

June\_4, 2018

Alfred M. Pollard, General Counsel  
Attention: Comments/RIN 2590-AA83  
Federal Housing Finance Agency  
400 Seventh Street, SW, Eighth Floor  
Washington, D.C. 20219

**Re: Notice of Proposed Rulemaking and Request for Comments –  
RIN 2590-AA83 – Affordable Housing Program Amendments**

Mr. Pollard,

Thank you for the opportunity to comment on your recent release of proposed rulemaking regarding the Affordable Housing Program (“AHP”) of the Federal Home Loan Banks (“FHLBanks”). Collectively, we are the Affordable Housing Advisory Council of the Federal Home Loan Bank of Dallas (“AHAC”). In our role, we provide advice and counsel to the FHLBank Dallas staff and board of directors regarding the Bank’s AHP, as well as the other community investment programs offered by the Dallas Bank.

We are concerned with the outcomes framework as proposed in the AHP regulation amendments. We had hoped that the proposed amendments would provide FHLBanks with more flexibility in their scoring methodologies to allow AHP to adapt to the changing landscape of housing needs within our five-state district. However, the proposed amendments introduce an outcomes-based framework for awarding AHP funds which prioritizes the Federal Housing Finance Agency’s (FHFA’s) overall housing goals. The consequence of this approach is that rather than modernize the AHP, the proposed outcome framework essentially creates a static program that will continually lag the latest innovations in affordable housing and reduce the FHLBanks ability to be more fully responsive to addressing local housing needs as they become evident. The unnecessary layering of statutory and regulatory priorities, establishing preferences for certain project types based on those priorities and several other aspects of the proposed rule concern us as Advisory Council members.

Housing sponsors/developers manage multiple layers of capital and operating financing that take years to assemble. They must blend AHP into the total financial package while dealing with the complexities of real estate development. This makes it imperative for funding to be as streamlined, transparent and operationally efficient as possible. The outcomes framework as proposed in the amendments introduces a complex structure that makes executing the AHP by the FHLBanks inefficient and cumbersome. We also believe that the proposed rule makes the scoring process unclear and ultimately the AHP a less-attractive funding resource. A scoring-based system is strongly preferred over an outcomes-based framework as it will allow FHLBank Dallas to better respond to the specific needs of Arkansas, Louisiana, Mississippi, New Mexico and Texas, encourage all project types to apply and maintain program transparency.

We also have the following additional concerns about the proposed amendments:

- The AHAC believes the most important possible advancement of AHP centers on the establishment of priorities at the district level. While Title 12, Chapter 11 Section 1430 j, (9) B states that the Director shall specify priorities, Section 1430 j (9) G also states that the director shall "...co-ordinate activities under this subsection with other Federal or federally subsidized affordable housing activities to the maximum extent possible." (emphasis added). To co-ordinate with other Federal programs, we must recognize that AHP is subordinate to those other Federal programs. AHP is "gap" financing; it rarely drives the deal. As shared on multiple occasions with FHFA staff during the last several annual meetings between the FHA and AHAC Chairs and Vice Chairs in Washington D.C., on average the financial gap that the AHP fills in an affordable housing project is between 5-7% of the project's cost structure. The AHP should be a complementary source of funds and not one driven primarily by the need to meet stated priorities.

To coordinate with other Federal programs, the AHP must accept the priorities set by other Federal programs as they evolve. Federal housing programs change and set priorities annually. Therefore, setting specific priorities (even those which may already be in use) at a regulatory level dooms the program to a historical rather than forward looking focus.

- The Proposed Rule requires publication of the Targeted Community Lending Plan ("TCLP") at least six months before the beginning of each Plan year and 12 months if an FHLBank offers a Targeted Fund. The timing requirements inhibit the FHLBanks' ability to respond to unforeseeable and emerging events, such as disasters or new district priorities, in a timely manner. The lead times may also result in placing the AHP at an incompatible planning schedule with other funding sources such as the Housing Finance Agencies, which have notably shorter lead times. The 12-month timing requirement makes it impossible for the FHLBanks to change the purpose of the Targeted Fund from year to year as a Bank will not be able to examine the results of the current year's Targeted Fund to determine if it should continue to be offered in the next year in the same fashion or if another need has arisen in the FHLBank's district which would necessitate the direction of the targeted fund be shifted.

