



June 6, 2018

**Submitted Electronically**

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: Comments/RIN 2590-AA83; Affordable Housing Program Amendments**

Dear Mr. Pollard,

Thank you for the opportunity to comment on the proposed amendments to the Affordable Housing Program (“AHP”) regulation issued by the Federal Housing Finance Agency (“FHFA”). The Federal Home Loan Bank of Pittsburgh (“FHLBank Pittsburgh”) is committed to working with the Federal Home Loan Banks (“FHLBanks”) and the FHFA to implement a revised AHP regulation that reflects our commitment to strengthening communities and serving members. We believe this can be achieved in a manner that is consistent with both our mission and our pledge to safety and soundness.

Since its inception 28 years ago, AHP has been a model program resulting from the successful collaboration of several partners, including the FHFA, the FHLBanks’ Boards of Directors (“Boards”), the Affordable Housing Advisory Councils (“AHACs”), sponsors and developers, member financial institutions, and the FHLBanks. Each partner in this collaborative structure is essential to AHP’s success. The FHFA provides oversight and central regulation. The Board of each FHLBank, with expert guidance from its AHAC, sets policy and program priorities and is attuned to the affordable housing needs in its district. Sponsors and developers create affordable housing. Member financial institutions own the FHLBanks and champion AHP projects. Because AHP amounts are tied to FHLBank financial performance, member financial institutions, in essence, generate AHP funding. Given this structure, we believe that while AHP is centrally regulated, decisions regarding the allocation of AHP funds should rest at the district level. To effectively make these decisions, we believe the FHLBanks should be equipped with flexibility and discretion to address the affordable housing needs in their districts.

FHLBank Pittsburgh commends the FHFA for its thoughtful proposed regulation, which is beneficial to the FHLBanks in several respects. Notably, it increases the allocation authority and maximum subsidy per unit for homeowner set-aside programs. In addition, the proposed regulation streamlines monitoring requirements for competitive projects using certain federal funds. Moreover, the FHLBanks will be permitted to allocate up to 40 percent of AHP funds to multiple Targeted Funds to allow the FHLBanks to address district needs.

While these benefits are important, FHLBank Pittsburgh must also point to issues of concern in the proposal that, if enacted, will unintentionally impede AHP’s effectiveness. We appreciate the opportunity to discuss each individually and provide our recommended remedy. We are confident that addressing these issues will enhance our ability to meet the unique affordable housing needs in our district and ensure we can move forward with certainty.

## Outcomes Framework

We respectfully request that the FHFA replace the outcomes framework, as proposed in the AHP regulation amendments, with a scoring-based system. We had hoped that the proposed amendments would provide FHLBank Pittsburgh with more flexibility in our scoring methodologies to allow AHP to adapt to the changing landscape of housing needs in our district. To achieve the outcomes proposed in the amendments, we will have to design a new scoring methodology, which will likely create a complex award structure, establish preferences for certain project types, lessen AHP connection to and support for community development, and lessen AHP transparency.

## How the Amendments Would Impact AHP

The original proposed amendments, published on March 14, 2018, created several unintended consequences as a result of the outcomes framework. One such unintended consequence was reduced flexibility to adapt AHP to local needs due to the formula used to determine compliance with the proposed regulatory priorities metric. The FHFA issued a technical correction to the proposed amendments on May 2, 2018, which adjusted the regulatory priorities formula and allowed more flexibility to achieve the requirement.

The outcomes framework still has other unintended consequences that need to be addressed: preferences in the regulation for certain types of projects, less connection to community development, and less program transparency.

### *Preferences in the Regulation for Certain Types of Projects*

Certain projects that align with the proposed regulatory priorities would have an advantage over other types of projects that do not align well but still demonstrate a need within our district. This means that each FHLBank may not be able to support projects that are needed to house individuals and families in our district that fall into the latter category, which include:

- Rental and homeowner projects in urban areas that are general occupancy and are new construction or involve property reuse, such as repurposing vacant, blighted substandard property or non-housing properties (e.g., former schools, industrial or commercial property); and/or
- Urban and rural rental projects that target units for households with incomes greater than 50 percent of the area median income (mixed income).

### *Less Connection to Community Development*

By focusing on specific project types, the regulatory priorities make it more difficult to achieve policy objectives, such as linking AHP to community development strategies. The FHLBanks – and the FHFA via the current AHP regulation – have long-recognized the critical connection between AHP and community development. Community development initiatives receive a boost from affordable housing development, and AHP-supported projects are better in places where community development is occurring.

### *Less Program Transparency*

The new outcomes framework may force the FHLBanks to diverge from the long-standing process of selecting projects in descending application score order. The proposed amendments would permit FHLBanks to “re-rank” applications and select lower-scoring applications in order to achieve the outcome

### **Supporting Community Development**

*In 2005, FHLBank Pittsburgh created Blueprint Communities<sup>®</sup>, a leadership and community development initiative. To date, 58 participating communities have created comprehensive, action-oriented revitalization plans. Connecting AHP to development initiatives – such as Blueprint Communities or any other community revitalization plans – without focusing on specific project types, allows AHP to respond to local housing needs and benefit broader community development activity.*

requirements. FHLBank Pittsburgh would make every effort possible to adjust its program to avoid a possible re-ranking, but if it were to still occur, this would make the process for selecting awarded projects more complex and less transparent.

AHP's current transparent scoring system is developed through a model governance structure established by each FHLBank's Board, with expert advice from a 15-person AHAC in each FHLBank district. The scoring criteria and framework are published annually in each FHLBank's AHP Implementation Plan, which is transparent and well-understood by members and sponsors/developers.

The current AHP application scoring structure has worked successfully for 28 years. The scoring-based system, under the current regulation, also allows the FHFA to establish program priorities as required by the statute establishing AHP. The final regulation should eliminate the outcomes framework and retain a scoring structure that provides FHLBanks with scoring discretion beyond what is available in the current regulation and also adds the ability to create Targeted Funds, as proposed in the amendments.

A scoring-based system is strongly preferred over an outcomes-based framework and will allow FHLBanks to encourage all project types to apply, connect AHP to community development and maintain program transparency. The FHLBanks will propose, under separate cover, a scoring system that incorporates the statutory priorities, recommends regulatory priorities, expands discretion to the FHLBanks and retains Targeted Funds.

### **Two-Year Implementation Period**

We request that the FHFA provide an effective date for the final regulation that is two years after publication. As the proposed regulation makes substantive changes to several components of AHP, the FHLBanks require sufficient time to implement the regulatory changes. Internally, the FHLBanks need to revise agreements, develop and implement changes to systems, create new processes and procedures, and train FHLBank staff. FHLBank Pittsburgh anticipates considerable development efforts to update its online AHP system to accommodate the proposed changes, which requires collaboration with four other FHLBanks. As this regulatory overhaul is extensive, implementation will entail coordination of FHLBank Pittsburgh staff from nearly every department, including the Community Investment Department, Corporate Communications, Information Technology, Legal, Member Services and the Product Delivery Group. Externally, the FHLBanks will need to educate members, sponsors, community organizations and affordable housing developers that serve as project sponsors. We believe that a two-year timeframe for implementation would be appropriate.

