

March 13, 2023

Dear Director Thompson,

The Federal Home Loan Bank Des Moines's (FHLB Des Moines) Affordable Housing Advisory Council (AHAC) has watched with interest the comments provided to the Federal Housing Finance Agency (FHFA) during its *FHLBank System at 100: Focusing on the Future* initiative.

Throughout the various events associated with the FHFA's initiative, we have been particularly encouraged by stakeholders' calls for a simplification of the Affordable Housing Program (AHP).

The FHLB Des Moines's AHAC is comprised of several members who have received AHP awards. These AHP funds have provided critical financing that has been essential for the production and preservation of affordable housing. Our AHAC is also comprised of funders and other stakeholders who partner on AHP-financed projects. It is from these collective perspectives that we offer our comments, and respectfully request that the FHFA consider these recommendations for simplifying the AHP.

Adhere to the Regulation's Requirements for Need for Subsidy

1. The AHP regulation defines a project's need for subsidy as "(The) difference between the project's sources of funds . . . and uses of funds . . ." 12 CFR § 1291.24(a)(3)(i). This definition is reasonable, appropriate, efficient, and clearly aligned with the statutory requirements. Additionally, the regulation's requirements that the project is developmentally and operationally feasible are also reasonable, appropriate, and efficient. See 12 CFR § 1291.23(b).

However, throughout the administration of the AHP, these requirements have been interpreted by FHFA in such a way that has added complexity and resulted in worthy projects not being awarded funds.

Outside the AHP, industry practice is to include supportive services in a project's operating pro forma. The text of the AHP regulation also conforms to this industry practice because definition of need for subsidy is based on the project's capital sources and uses of funds, not on its operating pro forma. However, FHFA has created a standard whereby supportive service expenses must not be included in the operating pro forma, even though it is understood that, but for those supportive services, the project cannot reasonably meet the needs of its residents. In other words, but for those supportive services, the project is not operationally feasible. When AHP omits a central project expense, the project's operating pro forma shows an artificially high cash flow that often exceeds the AHP benchmark. This standard has the effect of eliminating projects for failing the need for subsidy test based on cash flow in excess of the AHP cash flow benchmark.

FHFA also presumes that cash flow in excess of the AHP benchmark is evidence that the project can service debt. Therefore, FHFA asserts that a loan should be reflected on the project's sources of funds and the AHP reduced commensurately. In practice, however, the project may not be eligible for debt financing because it does not meet the lender's credit requirements. The project finds itself proving a negative whereby it would need to demonstrate it has been denied debt financing to establish that debt financing is not available.

Complications also arise when an AHP sponsor lends funds to the project with an expectation that AHP will be a source of repayment. FHFA views this as the sponsor having the financial capacity to contribute to the project on a permanent basis, and generally expects the AHP to be reduced accordingly. However, the sponsor intends to provide those funds on a temporary basis with the expectation that AHP or another source will provide permanent financing. From the sponsor's perspective, they are being penalized for a willingness to commit temporary funding needed to launch the project.

Recommendation: Adhere to the existing AHP regulation's requirements for need for subsidy to align AHP with industry practice by including supportive services in the operating pro forma, eliminate the assumption that projects with excess cash flow can sustain ongoing loan funding, and clear the way for eligible projects to be awarded AHP funds.

Streamline AHP Administration

2. Coordinate with Federal Funders to reduce compliance burden.

We applaud the FHFA for its ongoing efforts to coordinate AHP's requirements with other federal or federally-subsidized affordable housing activities. Currently, AHP projects financed by Low Income Housing Tax Credits (LIHTCs), HUD 202, HUD 811, and USDA 515 and 514 are afforded streamlined monitoring.

We also encourage the FHFA to expand AHP's ability to rely on other federal, and state funders, for application review and monitoring. For example, if a project has been underwritten or is being monitored by a credible federal or state funder with requirements equal to or more restrictive than the AHP, it is duplicative for the AHP to repeat that underwriting and monitoring.

Currently, 12 CFR 1291.50(b) allows FHLBanks to rely on other governmental monitoring for certain projects so long as four conditions are met. However, those four conditions are at least as operationally intensive as monitoring the project directly. The AHP statute requires the FHFA to coordinate AHP activities with other federal affordable housing activities "to the maximum extent possible." 12 U.S.C. § 1430(j)(9)(G). We believe the FHFA could go further in its regulations to align with other federal monitoring requirements and provide relief from the AHP ongoing monitoring compliance burden.

