Federal Home Loan Bank (FHLBank) Affordable Housing Program (AHP) Proposed Rule (83 Federal Register 11344 (March 14, 2018))
Conference Call of the Federal Housing Finance Agency (FHFA) and Federal Home Loan Bank (FHLBank) Community Investment Officer (CIO) Subcommittee Members
July 12, 2018; 3:00 p.m. to 4:30 p.m. Eastern Standard Time

FHFA Attendees: Sharon Like; Marcea Barringer; Eric Howard; Tiffani Moore; Adam Pecsek; Danielle Safran; Lauren Boyd; Kingsley Bainson

FHLBank Attendees: Damon Allen (FHLBank of Cincinnati); John Bendel (FHLBank of Pittsburgh); Jennifer Ernst (FHLBank of Des Moines); Daniel Randall (FHLBank of New York)

Summary: On June 12, 2018, the eleven FHLBanks' CIOs jointly submitted, in response to FHFA's AHP proposed rule, a comment letter proposing an alternate AHP project selection scoring methodology. (See attached). FHFA staff held a conference call with the above-listed signatories of that comment letter to obtain additional information on the rationales behind a number of the recommendations and features of the CIOs' proposal. The following is a summary of those discussions, as captured by FHFA staff.

The FHLBank participants began the call by stating that they viewed their proposal as an attempt to merge certain regulatory priorities of the proposed rule with the existing AHP regulatory scoring system, but provide additional scoring flexibility for the FHLBanks**.**

Separate Scoring for Rental and Owner-Occupied Projects

FHFA staff asked the FHLBank attendees to explain why the CIOs' proposal would provide for the establishment of separate scoring for rental and owner-occupied projects under every scoring category. One FHLBank participant responded that authority to use separate scoring for rental and owner-occupied projects under each scoring category would enhance the FHLBanks' flexibility to emphasize rental or owner-occupied projects in response to market conditions. Several FHLBank attendees stated that, in their experiences, certain of the current regulatory scoring categories, such as *Housing for Homeless Households* and *Promotion of Empowerment*, favor rental projects over owner-occupied projects. FHFA staff pointed out that, with respect to *Promotion of Empowerment*, the current scoring methodology allows each FHLBank to adjust for any perceived favoring of rental projects by allocating more points to housing needs more commonly associated with owner-occupied projects (e.g., Homebuyer or Homeowner Counseling). It was also acknowledged by several FHLBank attendees that the proposed rule would allow a FHLBank to establish Targeted Funds specifically targeted to owner-occupied projects, but these attendees stated that also allowing separate rental and owner-occupied projects scoring would provide additional flexibility for the FHLBanks.

Donated or Conveyed Government or Other Properties

FHFA staff noted that the CIOs' proposal contains a scoring category for projects that use a significant portion of both: i) land or units donated or conveyed by the federal government or any agency or instrumentality thereof; *and* ii) land or units donated or conveyed by any other party for an amount significantly below fair market value. FHFA staff observed that this proposal would deviate from the analogous outcome measure in the proposed rule (and current regulation), which would establish an outcome measure for projects that meet i) *or* ii). The FHLBank attendees responded that the use of "and" in their proposal was inadvertent, and that their proposal was not intended to deviate from the current and proposed rules in this respect.

FHFA staff also noted that, as recognized explicitly in the preamble to the proposed rule, a negligible number of AHP-assisted projects use government-donated or conveyed properties, and that the outcome approach in the proposed rule reflects this by combining this priority with the nonprofit sponsorship priority. The FHLBank participants responded that they had not considered this approach for their proposal, with one participant indicating a preference that these two priorities be kept separate, characterizing them as "unrelated" and stating that AHP participants are familiar with the current requirements.

Homeownership Purchase

FHFA staff observed that the CIOs' proposal would require a minimum number of points (five) to be allocated to a "low- and moderate-income homeownership" priority if a FHLBank elects not to allocate a minimum of 10 percent of its annual required AHP contribution to a homeownership program (such as a homeownership set-aside program). The CIOs' proposal does not specify how those five points would be allocated if a FHLBank establishes a homeownership program. The FHLBank participants clarified that, under this circumstance, the five points would need to be allocated to one or more other statutory or regulatory priorities. They stated that the CIOs' proposal was designed to ensure that the point allocations for statutory and regulatory priorities combined would always be a minimum of 50 points, as under the current regulation.

