Answers to Questions Received by FHFA

Webinar on Proposed Amendments to the Federal Home Loan Bank (FHLBank) Affordable Housing Program (AHP) Regulation – Held on March 27, 2018[1]

Will the FHLBanks have the option to retain a retention mechanism on homeownership projects, if they so choose?

Upon analyzing all AHP proposed rule public comments on homeownership retention agreements, FHFA will determine in the final rule whether to retain or remove the current homeownership retention agreement requirement, or to provide an option for the FHLBanks, in their discretion, to require homeownership retention agreements.

What is the best way to provide feedback/comments on proposed changes?

FHFA published the AHP proposed rule in the *Federal Register* on March 14, 2018. The proposed rule identifies the following four methods for submitting comments during the public comment period, which was extended to June 12, 2018:

- FHFA's website at www.fhfa.gov/open-for-comment-or-input;
- Federal eRulemaking Portal at http://www.regulations.gov;
- Hand Delivered/Couriered to the Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219 (deliver package to the Guard's Desk at the Seventh Street entrance on the First Floor); or
- U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service to Alfred M. Pollard, General Counsel, Attention: Comments/ RIN 2590–AA83, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW, Washington, DC 20219.

Although FHFA believes that its website is the easiest and most convenient way to submit comments, commenters are encouraged to use the method that works best for them.

Can a project select more than one need under an individual regulatory priority? For example, [for] Underserved Communities/Populations, can a FHLBank select more than one of the needs identified in the proposed regulation?

[1] Minor edits were made to some of the questions to correct technical errors and enhance clarity.

Yes. Under the proposed rule, a FHLBank could select more than one housing need identified under a regulatory priority. The FHLBank would be required to award a minimum of 10 percent of its AHP funds to projects or households that meet the regulatory priority selected.

What does the Agency define as a reasonable period of time to cure noncompliance?

Consistent with the current AHP regulation, under the proposed rule each FHLBank would determine what a reasonable time period is to cure project noncompliance, based on the specific facts and circumstances of each project.

How will removing the 5-year compliance period be beneficial? It would seem to encourage flipping in hot markets.

Under the current AHP regulation, an AHP retention agreement is required for homeownership units, under which AHP-assisted households are required to repay AHP subsidy to the FHLBank out of any net gain realized if they sell the home during the five-year retention period, unless the home is sold to a low- or moderate-income household. The retention agreement requirement is intended to discourage "flipping" of homes by households. The AHP subsidy is not intended to be used by investors or landlords to purchase or rehabilitate and quickly sell homes to take advantage of rapidly appreciating housing prices in a neighborhood.

FHFA recognizes the moral hazard risk that may be associated with using subsidy intended to provide housing to low- or moderate-income households to flip properties. However, homes purchased by AHP-assisted households, by virtue of their low prices, are not typically located in neighborhoods with rapidly appreciating housing prices that would encourage flipping, especially given the low amount of AHP subsidy provided to the households -- averaging $6,311 per household in 2016 -- although exceptions may exist. Most AHP-assisted households do not sell their homes during the five-year retention period and, if they do, they usually sell to another low- or moderate-income household or have no net gain, so the retention agreement does not apply in most situations, making its value questionable. Moreover, the underlying policy of the AHP has always been that the purpose of the AHP subsidy is to enable low- or moderate-income households to receive the benefits of homeownership including appreciation in the value of their homes and, thus, to minimize any AHP subsidy repayments. Repayments of AHP subsidy may be a financial burden on the households.

The FHLBanks have also cited the administrative burdens on themselves and their members of having to obtain and track repayments of generally very small amounts of AHP subsidy, obtaining the documentation to calculate whether there is a net gain on the sale, and determining whether the subsequent purchaser is a low- or moderate-income household. In particular, the FHLBanks have noted the complications of trying to determine the net gain where a household used the AHP subsidy to rehabilitate its home without an accompanying purchase.

These considerations appear to outweigh the potential for deterring rare instances of flipping. Accordingly, FHFA is proposing to eliminate the retention agreement requirement for purchase and owner-occupied rehabilitation units.

Banks are required to meet the 55% outcome for 2 of 3 of the regulatory priorities, and at least 10% for the third priority of the required annual AHP contribution to meet the regulatory priorities outcomes.

