

Alfred M. Pollard
General Counsel,
Attention: Comments/RIN 2590-AA39
Federal Housing Finance Agency
Fourth Floor, 1700 G Street, NW.
Washington, DC 20552

March 24, 2011

Dear Mr. Pollard:

Opportunity Finance Network appreciates the opportunity to comment on the Advance Notice of Proposed Rulemaking (ANPR) concerning Federal Home Loan Bank (FHLB) membership.

In early 2010, the FHFA issued regulations implementing the provisions in the Housing and Economic Recovery Act of 2008 (HERA) opening Federal Home Loan Bank System Membership to CDFIs. Those membership standards issued in 2010 reflected thoughtful consideration on the part of FHFA and largely recognized the character and operations of CDFI loan funds and their differences from traditional regulated financial institutions. While we support the FHFA's efforts to apply consistent standards for all types of members, the financial structure and mission of CDFIs necessitates flexibility in the FHLBs' consideration of their membership, and the 2010 regulations preserved that important concept.

OFN is concerned that, barely a year after issuing the initial rule, the FHFA is considering significant changes to the regulations. Wholesale changes to the membership requirements for CDFIs would undermine the Congressional intent and agency efforts to expand membership to such institutions, as CDFIs and FHLBs are forced to revisit application materials and strategies on membership that have only recently been developed.

As of the end of 2010, only four CDFI loan funds had been admitted as members into the System, with some FHLBs not yet having considered a single CDFI membership application. CDFIs', FHLBs', and the FHFA's experience with CDFI membership is simply insufficient to determine whether the current thresholds and practices are appropriate or to allow for thoughtful changes and suggestions. At this point, the FHFA should be taking actions that encourage, not thwart, CDFI membership applications. We urge the FHFA to maintain current CDFI membership requirements.

Our work with CDFIs has suggested difficulty not with the Membership requirements, but with the ability to use advances and to take full advantage of member services and benefits. We suggest the FHFA direct any changes in the System's partnership with CDFIs toward facilitating CDFIs' participation in the FHLBs' financial products, rather than toward revisiting membership regulations.

Because our essential position is that the FHFAs should not at this time change current membership requirements for CDFIs, OFN does not in this letter address each question posed by the FHFA. The Agency should presume that, unless we provide specific comment in this letter,



the regulations governing CDFI membership should follow those promulgated in January 2010. For more detailed positions on the membership criteria, OFN refers the FHFA to our letter of July 2009 provided in response to proposed regulations.

OFN does wish to emphasize some recommendations for questions posed in the ANPR:

- Maintaining the financial standards as a “rebuttable presumption” is critical. At least one new CDFI member of the FHLB system did not meet the financial ratios on their face, and would not have been able to become a member if not for the “rebuttable” presumptions and the opportunity to provide additional or different indicators of its financial condition.
- Several of the FHFA’s questions ask whether criteria should be applied only at the time of membership application, or on an ongoing basis. Again, because the history of CDFI participation as FHLB Members is too new to fully evaluate, it is not clear what impact advances would have on a CDFI’s balance sheet, activities, or operations. At least until CDFIs have used advances and other products and the industry and the FHFA better understand any implications, CDFIs should be evaluated only at the time of application.

Finally, the FHFA’s public listing of members in the System (available at <http://www.fhfa.gov/Default.aspx?Page=287>) does not indicate which members are CDFIs. Instead, it categorizes them as insurance companies. This is not appropriate and the FHFA should promptly update its listings and its data definitions to properly categorize CDFI members.

Opportunities to Enhance CDFIs’ Membership

Community Financial Institutions

OFN continues to believe that CDFIs should qualify as community financial institutions (CFIs), that the FHFA should take steps to ensure their regulatory treatment as such, and that classification of CDFIs as community financial institutions would enhance their ability to access and use FHLB member services.

The Gramm-Leach-Bliley Financial Services Modernization Act (GLBA) created the community financial institution category within the FHLBank System in 2000. That legislation laid out just two characteristics that defined CFIs: 1) FDIC-insured depository institutions; and 2) assets less than \$1 billion, based on an average of total assets over the three years preceding that date. In 2008, in implementing the HERA provisions granting CDFI membership, the FHFA’s rules set out financial soundness standards for CDFIs to substitute for the information gathered from regulated financial institutions. FHLB member CDFI loan funds will have met requirements analogous to CFIs and should be considered by the FHFA to qualify as meeting that part of the definition.

Of all CDFIs that were not eligible for membership under the prior law, ALL but one has assets less than \$1 billion. If the law and the FHFA presuppose that small institutions have different circumstances simply by virtue of being small institutions, then this assumption should also apply to CDFIs.



Treating CDFIs as CFIs would fulfill the objectives of creating that category of institutions: the goal was “to help smaller banks or thrifts, which may have limited single-family mortgages and other traditional assets to pledge as collateral, gain greater access to the liquidity offered by FHLBank advances. In so doing, the GLBA reforms were supposed to help improve economic development credit opportunities in rural areas and other underserved communities.”¹

Collateral Policies

Most CDFIs that have considered membership in the FHLB System but have decided not to pursue the opportunity have come to that conclusion because it would have been difficult, if not impossible, for them to collateralize and secure advances. As it reviews membership, the FHFA should consider ways to make that membership more valuable for CDFIs so they can better contribute to the goals of the System. Treating CDFIs as community financial institutions, as detailed above, would be an important step in that direction. The FHFA should also consider promoting other policies that would enhance CDFIs’ capacity to be fully participating members of the FHLB system, including:

- Evaluating the appropriateness of high “haircuts” applied to alternative collateral, as recommended in the 2010 Government Accountability Office (GAO) report reviewing collateral policies for CFIs;
- Considering shorter-term predevelopment loans or loans backed by government guarantees as eligible collateral from CDFI members.

Conclusion

OFN and its CDFI Members continue to be excited about this opportunity for partnership with the Federal Home Loan Bank System. For the opportunity to fully benefit both CDFIs and the System, the FHFA should focus its efforts on successful implementation of the CDFI membership rules, not on changes to them.

Thank you for your consideration of our views. If you have additional questions or concerns, please do not hesitate to contact me at 215.320.4304 or mpinsky@opportunityfinance.net.

Sincerely,

Mark Pinsky
President and CEO

¹ Transmittal letter of GAO-10-792, “Federal Housing Finance Agency: Oversight of the Federal Home Loan Banks’ Agricultural and Small Business Collateral Policies Could Be Improved.”