

June 11, 2018

Submitted Electronically

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 Boston (FHLBank Boston) appreciates the opportunity to comment on the Proposed Rule and also appreciates the extension of the comment period deadline to June 12, 2018.

FHLBank Boston works in partnership with its regional member institutions, housing development partners, and an engaged Advisory Council and board of directors to efficiently and effectively deploy AHP resources to meet the diverse, local housing needs in our district.

FHLBank Boston and its Advisory Council, in collaboration with the other ten Federal Home Loan Banks (each an “FHLBank” and collectively with FHLBank Boston, the “FHLBanks”) and their Advisory Councils, engaged with the FHFA, in accordance with the FHFA’s five year-regulatory review plan of 2013, to modernize certain aspects of the AHP. The collaborative effort resulted in specific recommendations to expand the discretionary authority of the FHLBanks to allocate, design, and implement the AHP, simplify program administration, harmonize the AHP with other funding entities, and address certain compliance requirements.

¹ 83 Fed. Reg. 11344 (Mar. 14, 2018).

² 83 Fed. Reg. 19188 (May 2, 2018).

While FHLBank Boston applauds the FHFA for undertaking a comprehensive revision of the AHP regulation, we are concerned that the Proposed Rule results in negative unintended consequences not fully taken into consideration by the FHFA. These consequences fundamentally disrupt the AHP as a model program of cooperative partnerships between the FHLBanks and their members and housing development partners in providing gap funding that leverages public and private resources in the highly complex and competitive affordable housing industry.

Although the Proposed Rule offers modest improvements for program flexibility, its overall impact increases the AHP's complexity and results in a less desirable program. On a broad level, the Proposed Rule:

- Significantly complicates how AHP funds are allocated through prescriptive outcomes requirements;
- Limits how responsive the program can be to local – and changing – housing needs through prescriptive outcomes requirements;
- Results in less transparency by introducing a complicated re-ranking process for meeting such outcomes requirements, leading to an illogical result and the potential for reputation risk;
- Misses the opportunity to simplify the administration of multifamily rental initiatives by minimizing redundancies and better coordinating the AHP with other funders of affordable housing;
- Increases the thresholds for certain targeted populations that could disadvantage certain types of AHP initiatives and potentially concentrates AHP funds in certain geographic areas; and,
- Introduces additional practices and administrative requirements on housing developers that are duplicative with other funders with no discernable value-added.

The cumulative impact of the foregoing consequences of the Proposed Rule may discourage members and housing developers from applying for AHP funds.

The FHFA has also requested comment on 41 specific questions in the Proposed Rule. Because FHLBank Boston has been in the process of trying to effectively implement Revolving Loan Funds (RLFs) since 2012 and views them as a viable option to meet needs currently not addressed through the competitive AHP, we have chosen to respond to questions 20 through 23.

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

At the request of the FHFA, FHLBank Boston organized listening sessions on July 2 and 6, 2017, to hear directly from RLFs on the challenges of applying for AHP subsidies as a precursor to, and to provide research in anticipation of, the AHP Proposed Rule. Three New England RLFs participated: Housing Development Fund, New Hampshire Community Loan Fund, and the Providence Revolving Loan Fund, along with key policy staff from the FHFA. The activities of the RLFs ranged from providing single-family mortgage financing to first-time home buyers, to financing for the conversion of manufactured housing parks, to implementing home repair loan programs.

The agenda included a general overview of the FHFA's modernization of the AHP regulation, discussion of key questions from the FHFA sent to the RLFs in advance, and dialogue around challenges with the current AHP regulation and opportunities for improvement. Each RLF responded to the questions in writing, and therefore such responses should be on record with the FHFA.

Overall, the three RLFs identified the project-based nature of the AHP in the existing regulations as the primary impediment to successfully receiving an AHP award. RLFs are financial intermediaries, not project developers, with a business model of acquiring capital and relending that capital for specific uses, such as mortgage financing or home repair loan programs. Due to the programmatic structure of their lending programs, RLF applications are unable to score sufficient points in certain categories that are tied to specific geographic locations and/or property addresses. These existing scoring categories include: donated properties, rural, economic diversity, and income targeting. The RLFs also discussed the lack of recognition in the current AHP regulations of their business model and how they operate and administer their programs.

FHLBank Boston believes RLFs can be an effective tool for meeting certain unmet housing needs in our district. One such need is subsidy funds for existing homeowners to make necessary repairs and modifications to maintain and preserve their housing. Unlike other FHLBanks, which administer owner-occupied rehabilitation programs for existing homeowners, FHLBank Boston does not due to administrative challenges. RLFs are natural conduits for this type of financing and are structured to identify eligible households, make loans, and manage the administration and risk of providing such financing.

FHLBank Boston concurs with the observations made by the RLFs, that the existing RLF provisions do not adequately support the effective use of AHP subsidies by RLFs. FHLBank Boston requests that the FHFA reevaluate the challenges and barriers identified in the listening sessions and develop additional guidance around how program-based RLFs can best compete for AHP subsidies.

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 AHP subsidy?

Please refer to our responses to questions 20 and 23. In addition as previously discussed, RLFs are program-based, not project-based. Therefore, the requirement for the RLF to demonstrate need for AHP subsidy under a lending program in the same manner as a project-based rental or homeownership initiative does not apply.

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?

The proposed outcome requirements for the statutory and regulatory priorities would not effectively facilitate the use of AHP subsidies by RLFs for the reasons discussed in our response to question 20.

