June 12, 2018

Submitted Electronically

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

Re: Comments/RIN 2590-AA83; Affordable Housing Program Proposed Rule
Federal Home Loan Bank of Indianapolis (FHLBank Indianapolis)

Dear Mr. Pollard:

The FHLBank Indianapolis appreciates this opportunity to comment on the proposed amendments to the Affordable Housing Program regulation[1] (Proposed Rule) issued by the Federal Housing Finance Agency (Agency). In commenting on the Proposed Rule, we reiterate our commitment to our affordable housing mission and our desire to provide maximum affordable housing benefits to our district.

We offer the following comments and observations to address certain concerns and seek clarifications with respect to the Proposed Rule. We provide this comment letter in conjunction with a comment letter submitted on behalf of all eleven Federal Home Loan Banks (FHLBanks), including FHLBank Indianapolis. The purpose of this separate comment letter is to highlight specific areas of concern to us in the Proposed Rule and their potential impact on how we administer our Affordable Housing Program (AHP). Additionally, our Affordable Housing Advisory Council (AHAC) is submitting a separate comment letter.

We have organized our comments around eight specific concerns. Following a general discussion and recommendations section for each issue, we have provided specific responses to those numbered requests in the Preamble to the Proposed Rule.

Discussion

1. ***The outcome-based requirements contained in the Proposed Rule's regulatory priorities section, § 1291.48(d), increase the complexity of administering the AHP and substantially and negatively impact our ability to tailor our competitive program to the needs of our district.***

General Commentary and Recommendations

The outcomes requirements contained in Proposed Rule § 1291.48 would replace the statutory and regulatory scoring system of the current regulation. FHLBank Indianapolis recommends retaining a modified version of this scoring system instead of adopting the outcomes requirements, still within the statutory priorities of the Federal Home Loan Bank Act[2] (Bank Act).

[1] 83 Fed. Reg. 11344 (March 14, 2018).
[2] 12 U.S.C. § 1430(j)(3).

The proposed new requirement that a certain percentage of all awarded projects[3] must satisfy the statutory priorities *and* the regulatory priorities listed in the Proposed Rule jeopardizes the FHLBanks' opportunity to create their own scoring methodologies for their General and Targeted Funds in Proposed § 1291.25(a). Despite an FHLBank's Targeted Community Lending Plan (TCLP) setting scoring priorities responsive to its district's needs, the outcome percentage thresholds in the regulation effectively remove this desirable flexibility by establishing outcomes requirements. The impact of these outcomes requirements is potentially magnified because an awarded project that qualifies under more than one statutory or regulatory priority can be counted toward only one priority.[4] Moreover, the outcomes requirements could disfavor other impactful affordable housing projects that do not fit neatly within these priorities, such as new construction owner-occupied housing or adaptive reuse housing.[5]

Increasing the complexity of the competitive program with outcomes requirements also increases the FHLBanks' operational risks, because of the likelihood that these requirements will be implemented incorrectly. Outcomes-based requirements also increase the reputational risk that the FHLBanks may incur with project sponsors (and, in turn, members), because the process associated with these requirements makes the awarding of projects appear arbitrary, less predictable and more complex.

FHLBank Indianapolis recommends utilizing a modified scoring-based system that addresses the statutory and regulatory priorities required under the Bank Act without imposing strict percentage-based outcomes requirements.

Responses to Specific Agency Questions Relating To This Topic

#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 noted, we strongly prefer that an all-percentage-based outcomes requirements be eliminated altogether and replaced with a modified scoring system. However, if the Agency decides to retain an outcomes requirement in the Final Rule, we believe that a ten percent allocation of total AHP funds is sufficient to establish the desired prioritization. The greater the mandatory allocation percentage, the greater the likelihood of operational, compliance and reputational risks created by these outcomes requirements.

#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 Area Median Income (AMI) appropriate?

FHLBank Indianapolis does not believe that the proposed outcome approach for income targeting is useful; rather, we support a modified scoring-based system as detailed in the System comment letter. If the outcomes requirements are retained in the Final Rule, we prefer the current regulatory threshold that requires at least 20% of the rental units to be affordable to residents at or below 50% of the AMI.

