

**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
Banks (FHLBanks) of Cincinnati and Dallas**

June 6, 2018; 2:00 p.m. Eastern Standard Time

FHFA Participants: Sandra Thompson, Andre Galeano, Sharon Like, Ted Wartell, Marcea Barringer, Eric Howard, Tiffani Moore, Danielle Safran

FHLBank Participants:

FHLBank of Cincinnati: Damon Allen, Brenda Pierre, John Greyson

FHLBank of Dallas: Greg Hettrick

Summary: At an earlier conference call between the FHLBank of Cincinnati and FHFA staff on May 4, 2018, the FHLBank participants discussed potential challenges with meeting the AHP proposed rule's outcomes-based requirements for project selection. At that meeting, FHFA staff requested that the FHLBanks back-test their AHP awards over the past two years to determine if the FHLBanks would have met the proposed outcome requirements if those requirements had been in effect. In a follow-up June 6 conference call with the FHLBanks of Cincinnati and Dallas, the FHLBank participants presented the results of their back-testing, and also requested clarifications regarding the calculations of certain proposed outcome measures. These June 6 discussions are summarized below, with the FHLBank participants' accompanying June 6, 2018 presentation attached.

The FHLBank participants indicated that four FHLBanks conducted back-testing of their 2016 and 2017 AHP awards -- Cincinnati, Dallas, Topeka, and Pittsburgh -- and confirmed that all four would have met all of the proposed outcome measures. FHFA staff asked why certain words on slide 3 of the FHLBanks' presentation were highlighted. FHLBank participants responded that for purposes of the back-testing, the FHLBanks assumed that the proposed regulatory priorities back-tested were documented affordable housing needs within each FHLBank's district and identified in their respective Targeted Community Lending Plans (TCLPs) (as the proposed rule would require). FHFA staff asked if there was a situation where a housing need would not be documented and identified in a FHLBank's TCLP. FHLBank participants responded that their housing needs analyses typically are conducted at the time they develop their TCLPs. They stated that they did not conduct district housing needs analyses for purposes of the back-testing, and noted that the proposed rule would not count undocumented housing needs towards satisfaction by a FHLBank of the outcome measures.

Regarding the proposed government property/non-profit sponsorship outcome requirement, the FHLBank participants reported that all four FHLBanks would have met this outcome measure through non-profit project sponsorship, as few of the project applications they received included government or other donated or conveyed properties eligible under this priority.

Regarding the proposed 10 percent outcome requirement for home purchases by low- or moderate-income households, the FHLBank participants reported that all four FHLBanks would have met this outcome measure. They indicated that one FHLBank that did not participate in the back-testing would have had a 9 percent result.

The FHLBank participants stated that FHFA's housing needs priorities in the proposed rule could be fulfilled via the current AHP regulation's scoring-based methodology without the proposed outcome requirements. They specifically raised the following potential issues: (1) unintended consequences of re-ranking applications (a proposed option for the FHLBanks to fulfill the outcome requirements); (2) inconsistencies in regulatory interpretations; and (3) a disconnect between the proposed rule's goal of further empowering the FHLBanks, their Boards of Directors, and Affordable Housing Advisory Councils (Advisory Councils) and its additional meeting requirements and perceived diminished Advisory Council input in identifying district housing needs.

The FHLBank participants also expressed concerns with the proposed increase in the number of units required to be targeted to special needs and other targeted populations from the current 20 percent to 50 percent, and the proposed inclusion of a supportive services requirement for certain targeted populations. They pointed out that these proposals raise issues regarding adequate project cash flow, lower threshold requirements imposed by other programs that also fund AHP projects, and lack of access to supportive services in rural areas.

