks with high-quality, marketable collateral. Under the existing Standby Letter of Credit regulations, the FHLBanks are already permitted to accept municipal bonds rated investment grade or better as eligible collateral for certain letters of credit. See 12 C.F.R. §1269.2. The ability to accept municipal bonds backed by community development loans as collateral for advances to CFIs builds on the FHLBanks' existing experience with this collateral.[4]

[4] The FHLBanks also have experience with similar obligations as a result of their permitted investments in AA or better rated state housing finance agency and local development agency securities.

II. Secured Lending Transactions with Members and Affiliates

We understand the Finance Agency's position that a secured loan from an FHLBank to one of its members, in any form (e.g., reverse repurchase agreement), should be treated as an advance subject to the requirements of the Advances regulation. However, we are concerned that the broad language in proposed §1266.2(e), covering "all secured extensions of credit," would prohibit more than just transactions designed to evade, or having the effect of evading, the application of the Advances regulation to secured loans to an FHLBank's members. In particular, we are concerned that this language may have the effect of limiting necessary investment and risk management transactions by the FHLBanks. We recommend that proposed §1266.2(e) be modified so that the provision in the final regulation reads as follows:

> (e) *Status of secured lending*. All secured transactions, regardless of the form of the transaction, for money borrowed from a Bank by a member of that Bank shall be considered an advance subject to the requirements of this part. All secured transactions, regardless of the form of the transaction, for money borrowed from a Bank by a nonmember affiliate of a member of that Bank are prohibited, except for bona fide investment transactions, to the extent authorized under section 956.2 of this title, with (i) primary dealers in government securities recognized by the Federal Reserve Bank of New York and (ii) other financial institution counterparties meeting the credit and other risk management requirements established by that Bank.

We believe this approach is preferable for three reasons.

First, this language makes clear that collateralized obligations owed to an FHLBank by a counterparty under a derivative contract would not be considered an "advance" for these purposes, since such obligations do not involve the actual borrowing of money from the FHLBank. Net amounts owing to an FHLBank under an interest rate swap have never been viewed as equivalent to an advance for all purposes,[5] and should not be so viewed going forward. Likewise, there can be other obligations owed to an FHLBank that have nothing to do with borrowed money (e.g., contingent obligations relating to the future recapture of AHP funds or contingent obligations under an indemnification provision in a member or vendor contract). The key concept for purposes of §1266.2(e) should be whether there has been a secured money borrowing as part of the transaction.[6]

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[5] For example, stock purchase requirements under an FHLBank's capital plan.

[6] In addition, there are cases where direct and contingent obligations owed by a member to an FHLBank are incurred or underwritten on an unsecured basis, e.g., indemnification obligations, AHP recapture obligations, and Fed funds transactions ("unsecured obligations"). In some such instances, however, collateral held by the FHLBank under its advances and security agreement will, as a legal matter, also extend to secure the unsecured obligations. Even if an FHLBank does not have such a "dragnet clause" in its advances and security agreement, this collateralizing of unsecured obligations owing by members may occur automatically by operation of law, since both §10(c) of the Federal Home Loan Bank Act and §950.7(e)(1) of the Finance Agency regulations grant an FHLBank a lien on a member's stock in the FHLBank "as further collateral security for all *indebtedness* of the member to the Bank." (emphasis added) In such situations, we would view the unsecured obligations as not being "secured extensions of credit" within the meaning of the proposed rule or "secured transactions" under the substitute language proposed above, even though as a legal matter, the obligations technically remain secured and benefit from the usual contractual security interests and statutory liens.

Second, the substitute language clarifies a technical drafting issue in the proposed rule. The proposal by its terms prohibits an FHLBank from making any secured extension of credit to "an affiliate of any member." However, most, if not all, of the FHLBanks have certain members whose affiliates are also members of the same FHLBank. The proposed rule as written could be read to prevent an FHLBank from making advances to a member, if that member is an affiliate of another member that has received advances. The substitute language clarifies that the bar on advances to affiliates only applies to nonmember affiliates of a member.

