

August 14, 2024

The Honorable Sandra L. Thompson
Director
Federal Housing Finance Agency
400 Seventh Street SW
Washington, DC 20024

Re: Request for Input: Federal Home Loan Bank Affordable Housing Program Competitive Application Process

Dear Director Thompson:

On behalf of the Federal Home Loan Banks (“FHLBanks”), I am writing in response to the Federal Housing Finance Agency’s (“FHFA”) Request for Input (“RFI”) issued June 20, 2024, related to the FHLBanks Affordable Housing Program (“AHP”) Competitive Application Process. Thank you for considering our views.

The RFI raises issues vital to the philosophy of the FHFA regarding AHP, the role of AHP in the affordable housing industry and the accessibility of AHP funds, all of which have fundamental impacts on the operation of the FHLBanks, their members and the communities they serve through the AHP. The ultimate results of the RFI could have a significant and positive impact on this country’s affordable housing challenges by maximizing the impact of the program and reducing administrative complexity.

Although the input provided here echoes the input the FHLBank System has provided in the AHP regulatory refresh during the period of 2014 - 2018, we appreciate the opportunity to provide input to the AHP RFI. Under federal law, the FHLBanks were directed to establish their respective AHPs pursuant to the regulations promulgated by the FHFA¹ and other supervisory guidance issued by the FHFA in the form of Advisory Bulletins (“ABs”). Those regulations control the following elements of the AHP application process:

- Eligible applicants for General and Targeted Funds (12 CFR 1291.21)
- Eligible projects for General and Targeted Funds (12 CFR 1291.23)
- Eligible uses (12 CFR 1291.24)
- Scoring methodologies for General and Targeted Funds (12 CFR 1291.25)
- Scoring criteria for General Fund (12 CFR 1291.26)
- Scoring criteria for Targeted Funds (12 CFR 1291.27)
- Approval of AHP applications under General and Targeted Funds (12 CFR 1291.28)
- Modification of Approved AHP Applications (12 CFR 1291.29)
- Eligible applicants for Set-Aside programs (12 CFR 1291.41)
- Eligible households for Set-Aside programs (12 CFR 1291.42)

¹ 12 USC 1430(j)(1)

Further, FHFA regulations provide requirements for:

- Funding rounds (12 CFR 1291.22)
- Procedures for funding (12 CFR 1291.30, 1291.44)
- Monitoring (12 CFR 1291.50, 1291.51)

Additionally, FHFA ABs provide supervisory guidance on:

- AB 2013-06: Guidance on Scoring Tie-Break Methodologies in the Affordable Housing Competitive Application Program
- AB 2013-08: Guidance on On-Site Monitoring of Projects under the Affordable Housing Competitive Application Program
- AB 2016-03: Affordable Housing Program: Monitoring of Income Eligibility and Rents for Shelters for the Homeless and Victims of Domestic Violence
- AB 2019-02: Implementation of Streamlined Monitoring Requirements for Affordable Housing Program Projects Funded by Certain Other Federal Government Rental Housing Programs
- AB 2020-03: Guidance on the Use of Proxies

The FHLBanks believe the focus of the RFI should be the simplification of these regulations and the elimination of the complexities of these ABs rather than only focus on the AHP application processes of the FHLBanks. It is the complexity of these regulatory and supervisory requirements and the associated examination findings that drive the AHP application process of the FHLBanks. The FHLBanks also encourage the FHFA to demonstrate a more balanced and consistent examination approach across all FHLBanks which would allow for a more consistent execution, enabling the FHLBanks to align processes where prudent and maintain differences where appropriate to serve the needs of their respective Districts.

As a result, the FHLBanks believe the more effective approach to addressing the concerns about the AHP competitive application process is to focus on revising the regulatory framework to allow AHP to more efficiently, consistently, and effectively help ease affordable housing challenges. To achieve this end, the FHLBanks believe the FHFA should reconsider the regulatory philosophy as it relates to the AHP application process and provide for consistent supervisory interpretation and regulatory enforcement.