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[3] At least 55 percent of total AHP funds allocated, in the aggregate, to the FHLBank's General Fund and any Targeted Funds in the case of the government-owned properties and project sponsorship statutory priorities, and at least 10 percent of required annual AHP contribution allocated to the General Fund, Targeted Funds, or any Homeownership Set-Aside Programs, in the case of the low- or moderate-income household home purchase statutory priority. Proposed § 1291.48(a) and (b).

[4] Proposed § 1291.48(a) and (d).

[5] Using Homeownership Set-Aside Funds to fulfill regulatory outcomes requirements under § 1291.48(d) does not solve this problem. The outcomes requirements make this program difficult to administer for FHLBank staff. In addition, these outcomes requirements reduce transparency and predictability for applicants.

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

Although we favor a scoring-based approach rather than a percentage-based outcomes requirement, the scoring system in the current regulation does not, in and of itself, provide sufficient flexibility to address district-specific housing needs. The Final Rule should replace the outcomes requirements with a scoring-based methodology that increases the FHLBanks' discretion beyond what is available in the current regulation (*e.g.*, defining scoring categories differently for homeownership vs. rental applications).

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

Please see our response to question #35 above. We also suggest that Targeted Funds be retained in the Final Rule.

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

The FHLBank System recommends the Agency adopt a scoring-based methodology that addresses the statutory and regulatory priorities required under the Bank Act. In addition, FHLBank Indianapolis supports utilizing each FHLBank's Affordable Housing Advisory Council (AHAC) as an expert resource to help determine housing needs and priorities for its district and to suggest scoring criteria for inclusion in its AHP Implementation Plan by the Bank's AHP staff.

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

The FHLBank Indianapolis recommends the Agency adopt a scoring-based methodology that addresses the statutory and regulatory priorities under the Bank Act and allows the flexibility to allocate other points to meet district needs.

Additional Request For Comment #1[6] – Would the corrected calculation [relating to the inclusion of set-aside funds as part of the 55 percent annual allocation to §1291.48(d) regulatory priorities] provide sufficient flexibility for the Banks to provide AHP funds to the housing needs in their districts?

The corrected calculation would not provide sufficient flexibility to address district-specific housing needs.

Additional Request For Comment #2 – Would other changes to the outcome calculation be appropriate, such as decreasing the percentage of the Bank's annual AHP contribution required to meet the regulatory priorities to less than 55 percent, provided that at least a majority of the Bank's annual AHP contributions is awarded to certain regulatory priorities established by FHFA?

In addition to supporting a revised scoring approach, as described above, we support an approach that allows points to be awarded for a single project in more than one priority category. We favor this approach because many affordable housing projects are mixed-use and mixed-economic-demographic;

[6] Additional Requests For Comment #1 through #3 from 83 Fed. Reg. 19189.

project developers should be incented and rewarded for developing projects that serve multiple diverse populations.

For example, FHLBank Indianapolis received advice from its AHAC regarding a difficulty developers face in preserving affordable senior housing in Detroit, Michigan. If a developer is primarily incented to prioritize rehabilitation and development of existing affordable properties for households with less than 80% AMI, some of these properties may no longer be suitable for the seniors currently occupying the units. The better solution is to develop a scoring system which rewards developers who structure their projects to meet new identified district priorities, preserve existing affordable housing structures whenever possible, and develop projects that are focused on a specific housing need that is supported by an independent market analysis.

Additional Request For Comment #3 – Would adding a regulatory priority that is specifically focused on homeownership increase opportunities for the Banks to include awards made in their Homeownership Set-Aside Programs towards meeting the regulatory priorities?

It is difficult to answer this question without knowing the specific focus of the proposed "regulatory priority" for homeownership. As noted, however, we prefer to move away from outcomes requirements entirely and toward a flexible score-based system for competitive awards with a discretionary ability to award set-aside grants.

2. Failure to meet the outcomes requirements may result in re-ranking projects after an initial application round has been completed, which would increase member and sponsor uncertainty, reduce transparency, and increase our reputation risks.