Finally, this language would preserve the authority of an FHLBank to enter into reverse repurchase transactions with a primary dealer in government securities recognized by the Federal Reserve Bank of New York and other high-credit, quality financial institutions. Such transactions were permitted under §II.B.2. of the Federal Housing Finance Board's Financial Management Policy ("FMP")[7] and Finance Board Resolution 93-133 and are currently permissible under §956.2(f) of the Investment regulations.[8] These transactions are permitted under current rules even when the primary dealer is an affiliate of an FHLBank member. Preserving this existing flexibility in the FHLBanks' investment authority is especially critical at a time when many FHLBanks are increasing capital levels. Capital conservation efforts will be less successful for the FHLBanks without the ability to invest such additional capital in an economic and safe manner. In addition, utilizing reverse repurchase transactions provides FHLBanks with the ability to meet contingent liquidity requirements without over-reliance or dependence on the riskier unsecured credit markets.

We also request that the Finance Agency, in addition to adopting the substitute §1266.2(e) language above, clarify in the preamble to the final rule that the provision neither requires an FHLBank to treat investments in mortgage-backed securities as advances to the issuer nor prohibits an FHLBank from continuing to accept affiliate collateral pledges to secure advances to members as permitted under §950.7(g)[9] of the Advances regulation. These clarifications would merely recognize a long-standing policy

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[7] This section of the FMP listed the following as one of the permissible investments for an FHLBank: "Overnight and term resale agreements, that on the settlement date have a remaining term to maturity not exceeding nine months, placed with eligible counterparties." "Eligible counterparties" was then defined in Footnote 2 to include primary dealers, the New York Federal Reserve Bank, U.S. Government-Sponsored Enterprises, and, on a more limited collateral basis, the Bank for International Settlement and certain central banks of foreign countries. It should be noted that as the FHLBanks' membership has increased affiliates of large regional banks and primary dealers (entities active in the repurchase agreement transactions market) have become members of various FHLBanks. Consequently, prohibiting an FHLBank from engaging in any repurchase agreement transactions with such large firms if they have an affiliate that is a member of any FHLBank will result in substantially limiting the FHLBanks' ability to engage in any reverse repurchase agreement transactions.

[8] The May 3, 2001, annotated version of the FMP issued by the Finance Board stated that "(i)nvestments formerly authorized under §§II.B.1 through 5 and §II.B.9 of the FMP are now authorized under 12 C.F.R. §956.2(f)." These are among some of the authorized investments under 12 C.F.R. Part 956, the Investment regulation; authorized investments under the Investment regulation are not limited to those previously authorized under the FMP.

[9] The proposed rule would redesignate this as §1266.7(g).

and practice within the FHLBank System, and provide additional assurance that no unintended changes will result from the adoption of proposed §1266.2(e).

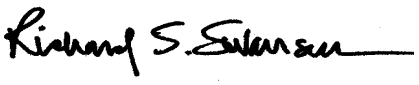
Once again, we appreciate the opportunity to comment on the proposed rule.

Sincerely,

Federal Home Loan Bank of Topeka

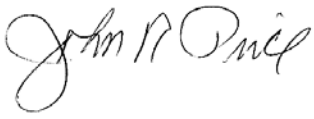
Andrew J. Jetter
President and Chief Executive Officer

Federal Home Loan Bank of Des Moines



Richard S. Swanson
President and Chief Executive Officer

Federal Home Loan Bank of Pittsburgh



John R. Price
President and Chief Executive Officer

To: Comment File

Re: Conversation with Federal Home Loan Banks of Pittsburgh, Topeka and Des Moines

One June 17, 2010, staff from the Federal Housing Finance Agency (FHFA) held a tele-conference with staff of the Federal Home Loan Banks of Pittsburgh, Topeka and Des Moines (Banks) concerning the comments in their joint comment letter of April 26, 2010 addressing the FHFA's proposed definition of community development and community development loans published in the Federal Register on February 23, 2010 (75 Fed. Reg. 7990, 7994-95). In response to questions from FHFA staff, Bank staff provided general examples of how the suggestions made in the joint comment letter for revising the two definitions might expand the type of loans that could be accepted from community financial institutions (CFIs) beyond what is currently allowed by the regulations as they would be amended by the proposal. They also provided information on how the income targeting criteria inherent in the proposed definitions might create difficulties in implementation and narrow the types of loans that could be accepted from CFIs based on the community in which the CFI is located.