### **Targeted Community Lending Plan**

We suggest removing the requirement of the Targeted Community Lending Plan ("TCLP") in the final regulation. As a result of the outcome requirements, the FHFA is effectively establishing each FHLBank's priorities for housing needs. Therefore, the proposed process circumvents the need for expanded TCLPs, which require additional research and empirical data for the housing market and affordable housing needs of each FHLBank's district. Additionally, it is unclear how the proposed requirements for the TCLP impact the value of the advice of the AHACs.

### **General and Targeted Fund Delay Periods**

The proposed rule requires publication of the TCLP at least six months before the beginning of the year that it is effective and 12 months before for FHLBanks that offer 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 AHP at a planning schedule incompatible with other funding sources, such as the housing finance agencies ("HFAs"), which have notably shorter lead times.

If the TCLP requirement remains in the final regulation, we recommend reconsidering the required six-month and 12-month periods. Including these provisions will reduce an FHLBank's ability to be nimble and timely in addressing priority housing needs. For instance, in disaster scenarios, an FHLBank would not be allowed to establish or administer a Targeted Fund unless at least 12 months have passed since the publication of the TCLP and the FHLBank identifies in the TCLP the affordable housing needs to be addressed by that Targeted Fund. In addition, if an FHLBank seeks to partner with another funding source to leverage AHP and enhance impact to address a critical local housing need, the six-month or 12-month delay would severely curtail an FHLBank's ability to create meaningful partnerships. FHLBank Pittsburgh recommends that the final regulation provide the FHLBanks greater flexibility with the implementation timing to promote adaptability and responsiveness. If a delay period is retained, we recommend that it not exceed 30 days.

Additionally, the proposed rule notes that any applications approved by an FHLBank that might satisfy the statutory or regulatory priorities may not be counted toward satisfying those priorities if the need is not expressly addressed in the TCLP. The intent of the TCLP is to identify those affordable housing needs critical to a specific FHLBank district. Those needs may or may not be compatible with the FHFA housing needs articulated in the proposed rule. Not allowing an FHLBank to count an award to a project that meets a regulatory priority, simply because the FHLBank has not prioritized that need as a district need within its TCLP, goes against the purpose of the TCLP. In this instance, the FHLBank would not have been credited for addressing a valid affordable housing need.

In the absence of relief from the statutory and regulatory requirements contained in § 1291.48, FHLBank Pittsburgh requests that the requirements of the TCLP remain unchanged from the existing regulation, except in the event that an FHLBank offers a Targeted Fund. In that instance, an FHLBank should document the need that is being addressed by the Targeted Fund in the TCLP.

### **Subordination of Retention Agreement to Other Government Sources**

We suggest the FHFA address the issue of allowing the FHLBank flexibility in subordinating its retention obligations in connection with certain projects that are largely funded by other government sources. For instance, in our experience, the U.S. Department of Housing and Urban Development ("HUD") in particular has regulatory restrictions on the type of subordinate funding it allows and the terms of any secondary funding documents, including FHLBank Pittsburgh's AHP retention agreement. Thus, finding a resolution that satisfies HUD's regulatory constraints while also complying with the proposed FHLBank retention requirement has been challenging. Accordingly, we recommend that the final regulation allow the FHLBank flexibility with the retention agreement requirement when working with other government sources.

### **Board Meetings with AHAC**

We recommend reconsidering § 1291.14(d)(1) on Board governance as it relates to the full Board meeting with the AHAC. This will make it extremely difficult to conduct offsite AHAC meetings, which is valuable to understanding the needs of our district. FHLBank Pittsburgh conducts one "in the field" AHAC meeting per year in a Blueprint Community, which is part of a community leadership and capacity-building initiative created by FHLBank Pittsburgh in 2005. There are 58 communities/neighborhoods that have completed our Blueprint Communities initiative. These community-based meetings include a tour and panel discussions on housing and community needs with local leaders and FHLBank members. These meetings provide an invaluable perspective to the AHAC members, which enhance their ability to advise FHLBank Pittsburgh's management and Board. For practical reasons, these community-based meetings are often not on the regular Board cycle and sometimes are in remote locations. Representatives of the Board do attend these meetings in person or by phone. The Board certainly benefits from the information gleaned by the AHAC. By requiring the full Board to meet with the AHAC, the community-based meetings would be very difficult to accomplish. Therefore, FHLBank Pittsburgh recommends eliminating the requirement that the full Board meet with the AHAC.

## **Ability to Make Project Modifications**

We suggest eliminating the “cure first” requirement in § 1291.27(a)(1) of the final regulation because it will delay AHP project modifications and will be unduly burdensome to AHP sponsors. This change requires sponsors with awarded AHP projects that are not able to completely fulfill the commitments made in their AHP applications to attempt to “cure” the issue before requesting a modification to their project. Sometimes the cause is beyond a sponsor’s control, such as unfavorable market conditions or changes in the availability of a third-party service provider who had committed to provide an empowerment service. In these cases, having a cure first requirement increases funding risk to the sponsor, may increase cost and may delay the disbursement of funds. Delays caused by this new requirement will impact members that have committed construction or permanent financing or are providing equity to the project. Therefore, we recommend retaining the FHLBanks’ current practice of approving a modification as long as the project would still have scored high enough in the funding round to receive the AHP award had the sponsor applied for AHP funding with the modifications in place.

## **Development Team Evaluation**

We request that the final regulation not require the FHLBanks to evaluate the ability of the sponsor and all members of the development team, including the general contractor, to perform the responsibilities committed to in the application. This change will add documentation burden for sponsors. In addition, the entire development team may not be in place at the time of AHP application, thereby making it impossible to assess total capacity. Accordingly, we recommend retaining the FHLBanks’ current practice of reviewing the prior experience of the sponsor and members of the development team identified at application to determine adequate capacity, which has worked well.

## **Thresholds for Targeted Populations**

The proposed amendments change 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. Ultimately, since rental subsidies are difficult to secure, raising the minimum number of units required to serve targeted populations could have a negative effect on a project’s feasibility and may discourage some sponsor/developers from applying for AHP. We recommend retaining the current 20-percent threshold amount.

## **Owner-Occupied Retention Agreement Requirement**

We recommend giving FHLBanks the discretion to impose a retention requirement for owner-occupied units. The proposed amendments eliminate the five-year retention requirement for homeownership projects. FHLBank Pittsburgh appreciates the opportunity to eliminate the retention requirement, especially for our set-aside, First Front Door, which provides up to \$5,000 for down payment and closing costs to first-time homebuyers. AHP projects that provide modest amounts to owner-occupants for home rehabilitation are another project type that could benefit from the proposed change. Although this is a beneficial change in most instances, it introduces a risk of misuse in certain situations when the AHP per-unit amount is relatively high, especially in rapidly appreciating markets. In the last two AHP funding rounds, FHLBank Pittsburgh awarded funds to 18 projects with 86 households receiving more than \$40,000 AHP subsidy per unit. We believe that FHLBanks need to have the flexibility to address potential misuse of AHP at higher per-unit levels. We recommend allowing FHLBanks the discretion to impose a retention requirement.

