



July 14, 2009

Mr. Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
1700 G Street, N.W. Fourth Floor
Washington, DC 20552
RegComments@fhfa.gov

Re: Proposed Rule on FHLBank Membership for CDFIs, RIN 2590-AA18

Dear Mr. Pollard:

As a national nonprofit organization with a strong history of financing both affordable housing and community service facilities, we respectfully submit comments on the proposed rule published in the Federal Register to authorize Community Development Financial Institutions (CDFIs) to become members of a Federal Home Loan Bank (FHLBank).

We urge the Federal Housing Finance Agency to consider the following broad goals in this rulemaking:

1. Make the barriers to FHLBank membership appropriate for CDFIs, without layering on additional regulatory burdens beyond what is necessary for safe and sound oversight of the FHLBanks.
2. Give the FHLBanks wide flexibility to administer CDFI membership, but impose targets to increase the likelihood that CDFIs actually borrow from the FHLBanks.

With the notable exception of imposing the ten percent mortgage asset requirement, we believe the proposed rule does a good job of addressing our first goal. We urge the Agency to give further consideration to our second proposed goal.

NCB Capital Impact is not a certified CDFI at this time, but we hope to be certified in the near future. If certified, we would seriously consider FHLBank membership, so we have a strong interest in this rulemaking. Since our inception, we have directly provided \$1.2 billion in financing to help people in low income communities. Together with our affiliate, NCB, we have invested over \$3 billion in low income communities. We are members of the Housing Partnership Network, Opportunity Finance Network, New Markets Tax Credit Coalition and the CDFI Coalition.

In the affordable housing arena, we have been among the leading proponents of Shared Equity Homeownership, a new and sensible approach to helping families become homeowners without taking on undue risk. Shared Equity Homeownership keeps homes affordable for generations of

first-time homebuyers, through mechanisms such as land trusts, deed restrictions or limited equity cooperatives.

As part of our Shared Equity work, we have joined together with three other non-profit organizations to form ROC USA™, a national social enterprise now active in 30 states, aimed at making resident ownership of manufactured home communities viable nationwide utilizing a limited-equity cooperative model.

We believe that very little is accomplished by programs that make housing affordable for the first generation of new homeowners, but then are quickly lost to the affordable housing stock after the expiration of only a 5 to 15 year affordability restriction. In order to improve communities for the long-term, it is essential that affordable homeownership remain affordable, while simultaneously building wealth. Shared equity models do just that.

Further, Shared Equity Homeownership is an important strategy to address the foreclosure crisis. In many places, the challenge is to appropriately manage vacant property and provide counseling to individuals at risk of foreclosure. In other places, the challenge is to stop the loss of affordable housing that occurs from the re-development and foreclosure of manufactured home communities. By keeping public subsidy in the land to moderate price peaks and valleys, Shared Equity approaches are the best way to avoid the boom and bust cycle that has plagued our communities in recent decades. Our work and the work of our partner, ROC USA,™ are just a couple of many examples of how communities will be enhanced by allowing CDFIs to become FHLBank members.

Financial Condition Requirements

We concur with your proposal to require CDFI applicants satisfy requirements relating to financial condition, character of management and home financing policy. Overall, we think the proposed financial condition requirements for CDFIs do a good job of balancing safety and soundness concerns with the need to allow CDFIs easy access to FHLBank advances. Financial statements that have been independently audited according to generally accepted auditing standards provide a uniform and reliable approach to measure the financial condition of CDFIs.

While we do not have a strong objection to a minimum net asset ratio of 20%, we think that a 10% minimum net asset ratio would be adequate in light of the significantly lower capital requirements that generally apply to regulated financial institutions. We concur with the proposal that it is appropriate to include restricted assets within net assets because restricted assets are available to absorb potential losses.

We also concur in the proposed earnings measurement of positive income for two of the three most recent years. We see no harm in allowing CDFIs to include additional years to demonstrate a pattern of positive income. Loan loss reserves and unrealized income should be excluded from the earnings measurement. The earnings measurement would more appropriately be based on the change in unrestricted net assets rather than total net assets.

We concur in the loan loss reserves threshold of 30% of loans aged 90 days or more and the logic that there is a historically lower delinquency rate among CDFI-originated loans. Even in this difficult lending environment, our current delinquency rate averages 2%, which compares favorably to many for-profit lenders.