A refocused philosophy should:

- Recognize that the current complexity of AHP regulations has a direct impact on program users and the communities they serve, as well as a program user's ability to apply for AHP;
- Simplify and streamline the AHP regulations and requirements for both the application process and monitoring;
- Recognize that AHP is only a part of the funding for affordable housing projects, and does not drive an affordable housing market;
- Provide a stable and consistent regulatory framework for the FHLBanks and sponsors, and eliminate inconsistencies resulting from supervisory findings and recommendations;
- Align/integrate the AHP requirements with, and support, the affordable housing sector as a whole;

- Adopt a reasonable risk tolerance based on an accurate understanding of AHP’s role in funding the gap in a project’s development budget and utilize existing information from other funders to mitigate risk rather than create new or additional requirements; and,
- Appreciate that rural areas are particularly impacted by the burdens of the current AHP regulatory structure because of scalability. Housing partners in rural areas are smaller, have less access to staffing resources, and are more hesitant to sponsor an AHP project because of the prohibitive costs and demands associated with regulatory compliance.

Input Questions

Question 1

Are there particular components of the FHLBanks’ AHP application processes that could be made more effective or efficient, and if so, how?

Are any of the FHLBanks’ specific documentation requirements for AHP applications unnecessary for verifying that the applicant meets the AHP eligibility requirements and scoring criteria?

Are there ways to streamline the application process while maintaining the FHLBanks’ ability to verify applicants’ compliance with the AHP eligibility requirements and scoring criteria?

The FHLBanks believe that the AHP regulations drive complexity in the AHP application process, and that efficiencies in that process can only be achieved through changes to the regulatory scheme. To this end, the FHLBanks suggest:

- Aligning AHP requirements with, and deferring to, larger project funders to mitigate the complexities involved when layering multiple affordable housing subsidies on one project.
- Accepting information provided to, and in the form utilized by, other funders when reasonable to do so.
- Recognizing resident or social services as allowable operating expenses, rather than excluding those expenses from AHP operating pro formas.
- Eliminating the expectation that FHLBanks assess whether excess cash flow could be used to take on additional debt, since FHLBanks will not be the providers of that additional debt.
- Allowing reasonable reliance on application information and certification without the need for supporting documentation and communications at application. For example, the FHLBanks believe that:
 - Memoranda of Understanding for empowerment are unnecessary if services are reasonably confirmed to be offered as part of the application.
 - Income documentation from formerly homeless households is unnecessary as there is a very low chance they will exceed AHP income thresholds.
 - At application, sponsors should be permitted to certify compliance with certain, scoring components to receive points rather than being required to provide backup documentation. Oftentimes these projects are prospective in nature, making

finalized documents difficult to obtain as they look to leverage the FHLBank's AHP grant.

- Allowing FHLBanks to allocate funding pools within the General Fund round to address priority activities for priority categories.
- Recognizing that aspects of the property development may change from the time of application to completion of the property due to economic or local factors, and that requiring developers to cure (or attempt to cure) any scoring category changes prior to requesting a modification is unduly burdensome, especially when AHP is a small part of the development budget and other funders allow changes.

Outside the AHP application process, the FHFA could further simplify the AHP process by:

- Specifically providing for pro-rata forgiveness on rental projects commensurate with the remaining retention period - requiring full repayment when a project has met its AHP commitments for a portion of the retention period is unfair and creates an unreasonable financial burden for project sponsors.
- Providing the FHLBanks with the discretion and authority to eliminate retention agreements for owner-occupied projects
- Eliminating a reduction in development costs as a trigger to reduce the AHP award amount - other larger funders may reasonably be first in line to receive partial repayment and sponsors should be able to defer lesser developer fees at their discretion in managing their organization.

Question 2

How do the FHLBanks' AHP application processes compare to those of other providers of gap funding with respect to scope, complexity, and documentation requirements?

There is a disconnect between the AHP application process and those of other funders that adds to the problem of complexity, but the process is driven by regulatory requirements. The FHLBanks offer the following for your consideration in revising the AHP regulatory scheme:

- Limit "need for subsidy" review to identification of gap in project's development budget solely and eliminate any additional requirements (e.g., ability to carry debt) brought upon the FHLBanks through the examination process;
- Eliminate negative treatment of positive cash flow (to effectively integrate AHP with the affordable housing sector, need to recognize that commercial lenders want to see positive cash flow);
- Recognize that reserves, especially replacement reserves, are necessary for long-term feasibility and do not need to have ceilings placed on them;
- Eliminate requirement that the net present value of Habitat for Humanity future mortgages be considered a development source; and,
- Allow FHLBanks to reasonably rely on a sponsor's expertise and experience.

Question 3

Do the FHLBanks' AHP application processes leverage other funders' applications/requirements? Are the AHP application processes duplicative or complementary of other funders' underwriting requirements and processes? Do the AHP application processes create the need for additional information and documentation?

