



National Community
Stabilization Trust

June 12, 2018

Mr. Alfred Pollard
General Counsel
Federal Housing Finance Agency
400 7th Street, S.W.
Washington, DC 20024

*RE: Comment on Federal Home Loan Banks Affordable Housing Program Amendments
12 CFR Parts 1290 and 1291 / RIN 2590-AA83*

Dear Mr. Pollard:

Thank you for the opportunity to comment on the Federal Housing Finance Agency's (FHFA) proposed amendments to its regulation on the Federal Home Loan Banks (Banks) Affordable Housing Program (AHP).

The National Community Stabilization Trust (NCST) is a non-profit, non-partisan organization that works to reclaim vacant and abandoned properties, to support healthy neighborhoods, and to promote affordable homeownership. Established in 2008, NCST has helped put approximately 25,000 distressed properties back to productive use. Our organization offers a unique blend of policy expertise and on-the-ground real estate experience focused on single-family acquisition and rehab in distressed communities.

Through our programs, NCST works with hundreds of local developer partners across the nation – largely community development corporations and nonprofit housing groups, but also some for-profit developers who work with the nonprofit sector. A number of our partners participate in programs supported by the Federal Home Loan Bank Affordable Housing Program (AHP). Given the very limited sources of affordable capital for mission-oriented, single-family housing developers, AHP remains of critical importance to this sector.

While we share many of the concerns that organizations such as the Housing Partnership Network and New Jersey Community Capital have shared concerning flexibility and ease of accessing the AHP program, we write today on one individual issue: the owner-occupant retention agreements for homeownership subsidies. We strongly oppose the complete elimination of the retention agreements.

Why NCST Supports Homeownership Retention Agreements

NCST's perspective on this topic stems from our flagship "First Look" program, which has a sub-program called the Neighborhood Stabilization Initiative (NSI) through a partnership with Fannie Mae and Freddie Mac. Through First Look, pre-qualified "Community Buyers" can access REO properties from Fannie Mae, Freddie Mac, and other private sellers before those properties are made available to the general public. Because the properties come onto our selling platform



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prior to any marketing or rehab costs are expended, we are able to offer them to our Community Buyers with what we call a “cost-avoidance” discount. These lower prices assist Community Buyers in making the economics of rehabilitation work in neighborhoods where the housing market remains troubled and where an “appraisal gap” deters private development because costs of acquisition and rehab exceed local fair market values.

Through our work, NCST has the daily opportunity to observe the market dynamics in low-income neighborhoods and communities of color. Our Community Buyers report they and the families they serve routinely lose properties to cash investors. Real estate remains a favored investment for many types of individuals and funds, and smaller funds and REITs with fewer restrictions and little concern about reputational risk are pushing hard into the lower value bands. They can rent these homes out at monthly payments not much lower than those in much stronger markets to families who have no other options, yet in these neighborhoods, there is far less pressure to rehab properties or even to do basic maintenance and repairs. Other investors will “fix and flip,” often doing little to fix up the property beyond a coat of paint and new carpet.

With the real estate investment business remaining extremely active, our Community Buyers routinely see evidence of Fannie Mae, Freddie Mac, or FHA “First Look” requirements being undermined by real estate brokers and investors who collude to evade them. NCST also routinely receives requests to participate in our program from buyers who do not come close to meeting our qualification requirements, but see our program as an opportunity to get rich quick, either as a landlord or a flipper.

In proposing to eliminate the retention requirement, FHFA cites a lack of evidence that subsidy recipients have been flipping homes under the current system. FHFA further asserts that “homes purchased by AHP-assisted households, by virtue of their low prices, are not typically located in neighborhoods with rapidly appreciating housing prices that would encourage flipping.”

NCST fundamentally disagrees with FHFA’s reasoning. In our view, the reason there is little evidence of flipping under the current program is precisely because of the prohibition on flipping. As noted above, we see flipping or other fraud designed to get properties into the hands of investors across a wide range of neighborhood types and home values. There is a long history of real estate fraud using low-income individuals as “straw buyers” to access certain types of mortgages or subsidies. Also, fraud risk will likely rise when the permitted subsidy amount is increased from \$15,000 to \$22,000.

Additionally, it is impossible to predict exactly when and where home values will increase at any given time. (Indeed, today’s investors use auction websites to purchase individual homes in numerous neighborhoods in the hope that some of them will “hit” when a neighborhood gentrifies.) It is also the case that growing inventory shortages, especially in lower value bands, currently are driving up prices even in neighborhoods that are not the usual suspects. FHFA



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should also consider that the Fed Banks serve the entire country, and not only do market conditions vary widely among different Banks' jurisdictions, but they are often vary widely within a given Bank's jurisdiction.

Answers to FHFA Specific Requests for Comment

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?

Owner-occupied retention agreements aim to prevent the waste or abuse of a limited amount of AHP subsidy available for homeownership. Without a retention agreement, low-income individuals who use these subsidies may be far more susceptible to pressure from investors who wish to purchase homes in the neighborhood – and outright fraud is much more difficult to detect and prevent without these agreements.

It is also an advantage to align with other subsidy programs like HUD's HOME Investment Partnership (HOME), which also requires five-year owner-occupied retention agreements. Since many of the projects funded by AHP use multiple funding sources, some of these homes will continue to have retention agreements in place even if the AHP rules do not require them.

