

June 12, 2018

Mr. Alfred Pollard, General Counsel
Federal Housing Finance Agency
400 Seventh Street SW, Eighth Floor
Washington, DC 20219

Re: RIN 2590-AA83 Proposed Amendments to the Federal Home Loan Bank's
Affordable Housing Program

Dear Mr. Pollard:

Opportunity Finance Network (OFN) appreciates the opportunity to comment on RIN 2590-AA83, the proposed amendments to the Federal Home Loan Bank's Affordable Housing Program. OFN is a national network of community development financial institutions (CDFIs) investing in opportunities that benefit low-income, low-wealth, and other disadvantaged communities nationwide. OFN members are performance-oriented, responsible investors that finance community businesses, spark job growth in the areas that need it most and deliver both sound financial returns and real changes for people and communities.

Our network has originated more than \$54.9 billion in financing in urban, rural, and Native communities through 2016. With cumulative net charge-off rates on par or better than traditional banks - less than 1% - CDFIs have demonstrated their ability to lend prudently and productively in unconventional markets often overlooked by conventional financial institutions. CDFIs in OFN's network have cumulatively developed or rehabilitated more than 1.93 million housing units through 2016.

CDFIs and Housing Finance

CDFIs are important players in the national housing finance landscape, providing innovative solutions to address the affordable housing crisis in our communities. CDFIs are responsible lenders who offer credit, capital, and financial services to promote sustainable homeownership; counter predatory products and services; develop affordable multifamily and rental housing; and pioneer innovation in financing such markets as shared-equity housing and manufactured housing.

Resources like those provided by the Federal Home Loan Bank's Affordable Housing Program (AHP) provide critical subsidy needed to finance affordable housing. The National Low-Income Housing Coalition notes that for single-family housing, AHP subsidies have been used to reduce a property's purchase price, lower mortgage interest rates, and help prospective home buyers with down payments and closing



costs. For multifamily housing, the program has been used as both a source of equity and a way to reduce the costs of financing projects' construction or rehabilitation.¹

CDFIs in OFN's network participate in the AHP program in several ways:

- Members of the FHLB System - The 48 CDFI members of the FHLB system can submit applications on behalf of project sponsors or apply for homeownership subsidy directly from the bank of which they are a member.
- Project Sponsors - For non-FHLB members, CDFIs can serve as project sponsors, defined as a nonprofit, for-profit organization or public entity that has an ownership interest in a rental project; is integrally involved in an owner-occupied project, operates a loan pool; or is a revolving loan fund. One OFN Member currently operates an AHP revolving loan fund.
- FHLB Advisory Councils and Boards - CDFIs serve on FHLB Boards and Advisory Councils, which have significant influence over the implementation and targeted lending programs the Banks use to administer their AHP programs.

OFN appreciates the FHFA's efforts to develop a proposed rule that allows FHLBs the flexibility to design and implement an AHP program that serves the housing needs of their district and meets statutory and regulatory priorities. Creating a regulatory structure that works for all stakeholders and balances multiple competing priorities is one of the challenges of implementing a program like AHP. OFN supports a regulatory framework that outlines clear priorities but that allows maximum flexibility and reduced complexity for FHLBs, their members, and project sponsors.

OFN would like to comment on the following aspects of the AHP regulations:

Subpart B—Program Administration and Governance

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

OFN supports the use of Targeted Funds as to better direct AHP resources to identified housing needs and address the expanded list of AHP regulatory priorities. These targeted funds offer CDFIs financing housing needs like housing for veterans, persons with disabilities, or disaster recovery efforts greater opportunities to partner with FHLB members as nonprofit partners, and for CDFI members of the FHLBs to leverage their expertise in these underserved markets to access competitive funds.

OFN also recognizes creating new funds with new scoring criteria could result in a more complex and difficult funding environment for FHLBs and Member financial

¹ NLIHC 2018 Advocates Guide, http://nlihc.org/sites/default/files/AG-2018/2018_Advocates-Guide.pdf



institutions but believe the benefits of creating Targeted Funds outweigh the potential additional complexity associated with their implementation.