Currently, the scoring methodology for the FHLBanks' competitive AHP is presented annually in the FHLBanks' Implementation Plans without the proposed 6 and 12 month TCLP timing requirements and the competitive AHPs are consistently oversubscribed. In terms of AHP funds available, the FHLBank Dallas competitive AHP is typically oversubscribed by three times. This supports the conclusion that the FHLBanks have more than adequately established and communicated to members and project sponsors the first and second district priorities under their current scoring methodologies. As such, the proposed timing requirements for publication of the TCLP are unnecessary and inappropriate.

There is a significant level of affordable housing expertise and experience on the FHLBank Dallas AHAC. The design of the TCLP in the proposed rule is too broad and as written in the proposed rule, the TCLP would virtually negate the role of the AHAC. The proposed rule also requires the TCLP to demonstrate the need for the FHLBank's Set

Aside programs, such as FHLBank Dallas' HELP, SNAP and Disaster recovery programs that have met established housing needs for years. When \$2 million in SNAP set aside program funds are allocated to members in a single day, it seems very unnecessary to demonstrate the need for the SNAP set aside owner-occupied rehabilitation grants in the TCLP.

The TCLP should be supplementary and provide support for the creation of a Targeted Fund. Targeted Funds should be created based on the district housing needs observed by the FHLBanks with the guidance from their AHACs. The AHAC has a history of properly advising the FHLBank of Dallas on the direction of the AHP based on the affordable housing needs in the district. TCLP is required to identify priorities based on empirical data not only for the competitive AHP (General Fund), Set Asides and any Targeted Fund. In our opinion, the proposed TCLP does not support the AHAC's role to continue to function in an advisory function as intended in the regulation.

The proposed TCLP does not leverage the expertise and experience of AHAC members and FHLBank staff. The board of directors and AHAC should continue to be looked upon to advise, inform and provide oversight to the Bank's housing finance and community lending mission. Our combined expertise should continue to be looked upon to identify needs and priorities for the Dallas district, rather than through the lens of the proposed TCLP. To maintain the proper advisory role of the AHAC, we recommend that if a FHLBank has the need to create and implement a Targeted Fund, the need for the fund be identified and supported in the TCLP. Absent of that specific addition, we recommend that no other requirements be added to the current community lending plan.

- The proposed amendments increase the threshold amount needed for projects to qualify as serving targeted populations from 20 percent to 50 percent. This new threshold is not compatible with other funders and does not recognize the benefit of a mixed-occupancy development, which allows developers to cross-subsidize units in a project.

The proposed increase from 20% to 50% for targeted populations goes against accepted best practices for working with targeted populations and could violate the Department of Justice's Olmstead Decision, which calls for persons with special needs or disabilities to be integrated into communities and to not concentrate the populations within a development. Some states have already adjusted their LIHTC Programs to meet Olmstead requirements. For example, in Arkansas the minimum is 30% for housing for disabled persons to achieve points for a LIHTC award. Thus, a project in Arkansas applying for LIHTCs with a targeted unit mix of between 30% and 50% for disabled persons would not count towards meeting the stated priority in the NPR.

We recommend retaining the current 20-percent threshold level in a scoring based system.

- The Bank statute requires 20% of the AHP rental units be affordable at 50% or below of the area median income; however, the new requirement of 55% of the AHP rental units be affordable at 50% or below of the area median income is overly prescriptive and is inconsistent with National housing trends. This priority does not consider the project's financing, market considerations and policy considerations of incenting mixed income. For example, the requirement in the NPR will put the AHP at odds with recently approved LIHTC Income Averaging option that will be available to affordable housing developers in the very near future. The LIHTC Income Averaging option will allow a project to target household incomes where at least 40% of the units are affordable on average to households at 60% of the AMI, up to a maximum of 80% of the AMI. The Outcomes based priority framework in the NPR is already diverging with the evolving affordable housing industry based on this example alone and reinforces our previous comment that setting specific priorities (even those which may already be in use) at a regulatory level dooms the program to a historical rather than forward looking focus.

