Habitat for Humanity®

We build strength, stability, self-reliance *and* shelter.

June 12, 2018

Mr. Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
400 Seventh Street S.W.
Washington, D.C. 20219
Attention: Comments/RIN 2590-AA83

Re: Notice of Proposed Rulemaking – Affordable Housing Program

Dear Mr. Pollard:

I am writing to express Habitat for Humanity's (Habitat's) serious concerns regarding the Federal Housing Finance Agency's (FHFA) proposal to amend regulations governing the Federal Home Loan Banks' (FHLBanks') Affordable Housing Program (AHP). Habitat strongly supports the FHFA's intentions, as stated in its notice for comment, to provide the FHLBanks "additional flexibility to allocate their total annual AHP funds" and to "enhance the Banks' ability to target specific affordable housing needs within their districts." These are laudable goals for improvement of the program. The proposed rule, however, would undermine the FHLBanks' authority to design the AHP scoring criteria, and in so doing, would likely reduce the program's effectiveness, as well.

The AHP program has built an impressive record of accomplishment, expanding access to decent, affordable housing throughout the U.S., particularly for very low-income populations who have benefited from 71 percent of all competitive AHP funding to date. Having demonstrated a decades-long, deep commitment to meeting the critical housing needs of the communities they serve, the FHLBanks merit greater freedom to design and implement AHP programs, providing them the opportunity to create even greater local impact.

Habitat is just one of thousands of organizations that has leveraged AHP funding with their own investments to ensure that more low-income families have access to decent homes they can afford. Habitat's nearly 1300 US affiliates and state organizations have accessed hundreds of millions of AHP competitive and homeownership set-aside dollars over the past twenty-plus years to create homeownership opportunities for low and very low-income households. These efforts have been generously supported by hundreds of FHLBank member institutions in all eleven FHLBank regions, and Habitat looks forward to continuing to work with the FHLBanks to advance its mission.

While portions of the proposed rule appear potentially beneficial for low-income households seeking affordable homeownership, other aspects, particularly the new outcomes framework, would make it difficult for those benefits to come to fruition and would risk undermining the AHP's current ability to meet critical housing needs in communities throughout the US.

As FHFA works to finalize AHP regulations, please give careful consideration to the following concerns.

- **Outcomes framework would undermine program flexibility and efficacy**
  Much of the success of the AHP program is directly attributable to the FHLBanks' ability to tailor scoring criteria to target the most pressing local housing needs. The proposed outcomes framework would supersede locally focused scoring criteria, requiring the banks to shift awards toward projects aligning with specific national regulatory priorities and reducing funding available to meet other local needs. Because the individual FHLBanks and their members are well positioned to understand and are committed to meeting the particular needs of their

regions, as has been demonstrated since the AHP's inception, the FHLBanks should retain authority to prioritize local needs and be given even greater latitude to implement scoring criteria best suited to meet those needs.

The rule also threatens the efficacy of the AHP from a practical standpoint, as the addition of outcome requirements would both complicate the program and reduce transparency. The transparency of AHP competitive application processes are particularly important, as they enable potential applicants to understand how their proposals are scored and can make better decisions regarding whether or not it is worthwhile to apply.

Under the proposed rule, because lower scoring projects would be re-prioritized above higher scoring applications to ensure outcomes requirements would be fulfilled, creating a less transparent and predictable system, creating uncertainty that could discourage potential applicants from applying. Nonprofit housing providers with limited grant-seeking resources, in particular, may be less likely to apply if they cannot assess whether or not their applications will be competitive.

Habitat recommends that the final rule maintain program quality, confidence and participation by fully empowering the FHLBanks to continue to allocate resources through locally defined, transparent scoring processes, unencumbered by federally dictated outcome requirements.

- **Outcomes framework likely to undermine support for homeownership**
  While the proposed rule includes provisions that could theoretically increase the AHP's support for homeownership, there is a significant risk that the framework would ultimately undermine it both by disadvantaging homeownership applications in the competitive program and by reducing funds available through the homeownership set-aside.

  The proposed rule would skew the competitive portion of the program strongly toward rental housing by severely limiting the types and locations of homeownership projects that could be supported under each of the proposed outcome requirements.

  - **Underserved communities and populations:** Even homeownership projects that serve the specified populations will find it difficult to qualify, as the requirement dictates that 50 percent of units serve homeless, special needs, and other populations requiring supportive services, populations who often find it difficult to qualify for homeownership opportunities.

  - **Creating economic opportunity:** The second priority appears to offer narrow support for ownership through homebuyer counseling or units constructed in high opportunity, mixed income, or rural areas. Unfortunately, this appears to prevent AHP investment in many areas of great need where nonprofit housing providers are poised to leverage greater impact.