3. Would the proposed expansion of the contents of the Targeted Community Lending Plans impede the Banks' ability to respond to disasters through the AHP?

Yes. OFN Members raised concern about the FHLBs and their members' ability to respond effectively to disasters due to the proposed rule's requirement to post and approve the Targeted Lending Community Plans (TCLP) one year ahead of their implementation. It is nearly impossible to predict and plan for unforeseen events and natural disasters and account for them in the TCLPs.

OFN urges FHFA to consider how regulatory and administrative guidance can be structured to allow flexibility for the use of AHP resources in disaster relief and allow banks to have a rapid response in the event of a disaster that was not included in the approved and posted Targeted Community Lending plans.

In addition, FHFA should emphasize the role of AHP resources in disaster prevention, including helping to ensure that new and existing affordable housing incorporates resiliency measures to mitigate the impact of future disasters on affordable housing.

4. What are the benefits of the proposed expansion of the contents of the Targeted Community Lending Plans and their linkage to the AHP Implementation Plans?

OFN supports the provision of the proposed rule requiring FHLBs to conduct market research on affordable housing needs in their districts and identify and assess significant affordable housing needs in their TCLPs and AHP Implementation Plans. Our members also noted that the advisory councils are a critical access point to the program for nonprofit developers and voiced concern about the proposed change that would explicitly allow for-profit organizations to be included under the "community and not-for-profit organizations" designation. OFN urges FHFA to define "community organization" in a way that ensures the majority of organizations included under this definition be nonprofit or mission-driven organizations such as community-based nonprofit developers and community development corporations.

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?

OFN opposes removing the retention agreements for homeownership as the proposed rule suggests. On the one hand, the AHP homeownership subsidies exist to enable low- or moderate-income households to purchase or rehabilitate their homes and reap the benefits of wealth creation from homeownership. The retention agreement requirement could be perceived as punitive for households



that are using the subsidy to leverage homeownership as a wealth building tool. On the other hand, the AHP subsidy is not intended to be used by investors or landlords to take advantage of rapidly appreciating housing prices in a neighborhood, and OFN does have some concern that removing the retention agreements could encourage flipping or misuse of subsidy.

As written, the proposed rule does not allow the FHLB to implement a retention agreement at all, which is equally as restrictive as requiring the agreement. Instead, OFN recommends the FHFA provide regulatory flexibility that gives the individual FHLB discretion to utilize retention agreements in their AHP programs based on the needs of their districts.

Each FHLB serves a geographic area with different housing market conditions. Some Banks cover markets where flipping, gentrification, and displacement of low and moderate-income homeowners are major issues while others serve housing markets where it is less of a concern. Even within a Bank's district, there are differences in the housing markets from community to community that require targeted solutions rather than a one size fits all approach. To ensure FHLBs have needed flexibility, they should be allowed to utilize retention agreements as needed based on market conditions.

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?

CDFIs in our network expressed concern that raising the subsidy limit while also removing the retention agreements as proposed could increase likelihood of the AHP subsidy being misused.

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?

Geographic indicators are not an acceptable proxy for verifiable income of the purchaser, as it is entirely possible for a higher income homebuyer to purchase a home in a low-income neighborhood or census tract. OFN does not support using "the purchase price of the AHP-assisted unit is less than the median home price



in the area” or “the AHP-assisted unit is in a census tract or block group where at least 51 percent of the households are low- or moderate-income” as ways to assume a purchaser’s income.

OFN does support using 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 and using FHA or other underwriting standards indicating that the income required to purchase the AHP-assisted unit as reasonable proxies.

Subpart C—General Fund and Targeted Funds

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 Bank for approval, and is the proposed requirement for a relocation plan approved by the primary funder reasonable?

The proposed requirement that projects have an approved relocation plan for occupants not meeting the income targeting commitments is reasonable. FHFA could also allow Banks to accept a “next tenant” policy to avoid displacing existing higher income tenants, whereby the project owner is required to rent the unit when it becomes vacant to the required lower income tenant, but not be evaluated on the current income mix at the onset of the AHP award. FHFA could also allow projects to grandfather existing residents.