Income Targeting

FHFA staff asked the FHLBank participants to provide their rationale for the proposal to reduce the minimum points allocation for the *Income Targeting* priority from 20 points, as provided in the current regulation, to 15 points. One FHLBank participant responded that this reduction would give the FHLBanks more scoring autonomy, while ensuring that the point allocations for statutory and regulatory priorities combined remained at least 50 points.

In response to FHFA staff's request for an explanation of the CIOs' proposal that the *Income Targeting* priority be either fixed or variable, as determined by the FHLBank, the FHLBank participants explained that this was designed to provide the FHLBanks with additional flexibility in administration of their AHPs.

FHFA staff asked the FHLBank participants why the CIOs' proposal would limit use of the *Income Targeting* scoring priority to only rental projects. A FHLBank participant stated that the participant's FHLBank does not prioritize projects targeting homeownership at income levels below 80 percent of area median income (AMI) because of the difficulty of fully supporting very low incomes, making the scoring range beneficial only in the context of rental projects.

However, the participant and another FHLBank participant stated that they would like to retain the option to score income targeting for owner-occupied projects as well.

FHFA staff observed that the CIOs' proposal does not recommend any changes to the current requirement, under the *Income Targeting* priority, that projects in which at least 60 percent of the units are reserved for occupancy by very low-income households be awarded the maximum number of available points under this scoring category, and asked whether they had considered proposing any revisions to the requirement. Specifically, FHFA staff asked whether, because numerous AHP-funded projects currently meet the 60 percent requirement and, therefore, receive the maximum number of allocated points, the requirement may be less sensitive to projects targeting greater numbers of units to very low-income and extremely low-income households. FHFA staff also noted that the 60 percent requirement was designed to encourage mixed-income projects, and has the benefit of facilitating monitoring for projects at the 60 percent limit.

One FHLBank participant responded that the 60 percent scoring requirement generally allows the FHLBanks to reach lower income households. Another FHLBank participant stated that the regulatory requirements have facilitated the funding of mixed-income projects.

Underserved Communities and Populations

Housing for Special Needs Populations

FHFA staff asked the FHLBank participants why the CIOs' proposal would remove the requirement in the proposed rule that eligible targeted populations receive supportive services or access to supportive services under the *Housing for Special Needs Populations* category. One FHLBank participant responded that many housing providers do not provide supportive services. The participant stated that AHP participants need a regulation that will allow them to meet current and future trends in affordable housing, and that the current practice of providing supportive services on-site may not continue into the future. Another FHLBank participant expressed concern about how this requirement would coexist with the "need for subsidy" guidance, since AHP funds cannot be used to fund supportive services under the statute, and many housing providers do not provide supportive services, especially in rural areas.

FHFA staff pointed out that the proposed rule would not necessarily require the provision of supportive services on-site, but merely "access to" supportive services. FHFA staff indicated that the intent of including supportive services was to encompass all types of housing projects with such services as eligible to receive scoring points, and that it is typically to the benefit of households to be able to receive supportive services. FHLBank participants responded that the rule should leave in the hands of affordable housing developers whether supportive services are appropriate for particular projects.

Housing for Other Targeted Populations

In response to a request for explanation from FHFA staff, a FHLBank participant stated that the CIOs' proposal would change the reference in the current and proposed rules from "Native Americans" to "Native or Native Peoples" under the *Housing for Other Targeted Populations* category in order ensure that the category covered all Native peoples, including Native Alaskans and Native Hawaiians. They noted that a similar change should also be made to the terminology in the *Non-profit Sponsorship* priority. FHFA staff stated that FHFA intended these populations to be included as eligible targeted populations.