General Commentary and Recommendations

Scoring criteria should be published at the outset of a project scoring round so project sponsors and members can rely on them when preparing applications. Re-ranking projects to meet outcomes requirements has three key negative effects on an FHLBank's ability to implement the competitive AHP subsidy. First, it substantially increases the operational and compliance risk, as well as the administrative burden on FHLBank personnel charged with evaluating and scoring applications.

Second, it eliminates an FHLBank's discretion to consider other important threshold elements of its scoring methodology, such as a project's other funding sources, need for subsidy, or readiness to proceed toward completion. This limitation may impair our ability to judge a project's suitability for inclusion in an award funding round.

Third, re-ranking significantly reduces the transparency of the project application process. A competitive application prepared in reliance on clearly-defined and achievable scoring criteria may be denied funding if we do not receive sufficient applications from other sources to allow us to meet our outcome requirements. This result would increase our reputational risk.

Until all applications for a given round have been submitted, an FHLBank cannot know what the "mix" of different project types will be or if there are sufficient qualifying applications in a given category to meet that category's outcomes requirements. Consequently, an FHLBank has no practical way of guiding project applicants or giving them a reliable indication of whether their applications are likely to be considered for a competitive grant. Many project sponsors and members use AHP as a source of "gap" funding with other funding sources to fully finance a project, and AHP grants are usually the last committed source to move a project forward. However, the unpredictability and lack of transparency

resulting from re-ranking projects and the complexity of the outcomes-based approach may reduce the number of sponsors who are willing to undertake the application process. Additionally, FHLBank members invest considerable time in vetting applicants and reaching construction and permanent financing decisions. Members may be less willing to support applications that lack certainty and clarity through the evaluation process. We expect project sponsors and members would pursue more predictable funding opportunities to close a development gap rather than using AHP.

Accordingly, we recommend the Agency eliminate the outcomes and re-ranking requirements and preserve a predictable scoring system for project acceptance prioritization.

3. ***Allowing project applicants to apply to both the General Fund and one or more Targeted Funds in the same funding round and with the same project application would further reduce certainty for applicants and increase operational and compliance risk and administrative burdens on AHP staff, because it would force staff to determine unilaterally whether an application is better suited to be ranked under the General Fund or a Targeted Fund.***

General Commentary and Recommendations

If an FHLBank has elected to establish Targeted Funds, proposed § 1291.26(d) would allow applications to be submitted to more than one Fund.[7] Targeted Funds must be authorized in an Implementation Plan, which must first be approved by the FHLBank's Board of Directors in consultation with its AHAC.[8] An Implementation Plan may be amended only after review by the AHAC,[9] adoption by the full Board, and publication.

Proposed § 1291.13(b)(3) and (b)(4), however, would require an Implementation Plan to contain scoring and tie-breaking criteria, re-ranking methodologies, and policies for deciding under which particular Fund to approve a project that has scored high enough to be approved under multiple Funds. Including these details in an Implementation Plan that is not easily amended could reduce an FHLBank's ability to effectively implement the parameters of the published Implementation Plan. For example, multiple applications submitted by project sponsors to more than one Fund would require staff to re-rank such projects in order to ensure that the outcomes requirements of § 1291.48 are met across all Funds. In practice, this re-ranking process would require staff to make unilateral decisions about which Fund – General, or one of the Targeted Funds – is best suited to meet the needs of a particular application, solely because awarding a subsidy under a particular Fund would cause the Bank to violate the outcomes requirements. This approach would disrupt the intended purpose for which Targeted Funds were envisioned, *i.e.*, giving the FHLBanks the flexibility to create funds which address unique, district-specific needs.

FHLBank Indianapolis proposes that a project applicant be required to determine at the time of application under which of the Funds – the General Fund, or one of the Targeted Funds – it intends to submit its application. In turn, the FHLBank would consider the application according to the scoring and ranking criteria established for that particular Fund only. This approach would clarify the scope of the competitive requirements for the applied-for Fund, and thereby increase transparency and predictability for Fund applicants.