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

A sponsor subsidy limit could limit FHLB exposure to risk associated with a single sponsor and could also encourage diversification of projects sponsors. At the same time, sponsors differ substantially in their size, scale and geographic scope, capacity and internal controls.

OFN recommends applications for project sponsorship be evaluated based on the merits of individual applications, where Banks assess the risks and potential impacts associated with each application rather than setting an arbitrary sponsor cap. Should FHFA choose to impose a maximum subsidy limit on sponsors, the limit should be calculated as a percentage of total AHP awards and should be high enough to allow a sponsor to receive multiple awards per award cycle.

20. Are the current AHP revolving loan fund provisions reasonable, and how could the financing mechanisms of revolving loan funds be used successfully with AHP subsidies?

OFN is pleased the FHFA plans to further study and amend the AHP revolving loan fund provisions. OFN strongly urges the FHFA to explore ways to expand



access to AHP investment in revolving loan funds. We commend the FHFA's plan to issue a separate request for comment on revolving loan funds to solicit more robust feedback on ways to improve the revolving loan fund provisions, and we look forward to providing additional input.

AHP's statutory and regulatory structure is designed for project-based financing, and as a result program-based revolving loan funds have difficulty applying for and scoring well under the current project-based criteria. CDFIs in our network also identified the requirement that all AHP funds be forgiven after the five-year retention period as problematic. Under the current rule, the AHP funds must be forgiven after the 5-year retention period rather than repaid and revolved to use to assist another homeowner, a key component of the revolving loan fund model of using subsidy to make mortgage financing affordable.

21. Why have certain AHP scoring criteria for revolving loan funds been difficult to meet, how would AHP subsidy be repaid in the event of project noncompliance, and how can a revolving loan fund demonstrate a need for the AHP subsidy?

As previously mentioned, due to the project-based nature of the AHP program, applications for revolving loan fund programs often do not score competitively under the current scoring criteria. The FHLBs instead could move to a system of scoring based on commitment to impact and project pipelines, as opposed to specific project addresses. For example, a CDFI that operates a statewide revolving loan fund could commit to using the AHP funds for mortgage financing only in rural areas and document the rural locations only after the loans are made. Under the current scoring system, this type of project would score poorly.

Revolving loan fund programs also typically do not score well in the project-type categories because they are essentially ineligible for points for donated properties, community stability, rural, or transportation categories because those require project addresses in advance. This could result in up to a 15-point loss in scoring; even after accounting for the 5-point scoring priority in the Second District Priority for revolving loan funds, that still results in a 10-point net disadvantage for revolving loan funds.

In addition, OFN recommends new scoring criteria be added that recognize and reward the impact of revolving loan funds that will re-use the funds for mission impact as the funds revolve in the future.

22. Would the proposed outcome requirements for the statutory and regulatory priorities facilitate use of AHP subsidies by revolving loan funds, and if so, how?

No. OFN Members stated that the proposed outcome requirements, including the removal of the homeownership retention requirement or the targeted outcomes would not facilitate the use of AHP subsidy for revolving loan funds. They also voiced concerns about the overly complicated nature of the new targeted



outcomes requirements and how the changes may exacerbate the compliance burden for both lending and project-based activities.

23. What are the potential positive or negative impacts of eliminating the owner-occupied retention agreement requirement for revolving loan funds?

OFN encourages FHFA to remove stricter five-year retention provision for revolving loan fund homebuyers. As OFN Member New Hampshire Community Loan Fund notes, if an AHP homeowner sells their home in the first five years, the retention provision requires them to pay back a pro rata portion of their AHP subsidy. The recapture requirement is avoided if they sell to another low- or moderate-income household, or if the retention agreement remains in place in case of a refinance. For revolving loan fund homebuyers, the recapture requirement applies no matter who they sell to, and no matter the conditions of their refinance. OFN recommends the same homeowner retention provisions apply to both revolving loan fund and non-revolving loan fund homebuyers.