## **Coordination with Other Funding Sources**

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. Requiring an FHLBank to independently underwrite a project's need for subsidy and viability is unnecessary and increases the burden on sponsors

in cases where other funding sources have already underwritten the project. Many AHP projects use Low Income Housing Tax Credits (“LIHTCs”) as their equity source and HFAs underwrite those projects to a more rigorous standard than AHP. Specifically related to the “need for subsidy” analysis, the regulation should recognize that in projects with a third-party source paying for rental assistance, an FHLBank should not be required to determine that project’s ability to support an additional loan to replace the AHP subsidy. We recommend allowing FHLBanks to rely on the underwriting of other funders with comparable standards in terms of cost reasonableness, viability of operations, development team capacity and need for subsidy.

### **Inclusion of Supportive Services**

We recommend that the final regulation allow projects to include supportive services in a project’s operating pro forma. The amendments require rental projects with supportive services to create two operating pro formas: one for housing operations and the other for supportive services. The requirement causes projects to arbitrarily separate costs and funding streams. We understand that the FHFA’s historical interpretation of the statutory authority has been that supportive services are not an eligible use of AHP subsidy and therefore should not be a development expense. FHLBank Pittsburgh concurs with this assessment. However, FHLBank Pittsburgh recognizes, and has advocated strongly, that supportive services expenses are standard operating expenses necessary to operate most, if not all, affordable rental housing projects serving special needs households. Supportive services expenses are included on projects’ operating pro forma, not their development budget, so it is clear that AHP subsidy is not being used to pay for them. Therefore, supportive services should be treated the same as other standard operating costs and included in the operating pro forma along with other customary operating expenses, such as property management costs, security costs, maintenance costs, etc.

Because supportive services are integral to serving the residents living in the project’s facilities, and funding sources often cover both the housing and supportive services, the proposed requirement will add an unnecessary burden for sponsors/developers. Thus, we recommend allowing projects to include supportive services in a project’s operating pro forma.

### **Long-Term Monitoring of LIHTC Projects by Sponsors**

The amendments add a new provision requiring members to amend current AHP agreements with LIHTC project sponsors, and include in future agreements a provision that requires the sponsor to report to the FHLBank LIHTC projects that are noncompliant with income targeting or rent requirements during the 15-year retention period. This adds a new requirement and burden on members to amend agreements. We recommend eliminating this proposed new requirement.

### **Scoring Process for Targeted Funds**

We believe the proposed regulation introduces compliance risk for FHLBanks by requiring Targeted Funds to “receive sufficient number of applications to facilitate a genuinely competitive scoring process.” The requirement is vague and adds a new compliance risk for FHLBanks choosing to offer Targeted Funds. We recommend that the final rule provide clarity on the eligibility requirement for Targeted Funds, and specify that the requirement pertains only to the structure of the Fund that it is expected to produce sufficient applications. We recommend that the final regulation specifically state that the measurement will be on the structure of the Fund and not the actual number of applications received.

### **Repurposed AHP Funds**

We suggest removing the requirement to use previously committed AHP subsidy for alternate AHP projects. This provision will remove flexibility that FHLBanks currently have to address local needs. For example, after devastating flooding in West Virginia in 2016, FHLBank Pittsburgh was able to deploy previously committed subsidy to create a disaster relief fund. Without this flexibility, we could not have responded in a timely manner to assist families in need.

The current AHP Regulation provides that an FHLBank may fund alternates within one year of approval if any previously committed AHP subsidies become available. Under the proposed rule, an FHLBank “must approve such alternates for funding if any previously committed AHP subsidies become available” within one year of approval. FHLBank Pittsburgh may not de-obligate or recapture AHP subsidy until several months after a project has been designated as an alternate. Under these circumstances, the entire funding structure may have changed, thereby requiring FHLBank Pittsburgh to re-underwrite the application, with an uncertain outcome as to whether the alternate would remain a viable project. Oftentimes, upon notice that a project did not receive funding, it seeks other funding sources, reduces the scope of the project or discontinues the project altogether. We recommend removal of the requirement that AHP funds be re-purposed only to award funds to AHP alternates.

In addition, as you requested, we have given thoughtful consideration to the 41 questions for which you specifically asked for comments, and we offer the responses and observations in an attachment to this letter.

FHLBank Pittsburgh appreciates the efforts of the FHFA in proposing enhancements to the AHP regulation. We believe that the above-mentioned considerations and recommendations may help achieve an enhanced focus in a manner that is not unduly burdensome for the parties using AHP funds and does not unintentionally conflict with other regulatory directives. FHLBank Pittsburgh appreciates the opportunity to offer these comments.

Sincerely,



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Patrick A. Bond  
Chairman, Federal Home Loan Bank of  
Pittsburgh Board of Directors



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Rev. Luis A. Cortés, Jr.  
Director, Federal Home Loan Bank of  
Pittsburgh Board of Directors, and Chair,  
Affordable Housing, Product and Services  
Committee



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Winthrop Watson  
President and CEO  
Federal Home Loan Bank of Pittsburgh

Enclosure

## **Subpart B—Program Administration and Governance**

### **1. What are the benefits and risks of allowing the FHLBanks to establish Targeted Funds?**

From FHLBank Pittsburgh’s perspective, there are two key benefits of allowing the FHLBanks to establish Targeted Funds. First, it provides the FHLBanks the ability to target specific affordable housing needs within their districts that align with their strategic plan objectives or are unmet or difficult to address through the existing competitive application process. Secondly, it maximizes flexibility and responsiveness to changing needs by allowing up to three Targeted Funds and permitting the FHLBanks to establish and tailor—subject to the outcome requirements—separate scoring priorities for the targeted needs.

The outcome requirements could create compliance risk related to Targeted Funds for each FHLBank. The proposed regulation introduces a vague, undefined requirement that each Targeted Fund will “receive sufficient numbers of applications . . . to facilitate a genuinely competitive scoring process.” It is unclear whether the proposed regulation intends to measure sufficiency in terms of an FHLBank’s methodology in receiving applications or based on applications actually received.

However, applying the outcome requirements to the Targeted Funds will be challenging. Depending on an FHLBank’s allocation percentage and methodology (i.e., General, Targeted or Set-Aside Funds), an FHLBank may not be able to meet all the statutory and regulatory requirements in the project selection framework specified in the proposed regulation.

In lieu of an outcomes structure, the final regulation may adopt a scoring structure for the Targeted Funds. This would provide FHLBanks with scoring discretion to respond nimbly to changing housing needs.

### **2. Is the proposed allocation of 40 percent of total AHP funds to Targeted Funds an appropriate percentage, or should the percentage be higher or lower?**

Although the proposed regulation provides for a maximum allocation of up to 40 percent to Targeted Funds, an FHLBank may choose the exact percentage. The maximum percentage of 40 percent appears reasonable given the regulatory and statutory requirements for competitive selection. Additionally, this percentage aligns with the FHFA’s priorities discussed in the preamble to the proposed regulation and §1291.25 Scoring Methodology.