The FHLBanks stated that their back-testing was conducted absent updated TCLPs and, therefore, may not have identified all district housing needs that are not identified under FHFA's priorities in the proposed rule to test their hypotheses. They concluded that the proposed outcomes-based approach would incentivize the types of housing needs identified in the proposed rule, thereby requiring the FHLBanks to meet the outcome measures for those specific housing needs even though those needs could become stagnant over time and might not reflect the specific district housing needs identified in their TCLPs. They also pointed out that inclusion of certain housing needs in the TCLPs to fulfill the FHFA outcome requirements would not guarantee that project sponsors will apply for AHP subsidy for those specific housing needs. They expressed concern that a FHLBank's failure to meet the proposed outcome measures could result in punitive financial penalties for the FHLBank. They emphasized that, because of the potential for such financial penalties for noncompliance with the outcome requirements, they would feel compelled to focus on the housing needs included in the rule and not on their unique district needs in order to ensure their compliance.

The FHLBank participants also asserted that the proposed rule is extremely complex. FHFA staff acknowledged that the transition to an outcomes-based framework may be operationally complex, but pointed out that the intention of this approach was to provide the FHLBanks with broad discretion to meet their district housing needs within the overall outcomes-based framework. FHFA staff also stated that the housing needs included in the proposed rule are broad enough to encompass current and future housing needs, and that the FHLBanks could define their district housing needs broadly in their respective TCLPs. It was also pointed out that FHFA could add new housing needs through the issuance of guidance, and could amend the regulation in the future to update the housing needs as appropriate.

Regarding the data justifying inclusion of certain district housing needs in the FHLBanks' TCLPs, FHFA staff stated that the FHLBanks could rely on surveys of their Advisory Council members on district housing needs. A FHLBank participant questioned the utility of data-driven TCLPs and Advisory Council input under an outcomes-based approach for the General Fund (as opposed to the Targeted Funds) if the FHLBanks would merely be ensuring their compliance with FHFA's housing needs priorities in the proposed rule. The participant stated that the FHLBanks would feel compelled to include every housing need identified in the rule in their TCLPs to reduce the risk of noncompliance with the outcome requirements, whereas currently, they identify district housing needs through research and Advisory Council input, and generally include only 3-4 housing needs priorities in their TCLPs. FHFA staff responded that the FHLBanks would not have to include every housing need from the rule in their TCLPs, and, as evidenced by the back-testing, the housing needs included in the proposed rule are already largely being funded by the FHLBanks. The participant noted that if the proposed rule is intended for the FHLBanks to fund the same housing needs they are already funding, then it is meeting the same outcomes, only in a different way. FHFA staff responded that the proposed rule would also give the FHLBanks much broader discretion to design their own scoring methodologies to meet not only FHFA's housing needs priorities, but also their own district housing needs priorities.

The FHLBanks reported that the back-testing results conducted by FHFA and presented to the FHLBanks and Advisory Council leadership on April 27, 2018 in Cincinnati, Ohio, do not match the results of the back-testing conducted by the four FHLBanks. They stated that their concerns could be mitigated if they knew the sources of the data and the formulas used in the outcome calculations. FHFA staff explained that its source of data was the FHLBanks' AHP data reporting to FHFA, and that FHFA's back-testing did not include special needs and homelessness populations because the FHLBanks do not currently report data for those specific data elements to FHFA.

FHLBank participants also requested clarifications on two proposed rule provisions. First, they asked how AHP Set-Aside funds would be counted toward satisfaction of the proposed outcome measure for home purchases by low- or moderate-income households. FHFA staff explained that the amount of Set-Aside funds approved for households would be counted in the calculation of the outcome measure.

