



Main Office
123 South Broad Street
Suite, 1330
Philadelphia, PA 19109
Ph: (215) 572-7300
Fax: (215) 572-0262

August 19, 2024

The Honorable Sandra L. Thompson, Director
Federal Housing Finance Agency
400 Seventh Street SW
Washington, DC 20024

Dear Director Thompson,

On behalf of Regional Housing Legal Services, we thank you for the opportunity to comment on the Federal Housing Finance Agency's (FHFA) Request for Input (RFI) seeking feedback on opportunities to improve FHLBank's Affordable Housing Program (AHP) application process. The RFI is an important step in making AHP a more efficient and effective resource to help address the nation's critical and urgent affordable housing needs.

We welcome this RFI and recommend that the FHFA expand AHP reform beyond the application process to include streamlining the post-award requirements (long-term compliance). Addressing both issues is necessary to make AHP even more impactful than it is already.

Importance of Regional Housing Legal Services' Perspective

Regional Housing Legal Services (RHLS) is a statewide nonprofit legal aid law firm with unique expertise in affordable housing development and operations and its related components—community and economic development, utility matters, and preservation of homeownership. For over fifty years, RHLS has provided innovative project and policy solutions that help create sustainable affordable communities offering decent, safe and affordable housing for lower-income Pennsylvanians.

Central to RHLS's mission and core to our operations is our representation of our clients; nonprofit organizations and community development corporations involved in affordable housing development, preservation and advocacy. Dozens of our clients rely on AHP awards to move forward their projects, be it a three-unit homeownership development, or a 60-unit multifamily LIHTC financed development. The funds received through an AHP award are a crucial part of the overall financing to make the project successful and affordable for the constituents our clients are intending to serve.

Need for Streamlining AHP

Complexities have been constructed into the AHP process over many years. They are the result of incremental changes - regulatory revisions, Advisory Bulletins, regulatory guidance, examination findings, and FHLBank actions, all of which have had a compounding effect. Because this compounding occurred over AHP's 35 years, oftentimes AHP sponsors share their frustration and difficulty in using AHP in general but may not be able to pinpoint a specific change(s) that is needed. They don't know where to start. This is the input we know about. However, our biggest concern are the voices we don't hear. Those are organizations, often smaller nonprofits, who have opted to forgo applying for AHP because of its administrative burden and the cost required to hire a consultant to assist with the application process.

AHP Streamlining Recommendations

We have provided responses to the RFI's specific questions in an attachment but want to emphasize an overarching theme in our response:

We recommend a new structure to allocate and prioritize AHP. The statute requires only three AHP priorities, yet the regulation adds multiple additional categories and establishes a General Fund that is a one-size fits all structure. Recently added Targeted Funds provide some flexibility to tailor AHP to meet a FHLBank's district needs but this structure introduces administrative and market challenges. A new structure allowing FHLBanks to design their own scoring methodology and allocate funding to specific priorities by project types in a funding round would have enormous benefit both in terms of streamlining and meeting district needs.

If this structure existed under AHP General Fund (competitive program), funds could be directed to district priorities via allocation pools within a single funding cycle much better than the current universal scoring-based rubric required by the regulation.

This simplification, creating pools of funds within an AHP funding cycle, would allow the FHLBanks to ensure support for priority needs within their districts. Using allocation pools, FHLBanks would be certain to award AHP to the district's priority needs as opposed to using a scoring methodology with the hopes of achieving certain outcomes. The FHFA has already taken a step in this direction by focusing on making sure AHP awards are made in each state. Selection criteria within the pools would be needed, but the criteria could be targeted to the types of pools created.

Coordinate AHP with other funding sources to the maximum extent possible

- The AHP statute directs the FHFA to "coordinate activities under this subsection with other Federal or federally subsidized affordable housing activities to the maximum extent possible." Adopting this as AHP's operating processes would have a profound streamlining effect without expanding risks. Housing sponsors/developers would embrace this change. They manage multiple layers of capital and operating financing that take years to assemble. Developers must blend AHP into the total financial package while dealing with the overarching complexities of real estate development. For developers to deliver much-needed affordable housing, the affordable finance system needs to move to be as streamlined, transparent and operationally efficient as possible.

As we interpret the current regulations, AHP philosophy requires FHLBanks to independently underwrite all aspects of an AHP transaction regardless of AHP's percentage participation and without consideration of the risk in the deal. Consequently, developers must repackage financial and other information that has already met other funders' criteria to also meet AHP's underwriting requirements. FHLBanks then must analyze the proposed project using its underwriting filters. We believe this is unnecessary and duplicative. Instilling a philosophy coordinating with other funding sources to the maximum extent possible would enable all developers, large and small, to participate more fully without sacrificing quality or the integrity of AHP.