In its discussion, FHFA offers two reasons to remove the retention requirement. The first is complaints by Banks and members about the burden of the paperwork and labor required to monitor homeowner retention outcomes, as well as disproportionately high costs incurred in enforcing repayment of relatively low subsidy awards. While we sympathize with this concern, especially for programs that may be relatively understaffed, there are always significant administrative costs and burdens associated with programs statutorily mandated to serve specific, underserved populations. As outside observers, we see sufficient value to the retention requirement that we believe it is worth the administrative burden. However, it would have been helpful for the FHFA analysis to cite to data supporting the claim that the paperwork is excessive or explaining the costs; without that, we cannot purport to offer a thorough cost-benefit assessment.

Another concern cited by FHFA is that because the AHP subsidy works with LMI households and aims to enable LMI households to build wealth through homeownership, a repayment requirement would be a burden on those families and would inhibit wealth building. NCST's core mission is to assist lower-income families become homeowners, and we are very sensitive to the financial struggles families face and to the advantages of building equity through homeownership. **However, the political reality of subsidy programs is that if they are abused, they will eventually be lost.** For that reason, virtually every program to subsidize LMI



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homeownership or prevent foreclosures comes with requirements imposed on the recipient (even loan modifications have a phase-in of principal reductions). In the case of AHP, exceptions to the repayment give homeowners who desire to exit the home an opportunity to limit their financial loss by, for example, selling their home to another LMI purchaser.

In summary, a retention requirement whose payment phases out over five years seems like the most elegant solution to deterring flipping while permitting the homeowner to build equity in their home. NCST cannot think of another solution that would accomplish the same goal as directly. As noted below, we are not opposed to an exception based on *de minimis* repayment amounts. It might also help to provide exceptions for *de minimis* amounts of initial homeownership subsidy.

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?

As noted above, increasing the maximum grant size is likely to increase the incentive for abuse.

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?

NCST supports the proposed revision to the notice requirements that would place both the Bank and the member on notice of any pending sale or refinance of a property within the 5-year retention period. The minimal cost of the extra notice is worth the added layer of oversight.

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?

With respect to FHFA's request for input on clarifying whether subsidy repayments should be made from "net proceeds" or from "net gain", NCST supports alignment of the subsidy repayment scheme with the HOME repayment process, as suggested in the proposed rule. Requiring *pro rata* repayment of the subsidy from the proceeds after deducting outstanding debts and seller's costs is fair, while still deterring profit-driven flippers. As stated earlier, there is value in promoting alignment between multiple government subsidy sources that are often used together.

10. What are the merits and disadvantages of the net proceeds and net gain calculations from the standpoint of the AHP-assisted households and the Banks, and are there other subsidy repayment



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approaches FHFA should consider, if the AHP retention agreement requirement is retained in the final rule?

Answering this question requires access to detailed information about typical transactions that was not included in FHFA's discussion. If the agreements are retained, FHFA should work with the Banks to learn more about how each approach affects the subsidy recipients in their jurisdiction.

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?

See answer to Question 12.

12. What proxies would be reasonable for assuming a subsequent purchaser's income, including the following or others: certification from the subsequent purchaser or a third party that the subsequent purchaser's income is at or below the low- or moderate-income limit; evidence that the subsequent purchaser is receiving direct homebuyer assistance from another government program with household income targeting requirements substantially equivalent to those of the AHP; the purchase price of the AHP-assisted unit is less than the median home price in the area; the AHP-assisted unit is located in a census tract or block group where at least 51 percent of the households are low- or moderate-income; or FHA or other underwriting standards indicating that the income required to purchase the AHP assisted unit at the purchase price is low- or moderate-income?

NST strongly opposes using either the purchase price or the geographic location of a home as a proxy for the income of a subsequent purchaser. With respect to purchase price, many purchasers are interested in acquiring lower-priced homes for a variety of reasons. As to geography, in our work, we frequently remove homes from our selling platform that are in a neighborhood that is generally distressed, but where certain blocks are quite upscale due to the presence of water features, golf courses, or other amenities.

While certification might help, our experience with certification requirements in the real estate space is that they often create more problems than they solve, especially if they are poorly written. In the last few years, we have seen significant unintended consequences flow from certification requirements in the context of FHA insurance and the foreclosure process. For this reason, we recommend avoiding them.

Of these options, the best proxies are the accessing of other programs with targeting requirements and looking to underwriting standards.



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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?

NCST recognizes that the costs to administer subsidy repayment requirements below a certain dollar amount may exceed the amount of the *pro rata* amount due from the AHP subsidy recipient. To avoid economic waste, we support setting a *de minimis* threshold. Whether that amount is \$1,000 or another amount is impossible to say without further information. It is possible that requiring each Bank to determine this *de minimis* threshold based on their actual costs would make the most sense.

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.

Conclusion

To protect the integrity of the AHP and to ensure that AHP subsidy funds are being used for their statutorily intended purposes, NCST believes FHFA should not eliminate the owner-occupied retention agreements.

In the alternative, if FHFA is determined to remove the mandatory requirement for all Banks to use the retention agreements, the rule should not prohibit Banks from establishing such a requirement. Individual Banks should have the flexibility to use such agreements if they believe their programs would benefit from one.

We appreciate the opportunity to comment on the proposed amendments to the AHP rules. Please let us know if you have any questions.

Sincerely,

Julia Gordon
Executive Vice President
National Community Stabilization Trust
910 17th Street NW, Suite 500A
Washington, DC 20006
jgordon@stabilizationtrust.org
202-706-7501