While we appreciate the FHFA's efforts to note in the NPR and in two public forums on April 27<sup>th</sup>, 2018 and May 7<sup>th</sup>, 2018 that it can add to the list of priorities as the affordable housing industry evolves, how that process might work or the timeliness of the process was not explained and concerns us. We believe that process will always lag local, regional and national trends. The AHP has been a responsive source of funds for affordable housing based on the regional governance by the FHLBank board of directors and advice provided by the AHAC. By virtue of the outcomes based design, the FHLBanks will always be waiting on the FHFA to review and react to new priorities. Given that the FHFA has certain procedures and processes to follow before providing guidance in an Advisory Bulletin or a NPR to add priorities to the AHP regulation, we believe that the responsiveness of the AHP in this structure will be slow and is a weakness in the proposed Framework structure. We recommend that the Outcomes based framework and the related priorities be eliminated and replaced with a scoring structure like what has been successfully be used and relied upon by AHP sponsors for years.

- Under the Proposed Rule, if an FHLBank fails to satisfy the regulatory requirements, it may re-rank applications. This proposed re-ranking undermines the integrity, predictability and transparency of the AHP. However, re-ranking may become a necessary tool for complying with the outcome requirements. Re-ranking adversely impacts the simplicity and rationale of the current award process, the AHP's predictability and transparency, and may further deter sponsors from participating in the program. This proposal has the result of creating a circumstance in which competitive projects are denied an AHP award in favor of lower-scoring projects. In practice, there may be several cycles of re-ranking projects needed to comply with FHFA outcomes because simply substituting one project for another may satisfy compliance with one or more FHFA outcome requirements, but not all those requirements. Thus, it is possible to imagine a scenario in which one or more otherwise competitive projects are replaced by one or more low-scoring and otherwise not competitive projects for the sole purpose of meeting the FHFA's outcome requirements.

We also believe that the reranking of AHP application exposes the FHLBanks to increased reputational risk as well as an increased risk of litigation. It is conceivable that if competitive projects are denied an AHP award in favor of lower-scoring projects to meet the outcome requirements, the higher scoring applicant may challenge that decision and the underlying FHLBank process with legal action. We are aware of similar scenarios occurring with other housing programs. Again, for these reason as well as those presented previously, we recommend that the Outcomes based framework and the related priorities be eliminated and replaced with a scoring structure like what has been successfully be used and relied upon by AHP sponsors for years

- Under the proposed amendments, AHP project modifications may be delayed, and AHP sponsors unduly burdened and may incur additional operating costs, due to a new “cure-first” requirement. In the modification section, it states: “There is good cause for the modification, which may not be solely remediation of noncompliance.” Taking a hard stance on not allowing any modifications to initially cure a non-compliance may conflict with other FHFA priorities. It is our understanding that the FHFA’s intention is to avoid displacing occupants of housing supported by the AHP. In order to cure a non-compliance issue without a modification, it may very well result in displacement.

For example, the FHLBank is monitoring a 20-unit rental project for the elderly with all units targeted to very-low income households. During the initial lease application, a resident is qualified by the onsite property staff with an income of 49% of the area median income. The person moves into the unit. During long term monitoring by the FHLBank, it is determined that an error was made in calculating the resident’s income, which is verified at 52% AMI. This exceeds the targeting commitment of the AHP grant. The lease is coming up for renewal and although the project could be modified to allow the household to remain, the first course of action required by the Bank per the proposed rule is to not renew the resident’s lease and displace. We recommend that the proposed cure-first requirement be eliminated and the just cause process currently utilized be retained.

