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Alfred M. Pollard, General Counsel
Federal Housing Finance Agency
400 Seventh Street, SW., Eighth Floor
Washington, D.C. 20219

RE: Comments on FHFA's proposed rule changes for FHLBs' Affordable Housing Programs—
RIN 2590-AA83

Dear Mr. Pollard and your esteemed colleagues,

Thank you for the opportunity to comment on FHFA's proposed rule changes for the FHLBs' Affordable Housing Programs ("AHP"). I submit these comments on behalf of the board, staff, and members of Grounded Solutions Network.

Grounded Solutions Network is a national nonprofit membership organization of community land trusts, nonprofits, and government programs that create and preserve inclusive communities and housing with lasting affordability. Our membership includes roughly 200 nonprofits and local government programs serving 41 states, the District of Columbia, and Puerto Rico. Most of our nonprofit and government members have shared equity homeownership programs. However, many of our members also develop rental housing with lasting affordability. Additionally, over one third of our members work in rural environments.

Shared equity homeownership is a form of resale-restricted, owner-occupied housing for low- and moderate-income households that remains affordable in perpetuity. Shared equity programs make homes affordable for low- and moderate-income households by investing public resources to significantly discount the sales price. In return, the homeowner agrees to sell the home at a resale-restricted, affordable price to another lower income homebuyer in the future. Consequently, the homeowner can successfully own a home and build wealth, while the organization is able to preserve the public's investment in the affordable home permanently to help family after family. Studies have consistently found that shared equity homeownership programs:

1) help low- and moderate-income households attain *and* sustain homeownership,
2) have lower rates of delinquency and foreclosure among their owners than those in the conventional market,
3) help their homeowners build wealth from owning a stable home,
4) preserve the affordability of these homes in order to serve initial and subsequent low- and moderate-income homeowners,

5) combat the adverse impact of gentrification by preserving this stock of affordable housing regardless of whether nearby housing values escalate, and
6) foster residential economic diversity by ensuring that this stock of homes remains accessible and affordable to low- and moderate-income residents.

Ultimately, homes in shared equity programs remain affordable to help family after family access, afford, and sustain homeownership. This, in turn, helps to build inclusive communities by ensuring that this stock of homes continues to be affordable and available for the benefit of low- and moderate-income residents.

At least 20% of our members have reported receiving AHP funds in recent years, and some have reported barriers in the AHP that inadvertently make their applications for shared equity homeownership less competitive. Unfortunately, many of the proposed rule changes would increase barriers rather than remove them. Therefore, most—but not all— of our comments provide recommendations on how rule changes could be modified to better enable shared equity homeownership projects to participate in AHP. This in turn would help lower income households access affordable, high-quality, sustainable homeownership. I would first like to share our general comments and concerns related to the proposed rule changes. Then, I will go into further detail to respond to specific questions posed in the request for comment.

GENERAL COMMENTS

Simplicity, Transparency, & Flexibility Are Worsened

It is our understanding that the proposed rule is intended to simplify AHP administration and remove barriers in order to increase flexibility for FHLBs to target their AHP funds to various affordable housing needs, especially underserved or hard-to-serve projects or populations. We applaud and fully support this intent. Unfortunately, based on our review and the practical collective experience of our members, we have concluded that the proposed rule adds complexity, lessens transparency, and decreases flexibility.

Outcome Requirements: The outcome requirements of the proposed rule are likely set too high to foster more flexible uses of AHP funds. In fact, the outcome requirements as proposed will arguably drive the FHLBs to prioritize meeting outcome requirements over addressing unique needs or funding innovative projects that do not specifically fall within the statutory and regulatory Scoring Priorities. Thus, the result would be an overall reduction in flexibility for award and use of the AHP funds. If FHFA desires to include outcome-based requirements, we make specific recommendations below on how the percentages could be changed to make outcome requirements reasonable without compelling the FHLBs to invest more in certain kinds of projects.

Application Ranking: We strongly believe that the proposed ability for the FHLBs to re-rank applications in order to meet the outcome requirements is detrimental to applicants due to a lack of transparency. AHPs are very competitive, and this would essentially create an unfair moving target. We recommend clear scoring criteria for Funds without the ability to re-rank applications.

