June 12, 2018

Alfred M. Pollard
General Counsel
Attention: Comments RIN 2590-AA83
Federal Housing Finance Agency
400 Seventh Street, S.W., Eighth Floor
Washington, DC 20219

Dear Mr. Pollard:

Thank you for the opportunity to comment on the proposed amendments to the Federal Home Loan Banks' Affordable Housing Program.

Housing Partnership Network (HPN) is a business collaborative of high-performing nonprofits that develop and finance affordable housing and community development projects. HPN members work in all 50 states, creating affordable housing and improving neighborhoods. HPN operates businesses that help improve the efficiency and impact of our members, such as property and casualty insurance company that insures their apartments, a bulk buying business that helps them purchase the supplies they need to build and renovate housing, and a social purpose Real Estate Investment Trust that provides financing for affordable housing. HPN is a social enterprise – we use private sector business practices to help our members achieve the mission of building more affordable housing in thriving communities.

HPN's members are larger nonprofits that are able to tackle tough affordable housing challenges because they have strong business skills that enable them to manage real estate efficiently and they also have a social mission to help residents improve their lives. HPN's members own and manage 275,000 affordable apartments and also develop single family homes. HPN members work closely with the Federal Home Loan Banks. Some HPN members are Community Development Financial Institutions (CDFIs) that belong to the System; others are members of the Boards of Directors of the Banks themselves or serve on the Affordable Housing Advisory Councils of the Banks. HPN members compete for funding in the Competitive Application Programs run by the 11 Federal Home Loan Banks for both rental housing and homeownership projects.

HPN applauds the FHFA for undertaking a comprehensive look at the regulations governing the AHP. The affordable housing development process has evolved a great deal in the 29 years since the AHP was created and it is timely and useful for the FHFA to assess how the regulations can be streamlined and updated. AHP subsidies are seldom the only funding that goes into a project, so it is appropriate and helpful for the FHFA to look at how AHP income targeting and monitoring requirements intersect with those of other funding sources. We appreciate the rigorous and thoughtful approach that FHFA takes to rule writing.

Before we address specific questions posed in the rule, we encourage FHFA to consider the totality of new requirements imposed by the revised regulations and whether they will improve the affordable housing delivery system. FHFA should be thinking about how AHP grants can fill gaps in the current system. There are practical ideas in a May 21, 2016 letter from the National Housing Conference about AHP that FHFA should consider as part of its rethinking of the AHP.

For example, there is a great need for pre-development financing to allow housing developers to explore the feasibility of promising projects. Often, the most difficult part of building or preserving affordable housing is getting the project started. Nonprofit developers need funding to acquire sites, perform required studies, and apply for other subsidies. AHP could leverage other sources of funds by getting deals started. The FHLBs are well- suited to being patient, early investors in projects. Through the AHP application process, the FHLBs can be careful to choose partners with proven track records, which could mitigate some of the risk of pre-development financing. This does mean that sometimes a project does not get built, but this is an appropriate use of grant funds that could fill a gap in the system.

There is also a need for enterprise-level capital for high-performing housing developers. The FHLB Advisory Leadership Council recommended this in *Opportunities for Change: AHP at 25*, "Allow AHP funds to be used to make enterprise-level investments, rather than project specific investments" (p.5) Nonprofits with a history of housing production could deploy capital most efficiently to leverage other funding streams to build more affordable housing. It would be appropriate for the FHLBs to hold the nonprofits responsible for producing a number of housing units commensurate with the size of the award, with penalties for a failure to produce and incentives to exceed the target. This is another use of AHP that would fill a gap in the system and allow the system to function more efficiently. It is theoretically possible that the Targeted Funds proposed in the rule could be used for pre-development or enterprise-level capital, but with the regulatory and statutory priorities proposed in the rule, it seems unlikely that a Bank would propose such a use.

