NeighborWorks® America
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June 12, 2018

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

Re: Notice of Proposed Rulemaking and Request for Comments
RIN 2590-AA83 – Affordable Housing Program Amendments

Dear Mr. Pollard:

Thank you for the opportunity to comment on the proposed Affordable Housing Program (AHP) Amendments published in the Federal Register on March 14, 2018. Given the complexity of the proposal and the importance of the AHP to the NeighborWorks Network organizations, we also appreciate the extension to the comment period granted in May.

Please note that these comments have not been submitted to or approved by NeighborWorks America's board. These comments reflect the view of NeighborWorks America management and do not necessarily represent the views of its board members, either collectively or as individuals. These comments have been formed in consultation with a number of NeighborWorks America's more than 245 local and regional nonprofit-affiliated NeighborWorks organizations.

For 40 years, Neighborhood Reinvestment Corp. (d/b/a NeighborWorks America), a Congressionally-chartered, national, nonpartisan nonprofit, has created opportunities for people to improve their lives and strengthen their communities by providing access to homeownership and safe, affordable rental housing. In the last five years, NeighborWorks organizations have generated more than $34 billion in reinvestment in these communities. In FY 2017, the NeighborWorks network created 22,700 homeowners, owned or managed 165,500 rental homes, and provided education and counseling for 181,400 customers.

NeighborWorks and NeighborWorks organizations (NWOs) have had a partnership with the Federal Home Loan Bank System (FHLB) and the FHL Banks that predates the creation of NeighborWorks. For the past 40 plus years we have maintained that partnership at the national, regional and local levels. Over a dozen NWOs serve on FHLB Advisory Committees and Boards. Countless NWOs have been nonprofit recipients of AHP homeownership and competitive programs at each of the FHLBs, creating or preserving thousands of affordable rental and home ownership housing opportunities over the years. Further, at least seven NeighborWorks organizations or affiliates are FHLB members, including one of NeighborWorks' capital corporations that serves the NeighborWorks network, Community Housing Capital.

The Affordable Housing Program is one of the valuable tools NWOs use to help the NeighborWorks and NWOs achieve our shared mission of creating opportunities for people to live in affordable homes, improve their lives and strengthen their communities. For almost thirty years, the program has served the Banks and their regions very successfully. It is, however, time to modernize the program so that it better aligns with other housing assistance programs and becomes less rigid in scoring, compliance and redundant monitoring and oversight so that the program is easier to use and administer. Banks need flexibility to better serve the specific needs of their unique districts. Additionally, rural and other hard-to-serve areas or populations that may not compete as well against areas with more housing resources could also be better served if the program is modernized.

NeighborWorks appreciates the efforts of the Federal Housing Finance Agency (FHFA) to update and streamline the Affordable Housing Program while attempting to maintain the flexibility which is key to the success of the program. We recognize the challenge of creating a program flexible enough to maximize the best use of a wide range of funds in distinct regions with differing priorities. We hope that with modifications to this proposed rule as recommended by the public comments, that FHFA will achieve these goals as well as level setting the role the AHP plays with other, often larger funding sources. Before addressing a number of the specific questions posed by the rule, NeighborWorks has some general comments on the rule.

- We are concerned about the overall complexity of the rule particularly with regard to the outcome framework. Advisory Committee reports over the years show the unique ways each bank is focusing on its region's needs. While the outcome measurement and requirement is laudable in theory, the proposed methodology is too restrictive. It will hinder the flexibility of the program, an attribute with wide support. This would be counterproductive especially considering the overall outcomes of the current AHP appear to track the results that the regulation would mandate. The proposed framework would be harder to administer and more difficult to use.
- We support the creation of targeted funds designed to meet specific housing needs within a FHLB's district that have been identified by analysis and the respective Advisory Committee but have proven difficult to address through the general fund's competitive application program. We are concerned, however, that using forty percent of a Bank's AHP funding to establish up to three targeted funds may unduly limit the funds available for the homeownership set-aside and the general funds under the competitive program.
- We support increasing the maximum FHLB-provided homebuyer benefit from $15,000 to $22,000 but have concerns about eliminating the requirement that homeowners repay the Bank a portion of their benefit should they sell or refinance their home within five years of purchase.

