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Federal Housing Finance Agency
400 Seventh St. SW, Eighth Floor
Washington, DC 20119

RE: RIN 2590-AA83, Affordable Housing Program Amendments

The National Low Income Housing Coalition (NLIHC) is an organization whose members include state and local affordable housing coalitions, residents of public and assisted housing, nonprofit housing providers, homeless service providers, fair housing organizations, researchers, faith-based organizations, public housing agencies, private developers and property owners, local and state government agencies, and concerned citizens. While our members include the spectrum of housing interests, we do not represent any segment of the housing industry. Rather, we focus on what is in the best interests of people who receive and those who are in need of federal housing assistance, especially extremely low income people and people who are homeless.

Many affordable rental projects receive Affordable Housing Program (AHP) gap financing, including a number of national Housing Trust Fund projects awarded 2016 HTF money. Therefore NLIHC is especially interested in the Federal Housing Finance Agency's (FHFA's) proposed changes to the AHP regulations administered by the Federal Home Loan Banks. NLIHC submits the following comments based on the input from our Policy Advisory Committee and State Coalition Partners.

Proposed Changes to AHP Allocation Requirements and Options

NLIHC does not agree with the proposed reduction in a FHLBank's minimum contribution to a competitive program from 65% to 50%, while also increasing from 35% to 40% the maximum contribution a FHLBank can choose to make to a Homeowner Set-Aside program. Data demonstrates that the greatest need is for affordable rental housing affordable, which the current Competitive Application Program primarily addresses.

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In fact, the national need is for more rental homes affordable to extremely low income households, those with income less than 30% of the area median income or less than the federal poverty line. NLIHC's *The GAP: A Shortage of Affordable Homes* has consistently demonstrated this need. The latest Gap Analysis, based on 2016 American Community Survey data, shows that the nation has a shortage of more than 7.2 million rental homes that are affordable and available to extremely low income renter households. No state, including the District of Columbia, has an adequate supply of rental housing for extremely low income households. Seventy-one percent of extremely low income renter households spend more than 50% of their income for rent and utilities, leaving them severely cost burdened.

From 1990 to 2016, the Federal Home Loan Banks (FHLBanks) awarded approximately $4.4 billion under the Competitive Application Program, assisting more than 660,000 units, 77% of which were rental units. In 2016, rental units constituted almost 94% of all Competitive Application Program units.

In the preamble to the proposed rule, FHFA acknowledges that the change to the 50% minimum allocation to a new General Fund will potentially result in less funding for rental projects, but justifies the amendment due to what FHFA claims is demand for Homeownership Set-Aside funds exceeding the current 35% maximum. Our understanding is that few FHLBs have approached, much less exceeded the current 35% threshold for their Homeownership Set-Aside programs.

In the preamble, FHFA states that if a FHLBank establishes one of the proposed new Targeted Funds, those resources are likely to be targeted to rental housing. FHFA also reasons that even if a FHLBank allocates 40% to Homeownership Set-Aside programs, the remaining 10% could be allocated to rental housing in the proposed General Fund, thus close to the current 65% requirement under the Competitive Application Program.

However, given the drastic need for affordable rental homes, there should not be any incremental reduction in a FHLBank's obligation to address such a need. Disability rights advocates also note that multifamily rental housing must address accessibility needs, while homeownership programs do not.

NLIHC urges FHFA to not reduce the amount of a FHLBanks' minimum required allocation of AHP to rental housing development below 65%.

Proposed Changes to AHP Scoring Requirements and Options

FHFA proposes two new "outcome" requirements:

a. Targeting projects that serve very low income households, and
b. Targeting projects that meet the housing needs of underserved communities and populations, create economic opportunities, or preserve affordable housing.

Targeting to Very Low Income Households

In order to meet the proposed regulatory "outcome" of targeting to very low income households, a FHLBank would have to ensure that at least 55% of the units in a rental project are targeted to very low income households, those with income at or less than 50% of the area median income (AMI). The proposed rule would not change the current rule which requires that at least 20% of the units in a rental project be occupied by and affordable to very low income households – a fundamental requirement, not a scoring issue.