Recommendation: Minimize the cost of compliance to affordable housing providers by amending 12 CFR 1291.50(b) to allow FHLBanks to rely on federal or state funders when those funders' restrictions are reasonably equal to AHP's.

3. Streamline operational requirements for Targeted Funds.

Currently, a project may apply simultaneously to both the AHP General Fund and, if offered by a FHLBank, its Targeted Fund. While this is a desirable feature for a particular project, it also complicates program administration.

Recommendation: Amend 12 CFR § 1291.28(d) and 12 CFR § 1291.13(b)(4) to allow a Bank, in its discretion, to permit or not permit a project to apply to both the General Fund and Targeted Fund.

4. Streamline Determination of Income Eligibility

Currently, the AHP regulation allows household income to be determined, “at the time (the household) is qualified by the project sponsor for participation in the project. Similarly, the regulations that govern income qualification for the Set Aside program allow for income to be determined, “at the time the household is accepted for enrollment by the member...with such time of enrollment by the member defined by the Bank in its AHP Implementation Plan.” These are desirable program features that allow for household income to be determined at a point in time, which may be before occupancy of a rental unit or purchase of an owner-occupied unit. This enhances AHP’s flexibility and should be maintained.

Calculation of household income, however, is complex. A household may have multiple jobs in a single year, either sequentially or simultaneously. Seasonal employment, overtime, bonuses, child support, tribal dividends and disbursements, and other circumstances further complicate the assessment of income eligibility. Additionally, different funders have different requirements for what income is to be included or excluded. Furthermore, members follow a methodology for qualifying buyers for a mortgage assisted by a Set Aside grant that may exclude some income types, thereby creating a methodology that is, albeit appropriate for extending mortgage financing, fundamentally different than the methodology the FHLBanks use to qualify the household for down payment assistance.

Recommendation: Amend 12 CFR § 1291.23(a)(1) and 12 CFR § 1291.42(b)(1) to allow a Bank, in its discretion, to accept a previous year’s income tax return to be used to determine a household’s income eligibility. This will streamline program administration and, particularly for the Set Aside program, increase member participation in the important objective of building wealth and long-term economic security for low- and moderate-income households.

Allow AHP to Adapt to Diverse Markets and Changing Circumstances

5. Allow a FHLBanks’ AHP Subsidy Limits to Differ

Currently, a FHLBank must have the same AHP subsidy limits per member, per project sponsor, per project, and per project unit in a single AHP funding round. While it is appropriate and reasonable for the AHP subsidy limit to be the same for each member and project sponsor, AHP could better serve the needs of diverse markets if it were permissible to have a different subsidy limit per project and per unit.

For example, the FHLB Des Moines’ district includes 13 states and three U.S. territories. This large area includes diverse markets ranging from remote rural areas to high-cost urban centers. FHLB Des Moines would be significantly better positioned to meet the diverse needs of this range of markets if the maximum AHP subsidy could be adjusted to meet regional needs.

Specifically, Hawaii is known to be among the least affordable states in the U.S., whereas housing in Iowa is relatively more affordable. By allowing a larger AHP subsidy limit to be available for high cost areas such as Hawaii, the FHLB Des Moines could attract AHP applications from that state while, at the same time, right-sizing the maximum AHP subsidy for other states.

Similarly, different projects have different needs. For example, often times new construction projects require a certain scale of development in order to be feasible, whereas rehabilitation projects,

particularly owner-occupied rehabilitation projects, expenses are driven by a capital needs assessment and scope of work.

Recommendation: Amend 12 CFR § 1291.24(c)(1) to allow for different AHP subsidy limits within the General Fund and any Targeted Fund. This approach would better enable the Bank to meet FHFA expectations that AHP is awarded in each state and U.S. territory on an annual basis because the Bank would be better able to distribute AHP funds relative to regional and project needs.

6. Remove the Cure First Requirement Before a Modification can be Approved

Between the time of application approval and the end of the retention period, which for rental projects is 15 years from the date of project completion, predictably, circumstances change. For example, a household who is outside the AHP application's income targeting commitments, but who is otherwise AHP-eligible, may occupy an AHP-assisted unit. A multitude of other possible scenarios may arise that, albeit a technical change to a particular project feature, do not materially impact the project's provision of affordable housing to low- and moderate-income households.