In response to FHFA staff's inquiry as to why the CIOs' proposal would remove the phrase "persons with disabilities" from the proposed *Housing for Other Targeted Populations* category, a FHLBank participant stated that "persons with disabilities" are already covered under the proposed *Housing for Special Needs Populations* category. FHFA staff explained that a project would need to include supportive services to count under that category, but under the *Other Targeted Populations* category, the project would not need to include such services. Thus, while there may be overlap between these two categories, the inclusion of "persons with disabilities" in both was deliberate.

FHFA staff also asked the FHLBank participants why the CIOs' proposal would remove "multigenerational households" from the proposed *Housing for Other Targeted Populations* category. One FHLBank participant stated that the participant's FHLBank district has not received many applications for projects that would serve such households. Another FHLBank participant noted that there is no standard definition of the term, which could be interpreted to mean a household solely of parents and children. A FHLBank participant also pointed out that multigenerational households could be included under the *Other Targeted Populations* category without specifying them under that category. In addition, it was noted that a FHLBank could include projects serving multigenerational households as a FHLBank district priority. FHFA staff clarified that FHFA's intent was that the term mean households of grandparents, parents and children.

Housing for Extremely Low-Income Households

In response to FHFA staff's request for explanation of the CIOs' proposed removal of the proposed *Rental Housing for Extremely Low-Income Households* category, one FHLBank participant stated that the FHLBanks could address this housing need through their district priorities, and that this category would overlap with the *Housing for Other Targeted Populations* category. Another FHLBank participant stated that this category is redundant with the *Income Targeting* category. A FHLBank participant also expressed concern about the financial feasibility of targeting extremely low-income households. FHFA staff observed that most FHLBanks do not allocate scoring points for projects targeting extremely low-income households, which suggests that this separate category might not be redundant. The FHLBank participants noted that extremely low-income targeting could be included as an optional scoring category with the FHLBanks having discretion whether or not to include it.

Rural Housing

FHFA staff asked the FHLBank participants why the CIOs' proposal would allow each FHLBank to define "rural area" in its AHP Implementation Plan, rather than using the proposed definition of "rural area" from the Duty to Serve program. One FHLBank participant opposed use of the Duty to Serve definition, characterizing it as overly complicated for purposes of the AHP, and indicated that the CIOs' proposal was designed to provide each FHLBank with flexibility to adopt its own definition so that each FHLBank could align its standards with those used by other state and local affordable housing financing sources that fund AHP projects. Another FHLBank participant noted that the definition of "rural area" in the proposed rule might conflict with the definitions used by state and local funders.

Creating Economic Opportunity

Promotion of Empowerment

FHFA staff asked the FHLBank participants why the CIOs' proposal would replace the phrase "such as" with "which may include" in the *Promotion of Empowerment* category in the current and proposed rules. A FHLBank participant responded that the CIOs' language was intended to ensure that the list of eligible empowerment activities is not exclusive so that each FHLBank can prioritize projects that provide empowerment services not explicitly identified in the proposed rule. FHFA staff noted that the current reference to "such as" is not exclusive and means the same thing as "which may include."

Residential Economic Diversity

In response to FHFA staff's request for a justification of the CIOs' proposed standard for the *Residential Economic Diversity* category, one FHLBank participant asserted that the definition in the proposed rule was "too narrow." The participant stated that the CIOs' proposed definition would provide the FHLBanks with greater flexibility to conform to the definitions of "residential economic diversity" used in their districts by state and local housing funders, such as state housing finance agencies. The participant indicated that the definition of "residential economic diversity" used by a state housing agency in the participant's FHLBank district differs from the definition in the proposed rule because it does not refer to "designated areas."

Affordable Housing Preservation

FHFA staff requested explanation of the CIOs' suggested revision to the proposed *Affordable Housing Preservation* regulatory priority standard. One FHLBank participant indicated support for the standard in the proposed rule, but wanted a more expansive standard that would allow the FHLBanks to adapt to any future trends in affordable housing preservation.

Community Stability

The current *Community Stability* standard requires that any project receiving points under this regulatory priority category promote community stability, such as by rehabilitating vacant or abandoned properties, being an integral part of a neighborhood stabilization *plan* approved by a unit of state or local government, *and* not displacing low- or moderate-income households or, if such displacement will occur, assuring that such households will be assisted to minimize the impact of such displacement. FHFA staff noted that the CIOs' proposal revised this priority to include, in part: "[p]rojects that are an integral part of a community revitalization or economic development *strategy*…." (italics added) A FHLBank participant stated that the reference to a neighborhood stabilization "plan" in the current regulation appears to imply something more formal and codified than the CIOs' proposal for a "strategy."

