

From: donotreply@fhfa.gov
To: [#FHFA.REG-COMMENTS](#)
Subject: Comment on a Rule RIN-2590-AA83 Submission
Date: Tuesday, June 12, 2018 4:40:14 PM

"Comment on a Rule" form was submitted by **Jay Kittenbrink** from Episcopal Retirement Services Affordable Living on 6/12/2018 4:40:14 PM. The comment is listed below.

General comments: I am appreciative of the work and effort that people have invested in creating an updated Affordable Housing Program Rule for the Federal Home Loan Bank system. The initial request from the Banks and the development community was to allow more freedom at each of the 11 District Banks to meet specific needs in the individual districts, to make the program more compatible with other funding sources and less burdensome on Affordable Housing development Sponsors by relaxing the "Need for Subsidy" and other items. I believe that the efforts by FHFA staff were aimed at solving these issues and their efforts produced several different ingredients each aimed at solving one of the above. Unfortunately, the combining of the ingredients make a recipe that is awful. My organization, Episcopal Retirement Services Affordable Living is a non-profit ministry based owner, developer and manager of 29 senior affordable communities ERS has used the Federal Home Loan Bank AHP program to complete 6-8 (new applications are being prepared) projects totaling 363 units in the six approved projects out of our portfolio of 1700 units of affordable senior housing. Here are some specific comments: 1. Even though the comment period has been extended to June 12, 2018, many of the stakeholders have not been involved in the communication concerning the Notice until it was released. This is a very complex rule which took four years to create. More than 60 days should be offered for people to understand and test the proposal before they can make adequate and usable comments. Please extend the comment period further or indicate that the rule as proposed will be further modified with a later comment period. 2. The proposal of an outcomes based system is flawed for multiple reasons: a. Basing awards on outcomes will create a situation where applications must be re-ranked. This will reduce transparency and trust in the program. Eventually the best development Sponsors will avoid the program if the outcome is so murky. ERS Affordable Living proposes LIHTC projects with FHLB funds before they are approved. In order to confirm that a project will move ahead, ERS must guarantee that should the FHLB AHP award not be received, we will replace that source with our own funds of \$500,000 to \$1,000,000. We can commit this guarantee because the scoring system is predictable enough to reassure our Board that our AHP application is likely to get funded. Re-ranking will force us to stop using the program if one of our projects must be passed over to meet a certain outcome and then we are required to provide \$500,000 to \$1,000,000 out of the corporate cash. Other non-profits are likely to take the same approach to the AHP Program if this new rule stands as proposed. Re-ranking is a terrible concept and one which cannot be used in a program that is designed to AID affordable housing development. b. The outcome based system assumes that the applications provide the majority of funding which is rarely true. Requiring projects to meet arbitrary targets which are specified in law may be totally inappropriate in 10 years but are still a requirement. As a gap financing vehicle, this program cannot affect the design and planning of projects that must meet requirements from Housing Finance Agencies, Participating Jurisdictions in the HOME program and other funding sources with far more investment to offer. c. Codifying three priorities in a law which will likely stand for 20-30 years as this last one has, makes no sense given that other funders requirements and area housing needs change over time. A prescriptive approach is not the best method. d. A better method would be to allow each District to state in their Community Housing Plan how