Due to the complexity of the AHP regulations, the FHLBanks cannot efficiently leverage the applications and/or requirements of other funders. We reiterate our belief that the AHP regulations need to reflect a change in philosophy that is consistent with the FHFA's stated goal of enhancing the FHLBank's ability to address affordable housing needs and streamlining AHP regulatory requirements. For this philosophy to be effective, it should be based on a strong understanding of the role AHP plays within the current affordable housing context and focus on the downstream impacts to the recipients and beneficiaries of AHP subsidies. This change in approach should allow the FHFA to integrate the AHP application process more effectively with those of other funders and the affordable housing sector at large. One example of an AHP application process requiring additional documentation is the requirement for sponsors to remove supportive services from operating expense pro-formas, resulting in the need to create a unique pro-forma just for AHP. This is not aligned with industry practice. As noted above, there are other opportunities to better align AHP with industry practice.

Question 4

Should the AHP regulation allow the FHLBanks to differentiate their AHP application requirements for projects requesting subsidy that constitutes a small percentage of the total funding in the project? If yes, why? Do other gap funders differentiate their application requirements for smaller projects?

Yes. Allowing differentiation for projects in which the AHP subsidy constitutes a smaller percentage of the total funding would more effectively integrate AHP into the affordable housing market, thereby more effectively serving the public. However, the FHLBanks believe that all projects should benefit from regulatory simplification, regardless of the total funding percentage AHP provides. Likewise, smaller projects are typically simpler projects, which should require a much simpler review. More complex projects will involve more partners who will be conducting their own reviews and producing documentation that should be able to be used under a simplified and integrated AHP regulatory scheme.

Question 5

What role do consultants provide in applying for AHP funds? What are the reasons that an AHP applicant may use a consultant? To the extent that applicants are using the services of consultants to apply for AHP subsidy, how does the practice compare to the use of consultants for other sources of gap funding?

Sponsors may have limited resources and be unable to devote the time necessary to develop expertise in working through implementation plans and AHP application processes, which is only exacerbated by the complexity of the AHP. It can be more efficient for sponsors to rely on consultants who have worked with AHP on numerous projects through multiple phases and have developed expertise as a result. However, both sponsors and consultants would benefit from an integrated and simplified AHP regulatory framework.

Question 6

Are there effective practices the FHLBanks could implement to coordinate the underwriting review process across multiple funding sources in a project?

Yes, however those practices should be uniform across all FHLBanks, which can only be achieved through a revised AHP regulatory framework that provides a uniform and consistent structure for the FHLBanks. In addition to the recommendations made above, a revised and integrated regulatory framework could:

- Eliminate the exclusion of supportive services from the operating pro forma to align with other funders.
- Allow FHLBanks to accept other funders reasonable benchmarks at face value without unnecessary justification or documentation.
- Recognize the significance and impact of the Low-Income Housing Tax Credit projects, the nation's most important funding source for adding to the supply of affordable housing.
- Allow FHLBanks to rely on other funders' reasonable conclusions and documentation about a project's readiness, capacity, market/demand, and financial viability.

Question 7

What is the single most important change you would recommend for improving the AHP application process?

The FHLBanks believe the single most important change that could be made regarding AHP is to change the philosophy that guides the regulatory framework for AHP. That philosophy should recognize the complementary role AHP occupies within affordable housing projects and the affordable housing market, align, and integrate with the affordable housing sector, simplify, and streamline regulatory requirements, eliminate unnecessary penalties and unduly burdensome monitoring requirements, and provide consistency to FHLBanks and end-users of AHP subsidies. Relatedly, the FHLBanks encourage the FHFA to recognize the FHLBanks' role as a "gap" funder as opposed to a lead lender, whereby the FHLBanks are not in a position to influence major project changes, for example, reserves, funding, etc.

Question 8

What concrete steps would you recommend for simplifying the AHP application process and why?

The FHLBanks believe the actions suggested under the responses to Questions 1, 2, 4 and 6 offer concrete steps the FHFA could take to simplify the AHP regulatory scheme which would in turn simplify the AHP application process. The FHLBanks recommend these actions because they realistically account for the role AHP plays within the affordable housing sector, better integrate with the affordable housing market and stakeholders, simplify the AHP application process and more effectively serve the communities that the FHLBanks and their members support.

Once again, the FHLBanks appreciate the opportunity to provide these comments to the RFI. We look forward to continuing to work constructively with FHFA as it continues its comprehensive review of the FHLBank System.

Sincerely,



Kirk Malmberg

Chair, Federal Home Loan Bank Presidents' Conference

President and Chief Executive Officer, FHLBank Atlanta