

Policy Title: Affordable Housing Program Non-Compliance Policy  
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**I) Introduction**

The FHLBC has established and implemented this Affordable Housing Program Non-Compliance Policy (this “Policy”), which addresses the bases for and means of remediating Non-Compliance in an AHP Project under the Competitive Application Program. This Policy sets forth areas of Non-Compliance, the remedies available for resolution of Non-Compliance, and the implications of Non-Compliance. Capitalized terms shall have the meaning set forth for such terms in the Affordable Housing Program Definitions unless otherwise defined in this Policy.

**II) Non-Compliance**

Non-Compliance is a failure to fulfill, in connection with an AHP Project, the requirements set forth in the Regulations, the Subsidy Agreement, the Retention Agreement, the AHP Implementation Plan for the applicable Funding Round under which the AHP Project was approved, or to comply with FHLBC policies and procedures as set forth in this Policy.

The following is a list of areas for which the FHLBC may determine there is Non-Compliance. In all cases, a determination of Non-Compliance will be at the discretion of the FHLBC after taking into consideration the facts and circumstances surrounding the event(s).

- 1) *Commitments*: Failure to fulfill a Commitment
- 2) *Eligibility*: Failure to meet or maintain minimum eligibility criteria as set forth in the Regulations, the Subsidy Agreement, the Retention Agreement, or the AHP Implementation Plan for the

applicable Funding Round under which the AHP Project was approved. Examples may include, but are not limited to:

- Failure to demonstrate a need for AHP Subsidy
  - Use of AHP Subsidy for an ineligible purpose for additional information regarding eligible and ineligible uses of AHP Subsidy, see the Eligible and Ineligible Uses of AHP Subsidy Policy
  - Failure to comply with the timelines for disbursement of AHP Subsidy or Project Completion; for additional information regarding AHP Project timelines see the Disbursement Policy and the Monitoring Policy
  - Significant and/or chronic vacancy
- 3) *Feasibility*: Failure to demonstrate financial feasibility. This includes significant and/or chronic vacancy.
- 4) *Monitoring*: Failure to comply with the FHLBC's requirements for monitoring and reporting. Examples may include, but are not limited to:
- Failure to submit monitoring reports in a timely manner
  - Failure to submit monitoring documentation in a timely manner
- 5) *Misrepresentation, negligence, or fraud*
- 6) *Financial distress, insolvency, or dissolution*: Examples may include, but are not limited to:
- Bankruptcy of the Sponsor or Owner
  - Dissolution of the Sponsor or Owner
  - Insolvency of the Sponsor or Owner
  - Legal actions involving the Sponsor or Owner, including, but not limited to violations of fair housing laws
  - Defaults on other sources of financing or real estate tax payments for the AHP Project
  - Significant and/or chronic vacancy

In cases where it is believed, anticipated, or unclear whether there has been Non-Compliance with the Regulations, the FHLBC may consult its legal department and, with CIO approval, the FHFA.

### **III) Remedies for Non-Compliance**

Upon a determination of Non-Compliance, the FHLBC will evaluate remedies available for resolution.

The FHLBC's policy is to remedy Non-Compliance in a timely manner with as little impact to the AHP Project as possible in an effort to maintain the AHP Project through the Retention Period.

Remedies for the resolution of Non-Compliance, in their order of preference, are as follows:

#### **A. Cure**

The FHLBC will first determine if the nature of the Non-Compliance is such that it can be cured. If the Non-Compliance cannot be cured, the FHLBC will consider alternative remedies to resolve the Non-Compliance.

If the Non-Compliance can be cured, the Sponsor and Member will be given an opportunity to do so. Unless the Non-Compliance can be immediately cured, the Member and Sponsor will be required to submit a Cure Plan that includes both of the following:

- the actions to be taken to cure the Non-Compliance; and
- the Cure Period for resolution of the Non-Compliance.

The FHLBC will review the Cure Plan for reasonableness and effectiveness and may require revisions, prior to FHLBC approval, to ensure that the Non-Compliance is cured in a timely and effective way.

If the Cure Plan is approved, the FHLBC will also determine an appropriate frequency and method to monitor progress towards resolution of the Non-Compliance.

If the Non-Compliance is not resolved within the Cure Period, the FHLBC may extend the Cure Period or seek an alternative remedy to the Non-Compliance.

#### **B. Modification**

If the Non-Compliance cannot be cured, the FHLBC may consider a Modification as a remedy to resolve the Non-Compliance.

For additional information regarding Modifications, see the Project Change Policy.

#### **C. De-Obligation or Recapture of AHP Subsidy**

If the Non-Compliance cannot be resolved through a cure or a Modification as described above, the FHLBC may remedy the Non-Compliance through a De-Obligation of AHP Subsidy that has not yet been disbursed to the AHP Project. For additional information regarding the De-Obligation of AHP Subsidy, see the Project Change Policy.

