

**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 the
FHLBank of Cincinnati
May 4, 2018
9:00 a.m. Eastern Standard Time**

Attendees (by telephone):

FHFA: Sandra Thompson, Andre Galeano, Ted Wartell, Marcea Barringer, Sharon Like

FHLBank of Cincinnati: Kyle Lawler, Damon Allen, Don Grace, Brenda Pierre

Summary: On May 4, 2018, FHFA staff held a conference call with staff of the FHLBank of Cincinnati to obtain a better understanding of the FHLBanks' overall concerns with the above-referenced proposed rule relayed by FHLBank staff at the April 27, 2018 meeting in Cincinnati of FHFA, the FHLBanks, the FHLBank Affordable Housing Advisory Councils (AHACs), and the Council of FHLBanks. FHFA staff indicated that it wanted to know specifically whether there would be specific operational impediments to implementing the requirements of the proposed rule given the way the FHLBanks conduct their business. FHFA noted that it believed the proposed rule would make AHP implementation easier for the FHLBanks. The following is a summary of the attendees' discussions and reflects solely the statements of the attendees, as captured by FHFA staff.

Outcome Requirements

FHLBank staff responded that the biggest concern of the FHLBank System is the proposed rule's outcome requirements, which the FHLBanks construe as mandating the funding of certain kinds of housing needs identified in the proposed regulatory priorities under the outcome requirements.

Calculation of 55 Percent Outcome Requirement

As an example of such perceived reduced flexibility, FHLBank staff pointed to the proposed 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). FHLBank staff noted that a FHLBank with, for instance, 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, satisfy two of the three identified regulatory priorities.

FHFA staff asked whether the subsequent correction to the calculation of the 55 percent requirement to allow inclusion of Homeownership Set-Aside Program funds, which would meet the Promotion of Empowerment housing need (based on the counseling requirement) and the Affordable Housing Preservation regulatory priority (if funding owner-occupied rehabilitation), would help the FHLBanks meet the 55 percent requirement.¹ FHFA staff indicated that based on

¹ 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*

its own back-testing of the FHLBank AHP funding, up to 90 percent of their Homeownership Set-Aside Program funds would count towards the regulatory priorities.

FHLBank staff responded that the correction would help a little “but doesn’t really move the needle.” Staff indicated that the FHLBank does not provide set-aside funds for owner-occupied rehabilitation, but that credit under the calculation for funding to first-time homebuyers would definitely help. FHFA staff asked if FHLBank staff had back-tested the 55 percent requirement against its 2016 and 2017 AHP awards to see if the FHLBank would have met two of the three proposed regulatory priorities. FHLBank staff stated that the FHLBank did back-test and noted that FHFA staff had shared its own back-testing results at the April 27 meeting. FHLBank staff acknowledged that FHFA’s back-testing shows that most FHLBanks would meet the 55 percent requirement. FHFA staff indicated that it would like to follow up with the FHLBank after the FHLBank completed back-testing its AHP awards based on the correction to the calculation.

FHLBank staff emphasized that the issue is that the proposed rule somewhat locks the FHLBanks in due to the fixed housing needs priorities. FHLBank staff emphasized that the FHLBanks are a supplemental funding source and not a market maker. They stated that the bigger picture is that the FHLBank has a long track record of being able to meet its district housing needs through the existing scoring system. The FHLBank indicated that the FHLBanks would be submitting a joint comment letter to FHFA that would recommend revisions to the existing scoring system along the lines of a previous scoring revision proposal submitted to FHFA.

FHLBank staff asked FHFA why it proposed changes to the existing scoring system if the back-testing produced the results that the agency was looking for. FHFA staff explained that it thought the FHLBanks would find the expanded flexibility to design their own scoring systems for their General Funds and Targeted Funds very useful, but that it also needed to overlay that flexibility with the proposed outcome requirements in order to ensure that the agency was satisfying the statutory requirement that it set priorities for the use of the AHP funds.

FHFA staff indicated that during the rule development stage one FHLBank proposal recommended an approach where each FHLBank would develop a community lending plan that would incorporate an assessment of its district’s housing needs, including data, needs assessments, and market analysis of the district. Each FHLBank would develop its selection criteria or a competitive scoring system based on its community lending plan, and each FHLBank would ensure its AHP awards incorporated FHFA’s statutory and a broadly defined list of regulatory priorities. The community lending plan would, among other things, establish goals, objectives, strategies, and tactics to achieve measurable outcomes and performance metrics. The FHLBank proposal did not include specific outcome requirements or enforcement of those outcomes. FHFA staff pointed out that FHFA sought to reconcile this FHLBank proposal’s approach with a scoring points-based approach by incorporating aspects of both in the proposed rule – *i.e.*, giving the FHLBanks complete scoring flexibility, while also utilizing an outcome-based approach and the TCLPs.

Housing Program Amendments; Correction, Extension of Comment Period, and Further Request for Comment; 83 Fed. Reg. 19188 (May 2, 2018).

Identified Housing Needs

Percentage Threshold for Units Reserved for Targeted Populations in a Project

FHLBank staff expressed concern that some of the identified housing needs under the proposed regulatory priorities are so detailed as to be very prescriptive in nature. FHLBank staff cited, as an example, the percentage threshold for units reserved for certain targeted populations in a project, which the proposed rule would increase from 20 to 50 percent. FHLBank staff reiterated AHAC concerns at the April 27 meeting that a 50 percent threshold requirement would be somewhat incompatible with the requirements of other funding sources that want more household income diversity in projects, and would result in insufficient subsidy to fund the projects because projects targeted to more lower-income households require more subsidy to be feasible.

Re-ranking of Scored AHP Applications

FHLBank staff stated that the proposal to allow a FHLBank to re-rank scored applications in order to meet the outcome requirements would make the current objective and transparent scoring process more opaque and raise reputational risk for the FHLBanks. FHLBank staff noted that developers applying for AHP subsidy like that they know exactly where they stand under the scoring. Staff indicated that the FHLBank would certainly re-rank applications in order to meet the outcome requirements rather than be in noncompliance and have to report to the FHLBank's board of directors that the FHLBank may have to reimburse its AHP Fund for any dollar shortfall resulting from the noncompliance.

Need for Subsidy Analysis

FHLBank staff indicated that the FHLBank could live with the need for subsidy analysis guidance in the proposed rule preamble, but noted that AHAC experts on supportive services projects have had long-standing concerns about the treatment of social services in AHP project budgets.

Targeted Funds

FHLBank staff indicated that the FHLBank System likes the proposed authority for the FHLBanks to establish Targeted Funds to prioritize the funding of specific housing needs.

Reimbursement of AHP Fund for Noncompliance with Outcome Requirements

FHLBank staff stated that the proposed authority for FHFA, in its discretion, to require a FHLBank to reimburse its AHP fund in the amount of any dollar shortfall for FHLBank failure to satisfy an outcome requirement was a "severe penalty."

FHFA Review of FHLBank AHP Implementation

FHLBank staff expressed concern about whether FHFA would ensure that FHFA policy and examination staff are consistent in their interpretations of AHP policies, such as those set forth in the proposed rule preamble for the need for subsidy analysis. FHFA staff pointed out that it is not unique for the agency to look to a rule's preamble in examining a FHLBank's activities. FHFA staff assured that there would be agency staff training on the final AHP rule, as well as communication and coordination among the policy and examination teams in connection with review of the FHLBanks' implementation of the final rule.