Allowing AHP underwriting to rely on evaluations completed by federal agencies, state housing finance agencies or other funding sources would eliminate redundancies thus simplifying the AHP application process. Leaning into a new philosophy that fully aligns with the statute to maximize coordination with other funders can expand to other aspects of AHP thus simplifying not just the application, but also carry through the entire AHP compliance period.

- *Engage stakeholders to make meaningful change.*

We believe to achieve meaningful impact and simplification, AHP should be restructured and provide for its stakeholders to be at the center of the revised design. We recommend engaging stakeholders to hear their concerns and to assist in making meaningful change. If a new application and prioritization structure, and new philosophy are embraced by the FHFA, we recommend forming a working group of subject matter experts – practitioners, FHLBank Affordable Housing Advisory Councils (AHAC), FHLBank members, and FHLBanks to flesh out a framework for implementation. This will take time but is important work and is attainable.

AHP has been, and will continue to be, a crucial and vital funding source for affordable housing. We commend the FHFA for engaging in a process to streamline AHP to align better with the affordable housing finance system, enhance AHP's support for vulnerable populations, and enable greater access for all affordable housing stakeholders. Thank you for listening our ideas on this very important subject.

Sincerely,

 Schlossberg
Dina Schlossberg, Executive Director

Responses to Input Questions

Question 1

Are there particular components of the FHLBanks' AHP application processes that could be made more effective or efficient, and if so, how? Are any of the FHLBanks' specific documentation requirements for AHP applications unnecessary for verifying that the applicant meets the AHP eligibility requirements and scoring criteria? Are there ways to streamline the application process while maintaining the FHLBanks' ability to verify applicants' compliance with the AHP eligibility requirements and scoring criteria?

- We recommend changing the application and allocation process.
 - Limit the required scoring categories to what is in the statute and allow FHLBanks to determine scoring based on district need.
 - Permit the FHLBanks to allocate a percentage of awards or funding within the General Fund round to address certain priority activities.
 - We recommend a new structure to allocate and prioritize AHP. The statute requires only three AHP priorities, yet the regulation adds multiple additional categories and establishes a General Fund that is a one-size fits all structure. Recently added Targeted Funds provide some flexibility to tailor AHP to meet a FHLBank's district needs but this structure introduces administrative and market challenges. A new structure allowing FHLBanks to design their own scoring methodology and allocate funding to specific priorities by project types in a funding round would have enormous benefit both in terms of streamlining and meeting district needs. If this structure existed under AHP General Fund (competitive program), funds could be directed to district priorities via allocation pools within a single funding cycle much better than the current universal scoring-based rubric required by the regulation.
 - This simplification, creating pools of funds within an AHP funding cycle, would allow the FHLBanks to ensure support for priority needs within their districts. Using allocation pools, FHLBanks would be certain to award AHP to the district's priority needs as opposed to using a scoring methodology with the hopes of achieving certain outcomes. The FHFA has already taken a step in this direction by focusing on making sure AHP awards are made in each state. Selection criteria within the pools would be needed, but the criteria could be targeted to the types of pools created.
 - Permit sponsors to provide certifications for compliance with scoring components to receive conditional approval, and FHLBanks follow-up for supporting documentation, as needed.
- Coordinate AHP with other funding sources to the maximum extent possible.
 - Minimize underwriting as much as possible; rely on other funders' determinations who have engaged in a competitive process for making awards, and permit other funders to certify their approval, satisfying AHP.
 - Permit FHLBanks to accept information provided to, and utilized by, other funders.

- The “need for subsidy” and “project costs” do not specifically allow for the maximization of coordination with other funding sources. Requiring an FHLBank to independently underwrite a project's need for subsidy and viability is oftentimes redundant and increases the burden on sponsors especially in cases where other funding sources have already underwritten the project. We recommend allowing FHLBanks to rely on the underwriting of other funders with comparable standards in terms of cost reasonableness, viability of operations, market demand, development team capacity and need for subsidy.
- Additional input and thoughts for revising the AHP process:
 - Revise the regulations to recognize that aspects of the property development may change from the time of application to completion of the property due to economic or other factors. Requiring that developers attempt to cure any scoring category changes prior to requesting a modification is burdensome, especially when AHP is a small part of the development budget, and other funders allow a change.
 - Recognize resident or social services as necessary allowable operating expenses, rather than excluding those expenses from AHP operating pro forma financials.
 - Specifically provide for pro-rata forgiveness on rental projects commensurate with the remaining retention period - requiring full repayment when a project has met its AHP commitments for a portion of the retention period is unfair and creates an unreasonable financial burden for project sponsors.

