



Member driven.
Community focused.

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

Re: Proposed Rulemaking and Request for Comments: Affordable Housing Program Amendments (RIN 2590-AA83)

Dear Mr. Pollard:

The Federal Housing Finance Agency (FHFA) has requested comments on its Proposed Rulemaking on amendments to the Affordable Housing Program (AHP) regulation published on March 14, 2018 (the Proposed Rule)¹ and re-published with a correction and deadline extension on May 2, 2018.² The Federal Home Loan Bank of Dallas (FHLB Dallas) appreciates the opportunity to comment on the Proposed Rule.

As the FHFA recognizes in the Proposed Rule's preamble, "[t]he AHP has played an important role in facilitating the Banks' support of their members' efforts to meet the affordable housing needs of their communities."³ Between 1990 and 2016, the FHLB Dallas awarded approximately \$271 million in AHP subsidies to assist the financing of over 48,700 housing units. Since its inception 28 years ago, the AHP has been a model program of cooperative partnerships among the FHLB Dallas, our members, and community partners, providing gap funding that leverages public and private resources in a highly complex and competitive affordable housing industry. The AHP partnerships are supported by the Federal Home Loan Banks' (FHLBanks) cooperative structure of regional member institutions, boards of directors (Boards), and Affordable Housing Advisory Councils (AHACs), all with deep knowledge and experience of local affordable housing needs in their communities.

From this shared perspective, the FHLBanks and their AHACs engaged with the FHFA, in accordance with the FHFA's five-year regulatory review plan of 2013, to modernize certain aspects of the AHP. Over the course of this collaboration, the FHLBanks and AHACs provided specific recommendations to expand the discretionary authority of the FHLBanks to: a) allocate, design, and implement the AHP requirements; b) simplify program administration; c) harmonize the AHP with other funding entities; and d) address certain compliance requirements. FHLB Dallas believes the Proposed Rule offers modest improvements. However, taken as a whole, we believe the introduction of a prescriptive outcomes-based framework for awarding AHP funds creates a complicated award structure resulting in unintended consequences that increase program complexity, establishes preferences for certain project types, and lessen the transparency of AHP. FHLB Dallas is further concerned that the proposal codifies a variety of analytic and administrative practices that have evolved over time through examination practices and that, in our opinion, add administrative burden to AHP users without enhancing the program's effectiveness. Taken as a whole, we are concerned that the value and relevancy of the AHP may be compromised by the Proposed Rule.

¹ 83 Fed. Reg. 11344 (Mar. 14, 2018).

² 83 Fed. Reg. 19188 (May 2, 2018).

³ See Proposed Rule at 11344.

In addition to our comments herein, we affirm our support for the FHLBank System letter dated June 1, 2018, which responded to the proposed rulemaking and some of the 41 specific questions asked by the FHFA. We also express our support of the comments made by our Affordable Housing Advisory Council (FHLB Dallas AHAC) in its letter dated June 4, 2018.

Duty to Serve and the AHP

Significant portions of the Proposed Rule are clearly derived from the FHFA's Duty to Serve regulation applicable to Fannie Mae and Freddie Mac (the "Enterprises"). The imposition of the Duty to Serve regulation on the AHP in the Proposed Rule is evidenced by the FHFA's use of outcome based requirements, the insertion of definitions and regulatory outcomes that were designed specifically for the Enterprises secondary mortgage market business, and the expansion of the Targeted Community Lending Plan. FHFA staff statements made during the FHFA's March 27th FHLBanks Affordable Housing Program Notice of Proposed Rulemaking webinar further confirmed its consideration of the Duty to Serve regulation in creating the Proposed Rule. The Duty to Serve regulation incents the Enterprises to create lending programs and then select mortgages from those programs that meet the Duty to Serve requirements. The current AHP regulation uses scoring criteria to incent certain sponsor behavior to be awarded an AHP grant, but does not require the sponsor to conform their project to meet any scoring criteria. The opportunity exists for AHP sponsors to make successful AHP applications without meeting certain scoring attributes; projects are successful if they achieve a high enough score. Affordable housing projects are not subjectively selected by FHLBank Dallas for the AHP. This distinction is important and is a significant reason for the long-term success of the AHP.

Under the proposed rule, it is possible that an AHP sponsor will not be awarded an AHP grant unless the project meets certain required regulatory priorities, as FHLBank Dallas would be incented to establish the scoring criteria that will produce results that exceed the FHFA minimum regulatory outcomes. FHLBank Dallas should not have to guarantee specific outcomes while working with local financial institutions and organizations to meet the affordable housing needs in their respective communities.