Example, if a FHLBank has $30 million as the required annual AHP contribution, it must achieve $19.5 million to meet the 65% under the General/Targeted Funds for regulatory priorities (55% for two priorities and 10% for one). If the FHLBank set aside $12 million, or 40%, of its AHP for set aside for home purchase, that leaves $18 million for General/Targeted Funds. That means that it is not possible for the FHLBank to meet the regulatory priorities to achieve the $19.5 million outcome. Therefore, allocating 40% of AHP to home purchase set aside is not possible. Moreover, even at a lower set aside level, the scoring criteria likely need to be set to meet only the regulatory priorities.

Is this a correct assessment?

The scenario depicted in the question correctly identifies some of the proposed outcome measures the FHLBanks would be required to meet, but does not take into account that a single AHP subsidy award could count towards the fulfillment of multiple outcome measures. The following example demonstrates how a FHLBank could attribute a single AHP award to more than one outcome measure under the proposed rule:

A FHLBank awards $500,000 in AHP subsidy to a non-profit organization for a proposed project to renovate 100 rental housing units located in a rural area that target the housing needs of very low-income households (i.e., 50 percent of area median income (AMI) or below).

The FHLBank would consider the following in calculating the extent to which the project contributed to meeting the proposed outcome measures:

- Because a non-profit organization received the award, the $500,000 would count towards achieving the statutory priority for projects sponsored by nonprofits or government entities;
- Because the award would be used to target households with incomes at 50 percent of AMI or below, the 100 rental units would count towards achieving the regulatory priority for very low-income targeting for rental units; and
- Because the award would be used to preserve affordable rental housing and the project is located in a rural area, the $500,000 would count towards achieving either the regulatory priority for financing the preservation of affordable housing or the regulatory priority for financing housing for underserved communities or populations, assuming the relevant priority is justified in the FHLBank's Targeted Community Lending Plan. Note that the proposed rule would not allow the FHLBank to count the $500,000 towards achieving more than one of the three regulatory priorities under the 55 percent outcome measure in proposed § 1291.48(d) for: 1) financing housing for underserved communities or populations; 2) financing housing that creates economic opportunity for the residents; or 3) financing the

preservation of affordable housing. Therefore, the $500,000 award in this example could not count towards both the regulatory priority for financing the preservation of affordable housing and the regulatory priority for financing housing for underserved communities or populations.

In addition, this question reflects a misinterpretation of the “10 percent” requirement in proposed § 1291.48(d). The purpose of this requirement is to ensure that a FHLBank’s awards are not distributed in a manner that neglects all but one of the proposed regulatory priorities. The proposed rule would require that, of the two regulatory priorities that combine to yield at least 55 percent of a FHLBank’s annual AHP contribution, each of *these two* is at least 10 percent. For example, if a FHLBank’s awards were applied in the following manner, it would be in compliance with proposed § 1291.48(d): 35 percent of its required contribution to the financing of housing for underserved communities and populations; 20 percent to the financing of housing that creates economic opportunity; and none to the remaining regulatory priority. However, if the FHLBank’s awards were distributed as, for example, 50 percent, 5 percent, and 0 percent, it would not be in compliance with this proposed section, even though two of the three priorities combine to yield at least 55 percent.

Finally, subsequent to the submission of this question, FHFA published a Notice of Correction to proposed § 1291.48(d) that would count eligible awards under the FHLBanks’ Homeownership Set-Aside Programs towards satisfaction of the three regulatory priorities. See *Affordable Housing Program Amendments; Correction, Extension of Comment Period, and Further Request for Comment*, 83 Fed. Reg. 19188 (May 2, 2018). This provides yet another opportunity for FHLBank AHP awards to count towards the fulfillment of multiple outcome measures. For example, Homeownership Set-Aside Program funds for homebuyers that receive counseling – an AHP regulatory requirement for first-time homebuyers – would count under the “promotion of empowerment” housing need within the priority for the financing of housing that creates economic opportunity. Further, any such set-aside funds used for owner-occupied rehabilitation would count under the “affordable homeownership preservation” housing need within the priority for the financing of preservation of affordable housing.