Scoring Priorities: If FHFA opts to continue using a scoring-based system, we support changing the current regulatory priorities to reflect the regulatory priorities in the proposed rule for underserved communities and populations, creating economic opportunities, and affordable housing preservation. We also support increasing the points allocated to the statutory priority of home purchase for low- and moderate-income

households. While the need is great for rental housing, we believe that specifically enabling more low- and moderate-income households to experience residential stability *and* wealth accumulation from homeownership is a crucial priority in our present climate of poor homeownership rates among people of color and a growing racial wealth divide.

Added Burden to Program Sponsors

Application Ranking: Program Sponsors are often nonprofits that expend tremendous amounts of time and effort applying for AHP Funds. It is vital for them to clearly determine the types of funds available from each FHLB and the concrete scoring criteria that will be used in order to evaluate if their projects are competitive. This is an additional reason why <u>we do not support the ability of FHLBs to re-rank applications in order for the Banks to better meet regulatory and statutory requirements</u> or goals.

Sponsor Qualifications: We also find the proposed rule changes relating to project sponsor qualifications to be burdensome and infeasible. Many times, "all affiliates and team members such as the general contractor" are not known at the time of the AHP application. <u>We recommend that the program sponsor be solely evaluated for qualifications</u>.

Supporting Homeownership

Shared Equity Models: Generally, we believe <u>the proposed rule should more substantially support homeownership, especially shared equity homeownership</u> (i.e. affordable homeownership preservation). Homeownership is the dominant source of wealth for lower income households and households of color. Ultimately, accumulating wealth and having residential stability provides the foundation for transformative outcomes for families, especially children. However, it is vital that substantial investments in affordable homeownership be utilized responsibly to maximize positive outcomes and preserve the investments in affordable housing. That is why we recommend <u>explicitly addressing shared equity homeownership in the proposed rule and altering some of the rule changes to ensure there are not barriers to supporting shared equity homes and homeowners</u> under both the Competitive Grant and Affordable Homeownership Set-Aside programs.

Statutory Priority: To meaningfully support homeownership, we believe that the "<u>Statutory Priority for Purchase of Homes by Low- or Moderate-Income Households" should be increased to at least 20%</u>. AHP is one of the dominant funding sources used to provide affordable homeownership opportunities to low- and moderate-income households through both the Affordable Homeownership Set-Aside and the Competitive Grant programs. While we absolutely agree that the affordable rental need is great across our country, there are more programs providing funding for this work. Further, the statutory intention was to ensure that more people have access to homeownership and the socioeconomic benefits associated with it.

Regulatory Threshold Requirements: Due to the outcome requirements that at least 55% go to affordable rental and at least 55% go to regulatory priorities for underserved communities and populations, creating economic opportunities, and affordable housing preservation, the FHLBs are more likely to invest in rental projects that could qualify for either of these outcome requirements. Even though shared equity homeownership is permissible under the regulatory priorities for underserved communities and populations, creating economic opportunities, and affordable housing preservation, FHLBs will likely favor rental projects that could meet various outcome requirements. Hence, <u>we support lowering minimum percentage requirements for the regulatory priorities pertaining to very low-income rental and</u>

underserved markets and populations. We also support raising the permissible percentage up to 40% for the Homeownership Set-Aside Program.

Responsibly Supporting Rental

We take issue with four aspects of the proposed rule that we believe do not account for the challenges of creating and preserving affordable rental housing.

Award Amounts: We believe that proposed rule changes on the "Need for AHP Subsidy" (p.45-48) are overly prescriptive. While we support the intention to ensure fiscal responsibility, we believe that the Banks should be granted more flexibility in underwriting and be less concerned about over subsidization, as program sponsors face tremendous difficulty compiling equity and debt to develop affordable housing. Furthermore, other funding sources may require alternative underwriting. If Banks end up stipulating that their award amounts may change based upon the debt coverage that may be obtained, this places projects at risk due to a lack of certainty in the subsidy amount (which ultimately, makes it harder to obtain debt financing). Program sponsors need to concretely know their award amounts, so they may recruit and leverage other resources. Furthermore, underwriting with very little buffer in terms of equity places projects at risk if the market changes.