Although well intended, the FHFA's attempt to align the requirements of Enterprises' Duty to Serve regulation to the FHLBanks' affordable housing programs is troublesome because it incents the wrong entities and the wrong behaviors. The Proposed Rule would shift the fundamental operating principles of the AHP from incensing sponsor behavior to incensing FHLBank Dallas's behavior by requiring certain outcomes. The dynamics that are involved in purchasing mortgage loans by the Enterprises and making AHP grants by the FHLBanks are diametrically opposed, and the execution of the AHP should not be predicated on policy that is expressly designed for the Enterprises. Had Congress intended for the FHLBanks' affordable housing programs to be subject to the duty to serve requirements applicable to the Enterprises, it would have done so in HERA.

Need for Subsidy

We recommend that the FHFA provide an additional, separate rulemaking to address the subject of the AHP "needs for subsidy". FHLBank Dallas objects to how the AHP "need for subsidy" is addressed in the preamble to the proposed rule and we are concerned that long-standing issues on this topic are not sufficiently addressed in the proposed rule. The topic has critical implications to a vast array of affordable housing project types and the sponsors that use the AHP to support

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

In the preamble to the Proposed Rule, the FHFA attempts 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.

Capitalized reserves: Regarding the impact to an AHP supported project, the preamble indicates certain instances where the Banks should evaluate the reasonableness of the capitalized reserves. As it pertains to Low Income Housing Tax Credits (LIHTC) projects, the FHFA, in its review and enforcement of 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. 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 FHLBanks. If the AHP grant is 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 deals 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 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.

Supportive Services: FHLBank Dallas agrees 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.

However, the Proposed Rule appears to lack differentiation between what constitutes an Empowerment Service versus a Supportive Service, while requiring Supportive Services to meet the Special Needs priority; at the same time, however, the preamble appears to establish the expectation that the Banks 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 to the FHLBank Dallas at application, disbursement and monitoring. This is a practice that we find to be costly and time consuming for AHP sponsors and FHLBank Dallas staff who must counsel sponsors on how to prepare separate information specifically as a result of this requirement. We recommend allowing all projects to include supportive service expenses in a project's operating pro forma.

Cash Flow/Debt Coverage: The preamble states that "[i]n 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."⁴ This implies that if excess cash flow is present, the Bank must evaluate whether the AHP should be

⁴ See Proposed Rule at 11355

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 a debt coverage ratio 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 address these case by case 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.

Definitions

Rural housing: 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, if retained in the final rule. 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 its Implementation Plan in consultation with the AHAC and board of directors.

Residential economic diversity: FHLBank Dallas prefers to retain the scoring criteria for economic diversity in our current and past Implementation Plans that has been used and understood by our sponsors and members for years. FHLBank Dallas included Difficult Development Areas as a scoring option at one point. Unfortunately, it did not work well for the FHLBank Dallas district, 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 by us in a Targeted Community Lending Plan, nor is it likely to be used as a scoring element given that the entire state of Mississippi would have a scoring advantage over significant portions of the rest of the FHLB 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 a concept is found in the Duty to Serve Regulation applicable only to the Enterprises.

Income Targeting

The proposed amendments would increase the threshold amount needed for projects to qualify as serving targeted populations from 20 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 percent 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.

Board of Directors Governance and AHAC

We recommend reconsidering § 1291.14(d)(1) on Board governance as it relates to the full Board meeting with the AHAC. This new requirement challenges our current Board meeting practices and is not consistent with our Board and Board Committee structure. Currently, representatives of our Board’s Affordable Housing and Economic Development (AHED) Committee attend each FHLB Dallas AHAC meeting in person or by phone. After participating in the AHAC meetings, AHED Committee members report to the Board regarding AHAC activities and recommendations. In addition, the AHAC Chair and Vice Chair make presentations to the full Board twice a year where they share the AHAC’s work product and recommendations, as well as update the Board on housing issues of both district and national importance. By requiring our full Board to meet with the AHAC, we may be forced to add additional days to AHAC meetings aligned with the Board meeting schedule. These added meeting requirements will increase the meeting cost and will require the AHAC members to spend additional time away from their primary jobs in affordable housing and economic development. Our AHAC members expressed displeasure with the concept of the entire AHAC attending additional meetings to share information that is currently handled appropriately by the AHAC Chair and Vice Chair. Additionally, the Board, AHED and AHAC are all involved in the development, acceptance and approval of the Community Lending Plan and AHP Implementation Plans. FHLB Dallas governance of the AHP under the existing regulation and governance structure has proven to be effective. Therefore, we recommend eliminating the requirement that the full Board meet with the AHAC quarterly.

Scoring Process for Targeted Funds

We believe the proposed regulation introduces compliance risk for FHLB Dallas 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 us should we choose 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 Targeted Fund that it is expected to produce sufficient applications. We recommend that the final rule specifically state that the measurement will be on the structure of the Targeted Fund and not the actual number of applications received.