We agree with the decision to exclude a Self-Sufficiency Ratio from the proposed rule. Some of our work that has the greatest impact on changing public policy to better assist low income communities is entirely grant funded. Our Shared Equity Homeownership work is just one example of this. A Self-Sufficiency Ratio would create a significant disincentive for CDFIs to undertake this important grant funded policy work. Moreover, while a Self-Sufficiency Ratio is a good thing for CDFIs to monitor for their own purposes, it is not a reliable predictor of financial condition because we and other CDFIs maintain the flexibility to drop grant funded programs when the grants are no longer renewed.

It is important that the “home financing” definition be broad enough to include certain loans that are for land only, such as in the case of a land trust or a manufactured housing park. This exception should apply to land that carries deed restrictions and supports affordable housing individually owned by low-income homeowners, and loans to entities, made up in whole or in part of low-income homeowners whose homes are located upon the land, whether or not the homes themselves are included in the collateral of the loan.

Financial Documentation Requirements

We agree that CDFI applicants should not be required to meet the inspection and regulation requirement. Most CDFIs operate quite successfully without formal government oversight. Such a rule would effectively preclude FHLBank membership for most of the CDFI industry, defeating the congressional intent of extending FHLBank membership eligibility broadly to CDFIs.

In light of the very strong community support performance that is required to be certified as a CDFI, we believe that CDFIs should be deemed to be in compliance with the community support regulation. This simple change will save countless hours of regulatory compliance and will in no way lessen the amount of community support that CDFIs provide to communities.

CDFIs are Community Financial Institutions

CDFI applicants should not be required to meet the requirement to have at least 10 percent of their assets in residential mortgage loans. The proposed rule asks if there is any basis in legislative history to construe the Community Financial Institution amendments to apply to CDFIs as well as CFIs. We concur with the Opportunity Finance Network’s comment that the Agency is asking the wrong question. Instead, the question should be:

Is there any basis in the statute or legislative history to NOT allow the new CFI amendments to apply to CDFIs as well as CFIs?

The answer is clearly, no. This is probably the single most important change that should be made before a final rule is published. CDFIs serve the same purpose as CFIs and help the FHLBanks to fulfill their dual mission of affordable housing and community investment. At the time CFIs were added to the Bank Act, membership was limited to FDIC-insured institutions. The statutory change that makes CDFIs eligible for membership is intended to allow CDFIs to have access to the FHLBanks on the same terms as FDIC-insured institutions. It would be inappropriate to make such a distinction between CFIs and CDFIs where there is no difference. Furthermore, the statute only requires that “insured depository institutions” meet the 10 percent test in the first place. It would be quite an anomalous and unfair result to apply the 10 per cent test to CDFIs and then to deny CDFIs access to the advances and collateral provisions granted to CFIs because they are not

insured depository institutions. Clearly the outcome most consistent with congressional intent is to treat CDFIs just like CFIs for all purposes.

CFIs and CDFIs have in common relatively small size for financial institutions. This is no coincidence. CFIs and CDFIs are generally less than \$1 billion in size because they are focusing on the needs of particular communities that are often underserved by typical banks. As our government struggles to unwind and pay for complicated transactions where some lenders grew too large and transferred credit risk far from local underwriters who would have known better, the Agency would help to solve this problem in a way that is consistent with the historic mission of the FHLBank System by giving smaller lenders that do this difficult community investment lending access to FHLBank advances on similar terms and not require CDFIs to meet the ten percent test.

In both the Financial Services Modernization Act of 1999 and the Housing and Economic Recovery Act of 2008, Congress chose to proactively increase FHLBank investment in economic development activity. The community development activities that Congress encouraged in HERA are the *raison d'être* of the CDFI community.

Using NCB Capital Impact as an example of CDFI community investment lending, our primary organizational strategy is to address the impact of poverty by financing community facilities serving disadvantaged populations. During our history we have invested over \$1.2 billion in our core market sectors of community-based health and behavioral care; and educational facilities including charter schools. We are currently the country's largest nonprofit lender to community health centers (financing \$414 million since 1995) and charter schools (financing \$285 million since 1995).

Our track record includes becoming a certified Community Development Entity under the New Markets Tax Credit Program. We have been the recipient of \$319 million in New Market Tax Credit allocations and to-date have completed 25 transactions, totaling \$204 million, deployed in 25 loans to 21 customers in urban and rural areas. These transactions have leveraged over \$500 million in capital; have created/retained 3,542 permanent jobs, 2,157 temporary jobs, and 1,015,000 square feet of space. On May 27, Secretary Geithner traveled to Boston to announce the most recent round of NMTC allocations highlighting the Match School in Boston, which we financed.