- We support the AHP focus on down payment assistance programs. NWOs are effective at using these programs to promote and preserve homeownership. The success and sustainability of assisted homebuyers is due to the comprehensive homebuyer preparation provided by NWOs. Proper homebuyer preparation includes an education component (whether a group class or an approved online course) combined with pre- and post-purchase counseling provided by a HUD-certified counselor. The AHP should require that assisted low-income homebuyers receive comprehensive homebuyer preparation consisting of pre-purchase education combined with one-on-one counseling.
- In general, we support expanding the scope of first time homebuyer set-asides (one-third of homebuyer set aside) to include owner-occupied rehabilitation. There is great need around the country – in all kinds of markets – for owner-occupied rehabilitation. The need for first time homebuyer assistance also remains strong, so a sharp focus on first-time homebuyers in the homebuyer set-aside could facilitate higher levels of counseled first time homebuyers.
- We support alignment of the AHP's program monitoring requirements with those used by other government housing finance programs so that AHP funding can more easily be combined with such resources. The Low-Income Housing Tax Credit (LIHTC) is crucial and it should continue to be a priority. We also support including HUD 202, HUD 811, USDA 514 and USDA 515 as programs eligible for reduced monitoring. We would like to encourage continued re-evaluation of whether to include HOME, CDBG, RAD and PBRA on the list of eligible programs.
- The Advisory Councils are a critical access point to the program for nonprofit developers. NeighborWorks does not support diluting the nonprofit voice by including 'for-profit organizations" as "community" and 'not-for-profit" organizations if such organizations would become a large proportion of an Advisory Council. The majority of members on the council should be not-for-profit organizations and government agencies to bring the mission and perspective for success in reaching and maintaining long-term affordability in homeownership and rental projects.
- Rural areas and regions are suffering from a lack of access to credit and subsidy. The AHP has a role to play for member banks and nonprofit partners to change this dynamic, whether through homeownership set-aside or competitive programs (General Fund or Targeted Funds). We support rural as a defined underserved area.
- The rule should allow for expansion of funding rounds. Also, competition rounds could make better comparisons if rental and homeownership programs competed only against other rental or homeownership applications. These could be broken into separate rounds to level-load program administration throughout the year.

- The proposal to require the evaluation of the ability of the sponsor and all the members of a development team to perform the responsibilities related to an application is problematic. Entire development teams are not always there at the time of an application. Absent a real problem to solve, reviewing the prior experience of a development team or organization should be sufficient and retained.

Responses to Specific Questions Raised in the Rule for Response:

Subpart B—Program Administration and Governance

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

There is a benefit for Banks to be permissively allowed to establish Targeted Funds if the targets are determined by market needs along with the input and guidance of the Bank's Advisory Committee. Targeted funds could also help Banks with larger geographies reach communities or applicants who have been underserved. Targets should be allowed - but not required - and should be subject to amendment annually or as needed, in accordance with the priorities of the Targeted Community Lending Plans. To the extent Plans can signal the future direction of Target Funds, potential applicants can also plan accordingly. Establishing several targets with up to forty percent of the funds, however, will detract from the viability of the competitive program. NeighborWorks proposes limiting the creation to no more than two per year. Targeted Funds should include opportunities to better serve rural areas in a Bank's geography.

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?

In general, the competitive program should be designed to meet the needs of the Banks' market priorities which should successfully include, at least eventually, projects that a targeted fund would be designed to assist. Lowering the limit to twenty-five to thirty percent would allow the funds to be of a viable size without overly impinging on the general competitive program.

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?

It is possible that the proposed expansion will impede the Banks' ability to respond to disasters through the AHP. Disaster recovery funds available through member institutions for small business and homeowners can be an important resource. Either banks should be able to reserve funds for disaster lending responses OR disaster response and recovery should be allowable Target Fund activity.

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?

AHP implementation Plans should devolve from market information with the input and recommendation of the Advisory Councils. Flexibility is paramount so that each Bank can meet the needs of various different markets and constituencies in their Districts.

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?

NeighborWorks supports owner-occupied retention agreements. These agreements ensure that affordable homeownership resources are maintained in the community and are not lost to "flipping".

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?

NeighborWorks supports the increase in the maximum permissible grant to households from $15,000 to $22,000 under the Homeownership Set-Aside Program because it will allow the program to work better in high-cost markets where housing price increases are continuing to outpace low- to-moderate-income homebuyers' affordability. We do not support eliminating the retention requirement regardless of an increase in the amount. NeighborWorks supports the requirement of an education component (whether a group class or an approved online course) combined with pre- and post-purchase one-on-one counseling provided by a HUD-certified counselor in conjunction with homeownership assistance programs of the Banks.

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?

Yes, there should be a repayment of the subsidy with the repayment level declining over time. It would be appropriate, however, to have a de Minimis threshold, such as the $1,000 suggested in the proposed rule, when repayment would be waived or additionally when a refinancing is not a cash-out refi and it benefits the homebuyer.

11. What approaches would provide a reasonable basis to assume that the subsequent purchaser of an AHP-assisted unit is likely to be low- or moderate-income, including proxies that could serve this purpose?

It is reasonable to obtain income documentation/verification from other parties such as the real estate broker, for certain low-income borrowers. Other proxies could include borrower participation in other programs with income-restrictions.

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?

Certainly, there are circumstances where the costs for repayment outweigh the benefits of recapture of funds such as when the net proceeds or gain are less than $1,000. We support these kinds of exceptions to the AHP subsidy repayment requirement.

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?