Repurposed AHP Funds

We recommend removing the requirement to use previously committed AHP subsidy for alternate

AHP projects. 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 Dallas 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 of the alternate project may have changed, thereby requiring FHLB Dallas 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, the sponsor seeks other funding sources, reduces the scope of the project or discontinues the project altogether.

In addition, this proposed requirement would impede the ability of the FHLB Dallas to manage the use of AHP funds to best meet the current needs of the district. In the event of returned funds, the FHLB Dallas should have the ability to use those funds in its set-aside programs or make them available for the next competitive round as market conditions dictate. In the event that demand for set-aside program funds is high, directing those recovered AHP funds to a set-aside program is beneficial to the members and their communities. If a FHLBank is above the 50% allocation for the General Fund and below the regulatory percentage of 40% as proposed, there should not be a hindrance to allocating recovered AHP funds from the General Fund, as long as the minimum General Fund percentage is met and the maximum set-aside percentage is not exceeded.

When an FHLBank has limited AHP funds in a given year, the ability to use recovered AHP funds in a future round is quite meaningful to having a competitive AHP funded at an appropriate level. For example, in 2016, FHLB Dallas had \$7.5 million in available AHP funds from its 2015 derived earnings. However, because we also had over \$2 million in reallocated funds from 2015, we could offer our normal two set-aside programs at \$1 million each as well as have sufficient money available to have a meaningful competitive round of \$7.7 million. In addition, we utilized some of the reallocated money that became available in 2016 to break ties in the 2016 competitive round during which we awarded \$7.8 million. To address the concern of FHLBanks “funneling money” to their Targeted Funds from the General Fund, we recommend that if any previously committed AHP subsidies become available, an FHLBank may in its discretion, approve alternates from the General Fund, as is currently permitted. However, they may not use those funds to increase the Targeted Funds within the plan year.

If this aspect of the proposed rule is retained in the final rule, FHLB Dallas requests that the FHFA clarify the scope of “any previously committed AHP subsidies.” Does this include AHP subsidies that have de-committed from prior year’s projects? For example, would funds approved for a project in 2017 that is de-committed have to be provided to an alternate in 2019? If this is to occur, it makes managing those funds and executing the program more inefficient, increases the complexity of accounting for program funds and increases the operating risk of the FHLBanks.

We recommend removal of the requirement that AHP funds be repurposed only to award funds to AHP alternates and that AHP alternates must be funded within one year if funds become available.

Specific Funding Allocations disclosed in Implementation Plan

The Proposed Rule requires that the Bank disclose the specific funding allocations to each of its programs in the Implementation Plan. This requirement would significantly alter how the Bank

discloses the availability of program funds. Historically, FHLBank Dallas has operated its grant programs on a calendar year. This has included approving the calendar year Implementation Plan in December of the preceding year. Funds from our set aside programs, which are administered on a first come, first serve basis, become available in the beginning of each calendar year. Available funds for the Bank's programs are based on our prior year's income, which is not finalized, approved by the Board and made public until mid to late February of each year. As such, placing specific dollar amounts in the December Implementation Plan is not feasible, and, under our current practices, placing percentages in the Implementation Plan is also problematic because it would create Securities and Exchange Commission (SEC) disclosure implications. For example, if FHLBank Dallas disclosed in its Implementation Plan that it would set aside 25% of its allocation to its set aside programs in the following year and then later, in January of the following year, disclosed the specific dollar amounts for the set aside programs, the Bank's prior year's income could be determined prior to such income being made public. However, to delay the set aside programs until late February or March when such income has been made public would be a significant operational change for FHLBank Dallas and its members, and, more importantly, it would delay the availability of owner-occupied rehabilitation funds which are typically accessed and exhausted within a few days of opening the programs. Although the current AHP regulations require us to allocate percentages of our annual contribution to certain programs, they do not require the disclosure of those percentages in the Implementation Plan. FHLBank Dallas publicly announces the allocation of funds to each of its programs (via the website, workshops, marketing materials, press releases and other methods) once the prior year's income is finalized and made public. We request that the proposed requirement to disclose the allocations in the Implementation Plan be removed as it would cause the Bank to be less transparent in communicating to its members and sponsors the actual availability of set-aside funds.

Two-Year Implementation Period

We request that the FHFA provide an effective date for the final regulation that is at least 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, we will need to revise agreements, develop and implement changes to systems, create new processes and procedures, and train FHLBank Dallas staff. We anticipate considerable development efforts to update our online AHP system to accommodate the proposed changes. As this regulatory overhaul is extensive, implementation will entail coordination of FHLB Dallas staff from nearly every department, including Community Investment, Corporate Communications, Information Technology, Legal, Member Services and the Member Solutions Group.

