NAAHL | National Association of Affordable Housing Lenders

June 12, 2018

Alfred M. Pollard
General Counsel
Attention: Comments RIN 2590-AA83
Federal Housing Finance Agency
400 Seventh Street, S.W., Eighth Floor
Washington, DC 20219

Dear Mr. Pollard:

Thank you for the opportunity to comment on the proposed amendments to the Federal Home Loan Banks (FHLBanks) Affordable Housing Program (AHP). We greatly appreciate the tremendous effort that the Federal Housing Finance Agency (FHFA) has devoted to the AHP and the proposed rule.

The National Association of Affordable Housing Lenders (NAAHL) is the national alliance of commercial banks, community development financial institutions (CDFIs) and other private capital providers for affordable housing and inclusive neighborhood revitalization. A list of NAAHL's members is attached. Our members generally use the AHP as members of the FHLBanks or as lenders and investors in projects and programs that receive AHP support. We also have experience with the many other public programs and policies that combine with AHP.

We believe that the AHP has been successful but needs more flexibility and simplicity, as well as updating to reflect changing market conditions, needs, opportunities, and practices. The average AHP amount per unit from 1990-2016 was only $6,700, and currently represents roughly 5-10% of a housing unit's or project's total financing. AHP-assisted housing often receives far more funding from other public programs. Indeed, many projects involve multiple public programs, often with different requirements, resulting in enormous administrative complexity, extended planning periods and delays to assemble financing, additional cost, and greater compliance risk – all of which make the already difficult challenge of providing affordable housing even harder. While we appreciate FHFA's responsibility to ensure that AHP funds are properly used, we urge FHFA to avoid imposing unnecessary burdens on the FHLBs and – indirectly but more importantly – on the end users of AHP funds.

We are aware that some potential AHP users with high-impact projects decide not to seek AHP funds because the modest funding available does not justify the additional complexity and burden. This does not mean those users do not need AHP funds or would not use them well. Instead, some sponsors would rather scale back projects or pursue other, perhaps less impactful, activities than take on the additional burden associated with the AHP funding. For example, a homeless housing project usually depends on rental subsidies that will require renewal after several years, contingent on subsequent government spending decisions beyond a sponsor's control. If AHP funding requires a service term longer than the initial rental assistance period and there is a risk that AHP funds must be repaid because the rental subsidies are not renewed and the required income level can no longer be served, then the sponsor and its investors may decide the AHP compliance risk is unacceptable. Other federal policies, such as the McKinney-Vento homeless housing program, accommodate such realities. We hope the final AHP rule will not worsen these kinds of problems.

Here are our responses to many of the specific questions FHFA has asked.

1. What are the benefits and risks of allowing the FHLBanks to establish Targeted Funds?

- Targeted Funds enable the FHLBanks to structure specific programmatic responses to high-priority activities.

2. Is the proposed allocation of 40 percent of total AHP funds to Targeted Funds an appropriate percentage, or should the percentage be higher or lower?

- Yes.

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?

- The primary advantage is to prevent an owner from flipping a property and unduly profiting from AHP assistance. However, most low- and moderate-income (LMI) owners will use whatever profit they derive to buy another home, so the funds will continue to support those LMI households and their housing. The disadvantages are three-fold. First, the provision will be confusing to many homebuyers, especially first-time homebuyers, even if they are expressly informed. Second, in a distressed neighborhood the retention requirement could discourage some homebuyers, especially if homes in other neighborhoods are not so encumbered. Where the assistance covers the gap between the home's appraised value and the cost of development such that the buyer is paying the market price, the buyer is helping to stabilize the neighborhood without receiving any financial benefit. In such cases, a retention payment may be punitive and counter-productive. Third, the requirement may be administratively burdensome. For these reasons, we support giving the FHLBanks full flexibility to determine whether and how to require a retention agreement.

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?

- The FHLBanks should have full flexibility to determine whether and how to require a retention agreement.

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?

- Yes, but the threshold should be higher than $1,000, perhaps $5,000.

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 FHLBank 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.

15. How should preservation of rental projects be encouraged through the AHP while discouraging displacement of current occupants with higher incomes than those targeted in the AHP application submitted to the FHLBank for approval, and is the proposed requirement for a relocation plan approved by the primary funder reasonable?

- The FHLBanks should have the flexibility to set this policy or to defer to policies established for other subsidy programs assisting the property.

18. What are the potential advantages and disadvantages of allowing the FHLBanks to impose a maximum subsidy limit per project sponsor?

- The FHLBanks are in the best position to set this policy.

19. What are possible approaches for re-ranking applications to meet the outcome requirements while at the same time maximizing the extent to which the highest scoring applications are approved?

- The FHLBanks are in the best position to set a re-ranking policy. However, we understand that most FHLBanks will be very reluctant to re-rank applications to meet the outcome requirements. Accordingly, we are concerned that the FHLBanks will set initial scoring criteria to ensure the outcome requirements will be met without resorting to re-ranking, with the likely result that virtually no applications may get funded unless they meet the outcome requirements.

25. Are there any potential positive and negative impacts of increasing the subsidy limit per household from $15,000 to $22,000, and should the subsidy limit be higher or lower?

- This proposal is reasonable.

28. What is the utility of the proposed outcome approach to income targeting, and are the proposed 55 percent threshold, its applicability solely to rental units, and income-targeting at 50% of AMI appropriate?