[7] Proposed § 1291.20(b).
[8] Proposed § 1291.13(b) [initial paragraph].
[9] Proposed § 1291.13(c)

Responses to Specific Agency Questions Relating To This Topic

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

Allowing Targeted Funds would permit the FHLBanks to increase responsiveness and add flexibility as they address district-specific affordable housing needs. However, much of this benefit would be negated if the FHLBanks must disqualify certain Targeted Fund projects in order to meet outcomes requirements. Moving Targeted Fund projects to the General Fund would create operational and compliance risks by moving and re-scoring applications in Funds for which the project may not be ideally suited.

#3 – Would the proposed expansion of the contents of the Targeted Community Lending Plans impede the Banks' ability to respond to disasters through the AHP?

Yes. TCLP timing, data collection and documentation requirements would prevent us from using AHP for disaster relief. Currently, we use the Homeownership Set-Aside Disaster Relief Program (DRP) to provide grant assistance directly to affected homeowners. However, under the Proposed Rule's TCLP requirements, no comparable program could be established in the competitive AHP, because any such fund would need to be created as a Targeted Fund. It would thereby be subject to the multi-year phase-in requirements, the lead-time requirements for approval of Targeted Funds in the TCLP and the AHP Implementation Plan, and the requirement to gather and assess market research and empirical data. Typically, for housing needs arising out of a disaster or other sudden event, data is not available within the short time before remediation projects must begin. Homeowners affected by disasters often need funds quickly in order to make repairs or rebuild. Practically, this means that AHP could not be used as a disaster resource. TCLP implementation requirements would be too slow and rigid to help the affected communities.

#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?

A TCLP that can be both de-coupled from the existing outcomes requirements and further revised to add flexibility of review and approval which is not tied to a strict six-month or twelve-month phase-in or approval of a Targeted Plan would have some utility. Such a plan would provide guidance about particular identified district needs, thereby increasing transparency into the process of scoring such needs for subsidy applicants, and would facilitate enhanced input from the AHAC.

4. The Proposed Rule undermines the role of the AHAC and needlessly increases burdens on the full Board.

General Commentary and Recommendations

A number of provisions in the Proposed Rule prevent the FHLBank's Board of Directors from delegating activities to a Board committee, FHLBank officers or staff.[10] Currently, the FHLBank Indianapolis AHAC meets at least annually with the full Board of Directors and quarterly with representatives of the Board's Affordable Housing Committee (AHC). The FHLBank and the AHAC believe that this schedule is optimal, because the quarterly meeting allows the AHAC to work on a frequent basis with those

[10] The Proposed Rule does permit the Board to engage in limited delegation in one particular circumstance; Proposed § 1291.14(f) allows the Board to delegate to one of its committees, but not to FHLBank officers or employees, the responsibility to appoint members of the AHAC.

directors who are most consistently informed about, and specialize in, Affordable Housing matters.[11] In turn, the AHC keeps the Board informed of AHAC developments.

The additional governance requirements set forth in proposed § 1291.12(e) and § 1291.13(b) (regarding the adoption of policies and of the Implementation Plan by the full Board) are neither necessary nor desirable. Each year, a subcommittee comprised of members of the AHAC and the AHC works with our staff on the Implementation Plan. All AHAC and AHC members, however, are invited to participate. In a joint session of the AHAC and the AHC, the Implementation Plan is then presented to the full Board for approval. This process is effective and favored by the Board because those directors with the most relevant experience are deeply involved in the development of the Implementation Plan. Engaging the full Board at every step of the Implementation Plan development process would make it more difficult to achieve consensus around a focused and impactful Implementation Plan in a timely, efficient manner.

Therefore, we recommend that the Agency retain the current provisions permitting delegation of certain duties by the full Board of Directors to informed and engaged subcommittees, which would in turn provide recommendations to the entire Board on key issues.

5. AHP subsidy application processes should not be expanded.

General Commentary and Recommendations

The current regulation's capacity and qualification review processes are effective as-is and should not be changed. Currently, the FHLBanks monitor the capacity and qualifications of project sponsors to complete their projects, but do not extend that monitoring or due diligence to third parties, such as development partners, general contractors or subcontractors.

