June 12, 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 or Finance Agency) has requested comments on its proposed rulemaking on amendments to the Affordable Housing Program (AHP) regulation published on March 14, 2018 (the Proposed Rule) and re-published with a correction and deadline extension on May 2, 2018.1 The Federal Home Loan Bank of Atlanta (the Bank) appreciates the opportunity to comment on the Proposed Rule, and considers the following to be supplementary to the FHLBank System comment letter submitted under separate cover.

Over the years the Bank has acquired greater experience, expertise, and success in administering the AHP and based on the proposed rule preamble, many of the changes purport to provide each FHLBank with discretion to tailor its program. We believe however that the policy goals outlined in the FHFA's *2017 Program Design and Project Selection Criteria White Paper* and the FHLBank's system response to the White Paper better reflects our shared goals -- increasing the clarity of the AHP regulation and permitting where appropriate individual FHLBank responsibility, discretion and flexibility.

1. **<u>Proposed Outcome Requirements Unreasonably Reduce AHP Flexibility; Reduces Pool and Diversity of Sponsors; Is Overly Complex; and Diminishes Transparency</u>**

   a. The stated flexibility of the proposal is at odds with a complicated layering of prescriptive statutory and regulatory award outcome requirements, which, as applied, have the result of controlling a majority of an FHLBank's annual contribution (§1291.48).[2] We believe that the FHFA's statutory requirement to establish priorities for the AHP and the Bank desire to modernize AHP can both be met via the format offered in the FHFA's 2017 Program Design and Project Selection Criteria White Paper or

[1] 83 Fed. Reg. 19188 (May 2, 2018).
[2] *Ibid* at 11385.

through a revised, scoring based methodology without the regulatory award outcome requirements.

The Bank welcomes the increase each FHLBanks' Set-Aside Program from 35 to 40 percent, and to increase subsidy per unit from $15,000 to $22,000. Additionally, although the FHFA published a correction to the Proposed Rule on May 2, 2018, allowing the Bank to include awards under their Set-Aside Programs to count towards meeting the statutory and regulatory outcome requirements, we do not believe this additional consideration is enough to offset the prescriptive nature of the award outcome requirements.

b. The Bank believe that the proposed concentration of prescribed outcomes will reduce the pool and diversity of AHP sponsors that will apply, knowing they are unlikely to qualify under the required outcomes: Underserved Communities and Populations; Creating Economic Opportunity; and Affordable Housing Preservation.[3] For example, AHP projects sponsored by entities in urban markets that do not primarily serve any of the specified outcomes will be less enthusiastic about applying. The Atlanta Bank's district includes a wide diversity of housing needs in rural, urban, and suburban communities that are distinct in the manner in which they address housing in their communities. The categories enumerated within these three regulatory priorities all respond to worthy housing needs, but they are not market-oriented and do not account for the totality of all project types or populations that have, or may be, served through the AHP, such as low-to-moderate-income households in urban areas, new construction in urban areas, or repurposed vacant, blighted or substandard property not in a high opportunity or mixed-income area. The Bank believe each district FHLBank should follow broad regulatory priorities and be able to establish its own priorities based on input from its expert AHAC members, its history of program success, and its desire to adapt to evolving affordable housing needs throughout its district.

c. The proposed outcomes-based framework penalizes the Bank if outcome requirements are not met. The amended Proposed Rule states that to satisfy the regulatory requirement, "Each 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 in this paragraph . . . ."[4] Under the current regulation, FHLBanks use scoring criteria to incentivize certain types of developments. However, there is no penalty if the Bank do not make any awards, or a minimum amount of awards, to those scoring categories (e.g., homeless or special

[3] *Ibid* at 11386.
[4] 83 Fed. Reg. 19188, 19189.

needs). Under the Proposed Rule, the "FHFA may order the Bank to reimburse its AHP fund for the difference in the amount of AHP funds required to be awarded to meet the outcome requirement and the amount the Bank actually awarded."[5] This is a harsh penalty that does not exist under the current regulation and is disconnected from the market realities of how housing is produced at a local level.

