



## **AFFORDABLE HOUSING PROGRAM (“AHP”) DISINCENTIVES FOR COMPLIANCE MONITORING LATE RECEIPT: SUSPENSION AND DEBARMENT POLICY**

### **Reason for Policy**

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 (“FHFA”) and published in the Federal Register under 12 CFR Part 1291 (“AHP Regulation”), the Federal Home Loan Bank of New York (“FHLB-NY”) is required to monitor compliance of projects that have 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* (AHP-102).

The compliance monitoring process commences with the disbursement requisition process for AHP funds and continues throughout the project’s development phases. FHLB-NY staff will request progress reports on a semi-annual basis throughout the project’s development phase. An AHP-assisted rental project’s initial compliance monitoring reporting requirements are customarily satisfied once FHLB-NY staff receives appropriate documentation that the project is completed (e.g., issuance of a Certificate of Occupancy), placed into service, and attains its approved occupancy goals. An AHP-assisted homeowner project’s initial compliance monitoring requirements are customary satisfied once FHLB-NY staff receives appropriate documentation that the funded AHP subsidies have been properly used to finance the acquisition, construction, or rehabilitation of all approved units and said units are owned and occupied by households who meet the approved occupancy goals.

For completed rental projects, Sponsors (or property managers) are required to submit certifications to the FHLB-NY on an annual basis in order to confirm the project’s continued compliance with its approved occupancy goals throughout its 15-year AHP retention period. These updates will generally be due on each anniversary of the issuance of the project’s final 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.

### **2. Open Issues Notification**

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

Such correspondence is customarily addressed to the Sponsor and the Member is copied. 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.

Depending on the nature of the supporting documentation or open issues that arise during the monitoring process, 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 effectively resolve an event of non-compliance.

Under those circumstances, the FHLB-NY will require a written response explaining either the circumstances which preclude a Members 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.

## ***Suspension and Debarment from the AHP***

### **1. Members**

During the initial monitoring compliance phase, the Member is responsible for providing the FHLB-NY with evidence that the AHP subsidy was disbursed to the Sponsor in a timely manner. An authorized signatory of the Member must also execute an *AHP Monitoring Report* form. If a Member fails to provide the FHLB-NY with either of these items within three months of the submission deadline, as determined by FHLB-NY staff, the FHLB-NY, in its sole discretion, may implement the following sanctions until the Member cures the delinquency:

- a) Dishonor any pending AHP funding requisitions that the Member has submitted in connection with its other AHP-assisted projects;
- b) Suspend the Member from submitting any new funding requisitions in connection with its other AHP-assisted projects; and/or
- c) Suspend review of any applications that the Member has submitted to a current AHP competitive offering.

If, in the judgment of either the FHLB-NY or the FHFA, the Member shows a pattern of noncompliance, or engages in a single instance of flagrant noncompliance with the terms of the AHP application, a funding requisition, or the AHP Regulation, the FHLB-NY, either in its sole discretion or under the regulatory direction of the FHFA, may suspend or debar the Member from participation in the AHP (including the First Home Club<sup>sm</sup>).

Furthermore, in accordance with § 1291.5 (b)(2) of the AHP Regulation, the FHLB-NY accepts AHP applications only from current Members of the FHLB-NY that are in good standing. For purposes of both the competitive AHP and First Home Club, a Member is in good standing if, as determined by the FHLB-NY, the Member is creditworthy and has fulfilled all necessary requirements for membership in the FHLB-NY, including the purchase of all required capital stock in the FHLB-NY, and is not in default with regard to any obligations or commitments under any of its credit programs including, without limitation, the AHP.

### **2. Sponsors**

As outlined in the *AHP Compliance Monitoring Guidelines*, during the initial monitoring compliance phase, the Sponsor and its partners are responsible for providing the FHLB-NY with semi-annual reports and supporting documentation that evidence the project's development progress. Once the project is completed and fully occupied, the Sponsor is responsible for providing the FHLB-NY with the balance of all financial statements, closing records, and supporting documentation, as determined by the FHLB-NY, this is needed to confirm that the project satisfies the levels of performance that were set forth and approved in the application for AHP funds. An authorized signatory of the Sponsor must also execute an *AHP Monitoring Report* form. If a Sponsor fails to provide the FHLB-NY with either of these items within three months of each respective submission deadline, as determined by FHLB-NY staff, the FHLB-NY, in its sole discretion, may implement the following sanctions until the Sponsor cures the delinquency:

- a) Dishonor any pending AHP funding requisitions that the Sponsor has submitted in connection with its other AHP-assisted projects;
- b) Suspend the Sponsor from submitting any new funding requisitions in connection with its other AHP-assisted project; and/or
- c) In the event that the Sponsor has submitted any applications to a current AHP competitive offering, the FHLB-NY may, in accordance with § 1291.5(c)(4) of the AHP Regulation, consider any substantive events of non-compliance as adversely affecting the Sponsor's experience and capability to develop other projects in a professional and responsible manner.

If, in the judgment of either the FHLB-NY or the FHFA, the Sponsor shows a pattern of noncompliance, or engages in a single instance of flagrant noncompliance with the terms of the AHP application, a funding requisition, or the AHP Regulation, the FHLB-NY, either in its sole discretion or under the regulatory direction of the FHFA, may suspend or debar the Sponsor from participation in the AHP.

By the fifth anniversary of the issuance date of its AHP funding commitment, the FHLB-NY expects all AHP-assisted projects to be:

- Constructed/rehabilitated, placed into service, and fully occupied; and
- Completed with all initial compliance monitoring reporting requirements.

The FHLB-NY will consider any project that fails to meet these thresholds to be delayed and distressed. If a Sponsor of a troubled project is unable to cure any deficiencies and satisfy all initial AHP compliance monitoring reporting requirements by the sixth anniversary of the issuance date of the AHP funding commitment, the FHLB-NY likewise reserves the right to implement the aforementioned sanctions.

### ***Notification of Suspension or Debarment***

Members and Sponsors will be individually notified of their ineligibility to either submit AHP funding requisitions or 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.