they would meet the statutory policy requirements and the Agency (FHFA) has the authority to accept or reject those plans. e. The requirement that any one project can only be counted to meet one of the three required “priorities” is also a challenge as no Bank can assure what projects will be submitted and situations could arise where every Sponsor focused on meeting one specific priority and no one applied with projects that could fulfill the others priorities. This would mean that the District could not be meet the requirement. f. The requirement that any District that fails to meet the outcome goals must repay the program from profits will cause the various Districts to become more conservative and guarded in the Implementation Plans and the program will become less flexible than it has been not more flexible. 3. The prescriptive outcomes based proposal will prevent inclusion of mixed income projects which are the encouraged trend of nearly every policy based Housing Finance Agency and local government. Requiring 50% of the units to meet the priority eliminates the capability to utilize the newest law for LIHTC Income Averaging and prevents any 15 year pro-forma from utilizing market rate units due to the overabundance of lower income units. The current 20% requirement is better. If the feeling is that 20% is too little, at worst increase it to 30% but 50% is far too high. 4. The proposed rule was requested to reduce the burden on Sponsors and in effect has made the burden greater by prescribing so many outcomes, notices of non-compliance, increasing the number of units that are required to meet the threshold for targeted populations, etc. Smaller organizations cannot keep staff and the complexity of expecting an organization to make notice to the FHLB of any non-compliance when the organization is likely focused on correcting the non-compliance with another agency is unrealistic. The new proposal will also discourage and possible eliminate urban projects that serve low and moderate income residents at a time when the population is moving to urban areas because of the added services available. Adaptive reuse projects in the urban areas will also be at a disadvantage for similar reasons. I do not believe that the Agency truly intended to create this adverse impact through the new rule. 5. Finally, the current “Need for Subsidy” requirements are so prescriptive that certain other Federally funded programs cannot utilize the program for funding. While Need for subsidy should be a part of the program, the Districts should be asked to create their own guidelines which will, in addition, allow for unusual circumstances. For example, there are Rural Development projects that have very little remaining 515 debt. Refinancing these project requires that the current 515 loan remain in place to keep the rental subsidy. However do so restructures the small amount of existing debt over a new 50 year period and creates a Debt Service Coverage far above the 1.50 allowed by most Districts. However Districts can use other measures (cash flow analysis which will be very low) undue enrichment of the owner, etc.) to verify that the need still exists. The proposal to codify the advisory bulletins will make this process even more challenging and eliminate the ability to serve truly needy projects in rural areas. Thank you again for the opportunity to comment on the Notice of Proposed Rule. It is my hope and expectation that the Federal Housing finance Agency will rescind this proposed rule and revamp it using the comments received from the public comment period. I look forward to seeing this program make an impact for our society and to utilizing it to aid the seniors whom we serve through Episcopal Retirement Services Affordable Living. If there are any questions on these thoughts, I can be contacted at jkittenbrink@erslife.org .

This submission can be accessed [here](#).

I, Jay Kittenbrink, have listed my comments to the 41 questions posed by Federal Housing Finance Agency concerning the 2018 Notice of Proposed Rulemaking concerning the Affordable Housing Program, (AHP) of the eleven Federal Home Loan Banks in the system. My comments are below each question and are **in red**

Subpart B—Program Administration and Governance

1. What are the benefits and risks of allowing the Banks to establish Targeted Funds?
The Benefits - in different areas of the country there will always be specific housing needs that are unique to the region. Targeted funds allow a Federal Home Loan Bank for a district to create a mechanism to fund and promote the solutions to housing needs without the hindrance of needing to compete with every project across the district in the General Pool.

The Risks - are minimal in that each district is motivated to provide quality affordable housing through the AHP program in order to disburse the funds as required by law. The staff in each of the districts are concerned about optics and fairness within the development community and within their Members and therefore police their selections well. In addition, the staff must report to the Board made up of Member Banks and a few non Member Directors. This creates an excellent check and balance to prevent favoritism, politics or other unseemly reasons for selection.

2. Is the proposed allocation of 40 percent of total AHP funds to Targeted Funds an appropriate percentage, or should the percentage be higher or lower?

I believe that 40% is the maximum that should be utilized for targeted funds but in reality it is unlikely that any district bank will ever be able to allocate 40% of the AHP funds to targeted funds under the proposed rule.

3. Would the proposed expansion of the contents of the Targeted Community Lending Plans impede the Banks' ability to respond to disasters through the AHP?

The simple answer is yes it will. The requirement to place a targeted Fund in the plan 12 months before it can be allocated is unrealistic as disasters require rapid and large response. This requirement in effect means that every District would need to plan for a disaster at least 12 months in advance AND assure that someone would utilize the funds allocated for that fund. These two stipulations will in most years be mutually exclusive and eliminate the ability to provide disaster relief.

4. What are the benefits of the proposed expansion of the contents of the Targeted Community Lending Plans and their linkage to the AHP Implementation Plans?

I believe that the current Housing Plan requirements have worked well and this expansion of the Planning process creates an undue burden, will in practice reduce

the distribution of funds due to larger staffing budgets at banks and therefore is counterproductive.

5. Is the requirement that members' AHP agreements with LIHTC project sponsors include a provision requiring the sponsors to provide prompt written notice to the Bank if the project is in noncompliance with the LIHTC income targeting or rent requirements at any time during the AHP 15-year retention period practical, and should it also be required of project sponsors in the event of noncompliance by their projects with the income-targeting or rent requirements of the government housing programs discussed under the Monitoring section?