Reserves: The proposed rule effectively states that Banks' project cost guidelines for capitalized reserves should be set to keep projects affordable for the 15-year retention period. AHP funds cannot be used to fund reserves; therefore, we believe that the Banks should have greater discretion on this issue and should, at times, encourage larger reserves. The primary reasons for this is because projects that commit to longer affordability terms, such as 30 years or "life of the building," should have larger reserves. Additionally, we deem it a poor use of public funds when projects could avoid recapitalization and the need for additional housing credits at year 15 simply by modestly increasing reserves on the front-end by doing lifecycle underwriting. In an environment with a growing affordability crisis and limited resources, lifecycle underwriting should be promoted as a way to create permanently affordable rental developments and to free up tax credits for new developments rather than preservation.

Thresholds for Underserved Communities & Special Populations: The proposed changes to the threshold amounts needed for projects to qualify for "Underserved Communities & Populations" should not be raised from 20 percent to 50 percent under any category (i.e. housing for homeless households, housing for special needs populations, housing for other targeted populations, rental housing for extremely low-income). Increasing the project-by-project thresholds will likely have the opposite effect of what was intended, namely that less affordable housing for underserved communities and populations will be produced. Because these populations are tremendously hard to serve and projects are extremely costly due to the level of subsidy and services needed, the thresholds should not be higher than 20%. Maintaining lower thresholds will enable mixed-income development projects that are able to subsidize more costly units serving lower income households or those with special needs by offsetting the costs with units occupied by higher income households, which is financially beneficial and supports residential economic diversity goals.

Expanding Underserved Communities & Special Populations: We support the addition of formerly incarcerated persons; victims of domestic violence, dating violence, sexual assault or stalking; and unaccompanied youth to the list of special needs populations. Formerly incarcerated individuals face extreme barriers in the housing market due to many landlords or public programs banning tenants with

histories of convictions. However, securing safe and decent housing is foundational for success after incarceration.

RESPONSES TO FHFA QUESTIONS

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

We generally support the ability for Banks to establish Targeted Funds, and we are very hopeful that Banks will establish Targeted Funds for Affordable Housing Preservation to support the development of shared equity homeownership. Due to the nature of shared equity homes being permanently affordable and serving an average household AMI of 63%, these projects require more upfront investment than traditional down payment assistance grants or loans. That is because shared equity homes must be priced substantially below market-rate housing, and the programs aim to preclude the need for mortgage insurance. Hence, shared equity homeownership projects can often score lower when Banks allot points for lower subsidy/unit requests. Unfortunately, this fails to acknowledge that one shared equity home serves an endless number of households because the home remains affordable for every subsequent low- or moderate-income owner of that home. This is in stark contrast to down payment assistance programs, which help just one household. Targeted Funds could accommodate the uniqueness and important impact of shared equity homeownership.

4. What are the benefits of the proposed expansion of the contents of the Targeted Community Lending Plans and their linkage to the AHP Implementation Plans?

The affordable housing need is great and far greater than what AHP can address. Banks' districts are very large, and there will be distinct and unique housing needs by geography. Hence, we want to ensure that this proposed rule change is not adding burden to the Banks for illustrating housing needs just for the sake of it. In fact, we have some concerns that existing data or reports from which Banks pull to make an empirical case may inadvertently bias where and in what the Banks invest. For instance, there may be more research available on urban markets. Alternatively, the Banks may end up setting priorities based upon quantitative estimates, which will undoubtedly reveal that the need is greatest for the lowest income populations. However, we also know that helping families step up into homeownership has intergenerational transformation through wealth accumulation. Consequently, we do not recommend that Banks must set priorities by quantitative need by group or income level, and while we support an empirical basis for an investment strategy, we question whether incorporating a burdensome empirical research component will ultimately prove very useful or appropriately drive investments since we all know that the needs across income levels, special populations, and tenure type will remain unmet.

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

We are addressing these three questions together because we believe that different levels of investment should be treated differently.