FHLBank Indianapolis already requires certifications of compliance under the Suspended Counterparty Regulation, both in the initial project application and at the time disbursement is made. This certification is made, however, only with respect to the project sponsor, not with each of its related parties or contract counterparties. Requiring this information to be collected and certified to at the time of initial application would substantially increase the paperwork and investigative burden on the project sponsor, because it would require the sponsor to make inquiries regarding the status of affiliates and contractors based on information that may change as the project progresses. Such a requirement may also create unworkable situations and cause the project sponsor to provide incomplete or inadvertently misleading information because the sponsor has not yet fully identified the involved parties, or because these parties may change.

A better, more realistic approach is that currently in effect which requires the sponsor to certify as to its capacity at the time of application, and to allow the FHLBanks to retain their current processes to monitor project progress and sponsor performance. Additionally, we recommend that any certifications of Suspended Counterparty Regulation compliance continue to be required at the time of fund disbursement.

Responses to Specific Agency Questions Relating To This Topic

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

[11] Similarly, FHLBanks are required by regulation, including 12 CFR Part 1239, to maintain Audit and Risk and other committees to enable the full Board to take advantage of the expertise of those committees' members. For the same reason, the Proposed Rule should allow the Board to rely on the AHC.

As noted, we do not believe that additional due diligence and monitoring at the time of application would be sufficiently beneficial to the process, because the information disclosed in the initial application process may materially change as the project progresses toward completion. The initial review of all scoring commitments made in the application (including rent and household income commitments) is part of the sponsor accountability that is crucial to maintaining the integrity of the AHP. The initial and continuing monitoring review process serves as a control that mitigates a need for modifications later in the process and helps reduce risk and misuse of the subsidy.

6. ***Instituting minimum mandatory thresholds on homeless and other special needs populations would not align with widely-supported current housing policy, and could disincent project sponsors and developers who use project subsidies as a tool to develop mixed-economic-use projects by cross-subsidizing different units in the same construction project.***

General Commentary and Recommendations

Increasing the minimum requirement of funds allocated to homeless or special-needs populations from 20% to 50% runs counter to housing policy that promotes integrated, diverse housing options for vulnerable populations. Focusing to a much greater extent on units reserved for the homeless concentrates poverty, carries the risk of perpetuating a cycle of poverty, and is more restrictive and burdensome on developers. This emphasis further increases risks that developers will decline to pursue housing opportunities that support any special needs populations. Typically for developers, housing vulnerable populations predominantly or exclusively results in higher operating costs over time than mixed-use and income diverse projects, due to the higher wear and tear and general maintenance expense associated with these vulnerable populations.

Currently, the FHLBank Indianapolis awards points based on a sliding scale that is proportionate to the number of special needs reserved units relative to the total number of units in the project. This approach has worked well for us. An outcome-based requirement that raises the threshold of units reserved for homeless populations from 20% to 50% of the total units would require those units to be held open and vacant for qualified homeless households, regardless of whether there is a local homeless population available to fill the reserved units. This proposal would also require the developer to provide on-site case managers and other support specifically oriented toward serving the homeless population, which tends to increase the total costs associated with operating and maintaining the property. As a result, project sponsors may question the value of AHP funds to meet their project needs.

Because state housing finance agencies do not draw the same distinctions between homeless and other special needs populations as are created under the Proposed Rule, developers often conceptualize their projects with an eye toward servicing all special-needs populations equally. In past situations where our AHP Implementation Plan distinguished between points awarded for homeless units and those awarded for other special-needs units, the sponsor was required to choose in which category to seek the points – homeless or special needs, but not both. Therefore, increasing the total threshold which must be devoted to homeless-only units may make it harder to receive funding from other agencies for the same project.

Responses to Specific Agency Questions Relating To This Topic

#29 – Is the proposed increase in the minimum threshold from 20 to 50 percent for the number of units in a project reserved for homeless households appropriate?

