May 14, 2018

Federal Housing Finance Agency
Via electronic mail: RegComments@fhfa.gov

RE: Comments/RIN 2590-AA83

Esteemed Colleagues:

Thank you for this opportunity for public comment regarding proposed amendments to the Federal Home Loan Banks' Affordable Housing Program.

Mile High Community Loan Fund is a certified community development financial institution (CDFI) in business since 2000 and serving all markets within the state of Colorado. Through its affiliation with Funding Partners for Housing Solutions, the two organizations offer both consumer loan products (down payment assistance, energy efficiency, rehabilitation and manufactured housing finance) and commercial loans to for-profit and non-profit entities seeking to create, preserve or rehabilitate housing stock that serves LMI populations.

As both a lender and technical service provider, we are often involved at the very earliest stages of residential development, financing gaps throughout that process. As with prospective first-time homebuyers, we occupy a market niche as trusted advisor and financial resource to make affordable housing happen. Identifying the most appropriate tools and strategies for implementation comprise a critical function of our services.

Unless otherwise noted below, the Proposed Rule represents considerable and welcome improvement to current regulation. Unfortunately, the Program has been allowed to lose relevance within a dynamic housing environment as outdated regulation is hampered by inflexible interpretation from the Agency and examination staff within each Bank. We welcome this opportunity to redefine this extremely valuable resource.

The following comments are presented in order of presentation within the Notice.

Subpart A- General
Proposed § 1291.1 Definitions

As proposed, definitions currently utilized would be retained with minor revisions and additions. The proposed revisions do not address the inconsistent definition of Low- and Moderate-Income

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(LMI) Household within § 1291.1 in relation to other federal agencies. U.S. Department of Housing and Urban Development and U.S. Department of the Treasury, as example, define Low-Income as households at or below 80% of area median income; Moderate-Income is defined as households at or below 120% of area median income.

Under § 1291.1, the following definition would be retained:

Low- or moderate-income household means a household that has an income of *80 percent* or less of the median income for the area, with the income limit adjusted household size in accordance with the methodology of the applicable median income standard selected from those enumerated in the definition of "median income for the area," unless such median standard has no household adjustment methodology. [Emphasis added]

Recommendation

Revise the definition of LMI so as to achieve consistency with prevailing standards within the housing environment. This is of particular interest to organizations seeking to create home ownership opportunities within high-cost markets. Across many markets in Colorado, it is financially infeasible to promote homeownership to households at or below 80% AMI in the absence of subsidy that far exceeds the maximum AHP award on per unit basis. Expanding the definition provides a more realistic avenue through which to assist households of sufficient capacity to obtain and retain their own home.

Recognizing FFIEC retains a definition consistent with § 1291.1, the Final Rule might consider allowing individual Banks to establish a Targeted Fund that permits the higher income limit (120% AMI) while retaining Low-Income under the General Fund component (80% AMI).

Likewise, the definition of Low-or Moderate-Income Neighborhood should be similarly revised.

Specific Requests for Comments

Subpart B – Program Administration and Governance

1. The proposed rule allowing for the implementation of Targeted Funds offers tremendous opportunity for each Bank to identify and respond to specific conditions within their respective district. The proposed guardrails appear adequate to minimize the primary risk of redirecting financial resources away from the primary purpose of AHP while allowing Banks to foster greater innovation within the program.

2. Allocation of up to 40% of AHP funds to Targeted Funds may dilute the impact of the General Fund and perhaps challenge the ability of Banks to meet the statutory priorities of AHP. However, forced continuation of the same strategy with the expectation of better outcomes is not a formula for long-term success. We continue to fall further behind demand for housing affordability each year. As Targeted Funds demonstrate impact, the proposal allows for further growth without requiring incremental modifications of the rule within the foreseeable future.

3. Expansion of Targeted Community Lending Plans may impede a Banks' ability to respond to disasters where the full allocation is committed, though it is questionable to presume AHP itself is structured to provide adequate response. While there are numerous examples of Banks responding through modifications to its Implementation Plan, the requisite process of moving from approval of the change, award of funds to issuing proceeds most often means those suffering the greatest impact are not necessarily the beneficiaries of AHP investment. As such, AHP response is more appropriately considered community re-building. Through both AHP and TCLP, Banks are provided opportunity to carefully consider effective strategies and criteria for implementing restorative investment.

4. The benefits of expanding TCLP allows each Bank to more definitively address specific market conditions or cyclical influences than currently envisioned within AHP. Whereas AHP retains a focus on national objectives, TCLP offers opportunity for Banks to foster greater innovation in addressing these same conditions and other market deficiencies specific to the respective district. Under the proposed rule, TCLP cannot exceed 40% of AHP allocations and subject to critical review, preserving accountability while maintaining a healthy allocation to current programs.