Externally, we will need to educate members, sponsors, community organizations and affordable housing developers that serve as project sponsors. We believe that, at a minimum, a two-year timeframe for implementation is necessary.

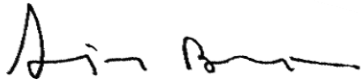
Supplemental Commentary

We are also providing commentary in the two attached addendums. In the first addendum we provide responses to specific questions posed by the FHFA in the preamble to the Proposed Rule that were either not addressed in the FHLB System letter or which expand upon responses in the FHLB System letter. In the second addendum we pose questions regarding the practical

considerations of implementing the Proposed Rule.

FHLBank Dallas appreciates the good faith efforts of the FHFA in proposing enhancements to the existing AHP regulation. Although we are concerned that the Proposed Rule will significantly increase the complexity of the AHP for FHLBank Dallas, members and sponsors, and, ultimately, discourage participation, we believe that with marginal adjustments to the existing regulatory framework based on a scoring methodology, FHLB Dallas can build upon the success of its AHP to efficiently respond to housing needs in our district and better harmonize program use with our members, sponsors and stakeholders. We appreciate your consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Sanjay K. Bhasin". The signature is fluid and cursive, with a long horizontal stroke at the end.

Sanjay K. Bhasin
President and Chief Executive Officer
Federal Home Loan Bank of Dallas

Addendum 1 – Answers to specific questions asked by the FHFA.

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

We believe the targeted fund would allow the FHLBanks to be targeted in their response to a particular need, such as a disaster, without neglecting the needs of the remainder of the District. For example, in the aftermath of Hurricane Katrina, the FHLBank Dallas AHP scoring criteria awarded 10 points specifically for areas impacted by Hurricane Katrina in its Second District priority category. The Bank was subsequently advised to allow the points to be allocated to any Federal Disaster area within the Dallas District. Once that occurred, due to the number of different active disaster areas, the result was that virtually no project could score high enough for an award unless the project was in a disaster area. A targeted fund to address the impact of Hurricane Katrina would have facilitated a much more efficient and effective response from the Bank without neglecting the needs of the rest of the Bank's District.

3. Would the proposed expansion of the contents of the Targeted Community Lending Plans (TCLP) impede the FHLBanks' ability to respond to disasters through the AHP?

FHLBank Dallas believes the expansion of the contents of the TCLP would likely impede our ability to respond to disasters through the AHP. There are several timing and data requirements that create less flexibility and slower responsiveness for the execution of the AHP. The FHLBank Dallas has been transparent with its AHP programs by socializing the Implementation Plan with AHP users, providing information via our website, social media and press releases.

Under the proposed rule, the programs and scoring attributes must be disclosed, in the TCLP, at least six months prior to the plan year and supported by empirical data. Our plan year starts on January 1 of each year. That means that we would have to decide on scoring attributes for the following year before we understood the results of the current year; this is an impractical requirement. In addition, if the proposed rule were in place, we would not have been able to respond as quickly as we did to recent disasters by establishing a new disaster set aside program.

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?

Given the structure of LIHTC projects, when a compliance issue exists with an LIHTC project, the FHLBanks typically must defer to the appropriate state Housing Finance Authority (HFA) that issued the LIHTCs and the IRS. From an implementation perspective, this essentially creates an addendum to the AHP agreement and a procedure on how to handle the LIHTC projects when notified of noncompliance, followed by placement of the project on the AHP Watch List. At this point, the Bank can only monitor the actions of the State HFA and/or the IRS. As such, we don't believe this proposed requirement is practical and recommend that it be removed from the final rulemaking.

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?

Under the proposed rule, 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. However, we believe that AHP grants made for owner occupied rehabilitation, like those made through our Special Needs Assistance Program (SNAP), 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 related to the resident's age or health.

Retention mechanisms are an administrative burden and unnecessary cost to many homeowners. For example, the state of Louisiana recently increased its recording fees to \$110. Also, because there is not yet a workable solution regarding how to calculate net gain on owner-occupied rehabilitation grants, most of the FHLBank Dallas' AHP set aside repayments come from these grants. Typically, this recovery of grant funds is made upon sale of the home from an elderly or disabled AHP recipient who leaves their home for an assisted living or a nursing home and then must pay back a portion of the grant.

Flipping is not expected to be a major issue and we expect that type of activity in the FHLB Dallas district to be an outlier, if it did occur at all. In order to access owner-occupied acquisition grants, the recipients almost always have to be a first-time homebuyer. For owner-occupied rehab grants, these grantees are almost always special needs households. The repairs and modifications needed typically don't increase value; rather, they make the home livable.

