June 12, 2018

Federal Housing Finance Agency
Alfred M. Pollard, General Counsel,
Eighth Floor, 400 Seventh Street, SW.,
Washington, D.C. 20219.

Re: Affordable Housing Program Amendments Comments / RIN 2590-AA83

Thank you for the opportunity to comment on the Federal Home Loan Banks' (FHLB) Affordable Housing Program (AHP) New Proposed Rule (NPR). The California Housing Partnership Corporation (CHPC) is in favor of the proposed changes that provide regional banks greater opportunities to set and implement their own priorities within limits, but strongly opposes proposed changes that would work against this goal. Our objections are outlined in detail below.

Major Comments

1. Proposed Changes to AHP Allocation Requirements

CHPC strongly opposes the proposed reduction in a FHLB members' minimum contribution to a competitive program from 65% to 50%, while also increasing from 35% to 40% the maximum contribution a FHLB member can choose to make to a Homeowner Set-Aside program. Data demonstrates that the greatest need is for affordable rental housing affordable, which the current Competitive Application Program primarily addresses.

CHPC annually assesses affordable housing needs in California. Our latest statewide report shows that California has a shortage of more than 1.5 million rental homes affordable and available to very low-income renter households. As the National Low Income Housing Coalition has documented, California is not alone. No state, including the District of Columbia, has an adequate supply of rental housing for extremely low-income households and the national deficit for affordable rental homes for extremely low-income renter households is 7.4 million. Seventy-one percent of these households spend more than 50% of their income for rent and utilities, leaving them severely cost burdened.

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From 1990 to 2016, the Federal Home Loan Banks ("FHLBanks") awarded approximately $4.4 billion under the Competitive Application Program, assisting more than 660,000 units, 77% of which were rental units. In 2016, rental units constituted almost 94% of all Competitive Application Program units.

In the preamble to the proposed rule, FHFA acknowledges that the change to the 50% minimum allocation to a new General Fund will potentially result in less funding for rental projects but justifies the amendment due to what FHFA claims is demand for Homeownership Set-Aside funds exceeding the current 35% maximum. However, we dispute this claim as few FHLBs have even approached the current 35% threshold for their Homeownership Set-Aside programs.

In the preamble, FHFA states that if an FHLBank establishes one of the proposed new Targeted Funds, those resources are likely to be targeted to rental housing. FHFA also reasons that even if a FHLBank allocates 40% to Homeownership Set-Aside programs, the remaining 10% could be allocated to rental housing in the proposed General Fund, thus close to the current 65% requirement under the Competitive Application Program.

However, given the drastic need for affordable rental homes CHPC and CHPC have documented, there is no justification for any incremental reduction in an FHLBank's obligation to address such a need. Disability rights advocates also note that multifamily rental housing must address accessibility needs, while homeownership programs do not.

For all of these reasons*, CHPC urges FHFA to not reduce the amount of an FHLBanks' minimum required allocation of AHP to rental housing development below 65%.*

2. Targeting to Very Low Income Households

In order to meet the proposed regulatory "outcome" of targeting to very low-income households, an FHLBank would have to ensure that at least 55% of the units in a rental development are targeted to very low-income households, those with income at or less than 50% of the area median income (AMI). Requiring a minimum of 55% of the units in a development to be targeted to very low-income households is contrary to current best practice regarding mixed-income housing and adds unreasonable regulatory burdens that will damage financial feasibility of many affordable housing developments. For these reasons, *CHPC opposes this change and urges FHFA to retain the current 20% very low income minimum regulatory requirement*.

3. Outcome Framework and Re-Ranking

CHPC strongly opposes the proposed outcome framework to replace the current scoring system because it would negatively impact the predictability and transparency of the AHP program. Instead, *we urge the FHFA to revise the NPR to include "ask" number four (4) from the "List of 41," prepared by the San Francisco FHLBank.* Currently, the ability to request additional subsidy without cancelling an existing award is offered by some FHLBanks, but not all. Given

rapidly rising construction costs due to sustained economic growth in the SF FHLBank region coupled with instability in the tax credit equity market, it is common for developments to face funding shortfalls after receiving their AHP award. Allowing developers to request additional subsidy without terminating their existing award is critical to ensure a functioning finance system as well as consistent standards, transparency, and fairness. Rescinding awards based on the need for additional subsidy would introduce a degree of uncertainty and risk that would likely render many developments infeasible due to developer, investor and lender concerns. *Developers must have the ability to apply for additional subsidy without forfeiture of the current award and relief language be offered consistently throughout all FHLBs by incorporation in the Federal Register.*

4. Sponsor and Affiliate Capacity

CHPC opposes the proposed rule that would expand the sponsor qualification criteria that evaluate not only the ability of the development sponsor but also the sponsor's team members such as general contractors. The Low Income Housing Tax Credit program, which is used for virtually all multifamily rental housing development, already has minimum and competitive sponsor criteria as do most state housing programs. Staff from these other funding programs already oversee the capacity of each development team. Expanding the evaluation process to general contractors and perhaps other team members would be an unnecessary and costly regulatory burden to the sponsors and would undermine the goals of the AHP.