- The preamble to the proposed rule adds elements to the definition of the Sponsor, as well as added requirements for the FHLBanks to evaluate the ability of the sponsor and all members of the development team to perform the responsibilities committed to in the application. Please note that the entire development team may not be in place at the time of AHP application, making it impossible to assess total capacity. In addition, once a project is approved, the project developer/sponsor is responsible for managing the rest of the development team and guiding the project to completion. As many of the AHAC members are developers of affordable housing, the AHAC believes the developer/sponsor should be held responsible for the assembly of the development team and bear the responsibility for that team’s success. Adding an additional level of review and analysis of the Sponsor under the expanded definition in the preamble and the proposed Sponsor Eligibility will only serve to complicate the relationship between the FHLBanks and the AHP Sponsors. We do not see it adding value to the AHP process or mitigating risk of fraud that has not already been identified by the Banks through existing processes. We

recommend retaining the FHLBanks' current practice of reviewing the prior experience of the Sponsor.

- We note that the actual definition of a Sponsor in the text of the proposed rule is the same as it is currently defined in the regulation. The preamble, however, states that “Proposed § 1291.21(b) on eligible applicants *would clarify that a project sponsor includes all affiliates and team members such as the general contractor.*” (Emphasis added.) We are concerned as to how, given these two disparate definitions, the term “sponsor” will be interpreted under a final rule. We recommend that the FHFA state the full definition of the Sponsor in the definitions listed in Subpart A of the regulation. We also note that Proposed § 1291.21(b) does not seem to match the intention of the preamble that states that “Proposed § 1291.21(b) on eligible applicants *would clarify that a project sponsor includes all affiliates and team members such as the general contractor.*” (Emphasis added.). That language in the proposed regulation § 1291.21(b) instead states “Project qualified sponsor qualifications – (i) In general. A project sponsor, including all affiliates and team members such as the general contractor, must be qualified and able to perform its responsibilities as committed in the application for AHP subsidy funding the project.” We agree that the development team members should be qualified, but the Sponsor should be defined as it is currently stated in Subpart A of the proposed rule. Other affiliates and team members are not party to the AHP agreement and typically work on a contractual basis with the sponsor/developer. Attempting to add those project participants to the definition of the Sponsor will have, we believe, unintended consequences that will complicate the AHP process and deter participation by well qualified developers. Developers will see added risk to their organization under this expanded Sponsor definition.
- Under the proposed regulation, the five-year retention agreement for homeownership is eliminated. This is a beneficial change for households that need a moderate amount of AHP to rehabilitate, construct or purchase a home. However, for projects requiring larger amounts of AHP per unit, it introduces a risk of misuse that FHLBanks need to have the flexibility to address. Specifically, it may expose new homeowners to predatory lenders looking to take advantage of the equity provided by the AHP grant. We also believe that AHP grants made for owner occupied rehabilitation, like those made through the FHLB Dallas SNAP program, need to be handled differently than grants used to purchase a home. Often when a recipient of a SNAP grant must sell their home, it is due to changing circumstances due to the resident’s age or health. Having a deed restriction on these homes that require repayment of a portion of the grant upon sale, ends up taking most if not all the homeowner’s proceeds. The one size fits all approach of the current and proposed regulation is not appropriate for these grants. We recommend that the Banks be given discretion when it comes to whether to place a retention agreement.
- The Dallas AHAC is disappointed and objects to how the AHP “need for subsidy” is addressed in the preamble to the proposed rule and that long-standing issues on this topic are not addressed in the actual proposed rule. We recommend that the FHFA provide an additional, separate NPR to address the subject of the AHP “needs for subsidy”. The topic has many implications to so many different types of affordable housing and the

sponsors that use the AHP to support their projects. We believe that the best solution will be created with public input by affordable housing advocates and developers, like many of the Dallas AHAC members, to reach a solution that is transparent and logical.

As the NPR preamble presents a discussion to clarify how the FHLBanks should evaluate under the proposed rule that a project's cash flow and costs are reasonable, and how the Banks should perform the need for subsidy analysis in cases where (1) capitalized reserves exceed a Bank's project cost guidelines: (2) supportive services are provided and (3) the cash flow or debt coverage ratio exceeds a Bank's project cost guidelines, the Dallas AHAC shall address each subject.

