FHLB Chicago

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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) has requested comments on its Proposed Rulemaking on amendments to the Affordable Housing Program (AHP) regulation published on March 14, 2018 (the Proposed Rule)[1] and re-published with a correction and deadline extension on May 2, 2018.[2] The Federal Home Loan Banks (the FHLBanks) appreciated the opportunity to comment on the Proposed Rule and submitted their joint comment letter to the FHFA on June 1, 2018 (the June 1st Letter).

In addition to the comments provided by the FHLBanks, collectively, the Federal Home Loan Bank of Chicago (FHLB Chicago) hereby submits supplementary comments for FHFA consideration based on our evaluation of the Proposed Rule, dialogue with our Board of Directors, Advisory Council, and stakeholders, and application of our deep knowledge of the ways in which housing needs and solutions uniquely manifest themselves within the 7th District.

The AHP is the largest source of private grant dollars for affordable housing and its success is indisputable. Since the inception of the AHP, the FHLBanks have awarded $5.5 billion for the acquisition, development, or preservation of 827,554 units of affordable owner-occupied and rental housing. Of those numbers, the FHLB Chicago awarded over $557 million for 106,513 units across Illinois and Wisconsin. It is with this success in mind, and a shared objective to provide each FHLBank with greater authority to deploy AHP funds based on specific housing needs in its district, that the FHFA engaged the FHLBanks in a collaborative dialogue to position the AHP's future.

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1 83 Fed. Reg. 11344 (Mar. 14, 2018).
2 83 Fed. Reg. 19188 (May 2, 2018).

As part of this process, the FHLBanks set forth their vision and values statement for the AHP. This guided the approach and recommendations made by the FHLBanks and helps to frame the comments we offer in this letter.

The FHLB Chicago is grateful for the opportunity to inform and influence the modernization of the AHP and for the depth and breadth of the FHFA's regulatory review. That said, while there are concepts in the Proposed Rule that are worthy of consideration, it is our opinion that, taken as a whole, the Proposed Rule does not advance or modernize AHP in the way in which we believe was intended.

Program Access

While centrally regulated, the FHLBanks are cooperatives owned by member financial institutions that generate the income from which the annual AHP contribution is derived. Our member financial institutions are also the beneficiaries of AHP funds that are directed to projects that serve their communities and that expand their partnerships and opportunities to engage with, and financially support, affordable housing projects. The AHP provides broad access for our members to serve a diversity of customers in unique micro markets whose housing needs vary from community to community. As a result, any change to the AHP that skews the use of AHP funds for only certain types of projects, making access for other projects more challenging, is likely to discourage participation, and could result in certain communities and populations within our district not being served.

Outcomes-Based Framework

The outcomes-based framework around which the Proposed Rule is built significantly changes the AHP from a program that rewards those projects most aligned with priorities in a scoring framework to one that becomes compliance-oriented, based on the ability of the FHLBanks to ensure that the required number of dollars and units are awarded to FHFA-prescribed priorities. Although there are various thresholds created by the outcomes framework that will pose challenges, one of the most significant is that FHFA-prescribed priorities will control a combined 65% of the required annual AHP contribution. While the addition of targeted funds and the lack of required scoring categories may have been intended to provide flexibility, in application, this is unlikely to be the case. When the outcomes-based requirements and related compliance activities are layered over these concepts, the result will be a number of unintended consequences, not the least of which will be a top-down approach that may be intended to serve national housing priorities, which may or may not align with the housing priorities in the various FHLBank districts.

While the FHFA-prescribed priorities are not without merit, they do not recognize the need for the FHLBanks to direct their AHP resources locally in order to be sensitive to the unique housing requirements in their districts. Instead, the proposed outcomes establish penalties for results that are largely outside of the control of the individual FHLBanks, and are of such significance that they will command the focus of FHLBank staff, detracting from responding to the priorities identified by each FHLBank's Advisory Council and Board of Directors. To avoid the significant penalties that the Proposed Rule assigns to noncompliance, these priorities will drive the scoring frameworks, removing the flexibility that might come with targeted funds and flexible scoring across both the general fund and targeted funds.

An example of the implications of FHFA-prescribed housing needs relates to the underserved populations and communities priority. Fifty-five percent of the required annual AHP contribution must be awarded to two of the three priorities. The targeted thresholds for serving homeless and special needs populations do not align with current housing models or the financing available. Recent history, following the Supreme Court's decision in *Olmstead v. L.C.*, 527 U.S. 581, 119 S.Ct. 2176 (1999), demonstrates how housing models change over time. These models have evolved over the last 28 years; the FHLBank System should aim to allow for continued evolution of the financing and development of affordable housing, ensuring that the AHP has longevity built into its framework.