Second, FHLBank participants asked how the outcome measure would be calculated for the proposed very low-income targeting requirement for rental units. FHFA staff explained that the calculation would be based on an aggregate award amount, and directed them to explanatory language in the proposed rule preamble. FHLBank participants also asked how noncompliance with this proposed outcome requirement would be quantified for purposes of determining the amount of AHP subsidy a FHLBank might be required to reimburse to its AHP Fund. FHFA staff responded that the calculation would be based upon the specific facts and circumstances of the FHLBank's noncompliance. FHFA staff also stated that any required reimbursement of AHP funds would be a last resort in very rare circumstances, for example, where there was sustained FHLBank noncompliance over a number of years. Otherwise, possible remedies might involve re-prioritization of AHP funds towards different housing needs, or adjustments in a FHLBank's

scoring matrix, to achieve future compliance. FHLBank participants stated that punitive financial action could result in the FHLBanks voluntarily removing certain programs and products from their portfolios. They also noted that requiring the FHLBanks to reimburse their AHP Funds may result in the FHLBanks contributing annually more than the statutorily required 10 percent of their net income to their AHPs.

FHFA staff concluded the call by noting that the FHLBanks' ideas are not dissimilar from FHFA's, and underscored the FHLBanks' request for significant training and guidance after issuance of a final AHP rule.



FHLBanks' Outcome Requirements Back Testing Results

June 6, 2018

Background

- May 4, 2018 – Conference Call between FHLBank Cincinnati and FHFA Deputy Directors Andre Galeano and Sandra Thompson
 - FHLBank shared challenges with meeting outcome requirements for statutory and regulatory priorities
 - Deputy Director Thompson requested that the FHLBanks back test their last couple of AHP offerings to determine whether or not they would have met the requirements
- The following FHLBanks back tested their 2016 and 2017 AHP offerings:
 - Cincinnati
 - Dallas
 - Pittsburgh
 - Topeka

Conclusion

- All four FHLBanks met the proposed regulatory and statutory outcome requirements assuming the regulatory priorities tested would have been documented affordable housing needs within each FHLBank's district and identified in each FHLBank's Community Lending Plan.
- As the FHFA indicated, [REDACTED], which did not participate in this back test, did not meet the Home Purchases by Low- and Moderate- Income Households requirement in 2017.
- The results demonstrate that the FHFA's priorities could be met via the current, simple scoring based methodology, which the FHLBanks recommend for a number of reasons:
 - Unintended consequences of re-ranking of applications;
 - Inconsistencies in regulatory interpretations;
 - Disconnect between original goal of empowering FHLBanks, their Boards and Advisory Councils and increase in requirements in Proposed Rule; etc.

Conclusion

- Proposed Rule is extremely complex as illustrated by the need to issue a technical correction on May 2, 2018
 - NOTE: Back testing results reflect the correction.
- Given the testing was performed absent updated Community Lending Plans, the FHLBanks may not have all of the options used in the test available to them in practice. For example, affordable housing preservation may not be a documented need for a particular FHLBank's district, but was incorporated into this test.

Conclusion

- Finally, the results the FHFA presented to the Community Investment Officers on April 27, 2018 do not match the calculations made by the four FHLBanks. The FHLBanks concerns could be mitigated if they knew the source(s) of the data and the formulas used in the calculations.

Clarification Required

The FHLBanks request clarification of the following items:

- AHP Set-Aside
 - Unclear as to how AHP Set-Aside would be included based on “awarding” of Set-Aside funds versus “disbursement” model used by some FHLBanks.
- Very Low-Income Targeting for Rental Units
 - The FHLBanks still seek formal clarity around the actual calculation for this requirement. Is it calculated on a per project basis or aggregate award basis?
 - Additionally, the FHLBank Cincinnati requested specifics regarding the calculation to determine the amount a FHLBank would have to reimburse the AHP Fund if it failed to meet this priority. As of yet, the methodology for calculation of the penalty has not been provided.

Clarification Required

- In general, the FHLBanks believe the FHFA (Exam and Policy) will need to provide significant training and guidance around the process of achieving the outcome requirements and reiterate that the FHFA can continue to set priorities for the FHLBanks, while giving the FHLBanks (staff, Boards and Advisory Councils) increased flexibility to respond to evolving affordable housing needs via a scoring based methodology.