I believe that enforcing and monitoring this requirement will be extremely challenging. How will any district bank be able to identify failure to provide this information? How will smaller non-profit organizations keep track of this additional requirement when there is a more common turnover of staff at these organizations. Asking each district's Bank staff to contact the State Housing Finance Agencies in their district will also require an agreement from the Agency to provide data that some may argue is confidential between the agency and the owner.

6. What are the advantages and disadvantages of an AHP owner occupied retention agreement, would eliminating it impact FHFA's ability to ensure that AHP funds are being used for the statutorily intended purposes, and are there ways to deter flipping other than a retention agreement?

The issue of flipping is only egregious if there are significant AHP funds in the project over and above the down payment assistance grants. The best way to address this issue is to allow the District staff to require retention agreements as that staff feels it is needed and at a threshold established in guidelines which each district bank should publish in its Implementation Plan.

7. Should the proposed increase in the maximum permissible grant to households from \$15,000 to \$22,000 under the Homeownership Set-Aside Program impact the decision on whether to eliminate the retention agreement?

No comment as I have never utilized this program

8. Should the current provision in retention agreements requiring that notice of a sale or refinancing during the retention period be provided to either the Bank or its designee (typically the member) be revised to require that the notice be provided to both the Bank and its designee if a retention agreement requirement is retained in the final rule?

Probably yes! But the retention language should allow the districts to establish a threshold for when such an agreement is required.

9. Should the AHP retention agreement, if retained in the final rule, require the AHP-assisted household to repay AHP subsidy to the Bank from any net proceeds on the sale or refinancing of the home or from the net gain?

Again, allow each district to create a policy and enforce this retention

10. What are the merits and disadvantages of the net proceeds and net gain calculations from the standpoint of the AHP-assisted households and the Banks, and are there other subsidy repayment approaches FHFA should consider, if the AHP retention agreement requirement is retained in the final rule? **No Comment**
11. What approaches would provide a reasonable basis to assume that the subsequent purchaser of an AHP assisted unit is likely to be low- or moderate-income, including proxies that could serve this purpose? **No Comment**
12. What proxies would be reasonable for assuming a subsequent purchaser's income, including the following or others: Certification from the subsequent purchaser or a third party that the subsequent purchaser's income is at or below the low- or moderate-income limit; evidence that the subsequent purchaser is receiving direct homebuyer assistance from another government program with household income targeting requirements substantially equivalent to those of the AHP; the purchase price of the AHP assisted unit is less than the median home price in the area; the AHP-assisted unit is located in a census tract or block group where at least 51 percent of the households are low- or moderate-income; or FHA or other underwriting standards indicating that the income required to purchase the AHP-assisted unit at the purchase price is low- or moderate-income? **No Comment**
13. Should there be an exception to the AHP subsidy repayment requirement in the AHP retention agreement, if retained in the final rule, where the amount of AHP subsidy subject to repayment, after calculating the net proceeds or net gain, is \$1,000 or less? **See answers above**
14. If the AHP retention agreement is retained in the final rule, should the rule clarify that the obligation to repay AHP subsidy to a Bank shall terminate not only after any event of foreclosure, but also after transfer by deed in lieu of foreclosure, assignment of an FHA mortgage to HUD, or death of the owner(s) of the unit? **No Comment**

Subpart C—General Fund and Targeted Funds

15. How should preservation of rental projects be encouraged through the AHP while discouraging displacement of current occupants with higher incomes than those targeted in the AHP application submitted to the Bank for approval, and is the proposed requirement for a relocation plan approved by the primary funder reasonable?

In nearly every multifamily project submitted to AHP there is an agency of the Federal Government which is already going to monitor the protection of current

residents in preservation projects. Since these agencies are the major funders, their requirements to fulfill the Uniform Relocation Act and other relocation requirements is more than sufficient to protect the FHLB AHP funding. If there are multifamily preservation projects that have no other source of funding, then the District FHLB should be aware and in only those cases is it necessary to require documentation that URA requirements and a legal relocation plan are being met.

16. Are the current AHP requirements for sponsor-provided permanent financing reasonable, do the sponsors have a need for AHP subsidy in light of their particular financing model, and does the current method in the regulation for determining their need for AHP subsidy understate or overstate the amount of AHP subsidy needed? **No Comment**
17. Should sponsors using the sponsor-provided permanent financing model be considered revolving loan funds and, if so, should they be subject to the current or different AHP revolving loan fund requirements? **No Comment**
18. What are the potential advantages and disadvantages of allowing the Banks to impose a maximum subsidy limit per project sponsor?

