



## **AFFORDABLE HOUSING PROGRAM ("AHP") COMPLIANCE MONITORING LATE RECEIPT POLICY**

### **Reason for Policy**

In conjunction with the offering of the Affordable Housing Program ("AHP"), the Federal Home Loan Bank of New York ("FHLB-NY") is required by regulation to monitor compliance of projects having received AHP subsidies. The FHLB-NY would like to preserve some flexibility for AHP participants in meeting monitoring requirements. However, the size of the AHP portfolio and limited resources available for monitoring have placed constraints on the level of forbearance we can afford while continuing to manage compliance monitoring with some degree of efficiency. Our experience thus far suggests that disincentives may be needed to induce responsiveness to our monitoring effort.

### **1. Monitoring Reporting and Progress Update Requirements**

All Projects must successfully satisfy the initial monitoring report requirements, as outlined in the FHLB-NY's *AHP Compliance Monitoring Guidelines*. The initial reporting and documentation requirements are generally associated with AHP subsidy funding requisitions. They include: 1) the submission of necessary supporting documentation which indicate compliance with the original (or modified) terms of the approved AHP application, 2) the submission of a completed and executed monitoring report form and 3) a resolution from the board of directors of the applicant stockholder institution ("Member") confirming that the AHP subsidy was used in accordance with the terms of the approved application.

The initial monitoring report form and Member certification will generally be due in conjunction with the completion of the Project, as specified in the FHLB-NY's *AHP Compliance Monitoring Guidelines*. If the AHP subsidy was used to subsidize permanent financing, this requirement should be satisfied within one year of Project completion, or as stipulated by the FHLB-NY. In cases where the AHP subsidy is being used to subsidize project construction, the Member may be required to provide an updated construction schedule with the anticipated completion date. The due date for submission of a completed initial monitoring report form and Member certification will be determined by the FHLB-NY based on this schedule but may be no later than one year from the date of last AHP subsidy disbursement.

For completed projects, annual updates may be required to confirm continued compliance. These updates will generally be due on the anniversary the issuance of the Certificate(s) of Occupancy.

The FHLB-NY will provide the Member and developer or nonprofit sponsor ("Sponsor") of an AHP-assisted project ample written notice of due dates for all reporting requirements. In an effort to lessen the administrative burden for AHP monitoring, a Member may authorize the FHLB-NY to directly contact a Sponsor for certain required monitoring materials. However, the federal regulations governing the operation of the AHP prevent a Member from completely delegating all long-term monitoring responsibilities to a project Sponsor.

### ***Disincentives for Late Receipt or Non-Receipt of Monitoring Reports***

- If the Sponsor (or Member, as appropriate) fails to submit the appropriate monitoring report or annual update within 59 days of the due date, the FHLB-NY, in its discretion, may suspend funding of **any** outstanding AHP subsidies committed to the Sponsor (or to the Member if delegation has not been authorized to the FHLB-NY). This includes AHP subsidies that may be committed to other projects of the Sponsor (or Member, as appropriate). In addition, the Sponsor (or Member, as appropriate) may not be eligible to participate in future rounds of the AHP. The FHLB-NY may consider lifting these sanctions once the requirements have been satisfied.
- A Sponsor (or Member, as appropriate) may be barred from submitting new applications in the next two rounds of the program if the monitoring report or annual update is received between 60 and 90 days from the initial due date.
- A Sponsor (or Member, as appropriate) may be barred from submitting new applications in the next four rounds of the program if the monitoring report or annual update is received more than 90 days past the initial due date.
- Extended delays in the receipt of monitoring reports or annual updates prohibit the FHLB-NY from determining if the subsidy is being used for authorized purposes. If a report is over 90 days late and efforts to obtain the necessary documentation are not likely to be successful, the FHLB-NY may commence recapture proceedings.

## **2. Open Issues Notification**

During the course of reviewing supporting documentation and other monitoring report information, the FHLB-NY's monitoring staff may prepare notification letters regarding open or unresolved issues affecting an AHP-assisted project.

Such letters regarding AHP compliance issues or written requests for clarification and/or additional documentation letters are normally addressed to the Sponsor (or Member, as appropriate), with a copy to the Member (or Sponsor, as appropriate). Members and Sponsors will normally have between 15 and 30 days (depending on the nature of the request) to respond in writing to the FHLB-NY.

### ***Determination of Due Diligence in Responding to FHLB-NY Notification***

Depending on the nature of the issues raised, the FHLB-NY recognizes that there may be circumstances where a Sponsor or a Member may not be able to provide the requested documentation or take the necessary action to resolve an event of non-compliance.

Under those circumstances, the FHLB-NY will require a written response explaining either the circumstances which preclude a Member or a Sponsor from either furnishing the requested documentation or fully resolving a compliance concern. However, the FHLB-NY reserves the right to determine if the Member and the Sponsor has properly demonstrated due diligence in cooperating with the federal regulations governing the operation of the AHP.

### ***Disincentives for Late Receipt or Non-Receipt of Response to Notification***

As stated earlier, a Member has the option to authorize the FHLB-NY to work directly with a Sponsor, on their behalf, in obtaining monitoring materials for projects. The FHLB-NY will forward written notifications of open items or unresolved issues directly to a Member or a Sponsor, subject to the authorization of delegation.

- For delegated monitoring projects, if a Sponsor fails to provide the FHLB-NY with a timely response (as determined by the FHLB-NY) to any written requests for additional documentation or clarification of open issues, the Sponsor (or Member, as appropriate) may be precluded from submitting any future AHP applications until it cures the delinquency with a written response.
- For all other projects, if a Member fails to provide the FHLB-NY with a timely response (as determined by the FHLB-NY) to any written requests for additional documentation or clarification of open issues, and the open issues and/or events of non-compliance have been determined to fall within the purview of the Member, the Member may be precluded from submitting any future AHP applications until it cures the delinquency with verifiable evidence and a written response. Similarly, if the open issues and/or events of non-compliance were determined to fall within the purview of the Sponsor, the Sponsor may be precluded from participation in future AHP competitions until it cures the delinquency with verifiable evidence and a written response.

### ***Notification of Prohibition***

Members and Sponsors will be individually notified of their ineligibility to participate in future AHP application periods. In addition, the FHLB-NY reserves the right to inform all Members of the names of any not-for-profit or for-profit housing related organization that is prohibited from participating in the AHP.

Members and Sponsors desiring to be considered for restoration of their eligibility to participate in future AHP application periods must first cure their delinquency with a written response within 60 days of receipt of notification. The FHLB-NY will make a determination of the Member's or Sponsor's eligibility status and will promptly communicate its decision in writing.

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