- 1) Capitalized reserves: Regarding the impact to the AHP supported project, the preamble indicates certain instances where the Banks should evaluate the reasonableness of the capitalized reserves. As it pertains to LIHTC projects, the FHFA in its review and enforcement of the what constitutes "reasonable" reserves as determined by the Bank at application and funding should view that determination in terms of what is in the best long-term-interest of the rental project. As practitioners in this field, the review of the "need for subsidy" during initial monitoring of the project is problematic and the practice serves only to complicate the process for the sponsor, other funders and the Banks. Please know that if the AHP is to be adjusted downward because of a change in the reserves as dictated by the interpretation of the regulation, the total development cost will decrease commensurately, thus possibly triggering noncompliance with other funder's benchmarks that are based on percentages that use the total project cost as the denominator. LIHTC projects are typically complicated with multiple funding sources. Changes to the AHP funding dictated by the level of capitalized reserves will likely have negative consequences to the project, beyond the just the loss/reduction of the AHP subsidy. Please also consider that if any portion of the AHP grant becomes repayable, it will affect how the AHP funds are treated in an LIHTC transaction and could impact the project's eligible basis that dictates the amount of tax credits available for a project.
  
- 2) Supportive Services: It is important to emphasize that the FHLBanks agree that social services are not an eligible use of the AHP subsidy. We point to the supporting documentation that accompanies AHP disbursements as evidence that AHP funds are used for project development expenses and not for social services.

The NPR seems to lack differentiation between what constitutes an Empowerment Service versus a Supportive Service, requires Supportive Services to meet the Special Needs priority; but then also includes in the preamble that the FHFA expects the Banks to require a separate supportive services budget. We find this to be confusing, unnecessary and an inaccurate view of how affordable housing is developed and operated today. This continued practice requires many projects to maintain two sets of financial statements to provide the Banks at application, disbursement and at

monitoring. This is a practice that we find to be costly and time consuming for AHP sponsors. We recommend allowing all projects to include supportive service expenses in a project's operating pro forma.

- 3) Cash Flow/Debt Coverage: The preamble states that "In instances where a project's operating pro forma reflects cash flow or a debt coverage ratio that exceeds the Bank's feasibility guidelines, the Bank must assess whether the excess cash flow could have reasonably been used for debt service on a larger loan and thereby supplant part, or all, of the AHP subsidy." This implies that if excess cash flow is present, the Bank must evaluate whether the AHP should be replaced with another source of funds, whether it is additional debt or project cash flow. When an analysis of operating feasibility is performed to determine need for subsidy after a project is complete (i.e., at initial monitoring), as a practical matter, it is effectively very difficult, if not impossible for a project to take on additional permanent debt. Among other things, this assumes that a sponsor has the credit, assets and collateral to qualify for a hypothetical loan. Assuming a project can take on more debt because of excess cash flow or DCR above guidelines isn't fair or realistic. In our view this practice should not continue at initial monitoring. In addition, the review by the FHFA of how the Banks handle these situations should always have the perspective of the best long-term-interest of the rental project.

The "need for subsidy" and "project costs" sections of the proposed amendments do not specifically allow for the maximization of coordination with other funding sources. We recommend allowing FHLBanks to coordinate with the underwriting of other funders with comparable standards in terms of cost reasonableness, viability of operations, development team capacity and need for subsidy.

- Rural housing definition: The proposed definition is overly restrictive within metropolitan areas by excluding small towns that are truly rural in character. In addition, the AHP will not be able to coordinate with USDA programs to the maximum extent possible as there are areas that are defined as rural by USDA but excluded as rural by the proposed definition. Therefore, AHP projects that currently qualify for rural points within places like Crawford County, AR and utilize USDA loan programs such as Section 502, 504, 515 and 538 will no longer qualify for the points or count towards the outcome requirements. That will assuredly result in a reduction of access to AHP capital and affordable housing in those rural communities. We recommend that the Banks continue to be allowed to define "Rural" in consultation with the AHAC and BOD.
- Residential economic diversity definition: We prefer our definition that has been used and understood by our sponsors and members for years. The Dallas Bank included Difficult Development Areas as a scoring option at one point. It did not work well for the FHLBank Dallas at all, as virtually all the state of Mississippi is qualified under this