### **3. Would the proposed expansion of the contents of the TCLP impede the FHLBanks’ ability to respond to disasters through the AHP?**

Based on our experience, expansion of the contents of the TCLP may impede the FHLBanks’ ability to respond to disasters through the AHP. For instance, if an FHLBank did not establish a Targeted Fund prioritizing disasters in advance, the proposed rule does not provide the FHLBank the flexibility to immediately create one in response to a disaster using funding from the existing General Fund. While disasters are inevitable, they are unpredictable. Therefore, especially with respect to disaster scenarios, a hindering requirement is that an FHLBank would not be allowed to establish or administer a Targeted Fund unless at least 12 months have passed since the publication of the TCLP and the FHLBank identifies in the TCLP the affordable housing needs to be addressed by that Targeted Fund. FHLBank Pittsburgh recommends that the proposed regulation provide the FHLBanks greater flexibility with timing the creation of a Targeted Fund to allow for the unplanned nature of a disaster.

Additionally, the competitive scoring requirement of a Targeted Fund for disasters could be an impediment. Competitive scoring may only be necessary if demand for the disaster funds exceed supply. In the event of a disaster, an FHLBank considers an organization’s ability to timely complete the work needed to rehabilitate affordable housing units. Timing is understandably critical to getting low- and moderate-income families back into their homes. In disaster situations, timing is a more important concept than competitive scoring. An additional consideration is if several counties are affected by a disaster, but the projects in one



or two counties score the most competitively, it would exclude other areas even if there was a demonstrated need. Accordingly, FHLBank Pittsburgh recommends removing competitive scoring for Targeted Funds for disasters and instead allow the FHLBanks the flexibility to determine how to award funds.

#### **4. What are the benefits of the proposed expansion of the contents of the TCLP and their linkage to the AHP Implementation Plans?**

FHLBank Pittsburgh supports the proposed expansion of the TCLP if the outcomes approach is eliminated and a scoring methodology is retained. The TCLP would add value in allowing the FHLBanks to tailor an award structure that aligns with local housing needs. However, if the outcomes approach is adopted in the final regulation, FHLBank Pittsburgh believes that the AHP Implementation Plan sufficiently addresses local housing needs and the TCLP would be rendered meaningless as the statutory and regulatory outcomes would drive scoring.

FHLBank Pittsburgh has identified two main benefits of expanding the contents of the TCLP and linking it to the AHP Implementation Plan. First, by linking the two resources together, the affordable housing needs identified in the TCLP will be prioritized in the AHP Implementation Plan. This will ensure that an FHLBank's scoring criteria logically flows from the affordable housing needs identified in the TCLP. As a result, the project's granted awards will be those that satisfy the FHLBank's identified needs. Secondly, the requirement to perform market research to support the TCLP will ensure that an FHLBank is able to identify, assess and address changing needs in a timely manner.

#### **5. Is the requirement that members' AHP agreements with LIHTC project sponsors include a provision requiring the sponsors to provide prompt written notice to the Bank if the project is in noncompliance with the LIHTC income-targeting or rent requirements at any time during the AHP 15-year retention period practical, and should it also be required of project sponsors in the event of noncompliance by their projects with the income-targeting or rent requirements of the government housing programs discussed under the Monitoring section?**

FHLBank Pittsburgh believes that the requirement to report noncompliance would have limited utility. Practically speaking, while this requirement would be included in members' AHP agreements, in the event of noncompliance, there is no guarantee that sponsors/owners would be cognizant of this requirement and fulfill their obligation under the agreement. Sponsors/owners may not remember to revisit the agreement—especially if the noncompliance occurs in subsequent years—as the agreement is read and signed before AHP funding. Therefore, FHLBank Pittsburgh recommends eliminating the requirement that sponsors provide prompt written notice to an FHLBank in the event of noncompliance with LIHTC income-targeting or rent requirements.

#### **6. What are the advantages and disadvantages of an AHP owner-occupied retention agreement, would eliminating it impact FHFA's ability to ensure that AHP funds are being used for the statutorily intended purposes, and are there ways to deter flipping other than a retention agreement?**

We believe that eliminating the retention agreement would be beneficial in most instances. As discussed in the preamble of the proposed regulation, the FHFA has found little to no evidence that AHP-assisted units are targets to be used by investors or landlords to purchase or rehabilitate and sell quickly. This is likely due to the units' low prices and locations, namely that they are not typically in neighborhoods with rapidly appreciating housing prices. Accordingly, 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, elimination of the retention agreement introduces the risk of misuse that the FHLBanks need to have the flexibility to address. Specifically, elimination of the retention agreement may increase property "flipping" for AHP projects with a relatively

high per-unit AHP subsidy, particularly in rapidly appreciating markets. In the last two AHP funding rounds, FHLBank Pittsburgh awarded funds to 18 projects with 86 households receiving more than \$40,000 AHP subsidy per unit. We believe that FHLBanks need to have the flexibility to address potential misuse of AHP at higher per-unit levels. Therefore, FHLBank Pittsburgh recommends allowing the FHLBanks the discretion to impose a retention requirement in a manner that the FHLBanks deem useful.

FHLBank Pittsburgh recognizes that there are several disadvantages of AHP owner-occupied retention agreements. First, retention agreements may reduce low- or moderate-income households' ability to receive appreciation in the value of their homes. It may also be a financial burden on households needing to complete a repayment. Additionally, retention agreements may cause confusion among members and borrowers about rules of repayment, particularly when a borrower refinances but stays in the home. In FHLBank Pittsburgh's experience, homebuyers have had a plethora of issues in satisfying retention agreements, including seeking satisfactions from member mergers, acquisitions and dissolutions; facing additional costs to satisfy the lien; and not realizing a satisfaction was required for an upcoming sale. Finally, the secondary market has discomfort purchasing loans with retention agreements on property, which results in the members being denied the ability to sell loans post settlement.

While a protective restriction on the AHP-assisted unit (e.g., retention agreement, deed restriction, lien) is likely the best tangible deterrent to flipping because it can be tracked and enforced, as noted in the preamble of the proposed regulation, the majority of AHP-assisted households do not sell their homes during the five-year retention period. To the extent that AHP-assisted households are sold, it is usually to low- or moderate-income households or results in no net gain, thereby rendering the retention agreement irrelevant.

**7. Should the proposed increase in the maximum permissible grant to households from \$15,000 to \$22,000 under the Homeownership Set-Aside Program impact the decision on whether to eliminate the retention agreement?**

The proposed set-aside subsidy increase from \$15,000 to \$22,000 should not have an impact on the FHFA's decision to eliminate the retention agreement. Most of the FHLBanks have strategically decided to use set-aside funds at lower subsidy-per-unit amounts to serve larger pools of low- to moderate-income borrowers rather than to provide higher levels of subsidy per unit. For instance, although the current AHP subsidy allows for a maximum subsidy of \$15,000, the average AHP subsidy provided to households in 2016 across the FHLBanks was \$6,311. In addition, if the increased AHP subsidy is used as the proposed regulation intends—namely to increase owner-occupied rehabilitation—the document-heavy process for eligibility and disbursement would likely deter investors looking for a quick profit. Additionally, the lengthy subsidy award and verification process under the rehabilitation model would discourage unintended groups from benefitting from set-aside funds. Therefore, we do not think the proposed subsidy increase should affect the decision to eliminate the retention agreement requirement.