d. The proposed re-ranking of applications to satisfy regulatory requirements undermines the integrity of the AHP and undermines transparency in the competitive process. In order to satisfy the outcome requirements, an FHLBank may re-rank applications[6]. The proposed re-ranking of otherwise competitive projects is a necessary tool for complying with the outcome requirements. However, it is a problematic disrupter to AHP's predictability and transparency and will further deter sponsors from participating in what they will view as a "rigged" process. This proposal has the result of creating an illogical circumstance in which high scoring and competitive projects are denied an AHP award. In practice, there may be several cycles of re-ranking projects needed to comply with FHFA outcomes because simply substituting one project for another may satisfy compliance with one or more FHFA outcome requirements, but not all of those requirements. Thus, it is possible to imagine a scenario in which one or more high-scoring and otherwise competitive projects are replaced by one or more low-scoring and otherwise not competitive projects for the sole purpose of meeting FHFA outcome requirements.

An additional unintended consequence of re-ranking a project is negating the value of FHLBank technical assistance provided to project sponsors to improve the competitiveness of unfunded or rejected AHP applications. A longstanding benefit of the AHP is its transparent scoring priorities. The current scoring system is transparent and clearly articulated making it easy for members to work with sponsors in submitting competitive applications. Therefore, it is fairly easy to improve the quality of project submissions and increase goodwill by providing technical assistance to applicants. In contrast, the regulatory outcome requirements, as proposed, include the potential for circumventing an objective scoring criteria by requiring FHLBanks to re-rank projects in order to meet arbitrary outcomes imposed by the FHFA at a specific point in time. This compromises the integrity of the AHP process and introduces an opaque application award process that increases the Bank' reputational risk.
The Bank believe that the mandatory outcome requirements should be eliminated, but the flexibility to offer a Targeted Fund retained. Specifically, the Bank recommend the FHFA adopt a scoring-based methodology similar to that outlined in the FHLBank System's response to the FHFA's *AHP Program Design and Project Selection Criteria*

[5] *See* Proposed Rule at 11389.
[6] *Ibid* at 11383.

White Paper incorporating the revisions suggested by the CIOs. The Bank will present proposed scoring-based methodologies under separate cover.

2. Enhanced Targeted Community Lending Plan is unnecessary

a. As a result of the outcome requirements, the FHFA is effectively establishing each FHLBank's priorities and housing needs. Therefore, the proposed process circumvents the need for Targeted Community Lending Plans (TCLPs). Between the outcome requirements and the Set-Aside Program, a majority of an FHLBank's annual required AHP contribution's use is predefined.

b. The Proposed Rule requires publication of the TCLP at least six months before the beginning of the year it's effective and 12 months if an FHLBank offers a Targeted Fund.[7] The timing requirements inhibit the Bank' ability to respond to unforeseeable and emerging events, such as disasters or new district priorities, in a timely manner. The lead times may also result in placing the AHP at an incompatible planning schedule with other funding sources such as the Housing Finance Agencies, which have notably shorter lead times.

c. Additionally, the Proposed Rule notes that any applications approved by an FHLBank that might satisfy the statutory or regulatory priorities may not be counted towards satisfying those priorities if the need is not expressly addressed in the TCLP. The intent of the TCLP is to identify those affordable housing needs critical to a specific FHLBank district. Those needs may or may not be compatible with the FHFA's housing needs articulated in the Proposed Rule. It seems counterintuitive and punitive to not allow an FHLBank to count an award to a project that meets a regulatory priority, simply because the FHLBank has not prioritized that need as a district need within its TCLP. In this instance, the FHLBank would not have been credited for addressing a valid affordable housing need.

In the absence of relief from the statutory and regulatory requirements contained in Section 1291.48, the Bank request that the requirements of the TCLP remain unchanged from the existing regulation, except in the event that an FHLBank offers a Targeted Fund. In that instance, an FHLBank should document the need that is being addressed by the Targeted Fund in the TCLP.

3. Owner-occupied retention discretion needed

While the Proposed Rule would eliminate retention on owner-occupied, AHP-assisted units, the Bank request the discretion to require ownership retention as they deem appropriate given the structure and operations of their respective Set-aside and ownership programs Such

[7] *Ibid* at 11350, 11380.

discretion is necessary to accommodate differences in housing markets across districts, as well as, within the districts themselves. It is also necessary in order to accommodate differences in grant amounts within the Set-Aside Programs as well as between the Set-Aside and the Competitive AHP.