There are arguments for maintaining mechanisms on acquisition grants. If a grant amount is significant, while flipping may not be the primary concern, predatory lending can be a concern. If there is significant equity infused without a lien, an unscrupulous lender could entice a recent homebuyer to take out the equity immediately with a higher loan amount and interest rate which could ultimately lead to foreclosure of the home.

We recommend some level of discretion. For example, while we may maintain the retention mechanism on acquisition transactions where there is a direct cash benefit to the homebuyer, we may not maintain it on owner-occupied rehabilitation grants as there is no dollar to dollar return on the grant. In addition, most of the FHLBank Dallas owner occupied rehabilitation grant recipients are on a fixed income and either elderly or disabled. Having a deed restriction on these homes that requires 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 whether to require a retention agreement.

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 increases 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 to serve larger pools of low- to moderate-income borrowers rather than to provide higher levels of subsidy per unit. However, in different regions of the country, a level dollar amount could have a different degree of purchasing power. Consistent with its response to Question #6, the FHLBank Dallas requests discretion to apply a retention requirement for owner-occupied housing as it deems useful and appropriate.

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 Bank or its designee (typically the member) be revised to require that the notice be provided to both the Bank and its designee if a retention agreement requirement is retained in the final rule?

No. FHLBank Dallas prefers to leave this aspect of the retention agreements for rental projects unchanged and would propose no changes to the owner-occupied retention requirements if the FHLBanks were given discretion to require retention on owner-occupied properties. For rental projects, requiring notice to the Member would provide little to no benefit as the FHLBanks have established a precedence of addressing issues of non-compliance directly with the project sponsor. In addition, the FHLBank Dallas is currently noted in the retention agreement and we believe that it may cause confusion as to who is responsible for calculating and providing a payoff in the event of a property sale if the member was also notified.

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?

The net gain calculation has been effective when a home acquired with the assistance of AHP funds is being sold. However, the net gain calculation has not worked well on owner occupied rehabilitation grants. These types of grants have resulted in most of the FHLBank Dallas' AHP repayments over time. See our response to Question #6 for suggestions on rehabilitation grant repayments.

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?

The net gain calculation has been fine for acquisitions. However, a method to effectively calculate net gain for owner-occupied rehabilitation projects continues to be absent. It is impractical, from a cost and time perspective, to obtain the original settlement statements as the majority of the homes have been owned for decades or passed down through generations.

For rehabilitation grants, we request the flexibility to exclude repayment if a homeowner had to sell for health reasons and was entering either assisted living, nursing home or having to live with a relative, or if the seller's income was still less than 80% of AMI.

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?

The FHLBank Dallas does not believe that the use of proxies is appropriate in the event of a

property sale.

Proxies are not fair to the seller. Proxies typically have very little to do with the seller's circumstances and everything to do with who is purchasing the home. For example, suppose there are two neighbors who each receive an AHP rehabilitation grant for their homes. Subsequently, both homes are sold. Both neighbors are senior citizens on fixed income and remain less than 80% of AMI at the time of their home sales. An investment company purchases a senior's home (a scenario we have experienced), which means a proxy related to the purchaser's AMI would not be applicable. Thus, one neighbor has to pay back a portion of the AHP grant because an investor is the buyer while the other neighbor doesn't have to pay it back because a moderate-income household is the buyer. We do not believe that is fair to the AHP grantee. We also believe that it is inappropriate to ask the purchaser of a home for personally identifiable information (PII) solely for the benefit of the seller. We also do not feel that it is appropriate for the FHLBanks to be in possession of the PII of the subsequent homebuyer, as we have no contractual relationship with that person nor are they receiving any grant benefit.

- 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 noted in our response to Question #12, we do not believe any currently identified proxies are appropriate for use with the AHP.

- 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?**

If the final regulation includes a retention agreement requirement for owner-occupied units, the FHLBank Dallas recommends exempting from repayment net proceeds or net gain in an amount determined by the FHLBank based on facts and circumstances. We believe 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. If, for example, a homeowner moves after four years to accept better employment and has net proceeds or a net gain greater than \$1,000, the FHLBank, member and title company should not necessarily be burdened with recapturing the subsidy. Rather than apply a maximum dollar amount, we recommend permitting discretion for FHLBanks to exempt repayment based on facts and circumstances.

However, should the FHFA require some level to be set to exempt repayment we propose that an FHLBank be permitted to provide an exemption from repayment based on a percentage of the original grant rather than a dollar based maximum amount. This is due to the variety of grant amounts made by FHLBanks across the country to homebuyers and homeowners. For a grant of \$5,000, an exemption of \$1,000 is much more meaningful than for a grant of \$22,000 when looking at the relative size of the grants.