FHFA staff also noted that the CIOs' proposal deleted the word "*and*" in the current regulatory priority, meaning that an eligible project could receive points under this regulatory priority even if it displaced the households or failed to minimize the impact of such displacement. In addition, this proposed change would permit a FHLBank to award points under this scoring category to any project that satisfied the non-displacement requirement. Under the current regulation, satisfaction of this non-displacement requirement would not, by itself, fulfill the requirements of the scoring category. The CIOs indicated that this was not the CIOs' intent and that this apparently proposed change was an inadvertent result of the CIOs' reorganization of the relevant text.

FHFA staff asked whether the CIOs considered merging the *Affordable Housing Preservation* and *Community Stability* priorities, given that the latter could include certain forms of rehabilitation, which also promote affordable housing preservation. One FHLBank participant stated that the CIOs' goal was to keep these two priorities separate because they generally encompass different types of housing needs. Another FHLBank participant noted that there is support for the current *Community Stability* category among certain AHP participants. Regarding the CIOs' proposal that each FHLBank be permitted to define "community stability" in its AHP Implementation Plan, FHFA staff indicated that, given the imprecise nature of the term, were FHFA to incorporate this feature in the final AHP rule, FHFA would likely elect to include certain restrictions or parameters in the rule for community stability.

District Priorities

FHFA staff requested examples of the types of housing needs the CIOs contemplate including as district priorities in their scoring systems. The FHLBank participants provided the following examples of such district priorities: providing opportunities for relocating residents from manufactured housing to other types of affordable housing; project readiness; small projects; housing needs of veterans; housing needs of Native Americans; and housing needs of households living in Appalachia.

FHFA staff also asked the FHLBank participants to clarify the meaning of "other categories" in section (d)(3)(iv) of the CIOs' proposal. A FHLBank participant responded that this section refers to district priorities, as in the current regulation, and that the FHLBanks' AHP Implementation Plans would identify the specific district priorities selected by the FHLBanks and their respective scoring points allocations. The FHLBank participants noted that the FHLBanks' Targeted Community Lending Plans currently do not include justifications for the FHLBanks' various district priorities, but that the use of the proposed Targeted Funds would require a higher standard of justification than the district priorities for the General Fund.

The FHLBank participants stated that they view the proposed Targeted Funds as a way to address acute housing needs through such stand-alone competitive funds. They provided an example of how a FHLBank could establish a Targeted Fund to address the needs of formerly incarcerated individuals in conjunction with a state initiative to fund housing for this population. They also expressed concern that the proposed rule would require that the justification for Targeted Funds include significant quantitative research and analysis. FHFA staff indicated that it was not FHFA's intent that the requirement in the proposed rule for empirical evidence justifying the housing needs selected by a FHLBank require exceedingly costly research or contracts with universities. FHFA staff stated that, in evaluating the housing needs in their districts, FHLBanks may take into account input from their Advisory Councils, as they currently do.

June 12, 2018

Submitted Electronically

Alfred M. Pollard, Esq.
General Counsel
Attn: Comments/RIN 2590-AA83
Federal Housing Finance Agency
400 Seventh Street SW, Eighth Floor
Washington, DC 20219

Re: Comments/RIN 2590-AA83; Affordable Housing Program Amendments Proposed Scoring Model

Dear Mr. Pollard:

Per the Federal Home Loan Banks' (FHLBanks') Comment Letter, dated June 1, 2018, attached is the proposed scoring methodology referenced in the letter. Including this proposal, the Federal Housing Finance Agency (FHFA) is in receipt of three scoring based options - maintaining the current scoring requirements in the existing AHP Regulation; adopting the scoring methodology proposed by the FHLBanks' in our response to the FHFA's *2017 AHP Program Design and Project Selection Criteria White Paper*; and the attached proposed scoring methodology. The undersigned FHLBanks believe that any one of the three, or some combination thereof, is preferable to the outcome requirements contained in §1291.48 of the Proposed Rule, which have several negative and unintended consequences outlined in the FHLBanks' aforementioned Comment Letter. Additionally, we also believe that our response to the FHFA's *2017 AHP Program Design and Project Selection Criteria White Paper*, the attached proposal, or some combination of the two, comports to the FHFA's requirement to determine the priorities for the FHLBanks' Affordable Housing Programs, while providing the FHLBanks with increased flexibility in responding to evolving affordable housing needs within their respective districts.

