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National Association of Federally-Insured Credit Unions

June 12, 2018

Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
400 7th St., SW, 8th Floor
Washington, D.C. 20219

RE: Affordable Housing Program Amendments (RIN 2590-AA83)

Dear Mr. Pollard:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally-insured credit unions, I am writing to you in regard to the Federal Housing Finance Agency's (FHFA) proposed rule to amend regulations concerning the Federal Home Loan Banks' (FHLBs) Affordable Housing Program (AHP). Many of NAFCU's member credit unions rely on the FHLBs for liquidity purposes so that they may properly serve the needs of their communities. The current AHP rule poses significant challenges for the FHLBs in terms of addressing the unique needs of their communities and NAFCU is concerned that this proposed rule's new outcome-driven approach would only exacerbate these challenges. NAFCU is also wary of the proposed rule's potential effect on the flexibility of the FHLBs, its credit union members, and their sponsors. NAFCU encourages the FHFA to either revisit and adopt the approach it originally put forward in its "AHP Program Design and Project Selection White Paper" (AHP White Paper) which more closely aligns with what the FHLBs have identified as most likely to benefit their communities, or keep the current AHP rule regarding project selection.

General Comments

The *Federal Home Loan Bank Act* (Bank Act) requires each FHLB to establish an affordable housing program to provide subsidies for long-term, low- and moderate-income, owner-occupied and affordable rental housing. The FHLBs may provide subsidies to finance (1) homeownership by families with incomes at or below 80 percent of area median income; and (2) the purchase, construction, or rehabilitation of rental housing where at least 20 percent of the units will be

occupied by and affordable for very low-income households. The FHFA's regulations implementing the AHP requirements are located in 12 C.F.R. Part 1291.
Since the start of the AHP, the FHLBs have awarded approximately $5.4 billion in AHP subsidies to their members through two different programs: the mandatory Competitive Application Program and the optional Homeownership Set-Aside Program. Each FHLB is required to allocate annually at least 65 percent of its required annual AHP contribution to its Competitive Application Program. Each FHLB may allocate annually up to the greater of $4.5 million or 35 percent of its required annual AHP contribution to its Homeownership Set-Aside Program.

As part of its five-year regulatory review plan, the FHFA published a Notice of Regulatory Review in 2013, and received a comment letter from the FHLBs jointly, which recommended certain updates to the AHP. The FHFA embarked upon a comprehensive review of the AHP regulation, including gathering feedback from the FHLBs' Community Investment Officers (CIOs). The CIOs offered several specific recommendations to improve the AHP and the FHFA released a non-public document entitled "AHP Program Design and Project Selection White Paper" to outline the approach proposed by the FHLBs. In March 2018, the FHFA published this proposed rule to amend the AHP regulation to, among other things, provide the FHLBs with greater flexibility to design and implement their own project selection scoring criteria and award AHP funds, subject to certain FHFA-prescribed outcome requirements.

Unfortunately, this proposed rule actually significantly reduces the flexibility the FHLBs, their members, and their sponsors currently experience with the AHP. NAFCU and its member credit unions are concerned that the new prescribed award percentage outcomes would have a negative impact on for-profit builders' access to AHP funds, unnecessarily shrinking the pool and diversity of sponsors, developers, and builders. The outcomes approach would force the FHLBs to focus on meeting the outcomes, thereby disadvantaging certain sponsors and types of housing. The proposed rule also places an undue burden on the "sponsor" community and could have a chilling effect on rental projects. Furthermore, the mandatory elimination of retention agreements and the mandatory funding of alternates if funds become available ignore local housing needs and could put the entire AHP at risk. Consequently, NAFCU urges the FHFA to either adopt the approach it put forward in its AHP White Paper or retain the processes in the current AHP rule regarding project selection.

AHP Award Percentage Required Outcomes

The proposal's new prescribed award percentage outcomes would run contrary to the objective of tailoring the AHP to meet local housing needs because it requires a significant percentage of funds to be awarded to certain types of projects and sponsors. In order to achieve the new

prescribed regulatory outcome requirements, the FHLBs would be compelled to move away from their long-standing practice of selecting projects in descending rank order in favor of selecting lower scoring projects, essentially restricting their ability to choose projects that would be most beneficial to their communities and respective districts. Additionally, the FHLBs would want to avoid the supervisory consequences for non-compliance, so these outcomes would become the de facto scoring and needs allocation in each district. The new required outcomes create a national, prescriptive program that prevents individual FHLBs from addressing the particular needs of their local communities and districts.

