

**Federal Home Loan Bank (FHLBank) Affordable Housing Program (AHP)
Proposed Rule (83 Federal Register 11344 (Mar. 14, 2018))
Conference Call Between the Federal Housing Finance Agency (FHFA) and
FHLBanks of Boston, Chicago and Cincinnati
April 11, 2018
4:00 p.m. – 5:00 p.m. Eastern Standard Time**

Attendees (by telephone):

FHFA: Ted Wartell, Marcea Barringer, Eric Howard, Sharon Like, Tiffani Moore, Adam Pecsek
FHLBank of Boston: Ken Willis
FHLBank of Chicago: Suzanne Thackston
FHLBank of Cincinnati: Damon Allen, Don Grace

Summary: On April 11, 2018, FHFA staff held a conference call with staff of the FHLBanks of Boston, Chicago and Cincinnati to discuss their initial comments on the above-referenced proposed rule. The following is a summary of the attendees' discussions and reflects solely the statements of the attendees, as captured by FHFA staff.

Project Selection and Outcome Requirements

Calculation of 55 Percent Outcome Requirement for Regulatory Priorities

Staff of the three FHLBanks stated that the proposed outcome requirements in the proposed rule were more prescriptive than the current regulatory requirements and would provide less flexibility for the FHLBanks to target affordable housing needs in their districts. They indicated that the current scoring methodology is significantly preferable to the proposed outcome-based approach. FHLBank of Cincinnati staff stated that the current regulation, as implemented by the FHLBanks, with input from their Affordable Housing Advisory Councils, over the past 28 years of the program, provides the FHLBanks sufficient flexibility to effectively target affordable housing needs in their districts.

As an example of perceived reduced flexibility, FHLBank of Cincinnati staff pointed to the requirement that 55 percent of a FHLBank's total AHP annual contribution be awarded to projects under its competitive General Fund and any Targeted Funds that meet, in the aggregate, two of the three regulatory priorities in proposed § 1291.48(d). FHFA staff explained that the purpose of the 55 percent outcome requirement is to ensure that, pursuant to the statutory requirement that FHFA establish priorities for the use of the AHP funds, FHFA-established regulatory priorities for specific housing needs would be funded. FHFA staff also explained that it believed the proposed regulatory priorities were broad enough in terms of the specific housing needs included to enable all of the FHLBanks to target the broad range of housing needs in their districts while also meeting the proposed outcome requirements.

FHLBank staff noted, however, that if a FHLBank were to take advantage of the proposed increase in the maximum permissible Homeownership Set-Aside Program funding allocation amount to 40 percent, more than 91 percent of the FHLBank's annual AHP

contribution under its competitive Funds would be required to fund projects that further the proposed regulatory priorities. FHLBank of Cincinnati staff noted that a FHLBank with, for example, an annual AHP required contribution amount of \$30 million and a \$12 million Homeownership Set-Aside Program funding allocation would need to ensure that \$16.5 million of the \$18 million allocated to its competitive Funds was awarded to projects that, in the aggregate, satisfied two of the three identified regulatory priorities. FHLBank of staff characterized this requirement as overly burdensome, and stated that it would be more reasonable if each FHLBank could count funds awarded under its Homeownership Set-Aside Programs toward satisfaction of the regulatory priorities under the proposed 55 percent outcome requirement.¹ FHLBank of Boston staff noted that it had been told that most other federal housing programs (e.g., Community Development Financial Institutions Funds, Low-Income Housing Tax Credit programs, New Market Tax Credits) do not use outcome-based approaches but rather project selection approaches more akin to the current AHP scoring requirements. FHFA staff suggested that the FHLBank support this claim with specific references to those programs in its comment letter.

Percentage Threshold for Units Reserved for Targeted Populations in a Project

As another example of perceived reduced flexibility, FHLBank of Cincinnati staff pointed to the proposed increase from 20 percent to 50 percent of units in a project that must be reserved for special needs populations or homeless households in order for the project to meet the specified housing need under the applicable regulatory priority. FHFA staff explained that the purpose of the proposed increase was to reflect that projects designed to serve a specific targeted population tend to operate more effectively than projects serving a mix of population types.

FHLBank staff responded, however, that the proposed percentage threshold increase, particularly with respect to homeless households, would be impractical and insufficiently reflective of market conditions, noting that more subsidy would be needed to make the projects feasible at a time when affordable housing funding sources are declining. FHLBank staff recommended that the rule instead allow the FHLBanks discretion to determine an appropriate percentage threshold for projects with units reserved for targeted populations. FHLBank staff indicated that even if the 20 percent threshold were retained in the final rule, they would oppose adoption of the proposed outcome requirements.

Targeted Funds

Staff of the three FHLBanks supported the proposed new authority for the FHLBanks to establish Targeted Funds, but recommended retaining some version of the current scoring methodology in lieu of the proposed outcome-based approach.

¹ Subsequent to this discussion, 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. *Affordable Housing Program Amendments; Correction, Extension of Comment Period, and Further Request for Comment*; 83 Fed. Reg. 19188 (May 2, 2018).

