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June 7, 2018

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Attention: Comments/RIN 2590-AA83
Federal Housing Finance Agency
Eighth Floor, 400 Seventh Street SW
Washington, DC 20219

Submitted via the Agency Website: www.fhfa.gov/open-for-coment-or-input

To Whom It May Concern:

Please accepts these comments on the FHLB Affordable Housing Program proposed rules published in the Federal Register May 2, 2018.

Northwest Housing Alternatives is a 35+ year old organization providing affordable rental housing in Oregon. Over the course of our history we have developed almost 2,200 units, and our current portfolio includes 1,885 units in 101 properties in 16 Oregon counties. Our range of affordable rental housing is broad—from 4-plexes to 100+ unit buildings; for working families to veterans leaving homelessness; serving the Portland metro area and communities with populations of only 1,500 people. Our residents have an average annual income of less than $16,000, and they save more than $13.3 million each year compared to market costs as a result of our affordable rents and rent assistance partnerships. We understand the wide range of needs for affordable housing across Oregon.

NHA has been the recipient of several AHP awards, and these have been critical to being able to produce high quality affordable housing. The AHP program, under the current regulation, has been cumbersome, complex and ill-suited to meeting the wide range of housing needs in Oregon. Our hope was that the AHP Modernization effort would address these challenges. It was hoped that that the AHP proposed rule would offer regional flexibility, but the overall effect increases regulatory control, program complexity, and reduces transparency.

Outcome Framework

The core difference between the current model and new model is the manner in which the national priorities are implemented. Under the current regulations there is a scoring system that prioritizes federal and local priorities with some points determined at the federal and others determined by the Banks. Under the new model, the federal priorities are expressed as required outcomes, and in concept, offers the banks increased flexibility through the creation of targeted funds.

In effect, the new regulation creates a national, prescriptive program reducing the local responsiveness of each FHLBank. It demands that the majority of funds be spent to achieve nationally prescribed

housing goals that from a national viewpoint may be important, but from a location specific viewpoint may totally miss the need in a particular community. For example, there are a number of communities in Oregon where there is great need and great opportunity to develop affordable homes for first time homebuyers, but this kind of project will not score well given the proposed priorities.

The regulation enforces the national priorities with a “gotcha” approach. If the scoring methodology developed by a Bank, or the applications in a particular funding cycle, fail to meet the national outcomes, it requires a complex re-scoring process that could by-pass high scoring projects that meet local needs. This reduces transparency and predictability, and can dramatically reduce interest in the program. Banks will not be able to provide guidance or technical assistance, because they will not be able to predict the likelihood of success of any individual application. In the current regulation, the structure provided incentives to meet national priorities; successfully steering applicants toward those goals. The proposed regulatory requirements are instead based on mandates and punishments.

The proposed regulation redefines the criteria of specific housing types that would qualify under the national outcomes in ways that are illogical and contrary to best practices. For example, special needs housing and housing to serve households experiencing homelessness would now only count if the project reserves at least 50% of the units for these households. This concentrates special needs households when best practice would create the most independent and integrated permanent housing settings possible. About one-third of NHA’s portfolio serves people exiting homelessness or those having other special needs. We find that 10% to 25% concentrations of special needs housing in integrated settings can work very well. These projects have operating expenses that are comparable to general affordable housing and provide the opportunity for residents to live without the stigma of their history or disability—these projects are cost effective and they work. Because the principles of integrated housing are codified in the Olmstead Voluntary Settlement Agreement between the US Department of Justice and the State of Oregon, it would reduce the likelihood of these special needs projects in Oregon receiving AHP awards (seven other states have similar Olmstead settlement agreements).

Oregon does develop some projects solely focused on people with special needs or exiting homelessness, most often as a transitional resource, helping residents through a period of recovery and stabilization. For these projects the 50% requirement is still problematic. From an implementation perspective, at 50% the project has effectively “tipped” into being a 100% project. The impact on operations and the level of needed services would make a 50% concentration overly expensive and impractical. Because these housing projects envision that residents will move on to new settings over time, it is also critical to build the integrated projects that people can move to.

While the new Targeted Funds provisions could theoretically help respond to diverse needs, it creates a cumbersome, time-consuming and restricted process of creating and administering those funds. To add a targeted fund would require significant research, documentation of the need and a paced implementation process—requiring at least one to two years before a targeted fund could be established. It was hoped that the capacity to have targeted funds would help Banks respond to emergency needs like natural disasters. With the implementation requirements, these funds will not be effective in meeting these needs.

