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June 11, 2018

Federal Housing Finance Agency
Mr. Ted Wartell
Manager, Office of Housing and Community Investment
400 Seventh Street SW
Washington, D.C. 20219

Subject: Affordable Housing Program Amendments

Dear Mr. Wartell:

Thank you for the opportunity to comment on the Federal Housing Finance Agency's ("FHFA") proposed amendments to its regulation for the Federal Home Loan Banks' ("Banks") Affordable Housing Program ("AHP" or "Program") dated March 14, 2018.

The development of affordable housing is extremely challenging in California, and we greatly need AHP to be effectively aligned with the lending practices of banks and the government funding programs that provide the vast majority of funding for the projects that our members deliver.

Nearly all of the public funding for affordable housing is administered by state and local governments. Therefore, we strongly endorse the call for local flexibility in order to limit burdensome and time-consuming processes and allow multiple layers of financing to function together in a synergistic and integrated fashion. In addition, this local flexibility should be informed by the constant input and guidance of the Banks' corresponding Affordable Housing Advisory Council.

Both our general comments about the Program and specific comments on the proposed changes to the AHP regulations are based on four overall goals we have for the Program and we urge FHFA to consider the proposed regulations in light of them:

- Autonomy to decide how to invest FHLBank resources
- Simplified administration
- Increased ability to work with other funding sources
- Increased options for resolving noncompliance

The proposed "outcome" framework is far too prescriptive and denies the Banks the ability to respond to regional and local conditions and meet regional and local needs.

The "cure-first" rule is highly problematic. Our members obviously want their projects to succeed and the Banks can address this issue in other ways.

The "Need for Subsidy" should be separated from operational feasibility. Unfortunately, the regulations have never really recognized the challenges of financing affordable housing and the proposed amendments do not either.

HUD's HOME, CDBG, RAD and PBRA programs should be added to the list of programs eligible for reduced monitoring.

Sponsor capacity should not include entire development team, since not all partners are chosen at the time of application.

Local Flexibility

As noted above, the affordable housing funding system has changed dramatically since the advent of AHP. Most notably, HUD is no longer a significant funder of new housing development. Instead, nearly all of the new development is funded in part by the Low-Income Housing Tax Credit (LIHTC) program, which is administered by states. In California, the LIHTC is augmented by state and local government subsidies, which target specific outcomes such as homelessness, veterans, and transit-oriented development. We need our regional office to have sufficient discretion to align AHP loans and practices with those of other much larger sources of funding.

Another example of the need for local flexibility relates to resident services. The California Tax Credit Allocation Committee (TCAC) requires resident services to be provided in multifamily projects and correspondingly allows for an appropriate level of operating expense to be used for that purpose. **Ironically, AHP also expects these services but does not allow rental income to be used to pay for the services, nor will it explicitly allow a reserve to fund services. This must be changed. It simply makes no sense for AHP to be inconsistent with this very basic requirement in the largest LIHTC program in the nation. This contradiction is also an example of misalignment between the AHP and the more dominant private and public underwriting rules in the market.**

Alignment

While AHP loans are valued and critical to ensure that affordable developments are able to go forward, they tend to be among the smaller layers in the capital stack. As such, the timing of awards, underwriting standards and monitoring should follow, be aligned with and responsive to the larger sources and the sponsoring banks to the greatest extent possible.

For example, AHP has its own unique definitions of allowable revenue and expense that are inconsistent with private lender practices and the state and local public funders. Key underwriting criteria like Debt Service Coverage Ratio, therefore, vary widely based on AHP's unique set of definitions. As a result, developers are forced to try to align their pro formas to two distinct underwriting calculations, one of which is used by the Banks and another for state tax credit agencies and the other dominant funders that typically account for over 90% of the project funding.

The initial disbursement and monitoring processes are unnecessarily cumbersome and difficult. AHP should defer to and accept verification from other credible public agencies. The U.S. Department of Housing and Urban Development (HUD) follows this approach and refers to it as "delegated processing." According to HUD, delegated processing procedures "enhance the Department's ability to provide timely, high quality underwriting while streamlining the compliance process for sponsors/owners undertaking mixed-finance transactions."

AHP should defer to local and updated cost standards and defer to the construction contracts and cost certifications provided to other financing sources such as TCAC and HCD which have systems and standards in place to report on and contain costs.

Need for Subsidy
It is critical to simplify the administration of AHP. We need greater clarity around the criteria for the "need for subsidy determinations." The overly restrictive approach to defining the need for subsidy creates enormous administrative cost for staff and partners. For example, relatively small changes in the development trigger extensive reviews. There should be a *de minimis* standard in which small changes do not require a new round of underwriting particularly for deviations that do not affect scoring.

We also encourage AHP to make larger per-project awards and allow a sponsor to request a larger award without having to give up an existing award and being forced to reapply. Also, AHP must stop the practice of rescinding awards based on additional "need for subsidy" analyses during construction and at completion. This kind of uncertainty and risk created by a funder is unnecessary and unwelcomed. Additionally, when projects are completed with a surplus of sources of sources over uses it should not be the Bank's policy to be the "last in, first out." Rather the AHP award should be reduced proportionately with all other soft lenders to share in the savings. Surplus funds which are targeted to benefit tenants directly, such as with capitalized services reserves, should be explicitly permitted under the Program.