The FHLBanks' Community Investment Officers appreciate the opportunity to collaborate with the FHFA to modernize and enhance the existing AHP regulation and invite additional dialogue around the attached proposal or any of the other scoring options.

Sincerely,

The Federal Home Loan Banks

Enclosure

[Signature Page Follows]

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PROPOSED SCORING MODEL

(d) Scoring of applications.

(1) IN GENERAL. A Bank shall establish written scoring guidelines setting forth the Bank's AHP competitive application program scoring criteria under its General Fund and any Targeted Funds and related definitions and point allocations, and implementing other applicable requirements pursuant to this paragraph (d). A Bank shall not adopt additional scoring criteria or point allocations, except as specifically authorized under this paragraph (d).

(2) POINT ALLOCATIONS. A Bank shall allocate 100 points under its General Fund and 100 points under each Targeted Fund. Separate 100 point scoring structures may be established for rental projects and homeownership projects.

(3) GENERAL FUND. An application for a proposed project may receive scoring points based on the following statutory and regulatory priorities:

(i) Statutory Scoring Categories – government properties; project sponsorship; and homeownership.

a. *Use of donated or conveyed government-owned or other properties* - The financing of housing that uses a significant proportion, as defined by the Bank in its AHP Implementation Plan, of:

i. Land or units donated or conveyed by the federal government or any agency or instrumentality thereof; and,

ii. Land or units donated or conveyed by any other party for an amount significantly below the fair market value of the property, as defined by the Bank in its AHP Implementation Plan.

iii. Each Bank shall allocate a minimum of 5 points under this scoring criterion.

iv. Scoring under this category may be fixed or variable.

b. *Sponsorship by a not-for-profit organization or government entity* - Project sponsorship by a not-for-profit organization, a state or political subdivision of a state, a state housing agency, a local housing authority, a Native American Tribe, an Alaskan Native Village, or the government entity for Native Hawaiian Home Lands.

i. Each Bank shall allocate a minimum of 5 points under this scoring criterion.

ii. Scoring under this category may be fixed or variable.

c. *Low and Moderate-Income Homeownership* – If a Bank does not offer a program that sets aside at least 10 percent of the annual required AHP contribution for homeownership, it must provide a scoring category for the purchase of homes by low- or moderate-income households.

i. Each Bank shall allocate a minimum of 5 points under this scoring criterion.

ii. Scoring under this category may be fixed or variable.

(ii) Regulatory Scoring Categories – Income targeting for rental projects; underserved communities and populations; creating economic opportunity; affordable housing preservation; and community stability.

a. *Income Targeting* - The extent to which a rental project provides housing for very low- and low- or moderate-income households, as follows:

i. An application for a rental project shall be awarded the maximum number of points available under this scoring criterion if 60 percent or more of the units in the project are reserved for occupancy by households with incomes at or below 50 percent of the median income for the area. Applications for projects with less than 60 percent of the units reserved for occupancy by households with incomes at or below 50 percent of the median income for the area shall be awarded points on a declining scale based on the percentage of units in a project that are reserved for households with incomes at or below 50 percent of the median income for the area, and on the percentage of the remaining units reserved for households with incomes at or below 80 percent of the median income for the area.

ii. Each Bank shall allocate a minimum of 15 points under this scoring criterion.

iii. Scoring under this category may be fixed or variable.

b. *Underserved Communities and Populations* – The financing of housing for underserved communities or populations, by addressing one or more of the following specific housing needs:

i. Housing for homeless households. The financing of rental housing, excluding overnight shelters, reserving at least 20 percent of the units for homeless households, the creation of transitional housing for homeless households permitting a minimum of six months occupancy, or the creation of permanent owner-occupied housing reserving at least 20 percent of the units for homeless households, with the term ''homeless households'' as defined by a Bank in its AHP Implementation Plan.