More specifically, the new awards percentage outcomes could negatively impact the historically broad access to AHP funds afforded to for-profit builders through the Competitive process by shrinking the pool and diversity of sponsors, developers, and builders. The new awards percentage outcomes could potentially disadvantage the following types of projects: (1) general occupancy, including new construction projects intended for renters and homeowners; (2) property re-use projects such as repurposing vacant or blighted properties; and (3) urban and rural rental projects that target greater than 50 percent of area median income. The pool and diversity of AHP Competitive sponsors that apply for such projects would likely shrink because they may not qualify under the new regulatory priorities. As a result, the outcomes approach could pose a host of new issues in terms of addressing local housing needs and only further existing challenges.

The proposed rule would also make the project selection process less transparent and more complex. Under the new outcomes approach, the FHLBs would have to move away from the practice of selecting projects in descending rank score order toward selecting lower scoring projects to achieve the new requirements. Currently, sponsors and members alike enjoy a substantial level of transparency regarding the scoring system. The new outcome requirements would effectively re-rank applications to meet the designated award quotas, thereby reducing transparency and causing confusion. This re-ranking process also has the potential to compromise the integrity of the AHP Competitive selection process and hurt the reputation of the FHLBs within their communities. Accordingly, NAFCU recommends that the FHFA revisit and adopt the approach it put forward in its White Paper as that draft did not include the outcomes approach and it more closely resembles what the FHLBs view as the best approach for their communities. Alternatively, the FHFA should keep the current AHP rule regarding project selection because it is superior to the outcomes approach.

Undue Burden on "Sponsor" Community

This proposed rule imposes an undue burden on the sponsor, non-profit and for-profit builders and developers that work with the FHLBs to alter their current business approach to respond to

the prescribed outcomes approach. The prescribed outcomes approach also has the potential to have a chilling effect on rental projects because it conflicts with other funding sources. The capital and other financing necessary for the projects envisioned by the FHFA under this regulatory priority may not be available on a national level.

The regulatory priority for Underserved Communities and Populations would require at least 50 percent of the units in awarded projects to serve the homeless, special needs or other targeted groups. This increase from the current 20 percent requirement is incompatible with other affordable housing funding sources, making it difficult to achieve this outcome while working with current sponsors. It also ignores some of the benefits of mixed occupancy developments, which include allowing developers to cross-subsidize units in a project. Consequently, due to the difficulty associated with securing rental subsidies, raising the minimum number of units to be reserved for homeless or special needs groups could negatively impact the feasibility of a given project. Additionally, it would likely discourage some sponsors and developers from applying for the AHP in the first place. NAFCU recommends the FHFA maintain the current regulatory requirement that 20 percent of the units in projects serving special needs or homeless households are reserved for those groups.

Mandatory Elimination of Retention Agreements

The proposed elimination of the retention mechanism requirement for owner-occupied, AHP-assisted units would undermine the FHLBs' ability to accommodate differences in housing markets within and across their respective districts. Each FHLB should be afforded the flexibility to use a retention agreement for its homeownership transactions on a case-by-case basis, depending on its needs. Overall, eliminating the retention agreement requirement runs counter to the proposed rule's overall goal of allowing the FHLBs greater flexibility to develop their competitive application scoring systems.

Not only does this proposal fail to account for differences in real estate markets, but it also fails to account for differences in grant amounts, which can actually encourage the "flipping" of properties. Additionally, eliminating the retention agreement requirement has the potential to encourage predatory lenders to try to access the home equity of first-time homebuyers, which creates huge losses and has a very negative effect on the local housing market and efforts to create affordable housing. The FHLBs have unique expertise and familiarity with the local real estate markets and should be able to decide whether to require a retention agreement for a particular project. Therefore, the FHFA should not finalize this portion of the proposal and instead allow the FHLBs the discretion to use retention agreements as they see fit.

Mandatory Funding of Alternates if Funds Become Available

Another area where the FHFA should provide the FHLBs with more flexibility to make decisions as they see fit is the mandatory funding of alternates if funds become available. The FHLBs should be permitted to use returned funds as they wish, in accordance with the regulation, and not forced to fund alternates that may not address the housing needs of their communities. Such alternates may be inferior projects the FHLBs would otherwise never select, which could put their entire AHP portfolios at risk. Moreover, projects have the potential to change significantly from the original application to when funding becomes available because a project may seek other funding sources or reduce the scope of the project, thereby altering the entire funding structure. This could require the FHLBs to conduct a new underwriting process for a given project, which adds substantial costs to the administration of the AHP. On the whole, mandatory funding of alternates reduces the FHLBs' flexibility to reallocate funds as most appropriate, compromising the effectiveness of the AHP.

Conclusion

NAFCU appreciates the opportunity to provide comments on this proposed rule on the FHLBs' AHP. If you have any questions or concerns, please do not hesitate to contact me at akossachev@nafcu.org or (703) 842-2212.

Sincerely,

Ann Kossachev
Senior Regulatory Affairs Counsel