Subpart D—Homeownership Set-Aside Programs

CDFIs in our network support affordable homeownership opportunities but do not support increasing the maximum share of AHP resources for homeownership from 35 percent to 40 percent. While promoting homeownership for low- to moderate-income households is important and should be continued, it is well documented that basic housing affordability challenges for the lowest-income households have grown consistently worse, especially for low-income renters.

Our Members expressed concern the proposed regulation creates strong incentives for FHLBs to focus on homeownership activities based on the proposed increase in the allowance for homeownership; increase in homeownership awards from \$15,000 to \$22,000 and; elimination of homeownership retention requirements. They do not want to see the increase in homeownership come at the expense of supporting the preservation and development of new rental properties for very low-income and extremely low-income households. In addition to the proposed changes to the homeownership provisions of the rule, the imposition of new outcome requirements and regulatory priorities could create even greater compliance imbalance between homeownership and affordable rental housing programs.

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?

As mentioned in question 7, Some CDFIs in our network expressed concern about raising the subsidy limit while also removing the retention agreements as proposed, and that the increased subsidy could increase likelihood of the limited AHP subsidy being misused.

Subpart E—Outcome Requirements for Statutory and Regulatory Priorities



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

Our Members are concerned the minimum threshold of 55% of units targeted to very low-income residents would diminish AHP grants in higher income communities and adversely impact mixed income housing. New construction and preservation transactions in high income markets that create residential economic diversity require significant subsidy. The proposed deep income targeting in the rule could result in lack of subsidy available for mixed-income projects as Banks focus their efforts to meet the regulatory requirements.

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

OFN appreciates the FHFA's efforts to propose changes that ensure projects awarded subsidy under AHP are truly serving the needs of these underserved populations, and that creating affordable housing units for homeless populations or people with special needs as primary focus of the project. However, OFN does not support increasing the minimum threshold from 20 to 50 percent.

OFN Members noted that serving homeless and special needs populations works best if it is a small percentage of units in a large percentage of properties. A building that is predominantly or entirely serving a population with special needs is harder to finance, harder to market, harder to site, and tends to isolate the population, which often benefit from greater interaction with the broader community. Projects serving homeless individuals or families are difficult to provide without having rental subsidy, and it is sometimes difficult to receive project vouchers in certain areas. OFN Members also expressed concern that the regulation requires that supportive services be provided for special needs populations, but the cost of those services are not an eligible AHP expense.

OFN recommends maintaining the existing 20% minimum threshold limits on homeless, specialized need and other targeted populations.

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

OFN Members agreed that AHP's support for units serving extremely low-income households is important and should be continued, but that income targeting that preferences multifamily rental projects with a high percentage of extremely low-income households is difficult to reconcile with other federal housing programs, such as HOME, Community Development Block Grants, and LIHTC, that set affordability thresholds at 60 or 80% of median income. These would also create incentives for concentrations of populations of extremely low income and/or persons with disabilities, which decreases residential economic diversity.



CDFIs in our network also noted that underwriting transactions to comply with overlapping program requirements and deep affordability targeting constrains cash flow and creates operational challenges, particularly where there is no rental subsidy. OFN recommends FHFA adopt a broader, more flexible affordability requirement that would allow a more diverse pool of affordable housing projects, including mixed-income projects to better compete for AHP funds.

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?

OFN supports the three regulatory priorities of Underserved Populations, Creating Economic Opportunities and Preservation of Affordable Housing. We also recommend additional priorities be included: rural and manufactured housing in Underserved Communities category and local affordable housing initiatives in Preservation of Affordable Housing.

35. Do the Banks have sufficient flexibility under the current scoring system to target specific housing needs in their districts, including awarding subsidy to address multiple housing needs in a single AHP funding period?

No. The new system and its statutory and regulatory priority percentages, when combined, will severely constrain the ability of each FHLB to address local needs that are not addressed by the statutory and regulatory priorities.

Subpart F—Monitoring

39. Are the proposed reductions in the Banks' monitoring requirements reasonable, taking into consideration the risks of noncompliance and the costs of project monitoring?

