



## **AFFORDABLE HOUSING PROGRAM (“AHP”) COMPLIANCE MONITORING GUIDELINES**

In accordance with the final rule of the amended regulation that governs the Affordable Housing Program (“AHP”) as promulgated by the Federal Housing Finance Agency (“AHP Regulation”) and published in the Federal Register under 12 CFR Part 1291, the Federal Home Loan Bank of New York (“FHLB-NY”) is required to periodically monitor projects that have been awarded subsidy under the AHP.

According to §1291.7 of the AHP Regulation, the FHLB-NY shall monitor each AHP owner-occupied and rental project under its competitive application program prior to, and within a reasonable period of time after, project completion to determine, at a minimum, whether:

- (A) The project is making satisfactory progress towards completion, in compliance with the commitments made in the approved AHP application, [FHLB-NY] policies, and the requirements of this part;
- (B) Following completion of the project, satisfactory progress is being made towards occupancy of the project by eligible households; and
- (C) Within a reasonable period of time after project completion, the project meets the following requirements, at a minimum:
  - (1) The AHP subsidies were used for eligible purposes according to the commitments made in the approved AHP application;
  - (2) The household incomes and rents comply with the income targeting and rent commitments made in the approved AHP application;
  - (3) The project’s actual costs were reasonable in accordance with the Bank’s [FHLB-NY’s] project cost guidelines, and the AHP subsidies were necessary for the completion of the project as currently structured;
  - (4) Each AHP-assisted unit of an owner-occupied project and rental project is subject to AHP retention agreements; and
  - (5) The services and activities committed to in the approved AHP application have been provided in connection with the project.

### **I. The AHP Retention Period**

All AHP-assisted projects must continue to comply with the requirements of the AHP Regulation and meet the objectives and targets set forth in the approved AHP application for a minimal period of time, known as the “Retention Period.” According to §1291.1 of the AHP Regulation, the Retention Period:

- a) Shall be five (5) years from the date of closing for an AHP-assisted owner-occupied unit; and
- b) Shall be fifteen (15) years from the date of project completion for a rental project.

In cases where an AHP-assisted owner-occupied unit has been renovated and no closing took place, the FHLB-NY shall consider the Retention Period to be five (5) years from the date of the final cost certification evidencing completion of the proposed renovations. Furthermore, the FHLB-NY has determined that the completion date for a rental project commences on the issuance date of the Certificate of Occupancy, Certificate of Substantial Completion, or other comparable documentation.

For AHP subsidized advances, the Retention Period shall equal the term of the subsidized advance (i.e., its maturity date). The Retention Period may be prematurely terminated with the prepayment in full of a subsidized advance, along with any applicable prepayment penalty.

## **II. Monitoring the progress of AHP-assisted projects prior to the funding requisition process**

For all practicable purposes, the compliance monitoring process for AHP-assisted projects begins at time of application. This progressive process continues throughout the development phase and lasts until each project reaches the conclusion of its applicable Retention Period.

- a) Following the FHLB-NY's initial commitment to provide AHP subsidy on behalf of an approved project, the FHLB-NY must receive adequate assurance that the development of the project is progressing in a reasonable manner. Until the AHP subsidy reservation is fully funded, the FHLB-NY will request updates on at least a semi-annual basis that confirm that the construction and/or renovation of the project units remain feasible and that the sponsor/developer has procured all of the necessary financing in order to bring the project to fruition.
- b) Until a reservation of AHP subsidy is fully drawn, the FHLB-NY may, in its sole discretion, approve extensions of its AHP funding commitment in accordance with the provisions set forth in its *AHP Commitment Extension Policy* (AHP-135). For projects that involve the new construction or substantial renovation of residential units/dwellings, the FHLB-NY will rely upon the submission of deeds, building permits, architect's certifications for payment, and financing commitment letters as evidence that development is progressing in a reasonable manner. For projects that involve home purchase assistance or the rehabilitation of owner-occupied properties, the FHLB-NY will rely on the timeliness of closings as well as the advancement of households through the proposed pipeline in order to confirm that reasonable progress is being made.
- c) The FHLB-NY reserves the right to decline extensions and cancel AHP funding commitments if the development of a particular project is not progressing in a reasonable manner or if the project fails to meet the targets and objectives originally set forth in the approved AHP application.