Question 2

How do the FHLBanks’ AHP application processes compare to those of other providers of gap funding with respect to scope, complexity, and documentation requirements?

- AS we understand, AHP doesn’t leverage other funders’ application or requirements.
- The AHP statute directs the FHFA to “coordinate activities under this subsection with other Federal or federally subsidized affordable housing activities to the maximum extent possible.” Adopting this as part of AHP’s philosophy would have a profound streamlining effect without expanding risks. Housing sponsors/developers would embrace this change. They manage multiple layers of capital and operating financing that take years to assemble. Developers must blend AHP into the total financial package while dealing with the complexities of real estate development. For developers to deliver much-needed affordable housing, the affordable finance system should stive to be as streamlined, transparent and operationally efficient as possible.
- The current AHP philosophy requires FHLBanks to independently underwrite all aspects of an AHP transaction regardless of AHP’s percentage participation and without consideration of the risk in the deal. Consequently, developers must repackage financial and other information that has already met other funders’ criteria to also meet AHP’s underwriting requirements. FHLBanks then must analyze the proposed project using its underwriting filters. This is unnecessary and duplicative. Instilling a philosophy coordinating with other funding sources to the maximum extent possible would enable all developers, large and small, to participate more fully without sacrificing quality or the integrity of AHP.
- Allowing AHP underwriting to rely on evaluations completed by federal agencies, state housing finance agencies or other funding sources would eliminate redundancies thus simplifying the AHP application process. Leaning into a new philosophy that fully aligns with the statute to

maximize coordination with other funders can expand to other aspects of AHP thus simplifying not just the application, but also carry through the entire AHP compliance period.

Question 3

Do the FHLBanks' AHP application processes leverage other funders' applications/requirements? Are the AHP application processes duplicative or complementary of other funders' underwriting requirements and processes? Do the AHP application processes create the need for additional information and documentation?

Please see our response to question #2 above.

Question 4

Should the AHP regulation allow the FHLBanks to differentiate their AHP application requirements for projects requesting subsidy that constitutes a small percentage of the total funding in the project? If yes, why? Do other gap funders differentiate their application requirements for smaller projects?

We believe this could be a benefit to our client base, nonprofit developers. The percentage of AHP in a project should be a factor in determining a project's compliance risk. Other factors may include development team experience and complexity of the project. Allowing differentiation for projects in which the AHP subsidy constitutes a smaller percentage of the total funding would more effectively and perhaps more efficiently integrate AHP into the affordable housing finance system.

Question 5

What role do consultants provide in applying for AHP funds? What are the reasons that an AHP applicant may use a consultant? To the extent that applicants are using the services of consultants to apply for AHP subsidy, how does the practice compare to the use of consultants for other sources of gap funding?

Sponsors may have limited resources and are often unable to devote the time or staff resources necessary to develop expertise in working through the AHP application and Implementation Plans. It can be more efficient for sponsors to rely on consultants who have worked with AHP on numerous projects through multiple phases and have developed expertise as a result. However, both sponsors and consultants would benefit from an integrated and simplified AHP regulatory framework. We appreciate the role of consultants in this process, however, this can also be an expensive endeavor and the need to pay upfront the funds to a consultant is often a barrier to a client's ability to even make an application.

Question 6

Are there effective practices the FHLBanks could implement to coordinate the underwriting review process across multiple funding sources in a project?

Yes. Relying on other funders' conclusions about a project's readiness, capacity, market/demand, and financial viability. To support the reliance on other funders, documentation can either be provided through the sponsor or received directly from the funder by the FHLBank.

In addition, we fervently recommend eliminating the exclusion of supportive services from the operating pro forma to align with other funders. And to recognize the true costs of service in an affordable housing

development.

Question 7

What is the single most important change you would recommend for improving the AHP application process?

Coordinate AHP with other funding sources to the maximum extent possible.

Question 8

What concrete steps would you recommend for simplifying the AHP application process and why?

We recommend engaging stakeholders to make meaningful change. If a new application and prioritization structure, and new philosophy are embraced by the FHFA, we recommend forming a working group of subject matter experts – practitioners, FHLBank AHACs, members, and FHLBanks - be formed to flesh out a framework for implementation. This will take time but is important work and is attainable.