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, we believe 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. Our 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. This clarification will help the FHLBanks resolve ongoing issues with homebuyers using FHA loans as the underwriters flag the loans due to this missing language. FHLBank Dallas also notes that elderly AHP recipients are sometimes reluctant to sign AHP agreements for fear that it will harm their beneficiaries upon their death. This clarification would help to alleviate those fears.

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?

The way the current and proposed regulation is written indicates residents must have their income certified at the time of AHP application. Since recertification is not a normal requirement of the AHP, please clarify that this is not the requirement. Having to recertify incomes of residents at application could be a major cause of displacement and not preservation. The household would have to meet the targeting requirements at the time of their initial occupancy even if that occupancy was prior to the AHP application. That clarification coupled with the relocation plan for any households outside of the proposed targeting should be sufficient.

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?

There is a need to support the homebuyers that purchase homes from sponsors (such as Habitat for Humanity Affiliates) who also provide permanent financing for their homebuyers. The presence of the AHP in these transactions increases the affordability of the home by reducing the mortgage payment made by the new homeowner.

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 standpoint, 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. The need for subsidy in all cases should be driven by the qualifications of the homebuyer, not by the source of their mortgage financing.

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?

The current regulation makes it difficult for revolving loan funds to utilize the AHP. FHLBank Dallas is not aware of a proper solution to improve the regulation in a way that will facilitate revolving loan funds to access the AHP. As such, we do not recommend that the sponsor-provided permanent financing models be considered as revolving loan funds by the FHFA. Organizations such as Habitat for Humanity affiliates may be negatively impacted and likely excluded from the competitive AHP funds if they were to be treated exclusively as revolving loan funds in any future regulation.

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

It is the same advantages and disadvantages for allowing FHLBanks to impose a maximum subsidy limit per member. While the FHLBanks are permitted to impose an AHP subsidy limit per member, not all FHLBanks use it. However, it is an option to prevent undue concentration and mitigate the potential risk of concentration to a sponsor in a given application round should that become a concern for a particular FHLBank.

Subpart C – General Fund and Targeted Funds

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?

Please see the response to this question in the FHLBank System letter dated June 1, 2018

Subpart E – Outcome Requirements for Statutory and Regulatory Priorities

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

This requirement does not exist in the current regulation and we are uncertain why the FHFA feels it is necessary to impose it in the Proposed Rule. The FHLBank Dallas believes that this outcome requirement is unnecessary and overly prescriptive, and should be eliminated.

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 20% statutory requirement for 50% or below should be the minimum as it allows for an appropriate level of flexibility when a sponsor applies to the AHP in the attempt to address an affordable housing need in its community.

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?

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, supportive services or access to supportive services should not have to be a requirement for meeting this defined threshold. While we agree that empowerment services are a necessary component of these types of projects, not all of these rental project types will necessarily have nor require supportive services. In addition, requiring supportive services doesn't work for owner-occupied scattered site rehabilitation projects. Within our special needs owner-occupied rehabilitation set aside program, supportive services are not a requirement nor are they deemed necessary.

Subpart F – Monitoring

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

Yes, we believe they are reasonable. However, we recommend that additional Federal programs, such as the National Housing Trust Fund be added to the list of qualified programs.

Subpart G – Remedial Actions for Noncompliance

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

Please see the response to this question in the FHLBank System letter dated June 1, 2018. The Federal Home Loan Bank of Dallas strongly concurs with the FHLBank System comment letter.

Addendum 2 – During our review of the Proposed Rule, we considered the potential operational impact to FHLB Dallas and our members and sponsors. Below, we submit some of the questions that surfaced during this review for consideration by the FHFA. These questions highlight the operational complexities that will be associated with implementing the proposed new AHP regulation.

Proposed Section 1290.6(d): Notification of Plan amendments to FHFA. A Bank shall notify FHFA of any amendments made to its Targeted Community Lending Plan within 30 days of adoption after the date of their adoption by the Bank’s Board of Directors.

In the preamble to the Proposed Rule and during its public webinar, the FHFA stated that they will request to review (but not approve) the Targeted Community Lending Plan.

FHLB Dallas requests more clarity on these requirements. The proposed timing requirements of the Targeted Community Lending Plan poses operational concerns as noted previously in the comment letter. Potential reviews and comments and the to be determined timing of such by the FHFA may pose further delays in the implementation of actual programs by FHLB Dallas.

Q. With the additional research requirements including empirical data, how often from a practical standpoint does the FHFA contemplate the FHLBanks making substantive changes to the TCLP? If this is to be done at least annually, how from an implementation perspective, do the FHLBanks fulfill the various timing requirements of the Targeted Community Lending Plan?