FHLBank Atlanta believes that eliminating the current requirement for a five-year retention for owner-occupied housing undermines the ability of FHLBanks to create program structures that mitigate the opportunity for predatory lenders to target first-time homebuyers.

The Bank, in conjunction with their AHACs and Boards, have the experience, knowledge and familiarity with local real estate markets to determine when it is appropriate to require a retention mechanism. Therefore, the Bank request discretion to apply retention requirements as they see fit.

4. Alternates may not qualify for funding as proposed.

The current AHP Regulation provides that an FHLBank *may* fund alternates within one year of approval if any previously committed AHP subsidies become available.[8] 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.[9] This mandatory requirement will have several unintended consequences. First, it forces the Bank to fund projects that may not address the then-current prioritized housing needs as outlined in an FHLBank's TCLP. Second, an FHLBank 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 may have changed, thereby requiring the FHLBank 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, it seeks other funding sources, reduces the scope of the project or discontinues the project altogether. Third, re-underwriting of the project would add additional costs to the administration of the AHP to the FHLBank. Finally, the additional requirements associated with this section of the Proposed Rule also limit the Bank ability to manage the reallocation of subsidy. Currently, FHLBanks have discretion to use previously committed subsidies to fund projects that request a modification for an increase in subsidy or to provide additional funding for its Set-Aside Programs. The Proposed Rule eliminates that flexibility.

FHLBank Atlanta recommends the retention of the current regulatory requirements governing the funding of alternates.

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[8] 12 CFR §1291.5(e)(2).
[9] *See* Proposed Rule at 11382.

5. Conflicts of Interest Provision Clarifications

The Proposed Rule would move current § 1291.10 addressing conflicts of interest by Bank directors, Bank employees and Advisory Council members unchanged to proposed §1291.16. The Bank suggests that the conflicts of interest provision applicable to AHP is overly broad and should be harmonized with the board of directors' general conflicts of interest requirements as set forth in 12 CFR § 1261.11. Specifically, section 1261.11(f) contains definitions of "immediate family member" and "financial interest" as set forth below:

> (f) Definitions. For purposes of this section:
>
> (1) Immediate family member means parent, sibling, spouse, child, or dependent, or any relative sharing the same residence as the director.
>
> (2) Financial interest means a direct or indirect financial interest in any activity, transaction, property, or relationship that involves receiving or providing something of monetary value, and includes, but is not limited to any right, contractual or otherwise, to the payment of money, whether contingent or fixed. **It does not include a deposit or savings account maintained with a member, nor does it include a loan or extension of credit obtained from a member in the normal course of business on terms that are available generally to the public.**

Absent this clarifying language, the Bank believes § 1291.16 would require that an ordinary course financial transaction with an organization involved with an AHP project to be a conflict of interest requiring disclosure and recusal. In addition, there are several ordinary course financial transactions that directors, Bank employees and Advisory Council members may enter into that the Bank believes should not be considered a conflict of interest for purposes of the AHP. For example, the purchase of an insurance product, an investment in a 401K account with a former employer, or a retirement pension plan are common, but should not motivate the holder of such financial instrument to influence decisions by the Bank regarding the evaluation, approval, funding, monitoring, or any remedial process for an AHP project.

6. Effective Date of Final Rule; Implementation Timetable

FHLBank Atlanta requests that the Finance Agency provide an effective date for the final regulation that is at least two years after the date of publication in the Federal Register. As the

Proposed Rule makes substantive changes to several components of AHP, the Bank anticipates significant time will be required to revise agreements, develop and implement changes to its online application management systems (with commensurate costs from internal Bank staff and information technology consultants), create new processes and procedures, and train staff. As this is the most extensive change to the AHP in several years, implementation will entail coordination among nearly every department including Community Investment Services, communications, information technology, legal, membership, and operations departments. The Bank will also need to educate members, sponsors, community organizations, affordable housing developers and other stakeholders that serve as material parties to the AHP projects. The Bank believe that a two-year period is the minimum timeframe to allow for an appropriate implementation.

We appreciate the Finance Agency's consideration of our comments and concerns. Should you have any questions with respect to the foregoing, please do not hesitate to contact Art Fleming, Director of Community Investment Services.

Sincerely,

Arthur S. Fleming

Arthur Fleming
Senior Vice President and Director of Community Investment Services
Federal Home Loan Bank of Atlanta