We support doing away with retentions agreements. These agreements cause unnecessary administrative burden, especially relative to the small amount of funds that are typically owed in the instances when owners sell their home before the retention agreement has expired. We agree with FHFA's assessment that flipping has not posed a meaningful problem to date; however, we do believe that larger down payment grants (e.g. $22,000) could increase that risk. Shared equity homeownership programs deter flipping through legal mechanisms and by supporting lower income homeowners and "stewarding" homes. Therefore, we believe that barriers should be removed for Affordable Homeownership Set-Aside Program funds to support buyers of homes that enter into shared equity homeownership programs, which we explain in greater detail below. Retention agreements are a barrier for Affordable Homeownership Set-Aside Program funds to be used to support homeownership because the obligations for repayment by the homeowners means that these funds cannot be used effectively as subsidy to help create the shared equity home. Hence, doing away with retention agreements would solve this problem.

Next, we support increasing the subsidy limit per household to $22,000, but we strongly encourage that the final rule endorses that Banks provide larger subsidies (e.g. subsidies greater than $20,000) only to buyers of shared equity homes whenever this is possible. In some high-cost markets that do not have shared equity homeownership programs, it may be necessary for Banks to provide larger down payment assistance amounts to those low and moderate income homebuyers. However, we recommend that in markets with shared equity homeownership programs, the Banks ensure that large subsidy amounts are provided to buyers to work with the shared equity program to purchase a home either on the market or in the programs pipeline. Why? Resources for affordable housing are so scarce and the need is so great, that we believe we collectively have an obligation to ensure that funds are being used as prudently as possible, with the most impact possible. Therefore, Banks should be encouraged to support the production and preservation of shared equity homes with Affordable Homeownership Set-Aside Program funds.

In fact, we recommend that the final rule increases the maximum subsidy limit for Banks working with shared equity homebuyers to $50,000. Why? Shared equity homes require more upfront subsidy in order to effectively "buy down" the price of a home to a price that a lower income buyer can afford. The average shared equity homebuyer has an annual income at 63% of the area median income, so they are lower income households than those served by modest down payment assistance programs. This one-time public investment makes homeownership affordable, not just for the first homebuyer, but for every subsequent lower income owner of that home. Hence, the subsidy is never lost; rather, it serves family after family who resides in that affordable home. This is in stark contrast to a down payment assistance grant, which only helps one family and does not keep the home affordable after that family sells the home.

So how would this work? Acknowledging that the Affordable Homeownership Set-Aside Program is structured to provide down payment assistance from FHLB members directly to low- and moderate-income homebuyers, the FHLB member would still make a down payment assistance loan to the buyer of a home that will become shared equity. In fact, the FHLB member can refer lower income households that are having trouble purchasing homes in the market to the existing shared equity homeownership program. After the program completes pre-purchase education on how shared equity works and pre-qualifies the homebuyer for the program, the prospective homebuyer can notify the Bank of their interest and get pre-qualified for a mortgage.

At that time, the Bank should be allowed to set aside between $20,000-50,000 for at least 90 days as the homebuyer works with the shared equity homeownership program to find a home in the market (or in the program's pipeline) that they can afford with their first mortgage and Homeownership Set-Aside Program funds. Once the homebuyer is ready to close, the Bank would provide the $20,000-50,000 of funds as "down payment assistance," but the homeowner and the shared equity homeownership program would have a legal agreement that stipulates those funds and some portion of the home's appreciation in value will stay in the home upon resale so that the affordable homeownership opportunity is paid forward to another lower income household.

Upon the first sale, the home would be made affordable to the homeowner due to the AHP funds. However, upon the second sale, those funds would stay with the home, as the seller would sell the home at a below market-rate price per the resale formula set forth in the legal agreement between the shared equity homeownership program and the homeowner. Many shared equity homeownership programs across the country have used down payment assistance dollars in this way to help create subsidy for the shared equity home. Homes in these programs continue to serve family after family, effectively ensuring that original down payment assistance endlessly helps lower income households enter homeownership and build wealth.

The reason that we propose the home be sold at below market-rate upon the second sale is because that is the tried-and-true shared equity homeownership model. When homes are sold below market-rate, the shared equity homeownership program may advocate for equitable taxation policies, meaning that homeowners pay taxes only on the home value for which they could see financial returns as stipulated in the resale formula. This will also standardize shared equity homeownership program practices and align well with the duty-to-serve program.