If the purpose of the system is to provide high quality rental affordable housing to serve for 15-30 years, it would be wise to have the best Sponsors possible. If we are talking single family or down payment assistance, then having one sponsor hog all the resource would be a disservice to the purpose of the program. So a disadvantage would be that imposing a maximum limit on a sponsor may require Districts to fund lesser qualified rental projects. The advantage is minimal in that it prevents any one sponsor from using an inordinate amount of this subsidy for either rental or homeownership projects. It is my opinion that the current two-fold method of one, capping the Member banks participation and two, requiring Sponsors to identify any applications to other districts should sufficiently prevent one Sponsor from overly capturing too much subsidy for rental projects.

19. What are possible approaches for re-ranking applications to meet the outcome requirements while at the same time maximizing the extent to which the highest scoring applications are approved?
20. **There are no good approaches to re-ranking. It should not be a part of the AHP program as it will give a terrible image to the program and the top Sponsors who produce great projects will avoid the program if their projects can be re-ranked and bypassed to meet arbitrary outcomes. The outcome based approach is a BAD idea for this program for many reasons including AHP is a minor but needed component of the funding so it cannot drive projects to reach certain goals established on a national level.**
21. Are the current AHP revolving loan fund provisions reasonable, and how could the financing mechanisms of revolving loan funds be used successfully with AHP subsidies?
No Comment

22. Why have certain AHP scoring criteria for revolving loan funds been difficult to meet, how would AHP subsidy be repaid in the event of project noncompliance, and how can a revolving loan fund demonstrate a need for the AHP subsidy? **No Comment**

23. Would the proposed outcome requirements for the statutory and regulatory priorities facilitate use of AHP subsidies by revolving loan funds, and if so, how?

I believe the answer is no because the funds will not want to participate in this system

24. What are the potential positive or negative impacts of eliminating the owner-occupied retention agreement requirement for revolving loan funds? **See above responses on retention**

25. Are there loan pools currently existing in the market that meet the conditions in the current regulation, how are the loan pools addressing current housing market needs, and what are the potential positive or negative impacts of eliminating the owner occupied retention agreement requirement for loan pools? **I do not know**

Subpart D—Homeownership Set-Aside Programs

25. Are there any potential positive and negative impacts of increasing the subsidy limit per household from \$15,000 to \$22,000, and should the subsidy limit be higher or lower? **No Comment**

26. Is the proposed use of FHFA’s Housing Price Index to automatically adjust the subsidy limit upward over time appropriate, or are there other housing price adjustment indices that would be preferable and why? **It seems reasonable to me as it will adjust as the market adjusts**

Subpart E—Outcome Requirements for Statutory and Regulatory Priorities

27. Does the proposed outcome requirement of 10 percent of a Bank’s total AHP funds constitute prioritization for the home purchase priority, or should the percentage be higher or lower?

28. What is the utility of the proposed outcome approach to income targeting, and are the proposed 55 percent threshold, its applicability solely to rental units, and income-targeting at 50 percent of AMI appropriate?

29. Is the proposed increase in the minimum threshold from 20 to 50 percent for the number of units reserved for homeless households appropriate?

No this is unreasonable as homeless populations require significant assistance with education and ongoing services which the rule additionally does not allow to be funded from rent proceeds.

30. Is the proposed increase in the minimum threshold from 20 to 50 percent for the number of units in a project reserved for households with a specific special need appropriate?
31. Is the proposed 50 percent minimum threshold for the number of units in a project reserved for other targeted populations appropriate? **Too much**
32. Is the proposed 20 percent minimum threshold for the number of units in a project reserved for extremely low-income households appropriate?

This is very inappropriate as there are no projects that can sustain for the 15 year compliance period supporting this many units unless there is rental subsidy and rental subsidies are shrinking not growing.

33. Do the three proposed regulatory priorities described in proposed § 1291.48—underserved communities and populations, creating economic opportunities, and affordable housing preservation—constitute significant housing priorities that should be included in the regulation, or should other housing priorities be included?

The whole concept of having the agency set the Regulatory Priorities is flawed as it determine policy for who knows how long the rule may stand before another update. Rather than having the FHFA set the Regulatory Priorities, the District Banks should include how they will fulfill this requirement in their Housing Plan which the Agency can affirm or not affirm so the Agency still has control over meeting the priorities as stipulated in its charter while allowing each District the ability to adjust the targets as time and needs change.