Additional unintended consequences arising from the outcomes-based framework cause concern that it is overly complex. For example, the Proposed Rule provides for an FHLBank to re-rank applications, despite the scoring results, in order to comply with the FHFA-prescribed outcomes. While re-ranking gives the FHLBanks a tool to mitigate the risk of not achieving the required outcomes, it introduces a risk to the value, relevancy, and most significantly, reputation of the AHP. The examples provided in the June 1st Letter further highlight some of these unintended consequences.

It has been suggested that, based on past awards, the FHFA-prescribed outcomes are achievable by the FHLBanks; however, such a conclusion can not be confidently inferred given that the Proposed Rule lacks definition as to how all of the requirements are to be calculated and monitored. There also exists a lack of complete data that aligns with all of the proposed requirements, and even if accurate calculations could be made today, the past does not predict the future.

It is fundamental that the FHFA ensure that the FHLBanks are meeting the statutory and intended purposes of the AHP. Given the successful history of the AHP over the past 28 years, including the maturation of the FHLBanks' governance and administration of their respective programs, as well as the level of experience and expertise of their staffs, it is reasonable to expect the FHFA to provide the FHLBanks with the autonomy to position the AHP in the most effective and impactful way to serve their districts. To accomplish this, the FHLBanks would appropriately assess their markets, identify needs, and design a transparent competitive scoring framework (adjusted as needed) to be responsive to their districts, as well as to fulfill their statutory and regulatory obligations. Regulatory priorities should be sufficiently broad to allow each of the eleven FHLBanks to define the needs addressed through those priorities.

In exchange for this greater autonomy, the FHLB Chicago recognizes that the FHFA would need to take steps to ensure that the FHLBanks are meeting the statutory and regulatory priorities, that each can support the way in which they prioritized the deployment of their AHP, and that the deployment was done transparently and with the proper controls and guardrails in place. In our opinion, the outcomes-based framework contained in the Proposed Rule is not the way to accomplish this. The Scoring Letter proposes priorities aligned with the Proposed Rule, but allows greater flexibility in defining those priorities.

Scoring Framework

As discussed below, there are components of the Proposed Rule, such as the targeted funds and expanded allocation flexibility, that could be implemented in a final rule. However, those should be paired with a modernized scoring framework. The concept of measuring outcomes can still be achieved through such a scoring framework, without the complexity of the one that is currently proposed.

The alternative presented by the FHLBanks in the Scoring Letter seeks to retain targeted funds, statutory and regulatory priorities, and a scoring framework that rewards projects most aligned with each FHLBank's priorities. The outcomes under this alternative framework can be measured through the projects that are awarded, based on the extent to which those projects align with multiple priorities as defined and weighted by each FHLBank. These priorities can be adjusted by the individual FHLBank over time based on market shifts, changes in housing needs, and award outcomes. Statutory and regulatory priorities are established, but in a manner that is sufficiently broad for the FHLBanks to fill in the details behind the needs to meet those priorities. This process of defining the needs at an FHLBank level will ensure a community-based, bottom-up approach. It would not ignore national trends and housing solutions, but it would place greater emphasis on local market conditions and real estate cycles, the unique housing needs within those markets, and the characteristics of affordable housing development that meet those needs. The priorities, their definitions, and how each is weighted would be set forth in what we consider to be policy documents, the Community Lending Plan and Implementation Plan, that would represent the needs and solutions applicable to each FHLBank district. The FHLBank strategic plans already demonstrate the uniqueness of economies and housing markets; this data, alone, tells us that the FHLBanks design and offer products and programs that align with their members' businesses and local markets. The AHP can be approached quite similarly. This modernized scoring takes into consideration the limitations of the current scoring framework. It does so through permitting separate scoring for owner-occupied and rental projects; broad regulatory priorities; statutory and regulatory priorities weighted appropriately for their relevancy to local needs; and targeted funds that will reach harder-to-serve geographies, populations, housing type, and models. Such a framework incentivizes and prioritizes those projects that meet the established scoring criteria, and the outcomes represent how the awarded projects align with stated priorities and policy objectives.