OFN Members voiced strong support for the elimination of redundant oversight and compliance burdens in the AHP program. CDFIs in our network noted that while AHP is an important source of subsidy, compliance costs of an AHP award can deter applicants from applying particularly when an award is likely to be small relative to the overall project costs.

AHP is an important gap filler for many projects, but current rules can add unnecessary complexity to transactions. Our members noted that the complex nature of deploying AHP awards and extended negotiations around the interaction between an AHP award and other capital sources add time and cost to the development process. This has sometimes resulting in some developers to seeking back-up subsidy sources to protect their projects from risk, which can then lead to the awards being rescinded as redundant or the developer dropping the AHP award from the project funding altogether. Further, draw-down of AHP



award funds sometimes requires duplicative submission processes and repackaging of closing materials.

OFN is concerned the proposed changes will increase ongoing monitoring and compliance requirements, making AHP a less viable source of gap financing due to the increased administrative burdens for awardees. The FHFA must ensure a balance between monitoring and overly complex compliance whose costs outweigh the benefits of utilizing the program.

Additional Comments

OFN Members had additional comments about the AHP program:

- Allow AHP awards to be used for pre-development financing – Our Members noted that this could increase affordable housing production as predevelopment financings is often the most difficult financing to secure. Although predevelopment financing is not without risk, it is nevertheless an important use of grant financing that impacts preserving and producing affordable projects.
- Increase number of award rounds – Some CDFIs recommend increasing the number of award rounds to better align with state housing finance agency tax credit rounds. This would permit AHP awards to be considered as endorsements of quality tax credit applications and further expand the impact of AHP.
- Discretion on Budgets and Proformas – OFN supports allowing Banks discretion on feasibility guidelines related to development budgets and operating proformas. Our members noted that the proposed rule's focus on programmatic cash flow metrics may not work since project lenders and LIHTC syndicators have different underwriting requirements. In addition, debt and equity providers working in the prioritized markets may require higher cash flow than traditional affordable transactions, and so a more flexible approach for Banks is warranted.
- National award footprint - The current AHP applications by Banks generally provide favorable scoring to projects within a Bank's coverage area. This policy concentrates AHP awards by Banks and discourages national mission-oriented members from sponsoring impactful projects throughout the country. FHFA should consider ways to encourage FHLBs to better expand their AHP awards to national projects.
- Increase maximum debt ratio for homeownership - The homeownership debt to income guidelines use the same affordability standards as many rental programs in which no more than 30% of household income be used for housing expense. However, other mortgage programs have a higher debt ratio: FHA allows up to 40%, VA allows up to 41%, and Fannie Mae allows up to 45% maximum debt ratio. OFN recommends increasing the maximum debt ratio under AHP for homeownership.



- Relief from homelessness and special needs targeting in appropriations lapses - Properties with operating and service subsidies, including HUD rental assistance contracts, are explicitly subject to the availability of ongoing funding, and developers and funders are unable to accept the obligation of taking on these obligations in the event of non-renewal. If the rental subsidy is discontinued for federal or state budgetary reasons, and not due to malfeasance of the developer, these agencies provide relief from the homeless and/or special needs restrictions to maintain project feasibility. OFN agrees with LISC that AHP should provide a similar waiver to allow project rents and income targeting to increase to 50 percent of Area Median Income and to release the project from any specific restrictions if replacement subsidies cannot be secured.
- Subordinate AHP subsidy to other programs - AHP is an important gap filler for many projects, but current rules can add unnecessary complexity to transactions. For AHP to be most effective, rules should allow awards to be subordinate to other affordability commitments, which are generally equal to or stricter than AHP requirements. Similarly, the AHP can rely on the compliance monitoring, developer fee limits, and other program terms of funding sources to which it is subordinate.

We appreciate your consideration of these comments and look forward to continuing to work with you. Please do not hesitate to contact me if you have questions or concerns about these recommendations via email: dwilliams@ofn.org or phone: 215.320.4318.

Thank you,

Dafina Williams
Vice President, Public Policy