designation. While this may help in meeting a stated priority, it is not likely to be identified in a Targeted Community Lending Plan, nor is it likely to be used by the Dallas Bank as a scoring element given that the entire state of Mississippi would have a scoring advantage over significant portions of the rest of the Dallas district. In addition, aspects of the definition refer to an “Underserved Markets Plan”. The Underserved Market Plan is not defined in the AHP regulation and is an element that seems to come from the Duty to Serve Regulation and seems to only apply to the Enterprises. The Dallas Bank does not have an “Underserved Markets Plan”. Is a FHLBank required to utilize this as a category? If a FHLBank does not have an Underserved Market Plan, whose do we use to utilize this category? We believe the inclusion of this new definition creates confusion, is unnecessary and does not lend itself for use with a competitive grant program, like the AHP.

While we have touched on several issues the respond to certain questions presented by the FHFA in the preamble to the proposed rule, we want to specifically address question 16 and 41 which are as follows:

16. Are the current AHP requirements for sponsor-provided permanent financing reasonable, do the sponsors have a need for AHP subsidy in light of their particular financing model, and does the current method in the regulation for determining their need for AHP subsidy understate or overstate the amount of AHP subsidy needed?

- No other lender is required by the regulation to disclose how it obtains funds to lend to a homebuyer. This is an unfair burden placed only on sponsor-provided permanent mortgage lenders. From a practical and examination stand point, the AHP subsidy must be disclosed on the Closing Disclosure which notes the face value of the mortgage loan. This is to demonstrate the pass through of the grant to the homebuyer and subsequent need for subsidy. The requirement for the sponsor-provided permanent financing was intended to show that due to lending money below market, there is a need for AHP subsidy as a source for the discounted loan (present value of the loan). However, since the “present value loan amount” is not on the Closing Disclosure, this creates an additional document for these entities to create which is burdensome and provides no value to the FHLBanks in evaluating the need for AHP subsidy.

41. Are the facts and circumstances described in proposed § 1291.60 appropriate for consideration by an FHLBank during reasonable subsidy collection efforts, and are there other factors that should be considered as well?

While the FHFA’s update to the proposed rule does seem to make it easier for the FHLBanks to achieve the regulatory outcome requirements, the proposed framework still creates layers of requirements to get to essentially the same scoring framework that the FHLBanks employ today. As such, the Dallas AHAC does not see the value in this outcome based methodology and we recommend that the FHFA considers the alternate AHP scoring framework that the FHLBanks will provide to the FHFA during the public comment period.

When this process of modernizing the AHP regulation began over 4 years ago, we had high hopes that the AHP would take a big step forward to be viewed as a model to other funders of affordable housing; however, we do not believe that modeling the proposed rule after the Duty to Serve regulation governing the Enterprises accomplished that goal. Please know that the outcomes based requirements that are central to the FHFA proposal are only useful when one must compel an entity to perform certain activities. Given our experience as AHAC members, we continue to witness FHLBanks to be good stewards and partners in affordable housing finance as they operate the AHP in their 11 distinct districts. In our role as advisors to the FHLBank of Dallas, we know that the AHP is a central part of the FHLBanks' mission to serve their members and the communities they serve. Compelling the FHLBanks to meet certain minimums is not helpful in continuing to make the AHP a valued source of funds for affordable housing.

We commend FHFA for working to update the AHP regulation. However, considering the concerns above, we respectfully ask that you reconsider significant parts of the proposed rule, especially the required outcomes framework and the associated priorities. The FHFA states that the outcome requirements create additional flexibility in meeting district needs. We respectfully disagree with that perspective. We believe that flexibility would have been accomplished via a reduction in the minimum points set by the FHFA in the current scoring system and by allowing a certain percentage of the AHP to targeted funds without set FHFA priorities. Incenting priorities via minimum scoring requirements is more flexible and allows more responsiveness than requiring (enforcing) predetermined outcomes. The FHFA desires a broad use of AHP funds and sufficient number of applications to facilitate a genuinely competitive scoring process and yet, we believe that forcing outcome requirements narrowly targets the use of the AHP.

Thank you for your consideration.

Sincerely,

The Federal Home Loan Bank of Dallas Affordable Housing Advisory Council

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