5. The proposed rule correctly references the fact very few LIHTC-funded properties default under affordability and documentation provisions that would be consistent with an AHP investment. In such rare event, it is very reasonable to expect credit investors and project sponsors would engage financial auditors to conduct thorough examination of records management, including compliance with all funding agreements to assess the extent of risk exposure. As such, it appears unlikely the Bank would not be notified of an event of non-compliance irrespective of the current regimen or self-reporting as proposed.

6. There are few fail-safe strategies to prevent homebuyers from reaping undue benefit from what is effectively a gift of capital. In practical terms, there are three filters through which a homebuyer with malicious intent must traverse prior to acquiring real estate: the project sponsor, the member (or participating purchase mortgage lender), and Bank review. The more common event is one in which a buyer needs to sell the home prior to expiration of the compliance period due to a job relocation or changes to family situation. In such cases the buyer is most likely to roll this equity into a subsequent purchase in a different location and thereby extend the utility of the AHP award. It does not seem reasonable to impose considerable cost and contingent liability on trusted partners in the unlikely event a rare homebuyer violates program intent for a one-time benefit.

7. Across the country, home prices have escalated beyond the means of a large segment of the population. Not only is it appropriate to raise the maximum AHP subsidy, but to permanently tie the maximum subsidy to an observable benchmark of housing cost.

8. In the event retention requirements are maintained in the final rule, it is impractical and an undue burden to require notification of sale or refinance to the Bank ***and*** its designee.

The recipient should not be expected to carry the burden of any real or perceived deficiencies within the communication channel between the Bank and its designee.

9. In the event the Retention Agreement is retained in the final rule, it would be appropriate to require repayment of the subsidy if the property is sold within 5 years of original purchase. Two caveats to repayment should be considered: repayment is waived if the original AHP subsidy is $7,500 or less, as the administrative expense is likely to exceed the value of the investment; and, recipient should be entitled at minimum to recovery of his/her/their required investment at time of sale, net of AHP repayment so as not to inflict financial injury. This second proviso could replace the current equity-share formula that is very challenging to ascertain in the absence of a sale transaction.

10. Administratively, repayment of the AHP investment is burdensome. In the absence of empirical evidence suggesting homebuyers are utilizing the program to obtain unjust reward there is little justification for imposing operational burden and financial peril on program participants.

11. Comment withheld.

12. Comment withheld

13. The net proceeds due recipient, net of subsidy repayment, should equal at least $1,000 (or minimum required investment) in the event the final rule retains the retention provision. It should not be the intent of the program to inflict financial injury upon a party known to be of limited means for the purpose of demonstrating "program stewardship".

14. Yes. Each of the proposed actions has the same effect as foreclosure while reducing financial injury to all parties.

Subpart C – General Fund and Targeted Funds

15. Preservation of units that target LMI populations is a critical need across the country. However, rental units that are affordable to a broad swath of the local populace is also of great concern in many markets. As such maximum latitude should be granted to project sponsors to transition the property into compliance with the approved income mix. At minimum, sponsors should be allowed 12 months from the date of AHP funding to assist unqualified residents identify alternate accommodations. While it may appear reasonable to subject relocation plans to the primary funder for approval, it should not be assumed the primary funder is adequately qualified to assess the appropriateness of the plan and compliance with federal, state of local requirements. Dependent upon circumstances, the primary funder may be a commercial bank or non-federal subsidy source. As such, the Bank may be the most qualified party to assess a relocation plan.

16. The use of AHP capital within a sponsor-funded loan does not inherently indicate whether a project is over- or undersubsidized. Rather, the sponsor should provide evidence whether the requested subsidy is appropriate given the project type and the

extent to which the subsidy delivers the intended outcome. AHP subsidy within a revolving loan fund can often deliver superior impact with every subsidy dollar if properly structured as it allows AHP funds to be leveraged at the fund level *and* project level.

17. Sponsors providing permanent financing should be treated as revolving loan funds as that is effectively their role in such situation. From an implementation and compliance monitoring perspective, such change in classification would help minimize dissimilar treatment between sponsors and applicants depending upon how they identify their program within the AHP application. In this light, revolving loan fund requirements must be amended to facilitate the use and value of this structure.

    In the event the Retention Agreement is retained, encouraging greater use of RLFs in delivering homebuyer assistance is strongly encouraged. Provided RLFs are permitted to re-deploy AHP subsidy recapture without returning funds to the Bank, RLFs tend to be much better positioned to administer compliance with current homebuyer qualification provisions. In fact, RLFs would be slightly incented to do so as it represents a recovery of loan fund capital for subsequent use in support of on-going program.