Additionally, the FHLBC may remedy the Non-Compliance through Recapture of a partial or full amount of any AHP Subsidy that has been disbursed to the AHP Project. The effect of a full Recapture is that there will no longer be an AHP Project, and the AHP Project will, therefore, no longer be subject to the Retention Agreement. The CIO must approve all Recaptures before they are initiated or accepted and the Group Head for Community Investment must also approve all Recaptures from a Member.

In the event of a Recapture, the FHLBC will provide written notification of the amount of AHP Subsidy subject to Recapture, along with the timeframe for Recapture, and will pursue repayment of the AHP Subsidy as follows:

If the Non-Compliance resulting in Recapture is due to the actions or omissions of the FHLBC, the FHLBC will reimburse the AHP fund. Such reimbursement by the FHLBC must be approved by both the CIO and the Group Head for Community Investment.

If the Non-Compliance resulting in Recapture is due to the actions or omissions of the Member, the Member shall repay the AHP Subsidy to the FHLBC. A Member's failure to have properly recorded and maintained the Retention Agreement, AHP Subsidy mortgage, or other appropriate real property security instrument throughout the Retention Period, as set forth in the AHP Implementation Plan and Subsidy Agreement, may make the Member liable for reimbursing the FHLBC for the AHP Subsidy.

In the event the FHLBC does not receive the Recapture amount from the Member, the FHLBC may approve a Settlement, provided that:

- The CIO and the Group Head for Community Investment have approved the amount of the Settlement; and
- For Settlements forgiving \$50,000 or less, the AHC approved the Settlement; or
- For Settlements forgiving more than \$50,000, the Board approved the Settlement; and
- The FHLBC has sufficient documentation showing that the Settlement is reasonably justified, based on the facts and circumstances of the Non-Compliance (including the degree of culpability of the non-complying parties and a determination of reasonable collection efforts); or
- The FHLBC has obtained a determination from the FHFA that the Settlement is reasonably justified, based on the facts and circumstances of the Non-Compliance (including the degree of culpability of the non-complying parties and a determination of reasonable collection efforts).

If the Non-Compliance resulting in Recapture is due to the actions or omissions of the Sponsor or Owner, the FHLBC, in its discretion, may either:

- Direct the Member to use reasonable collections efforts to recover the AHP Subsidy from the Sponsor or Owner and repay the amount recovered to the FHLBC, or
- Direct the Sponsor or Owner to repay the AHP Subsidy directly to the FHLBC.

In the event the FHLBC does not receive the Recapture amount from the Sponsor or Owner, the FHLBC may approve a Settlement, provided that:

- The CIO has approved the amount of the Settlement; and
- For Settlements forgiving \$50,000 or more, the Group Head for Community Investment has approved the Settlement; and
- The FHLBC has sufficient documentation showing that the Settlement is reasonably justified, based on the facts and circumstances of the Non-Compliance (including the degree of culpability of the non-complying parties and a determination of reasonable collection efforts); or
- The FHLBC has obtained a determination from the FHFA that the Settlement is reasonably justified, based on the facts and circumstances of the Non-Compliance (including the degree of culpability of the non-complying parties and a determination of reasonable collection efforts).

In the event the FHLBC settles for less than the full amount of the AHP Subsidy disbursed to the AHP Project, the FHLBC will reimburse the AHP fund if directed to do so by the FHFA.

Following De-Obligation or Recapture as a remedy for Non-Compliance, the CIO must approve the AHP Project's disposition and removal from Non-Compliance reporting.

#### **D. FHFA Waiver or No-Action**

The FHLBC may consult its legal department and, with CIO approval, the FHFA, which may allow the FHLBC to waive or pursue no action to remedy the Non-Compliance.

#### **IV) Implications of Non-Compliance**

The FHLBC expects that AHP Projects will comply with the requirements of the Regulations, the Subsidy Agreement, the Retention Agreement, the AHP Implementation Plan for the applicable Funding Round under which the AHP Project was approved, and the policies and procedures of the FHLBC. Instances of Non-Compliance may impact the Sponsor, the Member, or the AHP Project as described below.

##### **A. FHLBC Activities**

The FHLBC will not approve any of the following activities for an AHP Project in which there is unresolved Non-Compliance for which the FHLBC has not approved a Cure plan:

- Disbursement of AHP Subsidy;
- PCR Completion.

##### **B. Capacity Review**

Non-Compliance is a reflection on the capacity of the entity responsible for Non-Compliance. Instances of Non-Compliance are documented and may factor into the FHLBC's assessment of the capacity of a Sponsor or Member when reviewing any future Application for AHP Subsidy.

##### **C. Suspension and Debarment**

Based on the severity or frequency of the Non-Compliance, the FHLBC or the FHFA may initiate Suspension or Debarment of the entity responsible for the Non-Compliance as set forth in the Suspension and Debarment Policy.