Part of the context to consider for AHP regulation changes is that affordable housing developers like HPN's members manage multiple layers of capital and operating financing that takes years to assemble. One of the largest capital sources for affordable housing development is the Low Income Housing Tax Credit, which is awarded by the states on the basis of criteria laid out in their Qualified Allocation Plans. Over the years, these plans have become very complex and very competitive with points awarded for a wide array of worthy purposes. None of the state priorities are unworthy, yet organizations struggle with the complexity of meeting all of the priorities necessary to garner the points to win. These processes drive up the costs of affordable housing.

AHP grants are generally much smaller than the awards of Low Income Housing Tax Credits, yet the outcomes framework proposed in the proposed rule seems to mimic the complexity and uncertainty of QAPs. The Banks are ostensibly allowed to set their own priorities with Targeted Funds, yet the outcome requirements that 55% of the funding must be allocated to two out of three regulatory priorities overrules Bank discretion. The three regulatory priorities of underserved communities and populations, creating economic opportunities, and affordable housing preservation are all worthy goals. HPN strongly supported these activities in the Duty to Serve rule for Fannie Mae and Freddie Mac because Duty to Serve is a regulatory regime that makes sense applied to the enormous volume of mortgage purchases by the secondary market.

It is less clear that these regulatory outcome requirements are necessary for the AHP, a competitive grant program run by the 11 Banks. Regulatory requirements from FHFA that the Banks assess housing needs in their regions, determine priorities for funding, and run transparent and fair AHP competitions would be completely appropriate. It seems rather arbitrary to impose a requirement that a competition must result in 55% of these funds meeting two of three priorities. In 1989, Congress decided that the Federal Home Loan Banks should contribute 10% of profits to a competitive grant program for affordable rental housing and homeownership. FHFA's job is to ensure that the Banks run a fair competition with transparent scoring criteria. It seems to be an overreach for FHFA to impose the Duty to Serve objectives on the AHP awards.

FHFA acknowledges the difficulties of imposing the statutory and regulatory priorities on the AHP competition on page 55 of the proposed rule. The Notice states "To satisfy the outcome requirements for the statutory and regulatory priorities in proposed 1291.48, a Bank would be permitted to deviate from the normal descending ranking selection order only to the minimum extent necessary by re-ranking scored applications and alternates meeting the outcome requirements above the lowest scoring applications and alternates not meeting the outcome requirements. A Bank would be required to describe the possibility of re-ranking in its AHP Implementation Plan. FHFA specifically requests comments on possible approaches to re-ranking applications to meet the outcome requirements while at the same time maximizing the extent to which the highest scoring applications are approved."

This seems rather problematic that high-scoring applications could lose out on funding because the overall batch of applications being considered by a Bank did not meet the regulatory outcome requirements. When housing developers consider whether it is worthwhile to apply for AHP funds, they would have to factor in the possibility of re-ranking in deciding whether their applications were competitive. This seems to add an element of uncertainty and unfairness that could discourage applications. There have been no scandals with the awarding of AHP funds to date, and re-ranking seems problematic. It makes the awards less transparent and invites mischief. HPN encourages FHFA to eliminate the overly directive regulatory priorities that make re-ranking necessary. It would be appropriate to direct the banks to design scoring systems to reward the regulatory priorities, but an outcome limit is what then necessitates re-ranking.

HPN members also caution the FHFA not to totally eliminate the retention agreements for homeownership awards. The rule presents a thoughtful discussion of the reasons for including five year retention agreements as a way to discourage flipping of properties but then asserts that since it is rare that properties assisted with AHP are sold in five years, therefore the retention agreements are of questionable value. Another way to interpret that data is to say that the retention agreements are working as intended and should be kept. A five year retention agreement does allow a family to build equity over time. After five years the family can sell the house and take advantage of the asset building power of homeownership. The current practice seems to have the balance right between stewardship of the homeownership assistance and asset building for families. Given the increase allowed in the proposed rule for the amount of homeownership assistance to $22,000, it seems prudent to retain the five year retention rule. Perhaps if the amount of homeownership assistance is less than $2000, retention agreements should be eliminated, but in general, the requirement should be retained.