Beyond investment in community facilities and other non-housing assets, it also makes sense to exclude CDFIs from the ten percent requirement for housing policy reasons. In the wake of the foreclosure crisis, there is a great need to attract more strong lenders into the affordable housing market. NCB Capital Impact is a good example of an organization that is redoubling its efforts to bring our lending expertise to the affordable housing lending market. Applying the ten percent requirement to CDFIs, would only make it harder for CDFIs seeking to broaden their lending portfolio to include affordable housing. CDFI applicants can demonstrate a commitment to housing finance without having ten percent mortgage related assets.

Recommended Addition to the Proposed Rule

We recommend one significant addition to the proposed rule. We recommend that the Agency set a goal for each FHLBank to have a borrowing CDFI member operating in each state in its district within five years. The Agency should set gradual annual benchmarks for each FHLBank to meet this goal. Further, the Agency should require FHLBanks to analyze and publish information regarding the implementation of this rule. Each FHLBank should report the number

of CDFIs that applied for membership. Each should also report acceptance rates and include summaries of reasons for denial of membership. Information on CDFIs' access to advances should also be made available to the public.

We have great respect for the tremendous positive impact that the FHLBanks continue to have on America's communities. We have had excellent experience working with numerous FHLBanks, including through our affiliate, NCB, FSB, a member in good standing of the FHLBank of Cincinnati. However, we believe it is the appropriate role of the Agency to set targets that will greatly increase the likelihood that CDFIs actually borrow from the FHLBanks.

Other Issues

We concur with the approach to CDFI Bank Holding Companies in the proposed rule, but our own unique experience should serve as a caution of the importance of keeping the rules flexible for unforeseen circumstances. The reason why we have not yet been certified as a CDFI pertains to our status as an affiliate in a bank holding company. However, the holding company structure we are a part of is unique in that the National Consumer Cooperative Bank, our affiliate, was congressionally chartered for the public mission of financing consumer and business cooperatives. Despite NCB Capital Impact's long track record of effectively serving low income communities that considerably pre-dates the term "CDFI", we have to date been excluded from official CDFI certification because of concerns that if NCBCI is certified, then for-profit bank holding companies might create affiliates to gain access to CDFI Fund resources.

In the unlikely event that an affiliate of a for-profit bank seeks access to CDFI Fund resources, the Fund could make the appropriate distinctions without great difficulty. This is relevant to the Agency's rulemaking because it demonstrates the need to take a flexible approach and not assume that all bank holding companies should necessarily be treated similarly.

We interpret sec. 1263.17(f) to apply a presumption of noncompliance with home financing policy requirements only to those prospective members who are subject to inspection and regulation. If our interpretation is incorrect and this negative presumption is intended to apply to unregulated CDFIs, we think this would impose an unfair burden on institutions whose very purpose is to provide the community support to reach borrowers not served by the traditional lending market. If the Agency deems a home financing policy presumption necessary for unregulated CDFIs, a less objectionable alternative would be to create a presumption of compliance with the home financing policy requirements for an unregulated CDFI that has been recognized by the Internal Revenue Service as a "charity" having a public purpose under section 501(c)(3) of the Internal Revenue Code, or in our own case, where we have been Congressionally chartered to serve a "public purpose."

Conclusion

Recently, Federal Reserve System Chairman Bernanke stated, "While community development finance is a small part of our overall capital and credit markets, the Federal Reserve recognizes that these financial flows are critically important for many low- and moderate-income communities. In fact, the Board of Governors has been working with several of the Federal Reserve Banks to promote research on how best to promote CDFIs' effectiveness and financial stability."

The FHLBanks and CDFIs working in concert can make possible a wide variety of housing and community economic development lending throughout the United States. Both President Obama

and the Chairman Bernanke have been outspoken in support of doing more to reach low- and moderate-income communities. We hope that the Agency will do what you can to encourage not just CDFI membership in the FHLBanks, but actual FHLBank lending to CDFIs.

We look forward to an even closer working relationship with the FHLBanks once we are certified as a CDFI and this rule is adopted. We appreciate the opportunity to comment on the proposed rule. If you have any questions about our comment, you may contact Jim Gray at 703-647-2346, jgray@ncbcapitalimpact.org or me.

Respectfully submitted,

A handwritten signature in black ink that reads "Terry D. Simonette". The signature is written in a cursive style with a large, stylized 'T' and 'S'.

Terry D. Simonette
President & CEO