NLIHC recommends that the regulation retain the current 20% very low income minimum regulatory requirement. If FHFA decides to keep a very low income "outcome" provision in addition to the 20% regulatory requirement, then the outcome threshold should be no greater than 25%. HUD's Project-Based Voucher (PBV) program has a 25% cap on the number of PBV-assisted units in a project. (Admittedly, the PBV program is not exactly analogous because it could include extremely low income households.) Requiring a minimum of 55% of the units in a project to be targeted to very low income households is contrary to current thinking and practice regarding mixed-income housing.

Regulatory Priority (a): Underserved Communities and Populations

FHFA proposes five "specified housing needs" under this Regulatory Priority.

<u>Homeless Households</u> is one of the specified housing needs. NLIHC does not support the proposed rule that would require at least 50% of the units in a rental project be reserved for homeless households in order to achieve consideration under this outcome measure. NLIHC recommends retaining the current rule's 20% minimum. Regulatory text should also clearly state that a project would not be penalized for targeting more than 20% of the units, including up to 100% of the units

<u>Special Needs Housing</u> is one of the specified housing needs. This outcome measure could be addressed by financing housing that reserves at least 50% of the units for people who have specified special needs, and that provides supportive services or access to supportive services.

One of the special needs identified in the proposed rule is housing for people with disabilities. NLIHC does not support the 50% minimum unit set-aside per project for people with disabilities. This degree of concentration is generally contrary to the *Olmstead* decision that seeks to promote opportunities for people with disabilities to live in integrated community settings.

NLIHC recommends a minimum threshold of 20% for any outcome measure. That percentage is in line with one possible scoring criterion under the current rule's "First District Priority" scoring criterion. Some permanent supportive housing developers in some markets aim to target greater percentages of their projects for people with disabilities who need permanent supportive housing; therefore, the rule should clearly state that a project would not be penalized for targeting more than 20% of the units, including up to 100% of the units.

Rental Housing for Extremely Low Income Households is one of the specified housing needs. Throughout its history, NLIHC has championed the creation and preservation of rental homes that are affordable and available to extremely low income households. The proposed rule would require at least 20% of the units in a rental project be reserved for extremely low income households in order to achieve consideration under this outcome measure.

Targeting 20% of the units in a project for extremely low income households is a goal worth striving for. However it could be difficult to meet in some cases, particularly for multifamily developments in states that do not have local or state rental housing development resources without also having access to a project-based rental assistance program such as Section 8 Project-Based Vouchers. Therefore, NLIHC suggests an incentive structure to encourage developments that target more units to extremely low income people, up to a maximum of 20% or perhaps 25% of the units. For example, the incentive structure could award one point for a project with 10% of the units targeted to extremely low income households, two points for a project with 15% of the units targeted to extremely low income households, three points to a project with 20% of the units targeted to extremely low income households, and four points for a project with 25% of the units targeted to extremely low income households.

The Outcome Framework and Re-Ranking

NLIHC does not support the proposed outcome framework to replace the current scoring system because it would negatively impact the predictability and transparency of the AHP program. If a project scores high under the statutory requirements but fails to meet the outcome requirements, perhaps due to insufficient demand for a particular set of categories during a given year, then that project would be subject to the proposed re-ranking process, which lacks transparency. A lack of transparency could drive away potential applicants. In addition, there could be a high degree of project sponsor frustration regarding how to improve the quality of an application when re-submitting.

Sponsor and Affiliate Capacity

NLIHC does not agree with the proposed rule that would expand the sponsor qualification criteria that evaluate not only the ability of the project sponsor, but also the sponsor's team members such as general contractors. Other, much larger financing program sources go into projects that are also financed with AHP funds. Staff of those other sources oversee the capacity of a project's development team. Expanding the evaluation process to general contractors and perhaps other team members would be a burden to the sponsors and perhaps deter use of AHP funds.

NLIHC urges FHFA to consider the comments offered in this letter. If there are any questions about these comments, please contact Ed Gramlich at ed@nlihc.org or 202.662.1530 x 314.

Sincerely,

Diane Yentel
President and CEO