**8. Should the current provision in retention agreements requiring that notice of a sale or refinancing during the retention period be provided to either the FHLBank or its designee (typically the member) be revised to require that the notice be provided to both the FHLBank and its designee if a retention agreement requirement is retained in the final rule?**

FHLBank Pittsburgh already includes this requirement in its standard retention language because it is beneficial to FHLBank Pittsburgh to know that the sale or refinancing has taken place. If the final regulation includes a retention agreement for owner-occupied units, FHLBank Pittsburgh believes it is important that notice be provided to both the FHLBank and its designee in the event of any sale or refinancing during the retention period.

**9. Should the AHP retention agreement, if retained in the final rule, require the AHP-assisted household to repay AHP subsidy to the Bank from any net proceeds on the sale or refinancing of the home or from the net gain?**

If the final regulation includes a retention agreement for owner-occupied units, FHLBank Pittsburgh recommends retaining the repayment requirement from any net gain. This requirement discourages and/or prevents speculative home purchases for financial gain.

**10. What are the merits and disadvantages of the net proceeds and net gain calculations from the standpoint of the AHP-assisted households and the FHLBanks, and are there other subsidy repayment approaches FHFA should consider, if the AHP retention agreement requirement is retained in the final rule?**

FHLBank Pittsburgh believes the benefit of the net gain calculation is that it discourages and/or prevents speculative home purchases for financial gain.

We have identified two primary disadvantages of the net gain calculation. First, some potential homeowners perceive the repayment as a risk and are thus discouraged from participating in the AHP or homeownership set-aside program. Secondly, as settlement companies are involved in any sale or refinance and must be educated about potential repayments, the net gain calculation complicates and slows down the process. However, despite these disadvantages, FHLBank Pittsburgh recommends that if the retention agreement requirement is kept, the repayment requirement from any net gain should be maintained. We have no other subsidy repayment approaches to suggest.

**11. What approaches would provide a reasonable basis to assume that the subsequent purchaser of an AHP-assisted unit is likely to be low- or moderate-income, including proxies that could serve this purpose?**

FHLBank Pittsburgh believes two proxies, as described in the preamble to the proposed regulation, would provide a reasonable basis to assume the subsequent purchaser of an AHP-assisted unit is likely to be low- or moderate-income. First, a certification from a third party that the subsequent purchaser's income is at or below the low- or moderate-income limit would be acceptable. Examples of such third parties that could reasonably verify income include counseling entities, service-based nonprofit organizations, government assistance agencies, the Social Security Administration, child support entities, LIHEAP administration and accountants. Secondly, evidence that the subsequent purchaser is receiving direct homebuyer assistance from another government program would be acceptable. Examples of government programs providing homebuyer assistance include USDA, FHA loans, FHA 203K Home Loans, Veteran Administration Loans, Ready Buyer/HomePath Mortgages, FHA conventional Loan 97 and Freddie Mac Home Ready.

FHLBank Pittsburgh notes that using median home price and census tract determinations may not be reasonable approaches. These data points would not adequately recognize or track areas affected by gentrification. Because gentrification occurs gradually, median sales price and census tract data do not reflect homes being purchased by investors for rehabilitation and sale to new or higher-income populations.

**12. What proxies would be reasonable for assuming a subsequent purchaser's income, including the following or others: certification from the subsequent purchaser or a third party that the subsequent purchaser's income is at or below the low- or moderate-income limit; evidence that the subsequent purchaser is receiving direct homebuyer assistance from another government program with household income targeting requirements substantially equivalent to those of the AHP; the purchase price of the AHP-assisted unit is less than the median home price in the area; the AHP-assisted unit is located in a census tract or block group where at least 51 percent of the households are low- or moderate-income; or FHA or other underwriting standards indicating that**

**the income required to purchase the AHP-assisted unit at the purchase price is low- or moderate-income?**

As indicated in our response to question 11, FHLBank Pittsburgh believes that there are two reasonable proxies for assuming a subsequent purchaser's income.

**13. Should there be an exception to the AHP subsidy repayment requirement in the AHP retention agreement, if retained in the final rule, where the amount of AHP subsidy subject to repayment, after calculating the net proceeds or net gain, is \$1,000 or less?**

Yes. If the final regulation includes a retention agreement for owner-occupied units, FHLBank Pittsburgh recommends excepting from repayment net proceeds or net gain in the amount of \$1,000 or less. Even in small amounts, repayment of AHP subsidy may be a financial burden for low- to moderate-income households. FHLBank Pittsburgh believes that AHP-assisted households should be able to receive the benefits that come with homeownership, which include the appreciation in the value of their homes. In addition, the burden of the repayment process for the member and title companies outweighs the subsidy recaptured.

For instance, in 2017, FHLBank Pittsburgh recovered a \$5.04 subsidy repayment. The process and administration involved for the borrower and member in this transaction outweighed the de minimus repayment. Furthermore, in 2017, FHLBank Pittsburgh had three households that were on the cusp of satisfying the five-year retention period. The average repayment for these households was \$861.11. For the benefit of these types of borrowers, FHLBank Pittsburgh recommends adopting an exception to repayment for net gains under \$1,000.

**14. If the AHP retention agreement is retained in the final rule, should the rule clarify that the obligation to repay AHP subsidy to a Bank shall terminate not only after any event of foreclosure, but also after transfer by deed in lieu of foreclosure, assignment of an FHA mortgage to HUD, or death of the owner(s) of the unit?**

Yes. If the final regulation includes a retention agreement for owner-occupied units, FHLBank Pittsburgh believes the regulation should clarify that the obligation to repay AHP subsidy to an FHLBank shall terminate not only after the event of foreclosure, but also after transfer by deed in lieu of foreclosure, assignment of an FHA mortgage to HUD, or death of the owner(s) of the unit. FHLBank Pittsburgh's understanding of the retention provisions for owner-occupied units is consistent with this approach. We support this clarification as it would be useful for sponsors and members using AHP and homeownership set-aside programs.

### **Subpart C – General Fund and Targeted Funds**

**15. How should preservation of rental projects be encouraged through the AHP while discouraging displacement of current occupants with higher incomes than those targeted in the AHP application submitted to the Bank for approval, and is the proposed requirement for a relocation plan approved by the primary funder reasonable?**

FHLBank Pittsburgh believes that including housing preservation as a regulatory priority will provide substantial encouragement to address this expanding need effectively. The regulation targets specific rental housing preservation programs, but it also provides the option to include "other comparable state or local affordable housing programs." In addition, the option to use a Targeted Fund to focus on preservation projects allows each FHLBank to direct resources to prioritize this need.