Proposed 1291.48(d) would establish outcomes for three regulatory priorities: underserved communities and populations; creating economic opportunities; and affordable housing preservation. These priorities are not necessarily aligned with the structure and lending activities of RLFs, where the specific address or household is often unknown at the time of applying for AHP funds. Therefore, the RLF could not commit with certainty to the characteristics of the project or household.

For example, RLFs engaged in providing subordinate mortgage financing to first time home buyers would be unable to meet the requirements of either the affordable housing preservation or underserved communities and populations regulatory requirements. Similarly, a RLF engaged in providing home repair loans for existing homeowners, while being able to meet the requirements of the creating economic opportunity regulatory priority, would be hard-pressed to meet the thresholds in the underserved communities and populations and affordable housing preservation priorities due to their narrow definition.

Moreover, the proposed outcome requirements increase AHP complexity, determine how the majority of AHP subsidy is awarded, reduce the pool and diversity of sponsors

including RLFs, and undermine our members' and sponsors' ability to be responsive to local and regional housing needs in the district.

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

Both the existing AHP regulation and the Proposed Rule include retention requirements for RLFs that are seemingly inconsistent with the retention requirements for AHP projects more generally. Specifically, under Section 1291.5(c)(13)(iii)(B) of the existing AHP regulation, if a rental project or owner-occupied unit is sold or refinanced prior to the end of the applicable AHP retention period, the required amount of AHP subsidy shall be repaid to the RLF, and the RLF shall re-lend such repaid subsidy, excluding the amounts of AHP subsidy principal already repaid to RLF, to another project or owner-occupied unit meeting the initial lending requirements for the remainder of the retention period. This language is carried over without any substantive change in the Proposed Rule under proposed Section 1291.29(c)(2), and allows RLFs to revolve funds consistent with their business model.

Under Sections 1291.9(a)(7) and (8) of the existing AHP regulation, however, in the case of a sale or refinancing of a project or owner-occupied unit prior to the end of the retention period:

- (1) as to owner-occupied units, an amount equal to a pro rata share of the AHP subsidy that financed the purchase, construction, or rehabilitation of the unit, reduced for every year the seller owned the unit, shall be repaid to the Bank from any net gain realized upon the sale or refinancing, unless:
 - (A) The unit was assisted with a permanent mortgage loan funded by an AHP subsidized advance;
 - (B) The unit is sold to a very low-, or low- or moderate-income household; or
 - (C) Following a refinancing, the unit continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism described in this paragraph (a)(7), and

- (2) as to a rental project, the full amount of the AHP subsidy received by the owner shall be repaid to the Bank, unless:

(A) The project continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism incorporating the income-eligibility and affordability restrictions committed to in the approved AHP application for the duration of the retention period; or

(B) If authorized by the Bank, in its discretion, the households are relocated, due to the exercise of eminent domain, or for expansion of housing or services, to another property that is made subject to a deed restriction or other legally enforceable retention agreement or mechanism incorporating the income-eligibility and affordability restrictions committed to in the approved AHP application for the remainder of the retention period.

As it relates to rental projects, the foregoing rules are carried over without any substantive change in the Proposed Rule under proposed Section 1291.15(a)(7)(iii).

As summarized above, the retention rules for RLFs and the retention rules for AHP projects more generally include the same triggering event (i.e., a sale or refinancing prior to the end of the retention period). What is required upon the occurrence of such event, however, differs. Under the retention rules specific to RLFs, the RLF is authorized to revolve the AHP subsidy to another project meeting the initial lending requirements. Under the retention rules for AHP projects more generally, the RLF would need to repay all (rental) or a pro rata portion (owner-occupied) of the AHP subsidy to the Bank unless certain exceptions exist.

The question has been asked about what are the potential positive or negative impacts of eliminating the owner-occupied retention agreement requirement for RLFs. As detailed in the FHLBanks' joint comment letter in response to the Proposed Rule, the FHLBanks believe that giving the FHLBanks discretion as to whether to require a retention agreement for any owner-occupied units benefiting from AHP subsidy is preferable to eliminating the owner-occupied retention requirement. Giving the FHLBanks the discretion to require (or not require) a retention agreement for any owner-occupied units benefiting from AHP subsidy would resolve the above described inconsistency in the retention rules for RLFs and the retention rules for AHP projects

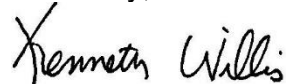
more generally only if the language from existing Section 1291.9(a)(7) is carried over in the revised AHP Regulation with an express carve-out exempting RLFs from such rules. Similarly, FHLBank Boston recommends that the FHFA resolve the conflict between proposed Section 1291.29(c)(2) and proposed Section 1291.15(a)(7)(iii) by including an express carve-out exempting RLFs from the requirements of 1291.15(a)(7)(iii). By doing so, the potential conflict that exists today in the AHP regulation will be eliminated, and RLFs will be permitted to revolve AHP subsidy consistent with their business model.

In addition to the comments noted above, FHLBank Boston approves of the specific comments in the FHLBank System AHP Proposed Rule comment letter, dated June 1, 2018, collectively developed, signed, and submitted by the FHLBanks.

Conclusion

FHLBank Boston appreciates the good faith efforts of the FHFA in proposing enhancements to the existing AHP regulation. We believe that the most effective approach to modernizing the AHP regulation would be to make marginal adjustments to the existing regulatory framework so that the FHLBanks can build upon the AHP's success to efficiently respond to regional housing needs and better harmonize program use with our members, sponsors and stakeholders. Many of these adjustments were included as part of the FHLBank System Community Investment Officer recommendations which we would be pleased to discuss further with the FHFA.

Sincerely,



Kenneth Willis

First Vice President, Director of Housing and Community Investment