FHFA should also be aware of the way in which the "need for subsidy" interacts with local processes to create unnecessary complexity and administrative burden. This has become particularly challenging given that the San Francisco Region only has one round of awards per year. Scoring and administrative burden also encourage projects to typically apply after all other sources have been secured. 9% tax credit projects have strict timelines for starting construction that may occur well before AHP award announcements, which also complicates the "need-for-subsidy determination."

The Banks must be allowed to allocate their funds according to regional and local priorities and needs, recognizing that every affordable housing project needs subsidy and that AHP funds can comprise one of those sources. Only one source can truly comprise "gap" funding, and in light of AHP's small size relative to others, AHP should not be viewed as filling that role.

Subpart B – Program Administration and Governance
Proposed §1291.12. This section would revise the required and permissible allocations of the Bank's required annual AHP contribution, under current §1291.2(b). Section 1291.2(b)(1) currently requires each Bank to allocate annually to its Competitive Application Program that portion of its required annual AHP contribution that is not set aside by the Bank to fund Homeownership Set-Aside Programs. Section 1291.2(b)(2) provides that each Bank may allocate annually, in the aggregate, up to the greater of $4.5 million or 35 percent of its annual required AHP contribution to Homeownership Set-Aside Programs. Therefore, a Bank generally is required to allocate at least 65 percent of its required annual AHP contribution to its Competitive Application Program depending on the amount of AHP funds it allocates, if any, to Homeownership Set-Aside Programs. The change would allow the Banks to create a Targeted Funds and allocate up to 15 percent of AHP allocation, thereby decreasing the amount of the AHP allocation to 50 percent from 65 percent of the current provisions. In the event that the Bank does not set up a Targeted Fund Competitive Application Program, the amount that would be allocated to the Targeted Fund would be allocated to AHP.

We understand the benefit of having a directed allocation for targeted populations, but we are concerned that the new Targeted Funds Competitive Application Program would result in less units built overall. It is helpful that the provisions note that the Banks *may* allocate Targeted Funds, and if not, then those funds would remain in the Program. However, we oppose the amendment to allow Banks to direct up to 15 percent of the Program to Targeted Funds. Considering the current high-cost market, the difficulty obtaining leveraged funds, and lack of new housing being built nationwide, this could be a significant decrease in the Program. For these reasons, we urge you to maintain the current 65 percent set aside.

Proposed § 1291.14 Advisory Councils

The Affordable Housing Advisory Councils must remain predominantly populated by non-profit and public sector representatives rather than diluting the composition and representation by including for-profit organizations.

Subpart C – General Funds and Targeted Funds

Proposed §1291.5(c)(2) would move to replace §1291.24(a)(3), with clarifying changes, including comments on supportive services funding through the operating budget and the requirement in which the Bank should review the operating budget for cash flow analysis. We urge you to align all changes with LIHTC on issues related to supportive services and cash flow analysis. Administratively, if a project has already been allocated tax credits, which allows social services in the budget, and in which the project's cash flow was reviewed and approved as appropriate, then the Banks should defer to that approval at time of the AHP application. Furthermore, an investor, and lender if applicable, are already regulating the project's operating budget and social services requirement at disbursement and initial monitoring, which would alleviate the administrative burden on the Banks of reviewing these items.

Subpart E – Outcome Requirements for Statutory and Regulatory Priorities.

Proposed §1291.48(d). Subsection d would establish outcome requirements for three regulatory priorities for the FHFA. This would include increasing the Housing for Homeless Households and Housing for Special Needs Populations set-aside from 20 percent of all units to receive the minimum scoring to 50 percent of all units in a development. At the same time, subsection d would include a new set-aside for Housing for Other Targeted Populations at 50 percent of all units to receive minimum scoring.

Unfortunately, increasing the set-aside from 20 percent of all units to 50 percent of all units for both Homeless and Special Needs, and now Other Targeted Populations, would render uncompetitive many developments that serve these populations. Again, we urge FHFA to maintain the 20 percent set-aside. A more diverse unit and population mix is often required by state and local funders and has proven to be more successful when working with populations such as Homeless or Special Needs.

Other outstanding issues

- AHP is not currently structured in a way that is compatible with re-syndications for substantial rehabilitation and we encourage a robust discussion with users around clear criteria on those that may serve important public policy purposes.
- A sponsor sale to a related entity should be permitted without penalties or required reductions of sale price, absent windfall receipts.
- Projects deemed to be alternates should be funded if de-obligations occur in the year.

- The "project readiness" standard continues to be problematic. In the current scoring, many projects need to be in construction before becoming competitive. This makes budgeting and scope planning very difficult, if not impossible, and attenuates the impact of AHP funding.

Thank you again for the opportunity to provide these comments.

Sincerely,

Amie Fishman
Executive Director
Non-Profit Housing Association of Northern California (NPH)