FHLBank Pittsburgh recognizes the difficult situation posed by displacement of over-income households in preservation projects undergoing recapitalization and revitalization. However, in our experience, most preservation projects have included some measure of federal funding, which triggered the Uniform

Relocation Act and the requirement for a Relocation Plan. From FHLBank Pittsburgh's perspective, in these cases, a Relocation Plan submitted by the project sponsor and approved by the project's primary funder is reasonable as long as it establishes open and consistent communication with the affected households, provides them with necessary counseling and assistance, and ensures their access to relocation benefits.

**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?**

FHLBank Pittsburgh believes that the current AHP requirements for sponsor-provided permanent financing are reasonable. In our experience, applications using this model are typically Habitat for Humanity ("HFH") projects that are providing sponsor financing to low-income borrowers. Sponsors like HFH provide upfront funding from their own fundraising for the homebuyer mortgages.

As HFH is mission-based with a unique and sole purpose, the repaid mortgages are being used to fund ongoing operations and/or used as capital to build the next development for another homebuyer. In the end, the funds under the HFH model are fully used to support affordable housing development. FHLBank Pittsburgh believes that the current regulation adequately determines the need for AHP subsidy.

**17. Should sponsors using the sponsor-provided permanent financing model be considered revolving loan funds and, if so, should they be subject to the current or different AHP revolving loan fund requirements?**

FHLBank Pittsburgh believes that the sponsor-provided permanent financing model to be a revolving loan fund. Also, as discussed in our response to question 16, in FHLBank Pittsburgh's experience, the types of applications using sponsor-provided permanent financing are typically HFH projects. With this model, HFH provides its own funding to cover the cost of the mortgages. Because HFH's sole mission is affordable housing, any AHP funds and gains made from the sale of the homes are continually used to support this mission. Therefore, FHLBank Pittsburgh believes this type of structure is acceptable and does not need to be subject to any additional requirements.

**18. What are the potential advantages and disadvantages of allowing the Banks to impose a maximum subsidy limit per project sponsor?**

FHLBank Pittsburgh believes that the potential advantage of allowing the FHLBanks to impose a maximum subsidy limit per project sponsor, as discussed in the proposed regulation, is that it may provide opportunities for smaller or less-experienced project sponsors to compete successfully for AHP subsidies.

FHLBank Pittsburgh recognizes that a potential disadvantage of allowing the FHLBanks to impose a maximum subsidy limit per project sponsor is that the most-needed projects identified through the competitive scoring process may not receive AHP subsidies. For instance, while a project sponsor may have a high-scoring project, if the project sponsor already reached the maximum subsidy limit for that year, the project will not receive funding.

Because there are varying benefits and challenges of having a maximum subsidy limit per project sponsor, FHLBank Pittsburgh believes the FHLBanks should be provided the discretion to impose a sponsor limit.

**19. What are possible approaches for re-ranking applications to meet the outcome requirements while at the same time maximizing the extent to which the highest scoring applications are approved?**

FHLBank Pittsburgh believes that it is not possible for re-ranking applications to meet the outcome requirements while also maximizing the extent to which the highest-scoring applications are approved. FHLBank Pittsburgh recognizes that in order to satisfy the outcome requirements identified in the proposed regulation, the FHLBanks must prioritize the outcomes in their scoring processes. Accordingly, the new outcomes framework may force the FHLBanks to diverge from the long-standing process of selecting projects in descending application score order. In some instances, the FHLBanks would have to “re-rank” the projects and select lower-scoring projects simply to achieve the outcome requirements. FHLBank Pittsburgh would make every effort possible to adjust its program to avoid a possible re-ranking, but if it were to occur, this would make the process for selecting awarded projects more complex and less transparent. Focusing on FHFA-led priorities would also reduce the ability of the FHLBanks to address the unique housing needs of their districts. FHLBank Pittsburgh anticipates that sponsors and members may be concerned with the lack of transparency and logic of the re-ranking of applications.

On the other hand, AHP’s current transparent scoring system is developed through a model governance structure developed by an elected Board, with expert advice from a 15-person AHAC in each FHLBank district. The scoring criteria and framework are published annually in each FHLBank’s AHP Implementation Plan, which is transparent and well-understood by members and sponsors/developers. Therefore, we suggest retaining the current scoring methodology.

**20. Are the current AHP revolving loan fund provisions reasonable, and how could the financing mechanisms of revolving loan funds be used successfully with AHP subsidies?**

FHLBank Pittsburgh has not had any experience with revolving loan funds being used with AHP subsidies. From a theoretical perspective, FHLBank Pittsburgh believes that the current regulatory provisions regarding the use of AHP funds for projects involving a revolving loan fund, while appearing reasonable, may present challenges in their execution. Our understanding, as acknowledged in the preamble to the proposed regulation, is that the model has encountered problems with eligibility requirements. Due to the structure of these types of applications, they have often failed to score high enough to receive competitive funding. This is discussed in further detail in FHLBank Pittsburgh’s response to question 21.

For certain affordable housing projects, the revolving loan fund method may provide a way for project sponsors to lend and re-lend AHP funds, thereby potentially multiplying the value and extending the impact of the AHP subsidy four- or five-fold. Nevertheless, reasonable revisions to the existing regulation—as proposed by practitioners familiar with the methodology—may make this model fully operational. Although FHLBank Pittsburgh has had no direct experience with revolving loan funds, we do see the value in offering another tool to promote the affordable housing mission. Therefore, FHLBank Pittsburgh supports the proposed separate rulemaking on the revolving loan fund provisions.

**21. Why have certain AHP scoring criteria for revolving loan funds been difficult to meet, how would AHP subsidy be repaid in the event of project noncompliance, and how can a revolving loan fund demonstrate a need for the AHP subsidy?**

FHLBank Pittsburgh has not had any experience with revolving loan funds; however, based on the current regulatory requirements for AHP scoring, we believe that the difficulty lies in the way a revolving loan fund would typically identify projects for consideration. The current scoring system provides preference for projects where specific projects are able to be identified. This is inherently difficult to accomplish for revolving loan funds. Applications for revolving loan funds likely provide a description of a pipeline of potential projects rather than discrete projects.

With respect to recovery of AHP subsidy due to noncompliance, FHLBank Pittsburgh believes that the existing procedures would apply based on the application of rental or homeownership standards on a project-by-project basis.

A project using a revolving loan fund would demonstrate the need for subsidy during the scoring review based on a consideration of sources and uses. For rental projects, applications can include operating feasibility using the information on project type and a description of potential pipeline projects. Recognizing that need for subsidy is difficult to demonstrate for revolving loan funds, an FHLBank may integrate a hypothetical need for subsidy analysis at the application stage with the requirement that a need for subsidy analysis be conducted using actual project data once projects are identified and before AHP funds are actually committed by the sponsor to the project.

**22. Would the proposed outcome requirements for the statutory and regulatory priorities facilitate use of AHP subsidies by revolving loan funds, and if so, how?**

FHLBank Pittsburgh believes that the statutory and regulatory outcome requirements would not necessarily facilitate the use of the revolving loan fund method. The allocation requirement of AHP funds to General Funds, Targeted Funds, and Set-Asides, combined with applying the outcome requirements, may have the effect of excluding any priority for projects using the revolving fund approach. Although FHLBank Pittsburgh does not believe the outcome requirements will deter these types of projects from applying, the resulting allocation and scoring process will likely make them less competitive. FHLBank Pittsburgh supports the proposed separate rulemaking on the revolving loan fund method as it may provide additional scoring flexibility under the Targeted Fund method. This would facilitate the competitiveness of revolving loan funds.