Will the proposed rule provide flexibility to the FHLBank to better work with non-profits who act as the general contractor?

The proposed rule is silent on this. The proposed rule retains language in § 1291.23(b) of the current rule requiring each FHLBank to award AHP funds only to projects that are developmentally feasible -- that is, projects likely to be completed and occupied, based on relevant factors contained in the FHLBank’s project feasibility guidelines, including, but not limited to, the development budget, market analysis, and project sponsor’s experience in providing the requested assistance to households.

Is there a danger of the new Targeted Funds being pitted against the Homeownership Set-Aside funds?

FHFA designed the proposed rule in an effort to enhance and improve each FHLBank's ability to address the affordable housing needs within its district, not to favor one type of affordable housing need over another. Although the FHLBanks would be required to allocate at least 50 percent of their total annual AHP funds to their General Fund, the FHLBanks would also be permitted to allocate their remaining AHP funds between two voluntary programs – Targeted Funds and Homeownership Set-Aside Programs. The FHLBanks would be authorized to establish and allocate up to 40 percent of their total annual AHP funds to Homeownership Set-Aside Programs that provide grants to households for home purchases or rehabilitations. Subject to certain phase-in restrictions, the FHLBanks would also be authorized to establish and allocate up to 40 percent of their total annual AHP funds to Targeted Funds in order to address affordable housing needs that are unmet, have proven difficult to address within their districts, or align with objectives identified in the FHLBanks' strategic plans. While a FHLBank would not be able to fully fund both voluntary programs up to their regulatory maximums (i.e., 40 percent for each program), it could allocate up to 50 percent of its total annual AHP funds to a combination of the two voluntary programs. Each FHLBank would be required to demonstrate the rationale for establishing one or both of these voluntary programs, as well as the percentage of total annual AHP funds to be allocated to the programs, in its Targeted Community Lending Plan and AHP Implementation Plan, respectively. The proposed requirement to demonstrate the rationale for each Targeted Fund and/or Homeownership Set-Aside Program would serve to ensure that the funding and implementation of the programs best serve the affordable housing needs of the FHLBank's district.

Are not all the FHLBanks using all the HO [homeownership] set aside allowable?

In 2016 and 2017, each FHLBank operated a Homeownership Set-Aside Program. Some of the FHLBanks did not allocate the current maximum permissible 35 percent or $4.5 million, as applicable, to their Homeownership Set-Aside Programs during this period. Five of the eleven FHLBanks allocated 35 percent or the alternate maximum amount to their Homeownership Set-Aside Programs in 2016 and 2017. In the aggregate, the FHLBanks allocated 24 percent of total AHP funds to Homeownership Set-Aside Programs in 2017, down from 26 percent in 2016.

Will the proposed rule give the FHLBanks greater flexibility to work in Persistent Poverty Counties?

The proposed rule is silent on AHP awards to Persistent Poverty Counties. However, there are a number of ways in which a FHLBank could prioritize funding to Persistent Poverty Counties. For instance, a FHLBank could establish a Targeted Fund for housing in Persistent Poverty Counties. Additionally, a FHLBank could establish a scoring criterion in its General Fund or Targeted Fund for Persistent Poverty Counties.

Does previously committed AHP subsidy from <u>any</u> Targeted Fund <u>and</u> the Homeownership Set Aside Program(s) need to be allocated to the General Fund to fund alternates in the General Fund? Or, can previously committed AHP subsidy from a Targeted Fund be allocated to alternates in that Targeted Fund?

The proposed rule would require a FHLBank to transfer any uncommitted Targeted Fund amounts to the FHLBank's General Fund to award to alternates in the General Fund in the same calendar year. The proposed rule does not specify the specific Fund to which a FHLBank must allocate previously committed AHP subsidy from a Targeted Fund that has been de-obligated or recaptured by the FHLBank.

Can previously committed subsidy from the Homeownership Set Aside Program(s) be allocated to future Homeownership Set Aside disbursements?

The proposed rule does not specify the specific Fund to which a FHLBank must allocate previously committed AHP subsidy from a Homeownership Set-Aside Program that has been de-obligated or recaptured by the FHLBank.