## **III. AHP monitoring requirements during the funding requisition process**

The FHLB-NY customarily requests submission of the following types of back-up and source documents as a prerequisite to processing a pending AHP subsidy funding requisition:

### **1. Homeownership projects approved to use AHP subsidy during the construction phase**

- a) Copies of deeds or other evidence that the sponsor/owner has taken title to the project site(s);
- b) Copies of building permits or other comparable documentation;
- c) Copies of architect's certifications for payment, invoices, or other third-party evidence that AHP funds have been utilized for approved purposes;
- d) Evidence of the sponsor's private, not-for-profit corporate designation and confirmation that the sponsor maintains an ownership interest in the project during the construction/rehabilitation phase;
- e) Copies of funding commitment letters, award letters, or other third-party evidence that the sponsor/developer has procured all of the project's proposed construction financing sources;
- f) An updated development budget;
- g) Certification that the incomes of the proposed project households will satisfy the approved targets;
- h) Certification that owner-occupants will execute AHP retention agreements at time of closing; and
- i) If available, income source documents that meet the specification set forth in Section V on page 4.

### **2. Homeownership projects approved to use AHP subsidy as downpayment/closing cost assistance**

- a) A sources and uses of funds statement for each project household;
- b) Copies of income source documents that meet the specifications set forth in Section V on page 4.
- c) If available, a copy of a transmittal summary or HUD-1 Settlement Statement for each household;

- d) If applicable, a copy of a permanent loan financing commitment for each household;
- e) If applicable, a copy of a certificate as evidence that each household successfully completed a pre-closing homebuyer counseling course, a credit counseling workshop, and/or a self-help (e.g., IDA or “sweat equity”) program; and
- f) If available, copies of executed AHP retention agreements.

### **3. Existing owner-occupied dwellings approved to use AHP subsidy for rehabilitation**

- a) A sources and uses of funds statement for each project household;
- b) Copies of invoices or other documentation related to the scope of proposed renovations;
- c) Copies income source documents that meet the specifications set forth in Section V on page 4;
- d) Certification that each project household is current on all mortgage payments, taxes, and insurance;
- e) If applicable, a copy of a certificate as evidence that each household successfully completed a credit counseling workshop or homeowner education course;
- f) A final cost certification evidencing that the proposed renovations were satisfactorily completed; and
- g) Copies of executed AHP retention agreements.

### **4. Rental Projects**

- a) Copies of deeds or other evidence that the sponsor/owner has taken title to the project site(s);
- b) If applicable, copies of building permits or other comparable third-party documentation;
- c) Copies of architect’s certifications for payment, third-party inspections, invoices, or other verifiable evidence that AHP funds have been or will be utilized for approved purposes;
- d) Evidence of the sponsor’s designation as a private, not-for-profit corporation confirmation that the sponsor maintains an ownership interest in the project;
- e) Copies of financing commitment letters, award letters, or other third-party evidence that the sponsor/ owner has procured all of the project’s construction and permanent funding sources;
- f) An updated development budget and operating pro-forma(s);
- g) An updated rent plan as evidence that the project will achieve the rent commitments made in the approved AHP application;
- h) Copies of draft or executed AHP retention agreements; and
- i) If available, income source documents that meet the specifications set forth in Section V on page 4.

### **IV. AHP initial monitoring requirements for fully funded projects under construction**

- a) Sponsors of projects that have fully drawn down their approved allocation of AHP subsidy must submit a report to the FHLB-NY on a semi-annual basis that confirms that reasonable progress is being made toward the completion of the project;
- b) This report shall provide a formal development status as well as an indication as to when the project will be fully occupied and placed into operation;
- c) This report should also include copies of updated architect’s certifications for payment, third-party inspections, or other evidence of the project’s progress of development; and
- d) If available, the report should include a current listing of households approved to either occupy or purchase a project unit, along with their corresponding household income and family size.

### **V. Household Income Determination**

Please refer to the *AHP Guidelines for Determining Income Eligibility* in order to ascertain the methodology that the FHLB-NY utilizes in establishing the potential sources of household income as well as the types of source documents that FHLB-NY staff customarily evaluates in confirming the eligibility of AHP-assisted households.

#### **1. Homeownership Projects**

In accordance with § 1291.7(a)(1)(C)(2) of the AHP Regulation, the FHLB-NY must ensure that the incomes of project households comply with the income targeting commitments made in the approved AHP application.

Due to the nature of homeownership projects and the opportunity for owner-occupants to directly receive the full financial benefit of AHP subsidy, it is the intent of the FHLB-NY to verify the household income and, hence, eligibility of each proposed AHP-assisted owner-occupant.