**23. What are the potential positive or negative impacts of eliminating the owner-occupied retention agreement requirement for revolving loan funds?**

FHLBank Pittsburgh's response to this question is the same as our response to question 6. We recommend that each FHLBank be given the discretion to implement a retention requirement in appropriate circumstances, as described above.

**24. Are there loan pools currently existing in the market that meet the conditions in the current regulation, how are the loan pools addressing current housing market needs, and what are the potential positive or negative impacts of eliminating the owner-occupied retention agreement requirement for loan pools?**

As noted in our response to prior questions, FHLBank Pittsburgh has not had any experience with revolving loan funds being used with AHP subsidies. We are not aware of revolving loan funds in the market that meet the current AHP requirements.

**Subpart D – Homeownership Set-Aside Programs**

**25. Are there any potential positive and negative impacts of increasing the subsidy limit per household from \$15,000 to \$22,000, and should the subsidy limit be higher or lower?**

FHLBank Pittsburgh believes that increasing the AHP subsidy per household from \$15,000 to \$22,000 would likely encourage the targeting of owner-occupied rehabilitation to promote accessibility and aging in place, and improve deteriorating older housing stock across the country. For instance, prices of chair lifts, doorway modifications, ramps/rails and other similar accessibility features are costly, and a subsidy amount of even \$22,000 may be insufficient to make a home 100-percent accessible. However, FHLBank Pittsburgh believes that \$22,000—with the ability to leverage housing price indexes for increases—is a reasonable limit to satisfy both home purchase and owner-occupied rehabilitation goals.

**26. Is the proposed use of FHFA’s Housing Price Index to automatically adjust the subsidy limit upward over time appropriate, or are there other housing price adjustment indices that would be preferable and why?**

FHLBank Pittsburgh supports the FHFA’s proposed use of the Housing Price Index as an appropriate and referable index to automatically adjust subsidy limits for the set-aside.

**Subpart E – Outcome Requirements for Statutory and Regulatory Priorities**

**27. Does the proposed outcome requirement of 10 percent of an FHLBank’s total AHP funds constitute prioritization for the home purchase priority, or should the percentage be higher or lower?**

Most of the FHLBanks already meet or exceed the outcome requirement of 10 percent of an FHLBank’s total AHP funds for the home purchase priority on a consistent basis. This is primarily achieved through an FHLBank’s homeownership set-aside program. FHLBank Pittsburgh believes that if the outcome requirements remain in the final regulation, 10 percent for the home purchase priority is reasonable.

**28. What is the utility of the proposed outcome approach to income targeting, and are the proposed 55 percent threshold, its applicability solely to rental units, and income-targeting at 50 percent of AMI appropriate?**

The statute requires that 20 percent of a rental project’s units must be reserved for households with incomes at or below 50 percent of the area median income. The proposed rule more than doubles that threshold to 55 percent. This is overly prescriptive and inconsistent with national housing trends that promote mixed-income housing. The proposal does not take into account the financing involved, market considerations and policy considerations of incenting mixed-income projects, and is likely to discourage certain sponsors from applying for AHP funds. Additionally, this threshold would discourage the regulatory requirement that the AHP work with other state and federal funding sources, many of which are encouraging mixed-income housing and moving away from concentrated poverty. Additionally, the proposed rule appears to be incompatible with the LIHTC income-averaging option available to developers through the passage of the Consolidated Appropriations Act of 2018.

**29. Is the proposed increase in the minimum threshold from 20 to 50 percent for the number of units reserved for homeless households appropriate?**

FHLBank Pittsburgh believes that increasing the minimum threshold to 50 percent may negatively impact projects that cannot be financially supported with the new threshold in place. 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. Ultimately, since rental subsidies are difficult to secure, raising the minimum number of units required to serve targeted populations could have a negative effect on a project’s feasibility and may discourage some sponsor/developers from applying for AHP. In addition, this structure would affect a project’s cash flow as homeless households are likely to have little to zero income and therefore cannot provide rent.

Moreover, increasing the threshold would be detrimental to projects that reserve between 20 percent and 49 percent for homeless households. For instance, in 2017, FHLBank Pittsburgh had 33 homeless units out of 379 (nearly 9 percent of approved homeless units) that reserved less than 50 percent of the units for homeless households. FHLBank Pittsburgh recommends retaining the current 20-percent threshold minimum.



**30. Is the proposed increase in the minimum threshold from 20 to 50 percent for the number of units in a project reserved for households with a specific special need appropriate?**

FHLBank Pittsburgh does not support this change for the same reasons indicated in our response to question 29.

When consulting with our AHAC on this matter, there was a consensus that there are areas in FHLBank Pittsburgh's district that may not be able to support 50 percent of their units as special needs. As a result, sponsors in these areas would be at a competitive disadvantage. In particular, this could negatively impact projects in rural areas.

Moreover, increasing the threshold would be detrimental to projects that reserve between 20 percent and 49 percent for persons with special needs. For instance, in 2017, FHLBank Pittsburgh had 139 special needs units out of 535 (nearly 26 percent of approved special needs units) that reserved less than 50 percent for special needs households. Therefore, FHLBank Pittsburgh recommends retaining the current 20 percent threshold minimum.

**31. Is the proposed 50 percent minimum threshold for the number of units in a project reserved for other targeted populations appropriate?**

Similar to the concerns for units reserved for homeless and special needs households—as discussed in questions 29 and 30, respectively—FHLBank Pittsburgh believes that a 50 percent minimum threshold may have unintended consequences. Therefore, FHLBank Pittsburgh recommends using a 20 percent threshold minimum.

**32. Is the proposed 20 percent minimum threshold for the number of units in a project reserved for extremely low-income households appropriate?**

FHLBank Pittsburgh believes that the proposed 20 percent minimum threshold for the number of units in a project reserved for extremely low-income households may prevent applicants from applying for AHP funding that otherwise may meet the statutory and regulatory priorities. In addition, some projects that otherwise meet the proposed priorities may not be able to secure rental subsidies to support a minimum of 20 percent reservation of units for extremely low-income households. Accordingly, FHLBank Pittsburgh believes the proposed 20 percent minimum threshold reserved for extremely low-income households is not appropriate and should not be adopted in the final regulation. The FHLBanks can address this need through scoring as they do currently.

**33. Do the three proposed regulatory priorities described in proposed § 1291.48 – underserved communities and populations, creating economic opportunities, and affordable housing preservation – constitute significant housing priorities that should be included in the regulation, or should other housing priorities be included?**

FHLBank Pittsburgh believes that the proposed regulatory priorities address many needs. However, certain projects that align with the regulatory priorities would have an advantage over other types of projects that do not align well. This means that each FHLBank would have to work harder to support projects that fall into the latter category, which include rental and homeowner projects in urban areas that are general occupancy and are new construction or involve property reuse, such as repurposing vacant, blighted substandard property or non-housing properties (e.g., former schools, industrial or commercial property). In addition, by focusing on specific project types, the regulatory priorities make it more difficult to achieve policy objectives, such as linking AHP to community development strategies. The FHLBanks—and the FHFA via the current AHP regulation—have long-recognized the critical connection between AHP and community development. Community development initiatives receive a boost from affordable housing development, and AHP-supported projects are better in places where community development is occurring.