No, the current minimum threshold of 20% with respect to homeless-reserved unit requirements should be retained. Any strict system of ranking or selecting competitive subsidies based solely on a project's ability to meet one or more defined priorities, without consideration of other elements of importance to project developers[12], risks deterring project sponsors and developers from seeking AHP subsidies in the first instance. Developers use the FHLBanks' AHP programs as "gap" financing, with the majority of financing or subsidies coming from state housing agencies, tax credit programs, or other sources with their own priorities. Effectively removing such projects from consideration for AHP subsidies, due to mandatory minimum thresholds, would potentially exclude many projects that might otherwise squarely and effectively advance our affordable housing mission.

#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?

No. See the comments to question #29, above, which are equally applicable to thresholds applied to other special needs populations.

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

No. See the comments to question #29, above.

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

No. The proposed 20% minimum threshold for the number of units reserved for extremely low-income households may preclude applicants from seeking AHP funding if they cannot identify a sufficient number of qualifying households. In addition, a 20% minimum threshold may be too prescriptive for smaller projects because it may make the project financially infeasible. The FHLBank Indianapolis introduced opportunity targeting in its 2018 AHP Implementation Plan. After much discussion with our AHAC, we decided to award points to projects reserving at least 10% of the total units (up to 25% of the total units) in the project for households whose income is at or below 30% of the AMI.

#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?

Our strong preference is to move away entirely from a prescriptive outcome-based system of determining qualifications, in favor of the approach advocated by the FHLBank System in its separately-filed joint comment letter. However, if the Agency ultimately requires an outcome-based approach, we do not object to the identification of the three proposed regulatory priorities. At the same time, the regulation should also permit each FHLBank's AHAC to identify additional needs for similar treatment.

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

[12] Such elements include a developer's ability to create a project with maximum highest and best economic uses or to apply for multiple types of subsidies applicable to different populations housed within the same unit.

The specific housing needs identified under each regulatory priority accurately capture many of the categories of projects which apply to the respective priorities. We do not object to their inclusion in the regulation as illustrative, but non-exhaustive, examples. However, the regulation should also establish a mechanism allowing the FHLBanks (*e.g.*, through their AHACs) to identify additional needs in their districts that also would qualify under each of the listed priorities.

In addition, the Final Rule should expand the definition of specific affordable rental housing preservation programs identified under § 1291.48(d)(3)(i) to include those created under the AHP itself, as well as other expiring-subsidy programs such as the HOME and CDBG programs and other HUD and USDA programs.

7. The individual FHLBanks should decide on a market-by-market basis whether to require retention agreements.

General Commentary and Recommendations

We commend the Agency for its thoughtful consideration of empirical data about "flipping" in the Preamble to the Proposed Rule.[13] The absence of identified incidents, however, may be due in part to such factors as the lack of rapid price appreciation in neighborhoods primarily composed of affordable housing. In any event, the question of whether "flipping" is likely to occur is not one that can be answered the same way in all neighborhoods or markets, even within one FHLBank district. Like other factors relating to pricing in local housing markets, the prevalence of "flipping" is affected by several considerations, including location and overall desirability of the neighborhood, access to non-housing-related neighborhood services, housing supply in other areas and at other price points within the same local market, and so on. Moreover, in some areas the lack of observed "flipping" activity may be a direct or indirect result of the same retention agreements that the Proposed Rule now seeks to eliminate.

Rather than imposing a uniform requirement that applies equally to all districts across the country and which may result in exploitation of the AHP subsidy by some homeowners in high-demand neighborhoods, we suggest the better solution would be to grant the FHLBanks the discretion and authority to make their own determinations as to when retention agreements will be required. As a way to mitigate impact on homeowners from the potentially disparate use of retention agreements, the length of mandatory retention could also be shortened, from the current five-year time frame applicable to owner-occupied projects to two or three years. This would be a sufficient period in most cases to maintain neighborhood cohesion while not unduly penalizing homeowners who must relocate for reasons unrelated to a desire to monetize the value of their property.

Responses to Specific Agency Questions Relating To This Topic

#6 – What are the advantages and disadvantages of an AHP owner-occupied retention agreement, would eliminating it impact the Agency'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?