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

We believe that there is benefit in allowing Banks to impose a maximum subsidy limit per project sponsor to ensure that smaller nonprofits can still be competitive for AHPs. This is particularly important in places where nonprofits may be under-resourced and are still working hard to accomplish their mission.

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?

As mentioned in our general comments, we do not support re-ranking to meet outcome requirements. This sets up an unfair moving target for program sponsors who expend a great deal of time and resources to compete for AHPs.

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?

As stated in the general comments, we firmly believe that this requirement should be at least 20%. AHP is an important opportunity to contribute to rectifying the historical wrongs of the past related to discriminatory lending practices and racial and economic exclusion from wealth-building opportunities. We believe that AHP can advance CRA goals and should advance affordable homeownership opportunities for low- and moderate-income households.

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?

Generally speaking, we believe that the proposed rule will compel the Banks to expend their AHP funds on low-income and very-low income rental. While we understand there is great need to serve households earning below 50% or 30% of AMI, affordable housing at this level is more expensive to subsidize. In some markets, a better strategy may be to increase the supply of housing affordable to households between 50 to 80% of AMI in order to get more units and relieve built-up pressure. Additionally, the 50% AMI levels may constrain project sponsors from layering other funding sources, which may need to be leveraged to make projects work. Ultimately, we believe that the Banks should have greater discretion and that, overall, the outcome-based thresholds are set too high.

29. Is the proposed increase in the minimum threshold from 20 to 50 percent for the number of units reserved for homeless households appropriate?
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?
31. Is the proposed 50 percent minimum threshold for the number of units in a project reserved for other targeted populations appropriate?

We will respond to these questions together, as our input is the same for all of them. No, we do not believe that the minimum threshold should be increased from 20% for a project to qualify under "Underserved Communities & Populations." As we explain in our general comments, these projects are extremely costly due to the level of subsidy and services needed. Consequently, the thresholds should not be higher than 20%, as this can also enable mixed-income development projects that are able to cross-subsidize units serving different income levels, which is financially beneficial and supports residential economic diversity goals.

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

Yes, we agree that these are significant housing priorities and should be included in the regulation. In particular, we applaud the inclusion of affordable housing preservation and residential economic diversity as these align to the mission of Grounded Solutions Network and our members' work. We appreciate the alignment with the duty-to-serve program, which may increase access to financing but does not solve the need for subsidy.

Shared equity homeownership cannot proliferate unless there is access to subsidy dollars, which are needed to buy-down the price of a home to an affordable purchase price. The home will then forever remain affordable to serve multiple lower income home buying families, due to the self-sustaining model. We believe that additional rule changes can remove existing barriers for shared equity homeownership projects to obtain AHP funds as well as provide Banks with the option to prioritize shared equity homeownership through Target Funds, scoring in Competitive Grants, and the Homeownership Set-Aside.

As mentioned in our General Comments, we support the inclusion of formerly incarcerated persons; victims of domestic violence, dating violence, sexual assault or stalking; and unaccompanied youth into the "Underserved Communities and Populations."

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

We support that the final rule explicitly includes "shared equity homeownership" under affordable housing preservation for homeownership, and we support the inclusion of "residential economic diversity" as defined by duty-to-serve.

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

No, we believe that the current scoring system has inadvertently disadvantaged certain affordable housing projects, including but not limited to, shared equity homeownership and affordable rental projects designed for lasting affordability. Therefore, we do believe that change is warranted. However, we do not believe that the outcome requirements, as designed in the proposed rule, are appropriate. While we do support the regulatory priorities for underserved communities and populations, creating economic opportunities, and affordable housing preservation, the thresholds for these regulatory priorities and for the regulatory priority for very low income targeting for rentals units should be substantially lowered to provide Banks with greater discretion and flexibility.

Thank you for the opportunity to provide these comments. Grounded Solutions Network supports FHFA's intentions to make the AHP more flexible, responsive to underserved markets, and easy to administer. However, we believe that substantial changes to the proposed rule are necessary to reach these goals. I would be pleased to provide additional information on the many benefits and low risks of shared equity homeownership and permanently affordable housing models to ensure that these programs are prioritized, rather than inadvertently excluded from accessing FHLBs' AHPs.

Sincerely,

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