Another purpose behind asking for regulations for targeted funds was to be able to target multiple diverse project types in a single funding cycle. Even though the banks have discretion over 50 points, a project must score highly in the federally required 50 points in order to be competitive—in 2016 the cut

off score in the DesMoines AHP program was in the mid-50s and in 2017 it rose to the low 60s. The discretionary points, particularly if they are aimed at a variety of different goals, are too diffuse to overcome the weight of the national points. Both the old regulation and proposed new regulation fail to provide a clear and effective method to respond to rural need and urban needs, gentrified communities and distressed communities, workforce housing and homelessness, the need for new housing stock and for preserving existing housing, any many more needs. In Oregon, and across the DesMoines region, all of these problems exist simultaneously. In order to meet the different needs of different communities it is important to have a framework that is responsive and flexible. As the narrative in the proposed rule demonstrates, the AHP program, over many years and in every region, already excels at meeting broad national goals. It is not necessary for the regulation to become even more prescriptive.

Program Definitions & Implementation

The regulation fails to correct historical problems with the program and creates new ones. The following section addresses a number of these issues.

Need for Subsidy Analysis—The new regulations on the needs for subsidy analysis, in an effort to create a more standardized approach across the banks, has created an even more conservative lens that doesn't understand the very different dynamics at play in different project types. The new regulations relating to debt service caps, capitalized reserves, and supportive services are all inconsistent with current affordable housing industry best practices. In addition, the FHLB need for subsidy test is redundant with the analysis done by the primary funding partners—the equity investor, lender, and gap funding sources. Conducting a separate analysis, based on criteria that is idiosyncratic to FHLB, simply complicates the deal structure and encumbers clear communication between the various funding partners.

Cash Flow Analysis—The cash flow dynamics of a project are highly sensitive to project size, complexity and rent levels. In Oregon, a rural project or a small property in an urban area at 50% AMI will have a descending DCR. This means that it will need to have a high starting DCR in order to ensure that it is sustainable through the AHP, HOME fund and/or LIHTC periods of affordability. It is not uncommon for these projects to have DCRs well above 1.45 in the first year, but plummet to negative by year 15 or 20. The only projects in Oregon that can start at 1.2 and have a rising DCR are larger 60% AMI projects in the Portland area. In our experience, the AHP awards represent 5% - 10% of project costs and are usually the smallest gap funder. Requiring a complex analysis and justification for the majority of applications is unnecessary and redundant with the analysis already conducted by other funding sources.

Capitalized Reserves—Creating a finding that reserves are not reasonable even when they are required by the primary project funders is irrational given the level of funding commitment and risk being assumed by primary investors and lenders in comparison to the AHP contribution. Tax credit equity and first mortgage lenders typically represent 50% - 85% of total sources, state and local governmental partners come next in magnitude of funding, and AHP typically represents only 5% - 10%. Disqualifying projects because of arbitrary and ill-informed standards will simply steer those projects away from AHP and make them more difficult to complete.

Supportive Services—The new regulations present a very confusing and inconsistent analysis on the need and availability of funding for supportive services—separate budgets/integrated budgets, requiring services to qualify for points/concern about disallowing service costs as unreasonable. As discussed above, the 50% concentration requirement will likely tip toward 100% targeted projects that will have

even greater challenges in securing funds for services and a greater likelihood that the bank will disallow those costs.

Notification of Noncompliance—The new regulations on notification for noncompliance for LIHTC projects should be clarified to call for notification for "unresolved" noncompliance. The 8823 process for LIHTC projects issues many notices for small, easily resolved operating issues. These can be as minor as a pan on a stove with a rubber handle or an income certification form that was not dated. There are literally thousands of 8823s issued which would flood the Banks with notification, but only a tiny fraction—the significant or complex problems that could impact a project's success—are unresolved. These are the situations where it makes sense to notify the member bank and FLHB.

Subsidy Repayment – The change in the remedies for noncompliance is blind to the cause of the failure. In some cases, a failure may be the result of poor development or management skills, or lack of commitment, but in other cases may occur at no fault of the project sponsor. Consider a property that is damaged by a fire or earthquake. In this case, requiring the repayment of AHP funding from the sponsor's own resources simple serves to weaken the non-profit sponsor which is likely working hard to meet new critical housing needs in their community. This is another example of creating a harsh penalty when the history of the program does not show a pattern of scofflaw's but instead shows an extremely low number of projects that have mostly been subjected to external forces that operate contrary to the project sponsor and funders' best intentions.

AHAC & Board Governance Requirements—The proposed regulations create new requirements on how the AHACs work with their Boards of Directors. These new requirements (quarterly meetings with both AHAC and full Boards present) reduces the ability of the Advisory Councils to meet in a variety of locations across the bank regions where they learn more about community needs and to see the fruits of AHP investments. The affordable housing community so appreciates the effort and attention from the AHACs as they work to fulfill their charge and would hate to see them more limited in their ability to have this on-the-ground learning.

Thank you for the opportunity to comment on these proposed regulations. I believe that more work needs to be done in designing regulations that will create the most effective AHP program and look forward to the opportunity to support the FHFA and Banks in that effort.

Sincerely,

Martha McLennan
Executive Director