- a) Income source documents for prospective households who are participating in a program that utilizes AHP subsidy to provide down payment and closing cost assistance should generally coincide with the time that such households were approved for permanent financing (i.e., issuance of a mortgage commitment).
- b) Income source documents for existing homeowners who are participating in a program that utilizes AHP subsidy to provide rehabilitation assistance should generally coincide with the time that such households were approved for participation in that program.
- c) Income source documents for prospective households who are participating in a self-help program (e.g., IDA, homesteading, or Habitat for Humanity) that utilizes AHP subsidy to provide downpayment and closing cost assistance should generally coincide with the time that such households were enrolled in such a program.

## 2. Rental Projects

In accordance with § 1291.7(a)(1)(C)(2) of the AHP Regulation, the FHLB-NY must ensure that the incomes of tenants and the rent structure of an AHP-assisted project comply with the income targeting and rent commitments made in the approved AHP application. Based on a project's size and operating revenue, the FHLB-NY shall verify that the incomes of households and their monthly rent charges comply with the AHP Regulation, subject to receipt of the following supporting documentation:

- a) If a project contains 15 or fewer units, income source documentation must be submitted for each tenant;
- b) If a project contains 16 or more units, income source documentation must customarily be furnished for a 20% sample population of all project tenants, as determined by the FHLB-NY.
- c) If a project receives project-based Section 8 assistance, a copy of the Section 8 contract may be submitted to the FHLB-NY in lieu of income source documents.
- d) If a project receives tenant-based Section 8 assistance, a copy of the Section 8 voucher (or other comparable evidence) may be submitted to the FHLB-NY in lieu of income source documents.
- e) If a project receives rent subsidy from a city, county, state, or federal agency and that targets very low- and low-income households, a copy of the executed subsidy contract/agreement may, at the discretion of the FHLB-NY, be submitted in lieu of income source documents, provided that the income references set forth in the subsidy contract/agreement are consistent with the income targeting commitments made in the AHP application.
- f) In addition to tenant income source documents, if a project targets homeless households, the FHLB-NY must receive third-party referral letters or homeless housing assistance contracts/agreements that were executed with a city, county, state, or federal agency, or other comparable evidence.

## VI. AHP monitoring requirements for completed projects

Within one year of the completion of an AHP-assisted project, including its attaining full occupancy and (if applicable) placement into operation, the FHLB-NY will confirm that the project has fully attained the proposed levels of performance that were made in the AHP application. Based on the supplemental documentation that was previously received during the AHP funding process as well as the initial monitoring phase, the FHLB-NY shall request submission of the following documents:

### 1. Homeownership Projects

- a) Copies of any outstanding transmittal summaries or HUD-1 Settlement Statements as evidence that the household received the direct benefit of the AHP subsidy;
- b) Copies of any outstanding Final Truth-in-Lending Disclosure Statements;
- c) Copies of any outstanding income source documents;
- d) Copies of any outstanding counseling completion certificates;

- e) Confirmation that the project households have benefited from all empowerment activities that were specified and approved in the AHP application;
- f) Copies of any outstanding executed AHP subordinate retention agreements; and
- g) A final project certification form that has been duly executed by authorized representatives of the project sponsor and FHLB-NY stockholder that submitted the AHP application (“Member”).

## 2. Rental Projects

- a) Evidence of timely disbursement of the AHP subsidy from the Member to the project sponsor, or affiliate thereof;
- b) Copies of final Certificate(s) of Occupancy, Certificate(s) of Substantial Completion, or other comparable documentation;
- c) An executed 8609 form for projects that have been financed through low-income housing tax credits,
- d) A current rent roll or tenant listing (reflective of household income, family size, and monthly rent);
- e) Copies of any outstanding income source documents, referral letters, and/or rental income subsidy agreements/vouchers that have been issued by public agencies;
- f) A final cost certification or other audited financial statements that confirm the project’s actual development expenses;
- g) Confirmation that the tenants have benefited from all empowerment activities and/or supportive services that were specified and approved in the AHP application;
- h) If applicable, copies of any outstanding executed AHP subordinate retention agreements;
- i) A final project certification form that has been duly executed by authorized representatives of the project sponsor and Member; and
- j) An on-site inspection of the completed project.