  - **Affordable housing preservation:** The third regulatory priority would apply only in very limited circumstances: if, for example, the AHP sponsor were engaged in owner-occupied rehabilitation or permanent affordability strategies. While these are viable and important strategies in many areas of the country, they may not be the most impactful or appropriate for many communities in each of the FHLBanks' districts.

  - **Threat to homeownership set-aside**
    Additionally, because the FHLBanks could be penalized for failing to meet outcome requirements, the proposed rule would incentivize the reduction of the homeownership set-aside to allocate more to the competitive program to ensure it clearly exceeds the 55 percent threshold.

Habitat recommends that the final rule reject the addition of outcome requirements to protect AHP's ability to target local needs, including opportunities for low-income homeownership.

In addition to these central concerns, Habitat for Humanity is pleased to have the opportunity to respond to a number of the specific questions posed by the FHFA in the notice for comment.

1. **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?**
   Organizations providing access to homeownership opportunities for low-income families frequently employ retention agreements, often in the form of subordinate liens, to protect homeowner equity and housing subsidies from predatory lenders and "flipping." These strategies have proved extremely effective at Habitat. Habitat has been advised by FHLBank representatives that elimination of the FHLBanks' authority to require retention agreements would also result in a prohibition on awardees using them. Habitat recommends that the final rule provide the FHLBanks authority to determine retention agreement policies locally.

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?**
   No other lender is required by AHP regulations to disclose how it obtains funds to lend to a homebuyer. This is an unfair burden placed only on sponsor-provided permanent mortgage lenders. From a practical and examination stand point, the AHP subsidy must be disclosed on the Closing Disclosure which notes the face value of the mortgage loan. This is to demonstrate the pass through of the grant to the homebuyer and subsequent need for subsidy. The requirement for the sponsor-provided permanent financing was intended to show that due to lending money below market, there is a need for AHP subsidy as a source for the discounted loan (present value of the loan). However, since the "present value loan amount" is not on the Closing Disclosure, this creates an additional document for these entities to create which is burdensome and provides no additional value to the FHLBanks in evaluating the need for AHP subsidy.

17. **Should sponsors using the sponsor-provided permanent financing model be considered revolving loan funds and, if so, should they be subject to the current or different AHP revolving loan fund requirements?**
   Because the AHP rule makes it difficult for revolving loan funds to utilize the AHP, Habitat does not recommend that the FHFA consider the sponsor-provided permanent financing models to be considered revolving loan funds. Organizations such as Habitat for Humanity affiliates would be negatively impacted and likely excluded from the competitive AHP funds if they were to be treated exclusively as revolving loan funds in any future regulation.

29-31. Is the increase in minimum unit thresholds for targeted populations appropriate?
Even homeownership projects that serve the specified populations will find it difficult to qualify, as the requirement dictates that 50 percent of units serve homeless, special needs, and other populations requiring supportive services, populations who often find it difficult to qualify for homeownership opportunities.

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?**

While the regulatory priorities identified reflect significant areas of need and opportunity, many communities and households in need and effective housing providers, including providers of low-income ownership opportunities, would be competitively disadvantaged or locked out of the benefits of AHP by the proposed rule. Any changes to the AHP rule should enhance AHP's flexibility to meet local needs, rather than undermining it.

34. **Should the specific housing needs identified under each regulatory priority be included, or are there other specific housing needs that should be included?**
    Because the specific housing needs identified would further narrow the scope of potential AHP investments, reducing the FHLBanks' flexibility to identify and meet local needs, they should not be included. Their exclusion would allow a more expansive interpretation of the regulatory priorities, should they be adopted, better enabling the FHLBanks to meet specific local needs.

35. **Flexibility**
    While Habitat is extremely concerned that the proposed rule would undermine the FHLBanks' flexibility and ability to meet local needs through the AHP, the current system leaves room for improvements, as well. The AHP rule should be reformed to maximize the FHLBanks flexibility to meet the specific needs of their service areas, while still meeting all statutory requirements.

Thank you for your consideration of these concerns, as well as those expressed in separate comments by Habitat affiliates and state organizations. While some of their comments share some common language, many also express individual concerns based on their direct experiences with the FHLBanks serving their regions. As longstanding implementers of AHP funding, they are particularly well positioned to assess potential changes to the program.

Please protect the AHP's flexibility to meet local needs and support low-income homeownership by rejecting the proposed outcomes framework and by advancing reforms that would increase the authority and flexibility of the FHLBanks to meet local housing needs. If you have questions, please feel free to contact me at cptomey@habitat.org.

Sincerely,

Christopher Ptomey
Senior Director, Government Relations