18. As commonly recognized, administration of the AHP program is operationally burdensome. As such, it is highly appropriate to establish a minimum subsidy level per project. While this may limit opportunities to support smaller projects and those with minimal subsidy gaps, there must be recognition that administrative and compliance costs preclude financial support at some level.

19. Comment Withheld

20. The current provisions for assessing and awarding subsidy to a revolving loan fund are not reasonable in that it effectively mimics the award process itself. Under current requirements the only practical advantage AHP can bring to a project through a RLF is the responsive timeframe in moving from request to delivery of subsidy funds. This only serves to highlight one key weakness of AHP - timeliness. Alternatively, awarding subsidy to a well-managed RLF able to identify a pipeline of projects that address multiple needs within a District offers three critical advantages: leveraging of subsidy at both the fund and project levels; increasing the number of LMI units created or preserved for each dollar of subsidy initially and over time; and, allowing subsidy to flow into projects as funds are needed rather than according to a static schedule established by the Bank.

    By definition, a revolving loan fund is able to attract capital from multiple sources under various terms. AHP presents opportunity to lower borrowing cost, extend loan terms and extend credit on projects with a higher risk profile than might otherwise be possible.

21. Under current interpretation, an RLF must demonstrate *every* project it funds meets *all* scoring criteria where AHP funds are utilized. This leaves little, if any, incentive for an RLF to seek an AHP award. A more realistic interpretation would allow the RLF to

demonstrate all scoring criteria have been cumulatively achieved upon disbursement of the entire award. The Bank retains a reasonable level of control as awarded subsidy is disbursed incrementally as individual projects are identified. In the event the Bank determines adequate progress is not made toward meeting all award criteria, subsequent disbursements can be withheld or the award de-obligated.

As with all projects, the AHP can be de-obligated should the RLF be unable to demonstrate relevant requirements have been achieved on individual projects or if the RLF is unable to achieve all requirements in aggregate within the disbursement window. The RLF is no different than a direct project sponsor in this regard. Just as a direct sponsor is not expected to sell a property in order to return de-obligated funds, an RLF shouldn’t be expected to call a note due or otherwise imperil its borrower. The RLF should be expected to demonstrate adequate liquid resources in the event an award is de-obligated.

An RLF may be able to demonstrate need for subsidy by modeling projects within its pipeline as well as describing previously funded projects similar in nature to the proposed uses of AHP. As with most other financial institutions, RLFs are typically required to hold sufficient net assets (Tier 1 capital) to support leveraged capital within its fund. Within the CDFI industry, the minimum prudent standard is 20%, or $1 of unrestricted net assets for every $4 of borrowed funds. In order to grow, the RLF must be able to attract capital in the form of true equity. So one component of demonstrating need might require the RLF to show: it is growing; it meets a minimum liquidity standard (>20%); and, it is not under-leveraged (<50%). This would demonstrate the RLF adequately capitalized while discouraging those not making reasonable use of debt leverage to deliver capital into the community.

A successful RLF application should be able to illustrate historical track record of sound business practices, capacity to achieve the production targets identified within the AHP application, and strong familiarity with the types of projects highlighted. In the event project loans issued by the RLF through the use of AHP funds are of a shorter duration than the applicable retention period, the RLF should be permitted to recycle funds into a substantially similar project within a reasonable period of time, such as 6 months.

22. The use of AHP funds through an RLF could not only achieve statutory and regulatory priorities, but very likely to enhance outcomes over time. By virtue of re-deployment of recaptured funds, leveraging effect through unrelated capital sources, and ability to fund projects that might not otherwise consider the use of AHP.

    Primary RLF candidates would include CDFIs, which provide annual financial and impact reporting to retain certification from the U.S. Treasury CDFI Fund. Certified CDFIs must demonstrate that financial product delivery predominantly benefit LMI populations and/or under-served geographic areas. As such, similar reporting requirements could be employed by the Bank to verify statutory and regulatory priorities are achieved through the use of AHP funds at both the fund and project levels. Similar reporting would be required of all RLFs.

23. The elimination of owner-occupied retention requirements would greatly reduce on-going administrative burdens for RLFs, though may eliminate a source of recycled capital for subsequent use unless the RLF were allowed to impose such requirement voluntarily.