## VII. Long-term AHP monitoring requirements

### 1. Homeownership Projects

Inasmuch as transfers of title for owner-occupied projects are effectively monitored through deed restrictions or other legally enforceable AHP retention agreements, long-term monitoring requirements will only apply to rental projects.

### 2. Rental Projects

#### A. Requirements for Project Sponsors

Following satisfactory completion of an AHP-assisted rental project’s initial AHP compliance monitoring requirements, a project sponsor must subsequently submit long-term Monitoring Reports that include the following information:

- a) Certification that the project facility continues to be operated in a manner consistent with the goals and objectives that were originally set forth in the AHP; and
- b) Confirmation that tenant rents and incomes are in compliance with the rent and income targeting commitments which were originally specified in the AHP application.

Projects sponsors will be required to submit long-term Monitoring Reports in accordance with the following schedule and related supporting documentation:

#### i. Annual certification requirements for all rental projects

In the second year after project completion and annually thereafter until the end of the project’s Retention Period, the project sponsor must:

- a) Certify to the FHLB-NY that that the project continues to be owned and managed in a satisfactory manner;
- b) Certify to the FHLB-NY that tenant rents and incomes are in compliance with the rent and income targeting commitments which were originally specified in the AHP application; and
- c) Maintain documentation regarding these items that is available for review by the FHLB-NY.

**ii. Special requirements for projects that have been financed with low-income housing tax credits**

- Sponsors of such projects must submit a copy of a rent roll and confirmation that the project remains compliant with its approved objectives once every seven years throughout the Retention Period.
- State agency audit reports may be used to provide adequate confirmation that tenant rents and incomes are in compliance with the rent and income targeting commitments which were originally specified in the AHP application.

**iii. Special requirements for rental projects that have not been financed with tax credits**

- For projects receiving \$100,000 or less in AHP subsidy, sponsors must submit long-term Monitoring Reports (including appropriate confirmation that the tenant incomes and rents remain in compliance with the approved targets) to the FHLB-NY once every seven years;
- For projects receiving between \$100,001 and \$299,999 in AHP subsidy, sponsors must submit long-term Monitoring Reports (including appropriate confirmation that the tenant incomes and rents remain in compliance with the approved targets) to the FHLB-NY once every five years;
- For projects receiving between \$300,000 and \$499,999 in AHP subsidy, sponsors must submit long-term Monitoring Reports (including appropriate confirmation that the tenant incomes and rents remain in compliance with the approved targets) to the FHLB-NY once every four years;
- For projects receiving \$500,000 or more in AHP subsidy, where the AHP assistance is equivalent to ten percent or less of the total development budget, sponsors must submit long-term Monitoring Reports (including appropriate confirmation that the tenant incomes and rents remain in compliance with the approved targets) to the FHLB-NY once every three years;
- For projects receiving \$500,000 or more in AHP subsidy, where the AHP assistance is equivalent to ten percent or more of the total development budget, sponsors must submit long-term Monitoring Reports (including appropriate confirmation that the tenant incomes and rents remain in compliance with the approved targets) to the FHLB-NY once every two years.

**B. Requirements for the FHLB-NY**

- a) The FHLB-NY shall review the Monitoring Reports and supporting documentation provided by project sponsors and/or public agencies regarding tenant rents and incomes in order to verify compliance with the commitments made in the AHP application.
- b) For the purposes of determining a project's on-going compliance with the approved targets, the FHLB-NY will utilize current annual median income data, adjusted for family size, when verifying the eligibility of a new tenant which has been approved to occupy a recently vacated unit.
- c) Every five years, FHLB-NY staff will inspect those projects that have received \$500,000 or more in AHP subsidy as well as an allocation of low-income housing tax credits.
- d) Every three years, FHLB-NY staff will inspect projects that have received \$500,000 or more in AHP subsidy, if the AHP contribution equals 10 percent or more of total development costs.

## Events of Non-Compliance

The following situations will constitute Events of Non-Compliance which may result in a recapture of AHP subsidy or suspension of future application privileges as detailed in the FHLB-NY's [AHP Compliance Monitoring Late Receipt and Debarment Policy](#) (AHP-104) and [AHP Recapture and Settlement Guidelines](#) (AHP-105):

- a) A project's failure to attain any level of performance which was committed to at time of application; or
- b) Failure to on the part of the Member or the project sponsor to provide the FHLB-NY in a timely fashion with updated progress reports, monitoring reports, supplemental documentation as requested, or annual long-term monitoring certifications in a timely fashion.

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