The development of a relocation plan is important. There is no single answer and the solution will be very dependent on community priorities and the availability of funding and housing.

16. Are the current AHP requirements for sponsor-provided permanent financing reasonable, do the sponsors have a need for AHP subsidy in light of their particular financing model, and does the current method in the regulation for determining their need for AHP subsidy understate or overstate the amount of AHP subsidy needed?

The current method for determining need likely understates the amount of subsidy needed. Financing affordable housing projects is complicated and nuanced. Need for subsidy should be separated from the operational feasibility of a project.

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?

In general, we are concerned about the outcomes requirements and thus are not in support of re-ranking of applications to meet them. This opportunity to update the AHP should be moving toward efficiency and flexibility and should not make it harder for the Banks to administer or for the program applicants to use.

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?

Fewer households may receive the subsidy in areas when a Bank opts to increases the limit. Certainly, it will afford partners and homeowners living in higher cost areas some additional flexibility and utility. In order to prevent flipping and misuse of the subsidy, it should be subject to recapture. In addition, to leverage the impact of any increase in the subsidy limit, the assistance should be coupled with appropriate homebuyer preparation. Homebuyer education (whether a group class or approved on-line course) combined with pre- and post-purchase counseling provided by a HUD-certified counselor, will enhance the sustainability of the homeowners who are using the subsidy. NeighborWorks supports requiring such comprehensive homebuyer preparation in AHP homeownership programs.

26. Is the proposed use of FHFA's Housing Price Index to automatically adjust the subsidy limit upward over time appropriate, or are there other housing price adjustment indices that would be preferable and why?

Yes.

Subpart E – Outcome Requirements for Statutory and Regulatory Priorities

27. Does the proposed outcome requirement of ten percent of a Bank's total AHP funds constitute prioritization for the home purchase priority, or should the percentage be higher or lower?

We support the targeting of ten percent of a Bank's total AHP being allocated for affordable and sustainable home purchasing. We remain concerned that the outcomes rubric proposed by the rule will overly burden the Banks and limit flexibility and efficiency. We propose employing a separate grant round for homeownership activities so that rental and homeownership applicants are considered and rated among similar programs with similar outcomes.

28. What is the utility of the proposed outcome approach to income targeting, and are the proposed 55 percent threshold, its applicability solely to rental units, and income-targeting at 50 percent of AMI appropriate?

While a laudable goal, the outcome approach complicates a program at the front end in order to reach goals it appears are already being met under the current program at the back end. The requirement of specific outcomes, however, will drive the Banks to manage to the outcome, essentially trying to reverse engineer the outcomes, altering both the flexible feel of the program as well as the competitive nature of it, as projects solely focused on the outcome requirements likely would be chosen whether they scored high or not.

Given that the AHP funds are often a smaller part of any project/deal, the threshold level of 55% at 50% AMI is too aggressive. A lower number that is more in line with other federal programs would be more appropriate to allow flexibility. While scoring of applications can incentivize more units for very low-income households, if 55% is reserved for very low-income households, these projects will need more operating reserves etc. and the subsidy is not likely to support that.

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

As we have noted throughout, we are concerned many of the proposals in this rule will limit the flexibility of the AHP. We do not support the proposed change in the minimum threshold as it is too high and will not support mixed income housing. It may be that the percentage should vary based on the number of units in a project. We support maintaining the current threshold of twenty percent with the possibility of a Bank awarding additional points to applications that are able to go above this percentage. A building that is largely serving homeless people or people with special needs is harder to finance, harder to market, harder to site, subject to NIMBYism, and tends to isolate populations. Also, since successful projects would require supportive services, there are additional complications when the threshold is so high.

We are also concerned that given the high threshold, there may not be enough nonprofits in each Bank footprint to submit viable applications for a competition. It is not clear, for example, whether organizations in the NeighborWorks networks are operating properties with fifty percent or higher homeless or special needs persons.

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?

See previous answer to #29.

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

See previous answer to #29.

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?

See answer to question 34.

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

NeighborWorks supports calling out additional specific housing needs. For example, we would include urban community stabilization, revitalization of distressed neighborhoods, housing construction, more defined shared equity programs, and the permanent preservation of manufactured housing communities.

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?

NeighborWorks supports separate competitions for homeownership and rental housing applicants. This would assist in addressing multiple housing needs in a funding period.

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

Given the complexity of the model proposed by the rule, it might be favorable to return to the current scoring system in order to maintain flexibility and efficiency.

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, as the reductions are based on reliance on other government programs this seems appropriate. We also support including additional programs as soon as practicable as it reduces compliance burden for both the Banks and the project sponsors.

Subpart G – Remedial Actions for Noncompliance

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

The current system for subsidy collection for noncompliance is preferable to the proposed system.

Thank you for the opportunity to comment. If you have any questions, please feel free to contact me at (202) 760-4000.

Sincerely,

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Senior Vice President
Public Policy and Legislative Affairs
NeighborWorks America