See the general comments above regarding advantages and disadvantages of the retention agreement and FHLBank Indianapolis' recommendation to allow FHLBank district discretion.

[13] 83 FR at 11351-52.

#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?

We support the increase in caps and the escalation provision proposed for Set-Aside grants. However, different programs carry different risks, so the FHLBanks should have discretion to require retention agreements in some cases. The FHLBank Indianapolis Accessibility Modifications Program (AMP), for example, allows successful applicants to use Set-Aside grant funds for property construction to add accessibility features, which may increase the overall value of the property and therefore increase the incentive to sell the property. Thus, the incentive already exists, but increases as the value of the grant (and presumably the value of the modified property) increases. FHLBank Indianapolis therefore views the retention agreement as a valuable tool to ensure that Set-Aside Program funds are being used for their intended purpose, rather than to incenting applicants to improve their property merely for investment purposes. On the other hand, our Neighborhood Impact Program (NIP) or Homeownership Opportunities Program (HOP) -- which provide grants for home repairs or down payment assistance on first-time home purchases, respectively – do not carry the same risks that the funds could be used to materially enhance the value of the property, and thus potentially provide a windfall through use of the grant.

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

The utility of the notice provisions differs depending on whether the recipient is an owner-occupied residence. We do not believe that a requirement to provide notice to both the FHLBank and its designee in all sale or refinancing situations creates material advantages in enforcing the retention agreement for single-family homeowners. In most cases, we are contacted by a title company as part of the sale/refinancing process because our name appears on the chain of title; we, in turn, contact the member, who processes the appropriate documents. Typically FHLBank Indianapolis, when provided with notice of a sale or refinancing, works directly with the member to resolve compliance issues. Moreover, adding a notice requirement from either the selling household or the purchaser (or mandating notice from an unrelated third party, such as a title company) as part of the regulation could create enforceability issues, because it is not clear that those parties (other than the seller if the requirement were made part of a Retention Agreement) would be bound by an Agency regulation.

However, the situation is different when addressing multi-family or rental properties, given the 15-year retention agreement. In those situations, we support a requirement that notice of sale or refinancing be provided by the seller or refinancing party directly to both the FHLBank and its designee. Owners of multi-family properties often do not have other incentives to provide the FHLBank or its member with notice. Absent adequate notice, it may be difficult for the FHLBank to know the identity of the acquiring owner in the case of a sale, or if the subsidy may remain with the property or should be required to be repaid. Also, it is useful for the FHLBank to receive notice from the current property owner seeking a cash-out refinancing about whether the funds will be used to further improve or rehabilitate the property, or whether the owner may be instead be taking on an additional debt that risks overencumbering the property and jeopardizing its financial viability.

#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?

Given recent guidance from the Agency and the desire to ensure that this rule coordinates as much as possible with other government program subsidy repayment requirements (such as those used by HUD), we support using net gain (as defined in the Preamble to the Proposed Rule[14]) as the appropriate basis for calculating a pro rata repayment requirement.

#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 Banks, and are there other subsidy repayment approaches FHFA should consider, if the AHP retention agreement requirement is retained in the final rule?

The advantage of imposing a net proceeds repayment requirement is that it would maximize the amount of subsidy recapture to the FHLBank, and might thereby deter "flipping," because it would reduce the likelihood that a property owner would benefit from property appreciation resulting from capital improvement expenditures. On the other hand, as noted above, empirical evidence about the prevalence of "flipping" subsidized properties may vary substantially from one area to another, even within an FHLBank district. Therefore, using a net gain calculation might incent AHP-assisted households in otherwise-distressed areas to invest in improvements (thereby enhancing the economic value of the entire neighborhood), because they would be assured of retaining more of the value of such improvements in a subsequent sale or refinancing.

#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?