With regard to the specific questions posed in the rule, here are HPN's brief answers to those that we have expertise about:

Subpart B—Program Administration and Governance

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

   Targeted Funds would allow Banks to choose funding priorities that align with local housing needs and make it easier for projects that meet the needs to win. As noted above, however, the interactions of the additional outcome requirements that FHFA is applying with this proposed rule, may make it very difficult for Banks to set up Targeted Funds because they can't be sure to meet the overlapping and complex outcome requirements.

2. Is the proposed allocation of 40 percent of total AHP funds to Targeted Funds an appropriate percentage, or should the percentage be higher or lower?

   That is a reasonable percentage if the additional outcome requirements were not imposed on the competition.

5. Is the requirement that members' AHP agreements with LIHTC project sponsors include a provision requiring the sponsors to provide prompt written notice to the Bank if the project is in noncompliance with the LIHTC income-targeting or rent requirements at any time during the AHP 15-year retention period practical, and should it also be required of project sponsors in the event of noncompliance by their projects with the income-targeting or rent requirements of the government housing programs discussed under the Monitoring section?

   Yes, that is a reasonable requirement.

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?

   As discussed above, five year retention agreements for homeownership assistance amounts larger than $2000 are a reasonable balance between the need for good program stewardship and asset building for the families.

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?

Yes, the increase makes the case to keep the agreements stronger.

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 Bank or its designee (typically the member) be revised to require that the notice be provided to both the Bank and its designee if a retention agreement requirement is retained in the final rule?

Yes.

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?

Yes.

14. If the AHP retention agreement is retained in the final rule, should the rule clarify that the obligation to repay AHP subsidy to a Bank shall terminate not only after any event of foreclosure, but also after transfer by deed in lieu of foreclosure, assignment of an FHA mortgage to HUD, or death of the owner(s) of the unit?

Yes.

Subpart C – General Fund and Targeted Funds

15. How should preservation of rental projects be encouraged through the AHP while discouraging displacement of current occupants with higher incomes than those targeted in the AHP application submitted to the Bank for approval, and is the proposed requirement for a relocation plan approved by the primary funder reasonable?

FHFA could allow existing residents to remain and could require the subsequent residents to meet the income targets.

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

A sponsor subsidy limit would spread the AHP money around to more sponsors, but it seems that making funding awards on the basis of the merits of individual applications seems like a better approach for the AHP.

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?

Having outcome requirements for a competition that necessitate reranking of applications is not a good idea. It diminishes the transparency and clarity of AHP competitions to rerank applications because of arbitrary outcome requirements from the FHFA. The most competitive applications should win.

Subpart D – Homeownership Set-Aside Programs

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?

The proposal has a reasonable factual basis.

Subpart E – Outcome Requirements for Statutory and Regulatory Priorities

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

Raising the percentage of units to 50% if a project is to be considered as serving the homeless is too high and in conflict with best practices for serving some homeless populations.

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, this increase discourages mainstreaming populations with special needs.

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

See above.

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

Yes.

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?

These are important housing priorities, but imposing outcome requirements on a competition could result in projects with less merit being funded. It would be preferable if the Banks had discretion to set up Targeted Funds to prioritize projects with worthwhile purposes like these.

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

There are many localities that have a dire shortage of affordable housing, and the specificity of outcome requirements in the proposed rule could well preclude good affordable housing projects done by well-regarded nonprofits from winning AHP funding. The rule should be revised to give the Banks more flexibility to select the projects that can have the greatest impact on the shortage of affordable housing.

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

Yes.

40. Is data available on the noncompliance rates of projects funded under the PBRA Section 8 Program?

Projects with PBRA are subject to several different kinds of oversight. Project owners certify the incomes of residents annually and submit certifications of compliance every month with their requests for payment. These projects are also subject to management and occupancy reviews by program administrators and regular physical inspections. FHFA should request that HUD share information about noncompliance in the PBRA inventory. There is certainly data available from HUD on these properties.

Please feel free to contact me at siglin@housingpartnership.net if you would like to discuss these comments further.

Sincerely,

Kristin Siglin
Senior Vice President, Policy