The AHP regulation allows a project to be modified so long as the modified score is high enough for the project to have been approved in its particular funding round. This is a reasonable requirement for protecting the integrity of the competitive process and should be maintained. However, a 2018 regulatory revision requires a project to first attempt to cure what the regulation characterizes as noncompliance before a modification may be approved. Further, the regulation states explicitly that the modification may not be for a purpose that is "solely remediation of noncompliance."

This requirement provides an example for why stakeholders consider AHP to be onerous, operationally inefficient, and out of touch with industry practice.¹ If revisions to the project are such that the project can score high enough to have been approved in its funding round, it would seem that the label noncompliance is not applicable. The project's compliance should be considered in its entirety rather than on an individual scoring criterion basis. As such, the efficient and reasonable path forward would be to modify the project without first requiring it to cure, what has been characterized as, noncompliance. Housing groups' resources are required to provide information to enable the Bank's "analysis and justification of the modification, including why a cure of noncompliance was not successful or attempted..."

Recommendation: Amend 12 CFR § 1291.29(a) to allow for modification without the requirement to cure noncompliance.

7. Enhance AHP's Responsiveness to Natural Disasters

When a natural disaster strikes, a community is traumatized. AHP sponsors are placed in a position of providing support to project residents and, often, to the community at large. If an AHP project is rendered not habitable by the natural disaster, AHP commitments should be forgiven. Currently, the

¹ Another scenario could be an AHP sponsor that may have determined that project ownership is no longer appropriate for its organization and, therefore, wishes to sell the property and repay the AHP

sponsor would be expected to cure the noncompliance and finish the AHP retention period. This is not a reasonable expectation for this circumstance.

Recommendation: Amend 12 CFR § 1291.60(c)(2) to allow Banks to forgive the AHP commitments if a project is not habitable due to a natural disaster.

8. Remove 2018's Regulatory Requirement to Consider Sponsor's or Owner's Assets before Granting Settlement for Failed Projects.

If a project fails to meet all or a portion of its commitments, the AHP regulation allows a Bank, under prescribed conditions, to settle or forgive all or a portion of the AHP award. It is noteworthy that the AHP statute contemplates the possibility for these circumstances in section 1430(j)(9)(D), which states that the regulations shall, at a minimum, "ensure that the ***preponderance of assistance*** (emphasis added) provided under this subsection is ultimately received by the low- and moderate-income households."

In 2018, the section of the AHP regulation that governs AHP settlements was expanded to require a FHLBank to first consider the sponsor's financial capacity and assets as part of the settlement evaluation. This requirement has a chilling effect on sponsor's willingness to participate in AHP and deters participation, particularly among emerging housing groups and those with limited staff. It may disproportionality impact rural and tribal areas.

The increased focus on strict compliance with administrative and punitive requirements deters participation by non-profit housing groups, which are the very organizations the AHP statute intended to serve.

Recommendation: Amend 12 CFR § 1291.60(c)(2)(i) to remove the requirement that FHLBanks must consider project and owner financial condition and assets before reaching a settlement on a failed project.

Amend AHP Retention

9. Discontinue Homeownership Retention

The current requirement that AHP-assisted owner-occupied units must be subject to a five-year retention period, as well as the related requirements for repayment of the AHP if the unit is sold before the end of the five-year retention period, are well-intentioned program features. However, in practice, these requirements unnecessarily delay the important objective of building household wealth.

Recommendation: Amend 12 CFR § 1291.15(a)(7) to remove Homeownership Retention for all projects.

10. Remove Retention on Tribal Lands for Rental Projects and Owner-occupied units

Indigenous lands such as Tribal land, the Department of Hawaiian Homelands, lands subject to the Alaska Native Claims Settlement Act, and the native lands of the U.S. territories have a legal construct that complicates the execution of the AHP deed restriction. This creates a perceived barrier for Native lands to receive investments from the AHP and its down payment Set Aside program.

While the FHLB Des Moines has been very successful at directing AHP to meet the needs of Native communities, removing this requirement would elevate AHP's impact on Native lands.

Recommendation: Amend 12 CFR §§ 1291.15(a)(7) and 1291.15(a)(8) to remove retention requirements on Tribal Lands for Rental Projects and Owner-occupied units.

The national affordable housing crisis has placed significant pressure on housing providers and their development pipelines. In a climate where every effort needs to be made to support those organizations and their ability to serve low- and moderate-income communities, seemingly benign requirements, in fact, add complexity and cost – all of which create barriers to providing more housing.

It is in this climate that we respectfully request the FHFA to adopt the forgoing proposed recommendations to the AHP, so that it can be the source of funds the affordable housing industry needs it to be.

Sincerely,

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