ii. Housing for special needs populations. The financing of housing in which at least 20 percent of the units are reserved for, households with specific special needs, which may include, but is not limited to the following: elderly; persons with disabilities; formerly incarcerated persons; persons recovering from physical abuse or alcohol or drug abuse; victims of domestic violence, dating violence, sexual assault or stalking; persons with HIV/AIDS; or unaccompanied youth; or the financing of housing that is visitable by persons with physical disabilities who are not occupants of such housing.

iii. Housing for other targeted populations. The financing of housing in which at least 20 percent of the units are reserved for populations specifically in need of housing, such as agricultural workers, military veterans, Natives or Native Peoples, households requiring large units, or other targeted populations as defined by a Bank in its AHP Implementation Plan.

iv. Housing in Rural Areas. The financing of housing located in rural areas as defined by a Bank in its AHP Implementation Plan.

v. Other. The financing of other housing addressing specific housing needs of underserved communities or populations as FHFA may provide by guidance.

vi. Each Bank shall allocate a minimum of 5 points under this scoring criterion.

vii. Scoring under this category may be fixed or variable.

c. *Creating Economic Opportunity* – The financing of housing that facilitates economic opportunity for the residents by addressing one or more of the following specific housing needs:

i. Promotion of Empowerment. The provision of housing in combination with a program offering services that assist residents in attaining life skills or moving toward better economic opportunities, which may include, but is not limited to the following: employment; education; training; homebuyer, homeownership or tenant counseling; child care; adult daycare services; afterschool care; tutoring; health services; resident involvement in decision making affecting the creation of or operation of the project; or workforce preparation and integration.

ii. Residential Economic Diversity - The financing of either affordable housing in a high opportunity area, or mixed-income housing in a designated area. Each Bank will define high opportunity area and/or mixed-income housing in a designated area in its AHP Implementation Plan.

iii. The financing of other housing that facilitates economic opportunity as FHFA may provide by guidance.

iv. Each Bank shall allocate a minimum of 5 points under this scoring criterion.

v. Scoring under this category may be fixed-point or variable.

d. *Affordable Housing Preservation.* Financing, rehabilitating and other activities that promote the preservation of existing affordable housing as defined by a Bank in its AHP Implementation Plan.

  i. Other. The financing of other mechanisms for affordable rental housing preservation or affordable homeownership preservation as FHFA may provide by guidance.

  ii. Each Bank shall allocate a minimum of 5 points under this scoring criterion.

  iii. Scoring under this category may be fixed or variable.

e. *Community Stability* - The promotion of community stability, which may include, but is not limited to the following:

  i. Projects involving rehabilitation of vacant or abandoned properties;

  ii. Projects that are an integral part of a community revitalization or economic development strategy approved by a unit of state or local government or instrumentality thereof;

  iii. Projects that do not displace low- or moderate-income households, or if such displacement will occur, assuring that such households will be assisted to minimize the impact of such displacement; or,

  iv. As defined by a Bank in its AHP Implementation Plan.

  v. Each Bank shall allocate a minimum of 5 points under this scoring criterion.

  vi. Scoring under this category may be fixed or variable.

(iii) A Bank's AHP Implementation Plan must allocate a minimum of 50 points, in aggregate, under the scoring criterion in paragraphs (3)(i) and (3)(ii).

(iv) A Bank's AHP Implementation Plan may allocate a maximum of 50 points, in aggregate, to other categories not identified in paragraphs (d)(3)(i) and (d)(3)(ii).

(4) TARGETED FUND. A Bank's AHP Implementation Plan shall allocate scoring points to applications under a Targeted Fund for proposed projects in response to affordable housing needs identified in the Bank's Community Lending Plan.

(i) The Bank's must establish a minimum of three scoring categories and each category may be fixed or variable.

(ii) The types of categories may be different depending on the type of targeted fund but will be of a sufficient nature to ensure an impartial process.