34. Should the specific housing needs identified under each regulatory priority be included, or are there other specific housing needs that should be included?

FHFA should not set predetermined priorities which are written into the law and therefore unchangeable for 15-20 years.

35. Do the Banks have sufficient flexibility under the current scoring system to target specific housing needs in their districts, including awarding subsidy to address multiple housing needs in a single AHP funding period?

No – this is the reason that the System requested additional flexibility.

36. Should the current regulatory scoring system be maintained without change?

If the Agency is determined to keep the three Regulatory priorities as written, then the scoring system is preferred over the outcome based method.

37. Should any of the current mandatory scoring criteria and minimum required point allocations be modified to reflect other specific housing needs?

38. Should the current Bank First and Second District Priorities be combined and the list of housing needs in the Bank First District Priority eliminated?

Subpart F—Monitoring

39. Are the proposed reductions in the Banks' monitoring requirements reasonable, taking into consideration the risks of noncompliance and the costs of project monitoring?

Yes – I concur that this is a good move with the number of other agencies already performing compliance.

40. Is data available on the noncompliance rates of projects funded under the PBRA Section 8 Program? **Probably available from HUD but generally a year or so behind real time.**

Subpart G—Remedial Actions for Noncompliance

41. Are the facts and circumstances described in proposed § 1291.60 appropriate for consideration by a Bank during reasonable subsidy collection efforts, and are there other factors that should be considered as well?

Banks should not be REQUIRED to seek cure first as a reasonable action. Leave how the collection process is fulfilled to the 11 District staff who are well qualified to make the right decisions in these cases.

Additional comments listed on following pages

General comments:

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 - a. Basing awards on outcomes will create a situation where applications must be re-ranked. This will reduce transparency and trust in the program. Eventually the best development Sponsors will avoid the program if the outcome is so murky. ERS Affordable Living proposes LIHTC projects with FHLB funds before they are approved. In order to confirm that a project will move ahead, ERS must guarantee that should the FHLB AHP award not be received, we will replace that source with our own funds of \$500,000 to \$1,000,000. We can commit this guarantee because the scoring system is predictable enough to reassure our Board that our AHP application is likely to get funded. Re-ranking will force us to stop using the program if one of our projects must be passed over to meet a certain outcome and then we are required to provide \$500,000 to \$1,000,000 out of the corporate cash. Re-ranking is a terrible concept and one which cannot be used in a program that is designed to AID affordable housing development.
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targets which are specified in law may be totally inappropriate in 10 years but are still a requirement. As a gap financing vehicle, this program cannot affect the design and planning of projects that must meet requirements from Housing Finance Agencies, Participating Jurisdictions in the HOME program and other funding sources with far more investment to offer.

- c. Codifying three priorities in a law which will likely stand for 20-30 years as this last one has, makes no sense given that other funders requirements and area housing needs change over time. A prescriptive approach is not the best method.
 - d. A better method would be to allow each District to state in their Community Housing Plan how they would meet the statutory policy requirements and the Agency (FHFA) has the authority to accept or reject those plans.
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 - f. The requirement that any District that fails to meet the outcome goals must repay the program from profits will cause the various Districts to become more conservative and guarded in the Implementation Plans and the program will become less flexible than it has been not more flexible.
3. The prescriptive outcomes based proposal will prevent inclusion of mixed income projects which are the encouraged trend of nearly every policy based Housing Finance Agency and local government. Requiring 50% of the units to meet the priority eliminates the capability to utilize the newest law for LIHTC Income Averaging and prevents any 15 year pro-forma from utilizing market rate units due to the overabundance of lower income units. The current 20% requirement is better. If the feeling is that 20% is too little, at worst increase it to 30% but 50% is far too high.
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5. Finally, the current “Need for Subsidy” requirements are so prescriptive that certain other Federally funded programs cannot utilize the program for funding. While Need for subsidy should be a part of the program, the Districts should be asked to create their own guidelines which will, in addition, allow for unusual circumstances. For example, there are Rural Development projects that have very little remaining 515 debt. Refinancing these projects requires that the current 515 loan remain in place to keep the rental subsidy. However, doing so restructures the small amount of existing debt over a new 50 year period and creates a Debt Service Coverage far above the 1.50 allowed by most Districts. However, Districts can use other measures (cash flow analysis which will be very low) undue enrichment of the owner, etc.) to verify that the need still exists. The proposal to codify the advisory bulletins will make this process even more challenging and eliminate the ability to serve truly needy projects in rural areas.

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