- We believe this approach is misguided. Such deep income targeting will restrict a property's net operating income, making it impossible to obtain significant mortgage financing unless the property has access to project-based rental assistance, a severely limited resource. Accordingly, this approach is incompatible with the objective to preserve affordable housing that does not have project-based rental assistance. According to HUD data, 80 percent of all rental housing affordable to LMI households has no project-based rental assistance or capital subsidy. Moreover, the 50 percent of AMI standard is generally inconsistent with other most federal affordable housing policies (except for rental assistance and public housing), including the Community Reinvestment Act, Low Income Housing Tax Credits (LIHTC), multifamily private activity bonds, and the HOME and Community Development Block Grant programs. LIHTC properties generally serve households with incomes up to 60% of AMI, but mortgage financing on LIHTC properties typically covers only about 20 percent of project development costs and LIHTC equity can offset the small mortgage amounts. Affordable housing that does not have LIHTC or rental assistance requires more mortgage financing than the proposal would accommodate.

29. Is the proposed increase in the minimum threshold from 20 to 50 percent for the number of units reserved for homeless households appropriate?

- No. the 20 percent standard is more appropriate as a matter of policy and practice. In addition, serving the homeless and other extremely low-income populations generally requires project-based vouchers or some other project-based rental assistance. Project-based vouchers can generally be attached to no more than 25 percent of the units in a given property or 25 units, whichever is greater, unless the property is located in a low-poverty area or provides supportive housing. Requiring a higher standard would make it harder to serve any homeless households. In addition, many homeless housing providers and advocates believe it is preferable that homeless households live in settings where they comprise a minority of the residents.

30. Is the proposed increase in the minimum threshold from 20 to 50 percent for the number of units in a project reserved for households with a specific special need appropriate?

- See the response to question 29.

31. Is the proposed 50 percent minimum threshold for the number of units in a project reserved for other targeted populations appropriate?

- See the response to question 29.

32. Is the proposed 20 percent minimum threshold for the number of units in a project reserved for extremely low-income households appropriate?

- Yes. However, FHFA should define extremely low-income as the greater of 30 percent of AMI or the poverty line. This is the definition used for the Housing Trust Fund supported by contributions by Fannie Mae and Freddie Mac and administered by HUD.

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?

- We are concerned that the proposed outcomes structure, in combination with the requirement that FHLBanks pay a financial penalty for noncompliance, will in practice restrict the FHLBanks' flexibility to meet district needs. We understand that the FHLBanks will be very reluctant to re-rank proposals in order to meet the outcome standard. We are concerned that the FHLBanks are likely to develop scoring systems that will favor the regulatory priorities to the extent that proposals for other activities will have little chance of funding. Applicants will quickly learn that submitting proposals for other activities is futile. We recommend that FHFA permit the FHLBanks to establish their own priorities in ways that will not preclude other activities.

  However, if FHFA is intent on pursuing its proposed outcomes approach, we strongly urge that activities that stabilize or revitalize low-income neighborhoods be added as an eligible activity under the "underserved communities and populations" section. We are dismayed by this omission. Many low-income neighborhoods continue to struggle in the aftermath of the Great Recession and are among the most "underserved communities" in the United States by almost any measure. While we support designating rural areas as underserved areas, we would note that not every rural area is underserved and many are less distressed than low-income urban neighborhoods. An important strategy to retain affordable housing for LMI people is to stabilize and revitalize the neighborhoods where they live.

  Although housing preservation and homeownership assistance can support low-income neighborhoods, new housing construction and demolition of obsolete properties are often essential to helping these neighborhoods to stabilize and revitalize. Many of these neighborhoods have vacant and abandoned homes that cannot be rehabilitated cost-effectively. In many cases the homes are functionally obsolete and would have limited marketability even if they are rehabilitated. Demolition is an important strategy that several states and localities have pursued aggressively to prevent further abandonment, property value decline and crime. Federal programs such as HUD's Neighborhood Stabilization Program and Treasury's Hardest Hit Fund have supported targeted demolition. In fact, because the Hardest Hit Fund must be used to reduce foreclosures, Treasury allowed demolition as an eligible activity only after demonstrating that targeted demolition stabilizes nearby property values and reduces foreclosures.

New construction is often essential to neighborhood stability and vitality, both as in-fill housing and more generally by introducing new and attractive housing that can help retain and attract residents and, in turn, businesses providing jobs and services.

Finally, we also note that the Community Reinvestment Act, which applies to the insured depository institutions that comprise most of the FHLBanks' (and NAAHL's) membership, explicitly encourages neighborhood stabilization and revitalization as a core community development activity. The AHP should be consistent with CRA in this regard.

41. Are the facts and circumstances described in proposed § 1291.60 appropriate for consideration by an FHLBank during reasonable subsidy collection efforts, and are there other factors that should be considered as well?

- "The proposed rule would clarify that the facts and circumstances to consider also include the financial capacity of the project sponsor or owner, assets securing the AHP subsidy, and other assets of the project sponsor or owner." This language indicates that AHP funds will effectively be recourse obligations of the sponsor and owner. This is a major problem for affordable rental housing, for which financing is normally nonrecourse. For example, Low Income Housing Tax Credit investments are generally provided through a limited partnership or limited liability corporation structure that, by its own terms, limits the liability of investor-owners to the funds they have invested and precludes recourse to the owners' other assets. Similarly, mortgage financing is generally provided on a non-recourse basis. Because recourse to borrowers is inconsistent with standard housing finance practice, directing the FHLBanks to consider an owner/sponsor's assets as part of subsidy collection is not appropriate.

This concludes our comments. Thank you for considering them.

Sincerely,

Benson F. Roberts
President and CEO

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American Bankers Association Foundation
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