Governance

The preamble to the Proposed Rule suggests that there is a need for increased Board of Directors engagement in the FHLBanks' AHPs, as well as for increased integration of the FHLBanks' low-income housing and community development activities with the overall FHLBank strategic planning. The FHLB Chicago notes that its Community Investment activities are already integrated into its strategic plan as a matter of course and, more importantly, into its mission. While the FHLB Chicago has an Affordable Housing Committee, the FHLB Chicago's full Board of Directors is engaged with the FHLBank Chicago's housing and community development activities. As such, they are responsible for reviewing and approving all of the FHLB Chicago's Community Investment policies, including the Implementation Plan and Community Lending Plan. The Affordable Housing Committee works with the Advisory Council to provide input into these latter two key documents, based on the experience of the Committee and Council members in various aspects of affordable housing. While the FHLB Chicago's Affordable Housing Committee is the group that meets with the Advisory Council three out of four quarters (with the fourth meeting being a joint Advisory Council/full Board of Directors meeting), the Board of Directors is provided with updates by Community Investment staff on a regular basis, and by the Chair of the Advisory Council on a periodic basis. In short, there are no gaps in the FHLB Chicago's governance process for Community Investment that need to be filled by modifying the existing governance regulations.

The Proposed Rule also contemplates an expanded Targeted Community Lending Plan that would incorporate market research regarding affordable housing needs in the FHLBank's district, and identification and assessment of those needs that are deemed to be significant. Each FHLBank would be required to specify which of those needs is being addressed through the specific funding allocations and scoring criteria and support those needs through empirical data.

We believe that the expansion of the Targeted Community Lending Plan is reasonable to ensure alignment with the Implementation Plan, particularly for the purpose of aligning targeted funds to the market and to each FHLBank's strategic plan. We do, however, have concerns with requiring extensive empirical data, which signals that other resources to assess the market are insufficient. This requirement diminishes the roles of an FHLBank's Board of Directors, the Affordable Housing Committee, and the Advisory Council. We believe that, if retained, the inclusion of empirical data should either be an optional element (not a requirement), or should be clarified. Furthermore, the expanded Targeted Community Lending Plan research is unnecessary with respect to a general fund that must adhere to the prescriptive statutory and regulatory priorities set forth in the Proposed Rule. With the elimination of the outcomes-based framework, an expanded Targeted Community Lending Plan is reasonable and appropriate to evaluate, assess, and prioritize housing needs using an expanded scoring framework for general and targeted funds.

Favorable Proposed Changes

Despite the concerns that the FHLB Chicago has with respect to the proposed outcomes requirements, reworking this aspect of the Proposed Rule into a revised scoring framework does not necessitate the removal of several favorable proposed changes. As noted above, we favor the allocation of the annual AHP contribution among a general fund, an optional set-aside program(s), and optional targeted funds.

The FHLB Chicago also supports the five percent expansion of the set-aside program allocation to 40%. The FHLB Chicago's set-aside program has proven to be very popular with our members and is in high demand. The FHLB Chicago would like to be able to fund the program for a full calendar year, in order to satisfy that demand. Expansion of the allocation percentage to 40% will help to enable this longer funding period, which, in turn, further extends the Bank's affordable housing efforts in support of its mission.

In addition, the FHLB Chicago supports the expansion of the individual grant amounts available under the set-aside programs. While the FHLB Chicago typically funds its grants in smaller amounts than those that would be permitted under the Proposed Rule, the level of flexibility reflected by this expanded grant amount will be helpful to the FHLBanks in modifying and expanding their set-aside programs to respond to changing district needs.

Finally, the FHLB Chicago notes that the preamble to the Proposed Rule suggests the prospect of the FHFA undertaking a separate rulemaking with respect to revolving loan funds. The FHLB Chicago would be in favor of such a separate rulemaking, and looks forward to addressing that issue in the future.

Recommendation

The FHLBank Chicago recommends that the FHFA eliminate the outcomes-based framework, while retaining the expanded allocation authority to the homeownership set-aside program and the establishment of targeted funds, as well as a scoring structure (such as that reflected in the Scoring Letter) that offers the FHLBanks expanded discretion beyond the current scoring framework. We hope the FHFA will find that the suggestions included in the Scoring Letter make significant improvements to the AHP while ensuring that the statutory and regulatory requirements and priorities are fulfilled. If these recommendations are not feasible, we would prefer a final rule that permits us to retain the current scoring methodology. Alternatively, we suggest that the FHFA consider withdrawing the Proposed Rule with the intent of re-proposing it following further consultation with the FHLBanks and other interested stakeholders.

Sincerely,

Matthew R. Feldman
President and Chief Executive Officer