Re-Ranking of Scored AHP Applications and Alternates

FHLBank of Cincinnati staff expressed concern with proposed § 1291.26(e), which would allow each FHLBank to re-rank scored competitive applications and project alternates. Under the proposed rule, re-ranking could only be done to the minimum extent necessary by re-ranking applications and alternates meeting the outcome requirements above the lowest scoring applications and alternates not meeting the outcome requirements, with the possibility of such re-ranking described in the FHLBank's AHP Implementation Plan. Noting that one of the great attributes of the AHP is its scoring objectivity, FHLBank of Cincinnati staff stated that the proposed re-ranking option would introduce subjective elements into the project selection process, reduce transparency, and limit project sponsors' ability to accurately predict a FHLBank's project selection methodology and prepare its application accordingly. FHLBank staff expressed concern that this could introduce legal and reputational risk to the FHLBanks. FHFA staff responded that the FHLBanks could include their specific re-ranking methodologies in their AHP Implementation Plans to provide greater transparency. FHLBank of Cincinnati staff countered that the concerns cited above would not be adequately addressed by that approach.

Staff of the three FHLBanks objected to proposed § 1291.26(b), which would require that projects selected as alternates be approved for funding if funds become available. FHLBank staff preferred retaining the current regulatory provision, which requires the selection of alternates but does not require that the alternates be approved for funding. FHLBank of Cincinnati staff stated that the proposal would increase operational costs for the FHLBanks, including possibly having to hire additional staff to contact sponsors of alternates, determine whether they still desire AHP funds, and re-underwrite the applications. FHLBank staff also pointed out that sponsors of projects approved as alternates typically move on to seek other funding sources.

Delegation by FHLBank Board of Directors

Staff of all three FHLBanks objected to the proposed prohibition on FHLBank boards of directors delegating certain AHP responsibilities to board committees. FHLBank staff asked what problem the proposed requirement was trying to resolve. FHFA staff indicated that the agency's intent, as stated in the preamble, was to promote full board engagement in AHP activities. FHLBank staff responded that the board committee structure used by the FHLBanks for AHP matters has been effective, with significant participation by board members at meetings with the board committees. FHLBank staff noted that the board committees report to the full boards, which adopt and ratify the board committees' AHP recommendations. FHLBank staff stated that it can be administratively difficult to include the full boards in all meetings, especially at the FHLBanks whose districts cover large geographic regions or where the boards meet less frequently.

Remedies for AHP Noncompliance

FHLBank of Boston staff requested clarification of proposed § 1291.60 regarding cure of AHP project noncompliance, citing potential operational challenges. FHFA staff confirmed that

the provision would require an AHP-assisted project sponsor or owner to first make efforts to cure any project noncompliance before the FHLBank could modify the terms of the project's AHP application to eliminate the circumstances of the noncompliance. FHFA staff acknowledged that certain forms of project noncompliance may, by necessity, be incurable, in which case a FHLBank would consider modification of the project as the next step. FHLBank of Boston staff agreed that this made sense.

FHLBank of Cincinnati staff objected to the proposed authority for FHFA, in its discretion, to require a FHLBank to replenish its AHP fund in the amount of the dollar shortfall if the FHLBank failed to satisfy an outcome requirement in proposed § 1291.48. FHLBank staff stated that the proposed "penalties" were very severe and would be negatively viewed by their boards, especially as the replenishment amount would be in addition to the 10 percent required to be contributed annually by the FHLBank.

Need for AHP Subsidy Analysis

FHLBank of Boston staff asked why the proposed rule preamble contains a more extensive discussion of the need for subsidy analysis requirements than proposed § 1291.24(a)(3). FHFA staff responded that due to the detailed nature and scope of the policy guidance, it is more appropriate for inclusion in the preamble than the regulatory text, and confirmed that the policy guidance reflects FHFA's expectations for how the need for subsidy analysis should be conducted. FHFA staff indicated that FHFA may include the preamble guidance in a separate policy guidance document at a later date.

AHP Owner-Occupied Retention Agreements

FHLBank of Cincinnati staff opposed the proposed elimination of the current regulatory requirement that AHP subsidy awarded to owner-occupied households be subject to a five-year retention agreement. FHLBank staff indicated that it would prefer the discretionary authority to retain such retention agreements under its competitive programs, depending on the size of the subsidy awarded. FHFA staff indicated that it would be helpful if the FHLBanks would include in their comment letters discussion of whether similarly situated households should be subject to different retention agreement requirements simply by virtue of having obtained their AHP funds from different FHLBanks.

FHFA staff noted that the proposed rule specifically requests comment on various retention agreement issues. FHLBank staff stated that retention agreements for owner-occupied rehabilitation would be addressed in their comment letters. FHFA staff requested that FHLBanks opposing elimination of owner-occupied retention agreements in their comment letters include their recommendations for how the amount of AHP subsidy to be repaid to the FHLBank should be calculated in the event of a purchase or refinancing of the home within the five-year retention period.

Revolving Loan Funds

FHLBank of Boston staff asked about the status of an FHFA rulemaking on the AHP regulation's revolving loan fund requirements, as referenced in the proposed rule preamble.

FHFA staff responded that, as noted in the preamble, the agency is contemplating conducting a separate rulemaking on revolving loan funds and requested comment on this topic, which will help inform the agency in determining next steps.

Extension of Comment Period

FHLBank of Cincinnati staff raised the possibility that the FHLBanks and some AHP stakeholders would request that FHFA extend the 60-day comment period on the proposed rule because of the intricacies of the proposed rule, which require significant analysis.

Comments

At the conclusion of the meeting, FHFA staff reiterated that it is very interested in receiving comments on the proposed rule and takes them very seriously.