5. **Rent and Population Transition Provisions**

The NPR should also include tenant population relief language (transition from special needs population to non-special needs population) in the event the development loses its rental and/or operating subsidy through no fault of the sponsor to be consistent with relief language that has been adopted by CTCAC and other public agencies. On special needs developments, increasing rents and income levels is generally insufficient to achieve financial feasibility since the development is still required to serve a special needs population that is unable to pay the higher rents. A nonprofit sponsor would need to contribute limited financial resources to ensure break-even or positive cash flow operations or seek additional scarce financial resources from other public funders. With the loss in rental or operating subsidies, the sponsor would need the ability to transition the homeless/special needs population to a non-special needs population, in addition to increasing rents to the maximum permissible levels, to the extent necessary for financial feasibility. The rent and population transition language is critical to tax credit investors and bank lenders for underwriting purposes as these corporations would otherwise require substantial transition reserves in absence of such language, driving up the cost of development substantially.

Below are our more detailed comments, listed in order by proposed citation:

1. **Proposed 1291.23 Eligible Projects**

    a. ***Tenant income qualifications in rental projects:*** We agree with the Federal Housing Finance Agency (FHFA) proposal to include a mitigation measure that would allow for income verification at initial monitoring for proposed projects that were occupied at the time of application with a relocation plan approved by one of the development's primary funders. Further, we recommend FHFA consider allowing for "grandfathering" of existing tenants if: 1) there is evidence that at the time of initial occupancy the tenant was income certified and met the unit income targeting commitments, and 2) the applicant agrees to comply with income targeting commitment upon unit turnover.

2. **Proposed 1291.24 Eligible Uses**

    a. ***Supportive services expenses in operating proforma:*** We ask that the FHFA permit supportive services expenses to be included as a standard operating expense payable above the line from operating cash flow. AHP requires sponsors to provide critical supportive services but does not allow operating rental income to pay for these services. The California Tax Credit Allocation Committee (CTCAC) and California Department of Housing and Community Development (HCD) both require supportive services to be provided in special needs housing projects and correspondingly allows for an appropriate level of operating rental income to pay for services. AHP underwriting is inconsistent with the underwriting provisions of these public agencies.

    b. ***Maximum subsidy limit per project sponsor:*** We strongly oppose the proposed change within the NPR that would allow FHLBanks to establish per round maximums on the subsidies for which a sponsor can apply within a single round. With limited funding gap resources, sponsors should not be penalized for having multiple projects that score well and eligible for funding award. The scoring guidelines within the Implementation Plan with fixed and variable point criteria is sufficient to adequately determine which projects receive funding.

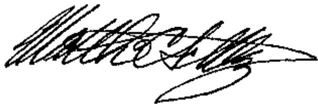
3. **Proposed 1291.48 Statutory Priorities for Government Properties and Project Sponsorship**

    a. ***Affordable Housing Preservation:*** We support the proposed new set aside for Other Targeted Populations and see this as benefit to the program. However, we strongly oppose the proposed change to the Housing for Homeless Households and Housing for Special Needs Populations set asides that would increase the current requirement of 20 percent of units to receive the minimum scoring to 50 percent of all units. Increasing the required minimum within these set asides from 20 percent to 50 percent will lead developments that serve these populations to be non-competitive for leveraging state-

controlled funds that are critical to financial feasibility. CHPC requests that FHFA maintain the 20 percent set aside to maintain the financial feasibility of these developments in California. Furthermore, CHPC's experience is that a more diverse unit mix has proven to be more successful with populations such as Homeless or Special Needs. If the goal of the proposed changes is to help Homeless and Special Needs households concentrated in specific areas or buildings, then provisions under the new Target Funds would better serve those household considering the intensive supportive services that are needed on those sites.

Thank you for the opportunity to comment on the NPR.

Sincerely,



Matt Schwartz, President & CEO