The FHLBank Indianapolis supports the concept of a "de minimis" exception to the repayment requirement, but we recommend the exception not be set at a specific dollar amount. Rather, the better approach would be to give each FHLBank the discretion to determine reasonable repayment waiver thresholds on a case-by-case basis. This would allow the FHLBank to take into account considerations such as differences in overall property appreciation, and would allow flexibility in determining when repayment would truly be "de minimis" when compared to the actual net gain realized on a sale or refinancing. Moreover, the FHLBank could adjust this level over time to take into account market changes and inflation.

8. The Proposed Rule's prioritization of a cure requirement in § 1291.60 over alternative forms of remedial action for project noncompliance, such as permitting project modifications or partial recaptures or de-commitments of funds, creates issues for project sponsors and may delay project completion or increase project development costs.

General Commentary and Recommendations

Under the current regulation,[15] if an AHP subsidy is misused by the project owner or sponsor, an FHLBank may elect a number of possible remedial actions, including requiring full or partial repayment of the subsidy, requiring the sponsor to cure the noncompliance, modifying the application, or settling a claim and reimbursing the AHP fund for the shortfall resulting from a reduced settlement amount. The FHLBank's selection of an appropriate remedy may depend on several factors, such as the project's progress to completion, the sponsor's financial state at the time noncompliance is detected, or the

[14] "...sales price minus the original purchase price, purchaser and seller paid costs, and capital improvement costs..." 83 FR at 11352.
[15] 12 CFR § 1291.8(b)(2).

technical nature of the act or omission. Our remedy would be guided by our statutory mission: what is the best approach to support our affordable housing mission? The current approach in § 1291.8 should be maintained.

Emphasizing cure over other remedies in all circumstances may create issues not only for the FHLBank, but also for project developers, who may find themselves facing ballooning development costs necessary to effect a cure when simpler, more cost effective alternatives may be available.

Responses to Specific Agency Questions Relating To This Topic

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

FHLBank Indianapolis believes that the proposed method of calculating subsidy repayment[16] for occupancies which exceed the application income targeting commitments is appropriate, since it only assesses repayment based on non-compliant units and does not force a project which might only be in technical non-compliance on a few units to potentially repay an entire subsidy. This has the beneficial effect of not displacing low-income residents in compliant units in the same property, or putting the entire property's sustainability at peril.

The FHLBanks should have substantial discretion, subject to a reasonableness standard, to fashion settlement arrangements with project sponsors or owners who may not be able to repay the full amount of a subsidy. We believe that the factors contained in proposed § 1291.60(c)(2), to the extent they limit the circumstances which an FHLBank may consider when structuring a settlement, are unduly prescriptive. We therefore recommend that the FHLBanks be given authority to consider all relevant facts and circumstances, not just those described in § 1291.60(c)(2)(i), when considering a settlement, as long as those circumstances are appropriately documented and the settlement amount justified as required by § 1291.60(c)(2)(ii). Artificially limiting our ability to consider all relevant facts and circumstances when offering a settlement also increases reputational risk to the FHLBank, which could further deter participation in the program.

Conclusion

We appreciate the opportunity to provide comments on this very important Proposed Rule. We are committed to our affordable housing mission and believe that our successful record should be reflected in the Final Rule. We thank the Agency for its participation in discussions with the FHLBanks over the past several years and for its diligence in proposing a comprehensive approach to amending the AHP Rule.

We encourage the Agency to consider a less prescriptive structure for setting mandatory outcomes requirements, one which leverages the experience that all parties in the affordable housing community have developed to address of the challenges discussed in this letter. Additionally, we join the other System FHLBanks in requesting that the Agency provide an effective date for the final rule which is two years after the date of its publication, in order to allow FHLBank Indianapolis sufficient time to implement new processes and procedures and to train staff, AHAC and Board members, and project sponsors and members on the requirements of the new final rule.

[16] Proposed § 1291.60(c)(1).

We look forward to continuing a constructive dialogue with the Agency to achieve a version of the AHP Rule which balances the needs of FHLBank members, project sponsors and developers, and the various populations which have a need for affordable housing in their communities.

SINCERELY,

FEDERAL HOME LOAN BANK OF INDIANAPOLIS

Cindy L. Konich
President and Chief Executive Officer

Mary Beth Wott
First Vice President, Community Investment Officer