24. Within the Colorado market, there is at least one loan pool that provides loan products for the creation and preservation of multifamily rental properties that serve LMI populations. The Denver Transit Oriented Development Fund, administered by Enterprise Loan Fund, appears to meet conditions within the current regulation. However, it is unlikely they would see any significant benefit in participating in AHP as currently interpreted for similar reasons RLFs have been unsuccessful. Identifying specific projects that meet *all* scoring criteria identified within a successful AHP application essentially inserts the loan pool as another layer of bureaucracy between the Bank and the project while dramatically lengthening the delivery of capital to a given project. The TOD Fund does not offer consumer financing so would not be impacted by an owner occupied retention agreement.

Subpart D – Homeownership Set-Aside Programs

25. As the inventory of housing available to prospective homeowners at or below 80% AMI has become increasingly limited in many markets across the country, it is both appropriate and necessary to raise the limit from $15,000. While raising the loan threshold may reduce the number of households served under the program, the need for meaningful assistance is of greater concern. It is also worth noting the average assistance loan is less than $7,000, which reinforces the view that maximum subsidy does not equate to over-subsidization.

26. Retaining status quo, where the subsidy level remains stagnant through housing cycles, should not be considered an option. To remain relevant over time, adjusting the subsidy level according the FHFA Housing Price Index appears to be a reasonable option whether or not it is the most accurate measurement across all markets.

Subpart E – Outcome Requirements for Statutory and Regulatory Priorities

27. The outcome requirement of 10% of a Bank's total AHP fund for homeownership support appears reasonable. While it should not be a regulatory priority to promote one form of housing over another, it must be recognized that many well-managed and successful project sponsors will not be able to compete well with service-rich ownership and rental sponsors within a competitive cycle. Nor are all successful homeowners a good candidate for service-rich project sponsors – assuming such exists within a given market.

28. Comment withheld

29. While the need for housing units dedicated to persons experiencing homelessness is widespread and acute in many markets, the financial and operational challenges of

dedicating 50% of rental units within a project can be significant. Moreover, the proposed higher threshold assumes continued availability of rental support through HUD, USDA Rural Development, etc. in order to maintain a viable project. This would be a significant mistake. The current threshold of 20% recognizes the need to integrate formerly homeless individuals within the community while provided project sponsors the ability to cross-subsidize very low-income units to some extent in the event rental support vehicles are curtailed, suspended or cancelled.

This is a service-rich population. In specific circumstances there are benefits to creating site-specific scale to support specialized investment. However, broader community needs and neighborhood acceptance can be achieved through greater dispersion of both the population and attending services.

30. See comments for 29, above.

31. See comments for 29, above.

32. For scoring purposes the minimum threshold of 20% of units reserved for extremely low-income households is appropriate. Not only does this provide consistency with current threshold standards for difficult-to-serve populations, but provides a competitive advantage for sponsors seeking to serve a very challenging outcome objective.

33. The three regulatory priorities identified under § 1291.48 appear to identify appropriate themes while providing sufficient latitude through scoring methodologies to foster innovation.

34. Expansion of the list of Special Needs Populations is of particular benefit though should include "Immigrants" in recognition of particular challenges in meeting economic, social and demographic challenges within rural communities.

35. Yes.

36. No.

    a. Land Donation - Specifically rewarding land donation from a public entity does not appear to have meaningful purpose in the current environment. Land donation from any source should be reflected within the project budget source and use table, but should not constitute scoring benefit simply based upon the source of the contribution.

    b. Targeting – The current requirement fails to differentiate the realty of delivering rental versus owner-occupied housing. There should be separate tables, to reflect the fact that delivering ownership opportunities to very low-income is not realistic in the absence of a robust service component. In fact, incenting project sponsors to target low-income households in developing homeownership opportunities is irresponsible *unless* the project incorporates a robust service component that is

financially sustainable. In such case, the applicant will score well on other measures without the 'bonus points' under Targeting.

Whereas a rental table would incent delivery of housing units to the lowest income cohort, the ownership table should allocate the highest possible points to projects targeting households at or below 80% AMI and neutral for projects targeting households above 120%, consistent with recommendations noted in Subpart A – Definitions. With or without that change, it must be noted the FHA mortgage insurance program provides for the use of down payment assistance programs for households at or below 115% AMI.

37. None to which I am aware.

38. It is appropriate to combine First and Second District Priorities into a single category.

Subpart F – Monitoring

39. The proposed reductions in Bank monitoring requirements are both reasonable and justified in recognition the majority of projects are subject to duplicative monitoring requirements. This must also recognize the cost of compliance monitoring exacts a significant financial burden, not only to project sponsors and member institutions, but to the Bank itself. It appears disingenuous to establish a mandatory annual AHP allocation for each Bank without accounting for the attending administrative cost.

40. Comment withheld.

Thank you again for this opportunity.

Respectfully submitted,

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