Proposed Section 1290.20(c): Eligibility requirements. – (1) A Bank shall adopt and implement controls, which shall be included in its AHP Implementation Plan, for ensuring that each Targeted Fund is designed to receive sufficient numbers of applicants for the amount of AHP funds allocated to the Targeted Fund to enable the Bank to facilitate a genuinely competitive scoring process.

Q. Can the FHFA provide an example of a control as contemplated above? We are unclear as to what is meant by “control”?

Q. What is the FHFA’s definition of “sufficient” in this aspect of the proposed rule? An FHLBank cannot force a “sufficient” number of applicants to apply for a program.

Proposed Section 1291.21(b)(i): Project sponsor qualifications. 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 to in the application for AHP subsidy funding the project.”

Q. What does this mean from a practical sense? At the time of application, often, not all parties for rental projects have been identified and/or selected. Will that be a problem for the FHFA? Who does the FHFA consider part of the team as it refers to *all* team members? The role of the sponsor/developer is to select the members of the development team and ensure that they are capable of performing their duties.

Q. Does this also apply to owner-occupied projects? For example, with owner-occupied rehabilitation projects, which are typically scattered site, most of the contractors have not been selected at the time of application.

Proposed Section 1291.23(a)(2)(ii): Projects that are occupied. For a rental project involving purchase or rehabilitation that is occupied at the time the AHP application is submitted to the Bank for approval, a household must have an income meeting the income targeting commitments in the approved AHP application at the time of such submission. If the project has a plan approved by one of its primary funders to relocate the households not meeting the income targeting commitments, a household must have an income meeting the income targeting commitments upon

initial occupancy of the rental unit.

Q. FHLB Dallas requests additional clarification on this proposed change to the regulation. For those households that occupy a project at the time of AHP application, does the household income have to be re-certified at the time of application or can the project use the income documentation used at the time that the household moved-in or was re-certified by the project prior to the AHP application? It is the recertification of income at the time of AHP application that is both difficult to perform when the project is being acquired during application and, in our view, is what can potentially cause resident displacement as resident household incomes may rise over time.

Proposed Section 1291.24: Eligible Uses

Q. Cash flow from the operating pro forma could be considered when evaluating the need for subsidy. Does the proposed rule allow for cost of delivering empowerment services as an operating expense?

Proposed Section 1291.26: Approval of AHP Applications

Q. If outcome requirements are calculated following board of director approval, will alternates be factored in at a later date? When are the FHLBanks to report outcome requirements to the FHFA? Since the proposed regulation also states that alternates must be funded if funds become available within one year of original approval, does compliance to outcome requirements have to be resubmitted to the FHFA after the approval of *each* alternate?

Proposed Section 1291.26(b): Alternates. For the General Fund, the Bank's board of directors also shall approve at least the next four highest scoring applications as alternates and, within one year of approval, must approve such alternates for funding if any previously committed AHP subsidies become available.

Q. It appears that previously committed subsidy may not be re-purposed for a Targeted Fund or the Set Aside Program. Will Banks be allowed to evaluate alternate eligibility and subsidy need based upon changes and construction status of the project? Current language in the Proposed Rule implies that an alternate must be funded absent of additional threshold, need for subsidy, and readiness consideration at the time funds become available to award.

Proposed Section 1291.27: Cure of noncompliance. The proposed rule would add a requirement that before a Bank may approve a modification request, it must have first requested that the project cure any AHP noncompliance...

Q. If a project has committed all of its units to 50% or below and it has allowed a tenant to move in who is at 55% due to either a mathematical error or other facts and circumstances prior to FHLBank notification, the FHLBank is to request that the sponsor displace the tenant as its first course of action or risk regulatory criticism? When these events occur, which are typically in long term monitoring, we believe that this type of modification is appropriate to avoid displacement of any tenant under 80% of the AMI. In cases involving residents whose income is above 80% of AMI, it is appropriate to have the sponsor cure the event of noncompliance as proposed.

Proposed Section 1291.48: Outcome requirements for Statutory and regulatory priorities and Proposed Section 1291.49(a): Determination of compliance

Q. At what point in the annual AHP lifecycle are the outcome requirements calculated and submitted to the FHFA? With the set asides now included within the calculation of the outcome requirements, this causes further timing issues with respect to the outcome requirements. We are aware that some FHLBank

set aside programs run into the following calendar year. How will the FHLBanks determine compliance with outcome requirements after their competitive round has ended while the set aside program continues?