The priorities should be expanded to account for the project types indicated above and recognize connections to community development within a scoring-based system.

**34. Should the specific housing need identified under each regulatory priority be included, or are there other specific housing needs that should be included?**

As noted in our response to question 33, FHLBank Pittsburgh believes that certain additional project types and connection to community development should be included in the priorities within a scoring-based system.

**35. Do the FHLBanks have sufficient flexibility under the current scoring system to target specific housing needs in their districts, including awarding subsidy to address multiple housing needs in a single AHP funding period?**

FHLBank Pittsburgh believes that the current scoring system, while not perfect, does allow the FHLBanks flexibility to target specific housing needs in their districts. Although the Bank supports more flexibility with AHP scoring, the Bank does not believe the proposed outcomes framework is the best solution to the current scoring framework.

We respectfully request that the FHFA replace the outcomes framework, as proposed in the AHP regulation amendments, with a scoring-based system. 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 in local districts. To achieve these outcomes, FHLBank Pittsburgh will have to design a new scoring methodology, which will likely create a complex award structure, establish preferences for certain project types, lessen AHP connection to and support for community development, and lessen AHP transparency.

**36. Should the current regulatory scoring system be maintained without change?**

FHLBank Pittsburgh recommends the FHFA adopt a scoring-based methodology similar to that outlined in the FHLBank System's response to the FHFA's *AHP Program Design and Project Selection Criteria White Paper* incorporating the revisions suggested by the FHLBanks. The FHLBanks will present such a proposed scoring-based methodology under separate cover. However, the FHLBanks prefer the current scoring system to the proposed outcome requirements.

**37. Should any of the current mandatory scoring criteria and minimum required point allocations be modified to reflect other specific housing needs?**

See response to question 36.

**38. Should the current Bank First and Second District Priorities be combined and the list of housing needs in the Bank First District Priority eliminated?**

See response to question 36.

**Subpart F – Monitoring**

**39. Are the proposed reductions in the Banks' monitoring requirements reasonable, taking into consideration the risks of noncompliance and the costs of project monitoring?**

FHLBank Pittsburgh believes that the proposed reductions in monitoring requirements are reasonable and do not add any risk. The monitoring reduction for LIHTC, HUD 202/811 and /USDA 514 and 151 funded projects present very little risk. FHLBank Pittsburgh has not encountered any noncompliance involving such projects.

#### **40. Is data available on the noncompliance rates of projects funded under the PBRA Section 8 Program?**

FHLBank Pittsburgh does not currently collect data on the noncompliance rates of projects funded under the PBRA Section 8 Program. FHLBank Pittsburgh is not aware of any current noncompliant PBRA Section 8 Program projects in the AHP portfolio.

#### **Subpart G – Remedial Actions for Noncompliance**

#### **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?**

The proposed rule clarifies that if noncompliance results from occupancy by over-income households, the AHP subsidy repayment is calculated based on the number of units in noncompliance, the length of noncompliance, and the portion of the AHP subsidy attributed to the noncompliant units. FHLBank Pittsburgh supports this clarification because only a partial recapture for the noncompliance would be required, which would potentially allow the project to continue to operate and provide affordable housing, rather than the entire subsidy award, which is more likely to put the affordable units in jeopardy.

As defined currently, the regulation offers a process for recovery of AHP subsidies, including settlements. Reasonable collection efforts may include settlement for less than the full amount of subsidy due, taking into account the facts and circumstances of the noncompliance, including the degree of culpability of the noncomplying parties and the extent of the FHLBank's recovery efforts.

The proposed regulation maintains taking into account the degree of culpability of the project sponsor or owner and the extent of the collection efforts; however, it provides for other factors to be considered in determining reasonable collection efforts, including the financial capacity of the project sponsor or owner, assets securing the AHP subsidy, and other assets of the project sponsor or owner. While the FHLBanks support the spirit of these considerations, these are just a few of the considerations used in the recapture process, including making a determination for a settlement. The attempt to codify an incomplete set of considerations leaves little flexibility for the FHLBanks. Governance policies and risk-based approaches to underwriting and monitoring AHP should inform each FHLBank's recovery and settlement guidelines.

In addition, the FHLBanks have noticed a not-insignificant discrepancy between the language of the preamble and that of the proposed definition of "sponsor." The proposed definition remains unchanged from the existing definition in § 1291.1 and is limited to a not-for-profit or for-profit organization or public entity that meets one of four criteria. 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.) FHLBank Pittsburgh is concerned as to how, given these two disparate definitions, the term "sponsor" will be interpreted under a final rule, and specifically with respect to the considerations set forth above for evaluating whether a settlement for less than the full amount of recapture is reasonable. There are issues of practicality when interpreting "sponsor" to mean an expanded team of entities beyond the not-for-profit or for-profit entity. Those issues are equally applicable in the settlement context. The FHLBanks request that this discrepancy be rectified in any final rule to maintain the existing definition of sponsor, thus ensuring that the definition of sponsor is clear and not open to interpretation.

There is further concern and need for clarification when it comes to the criteria enumerated in the preamble and the proposed regulations with respect to reasonable collection efforts, including settlement: "The proposed rule would clarify that the facts and circumstances to consider also include the financial capacity of the project sponsor or owner, assets securing the AHP subsidy, and other assets of the project sponsor or owner." Depending on the definition of "sponsor" to be applied in any final rule, this set of considerations

could be deemed to require that the FHLBanks look into the assets of other entities involved in a particular project beyond the entities that have been traditionally considered the project sponsor and owner. Based on the language of the preamble and the proposed regulations, this could include the assets of “all affiliates and team members, such as the general contractor.”

This poses several problems, not the least of which is FHLBank access to such information. “[A]ll affiliates and team members” are not currently signatories to the AHP agreements; there is no consideration between the FHLBanks and these tangential “team members” to justify their participation in an AHP agreement. Given the inability to contractually require the production of this information from those entities, the FHLBanks would be left with relying merely on their cooperation. It is unlikely that all affiliates and team members, such as the general contractor, would merely be willing to provide financial information in support of a proposed recapture.

Assuming that the intention is for these facts and circumstances to be factors to assist the FHFA and the FHLBanks in determining the reasonableness of a proposed settlement and is limited to the project sponsor, in the traditional/current definition, and the project owner, FHLBank Pittsburgh is generally in agreement with the facts and circumstances proposed. Again, these, among others, are generally a reflection of facts and considerations that are currently operationalized by the FHLBanks. FHLBank Pittsburgh requests that the FHFA not incorporate guidelines that are best established by each FHLBank to evaluate the fact-specific scenarios of a recapture and settlement process.

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