Proposed Section 1291.48: The proposed rule would provide that, every year, each Bank shall ensure that at least 55 percent of the Bank’s required annual AHP contribution is awarded under the Bank’s General Fund and any Bank Targeted Funds and Homeownership Set-Aside Programs to projects or households, as applicable, that, in the aggregate, meet at least two of the three regulatory priorities by meeting one or more of the specified housing needs included under the regulatory priority, and awarding at least 10 percent of the funds to projects meeting each of such regulatory priorities. If an awarded project meets more than one of the regulatory priorities, it may be counted towards meeting only one of them. If an awarded project meets more than one specified housing need under a regulatory priority, it may be counted towards meeting only one of those housing needs. In addition, an award to a project may not be counted towards meeting a regulatory priority unless the specified housing need that it meets is identified in the Bank’s Targeted Community Lending Plan as an affordable housing need the Bank indicated it would address through its AHP scoring criteria.

Q. If housing for the elderly is recognized as a need, can it be met via owner-occupied projects even if an owner-occupied rehabilitation project or set-aside rehabilitation household does not have access to supportive services?

Q. If a Bank awards points for special needs and includes HIV/AIDS in its definition and scoring criteria; however, the TCLP does not have the necessary data to include HIV/AIDS as a district need, then is it the FHFA’s position that the project cannot in fact be counted towards the special needs outcome requirement?

Proposed Section 1291.48(c): Regulatory priority – very-low income targeting for rental units. Each year, each Bank shall ensure that at least 55 percent of all rental units in rental projects receiving AHP awards under the Bank’s General Fund and any Bank Targeted Funds are reserved for very low-income households.”

Q. If the Bank identifies extremely low-income households as a priority and gives points for them, will extremely low-income units count towards meeting the above priority?

Proposed Section 1291.48(c) and new LIHTC-related Federal legislation

Q. The recently passed omnibus spending bill makes income averaging a permanent option for LIHTC projects, (creating a 60 percent area median income ceiling on entire developments), which allows for more mixed-income housing. As a result, developers will be able to cross-subsidize units within a development, reaching lower-income tenants because of this new provision. How will the FHLBanks be able to adapt to this new approach given that these projects may not meet the desired outcomes? Will the FHFA conduct a review/analysis of this before the rule goes into effect?

Proposed Section 1291.48(d)(1)(ii): Housing for special needs populations. The financing of housing in which at least 50 percent of the units are reserved for, and provide supportive services or access to supportive services for, households with specific special needs, such as: the elderly; persons with disabilities; formerly incarcerated persons; persons recovering from physical abuse or alcohol or drug abuse; victims of domestic violence, dating violence, sexual assault or stalking; persons with HIV/AIDS; or unaccompanied youth; or the financing of housing that is visitable by persons with physical disabilities who are not occupants of such housing.”

Proposed Section 1291.48(d)(1)(iii): Housing for other targeted populations. The financing of housing, not necessarily with supportive services, in which at least 50 percent of the units are reserved for populations specifically in need of housing, such as agricultural workers, military veterans, Native Americans, multigenerational households, persons with disabilities, or households requiring large units.

Q. Please clarify why “persons with disabilities” are listed in both sections? Do they require supportive services, and if they do not, why would the others in the special needs section require them? This duplication and the potential ability of a Bank and or sponsor to either assign or choose how a project meets this priority in one or the other section will likely lead to confusion and disagreement.

Proposed Section 1291.48 (d)(3)(i): Affordable rental housing preservation. ...affordable rental housing with energy or water efficiency improvements (meeting the requirements of 12 CFR 1282.34(d)(2). The regulation states “(2) *Energy or water efficiency improvements on multifamily rental properties. Energy or water efficiency improvements on multifamily rental properties provided there are projections made based on credible and generally accepted standards that the improvements financed by the loan will reduce energy or water consumption by the tenant or the property by at least 15 percent, and the energy or water savings generated over an improvement's expected life will exceed the cost of installation.*”

Q. How does the reduction of energy or water consumption and associated savings from such *preserve* affordable housing?

Q. Can AHP pay for these improvements or does it have to be a loan as noted in the Duty to Serve regulations?

Q. How does this apply to a homeownership project?

The language related to energy or water efficiency in this section is confusing and is intended for use with the purchase of loans by the Enterprises. As such, we believe the inclusion of this language is not appropriate for the AHP and should be eliminated from the proposed rule.

Proposed Section 1291.50: Monitoring Under General Fund and Targeted Funds and AB 2016-03 AHP: Monitoring of income eligibility and rents for shelters for the homeless and victims of domestic violence.

Q. Does the FHFA intend on incorporating Advisory Bulletin (AB) 2016-03, *Monitoring of Income Eligibility and Rents for Shelters for the Homeless and Victims of Domestic Violence*, into the proposed regulations? For long term clarity and transparency to all AHP applicants, we recommend that AB 2016-03 be incorporated into the regulation.