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, Des Moines, New York, and Pittsburgh on the FHLBank Community Investment Officers' (CIOs) Project Selection Proposal and Owner-Occupied Retention Agreements
July 26, 2018; 1:00 p.m. to 2:00 p.m. Eastern Standard Time

FHFA Attendees: Sandra Thompson, Deputy Director; Andre Galeano, Deputy Director; Ted Wartell; Sharon Like; Marcea Barringer; Eric Howard; Tiffani Moore; Adam Pecsek; Danielle Safran

FHLBank Attendees:
FHLBank of Cincinnati: Damon Allen
FHLBank of Des Moines: Jennifer Ernst
FHLBank of New York: Paul Heroux, Daniel Randall
FHLBank of Pittsburgh: John Bendel

Summary: On July 26, 2018, FHFA staff held a conference call with several FHLBank representatives to discuss the above-referenced proposed rule, specifically: i) the FHLBank CIOs' joint comment letter in which they proposed an alternate AHP competitive project selection methodology, which had been the subject of a July 12, 2018 conference call between FHFA staff and several of the above-named FHLBank attendees; and ii) owner-occupied retention agreements. The following is a summary of the July 26 discussions, and reflects solely the views of the attendees as captured by FHFA staff.

Project Selection Methodology

The FHLBank attendees reiterated generally the July 12, 2018 discussions between FHLBank staff and FHFA staff on the following features of the FHLBank CIOs' proposed project selection methodology and the rationales therefor: i) proposed change in current regulatory terminology from "Native Americans" to "Natives or Native Peoples;" ii) proposal that a FHLBank either allocate at least 10 percent of its annual required AHP contribution to its homeownership set-aside program(s), or establish a project selection scoring category for projects that include the purchase of homes by low- or moderate-income households; iii) proposed reduction in the minimum points allocation to the *Income Targeting* regulatory priority from 20 to 15 points; iv) proposed elimination of reference to "supportive services" in the proposed rule's *Underserved Communities and Populations* regulatory priority; v) proposal to permit each FHLBank to define certain terms or criteria in its AHP Implementation Plan (e.g., "rural area"); and vi) proposed inadvertent changes to the *Community Stability* regulatory priority.

One FHLBank attendee also provided the following rationale for the CIOs' proposed requirement that any Targeted Fund scoring methodology comprise no fewer than three scoring categories: that this would ensure no Targeted Fund was dominated by any one consideration or housing need. The attendee stated that the CIOs' proposal would provide flexibility to the

FHLBanks by “updating” certain definitions and providing the FHLBanks with five additional discretionary points than currently available (by reducing the *Income Targeting* minimum points allocation from 20 to 15 points).

Owner-Occupied Retention Agreements

Several FHLBank attendees stated that the FHLBanks would prefer discretionary authority regarding whether to use retention agreements for owner-occupied units, at least with respect to competitively awarded projects, in part because the AHP subsidy per unit is often far higher for such projects than for homeownership set-aside households, who are subject to the current regulatory maximum set-aside amount of $15,000 per household. Some FHLBank attendees stated that each FHLBank would likely elect to continue using retention agreements – at least where they award higher subsidy amounts – while one FHLBank attendee expressed doubt that the FHLBanks would continue to use the retention agreements at all.

FHFA staff inquired as to whether providing discretionary authority to each FHLBank regarding imposition of retention agreements, as well as the establishment of any minimum subsidy thresholds or *de minimis* subsidy repayment exceptions (discussed in more detail below), would be inconsistent with the status of the AHP as a national program. Several FHLBank attendees responded that they do not regard the AHP as a national program in light of the current differences among the FHLBanks’ programs.

Minimum Subsidy Threshold Amount

Several FHLBank attendees indicated a preference for FHLBank discretionary authority in establishing any minimum subsidy threshold amount above which the AHP subsidy would be subject to an owner-occupied retention agreement. One FHLBank attendee indicated that if provided such discretion, the attendee’s FHLBank would likely establish such a threshold for its competitive application program, which typically awards higher subsidy amounts, but expressed uncertainty about whether the attendee’s FHLBank would continue to use owner-occupied retention agreements for its smaller homeownership set-aside subsidies.

De Minimis Subsidy Repayment Exception

Several FHLBank attendees stated that if the FHLBanks were required to continue to use owner-occupied retention agreements, the attendees would support the establishment of some *de minimis* amount below which an AHP-assisted household would not be required to repay any AHP subsidy in the event of a sale or refinancing of the home during the AHP five-year retention period. One FHLBank attendee stated that a specified *de minimis* amount should not apply to all of the FHLBanks because of the disparate market conditions within each FHLBank district. FHLBank attendees indicated a preference for individual FHLBank discretionary authority to establish the amount of any such *de minimis* subsidy repayment exception.

Calculation of Subsidy to be Recovered

Several FHLBank attendees favored providing each FHLBank the discretionary authority to develop its own methodology for calculating the amount of AHP subsidy to be recovered from a household in the event of a sale or refinancing of the home during the retention period, due to the varying markets in each FHLBank district. FHFA staff asked how the FHLBank attendees anticipated developing their methodologies for calculating the amount of subsidy to be recovered. One FHLBank attendee responded that each FHLBank would likely consult with its Affordable Housing Advisory Council and other advisors.

FHFA staff asked the FHLBank attendees to elaborate on the features of the calculation method they might prefer. One FHLBank attendee indicated that any calculation should reflect out-of-pocket costs borne by the homeowner, and limit the amount of subsidy required to be recovered to the amount of proceeds available at transfer. FHFA staff also asked about the calculation used under HUD's HOME Investment Partnership Program described in the preamble to the proposed rule. The FHLBank attendees were unfamiliar with this calculation. One FHLBank attendee speculated that the HOME calculation might not be appropriate for the AHP because owner-occupied units subject to AHP retention agreements typically are not purchased along with other subsidies as may occur under the HOME Program.

Flipping Risk

One FHLBank attendee stated that the rate of property sales occurring during the AHP five-year retention period is very low, and that when sales do occur, they are typically in the third or fourth year and often driven by life events (e.g., employment-based relocation), resulting in only a small net gain to the household. The attendee stated that the risk of flipping is also very low, and that the retention agreement is an inadequate tool for mitigating against such risk because it can be circumvented. It was claimed by this attendee that AHP-assisted homes generally are not located in markets or middle home price ranges where profits from flipping could result. The attendee further stated that the use of retention agreements establishes a "second class" of homeownership for AHP-assisted households that is unjustified in light of the limited flipping risk.

FHFA staff asked whether the FHLBank attendees believed that the owner-occupied retention agreements deter the use of "straw men" and other forms of fraud. Several attendees responded that they have not seen evidence of such fraud in their districts.

Administrative Obligations

FHFA staff inquired about the nature and extent of administrative costs associated with the owner-occupied retention agreements in light of the fact that few AHP-assisted households sell or refinance their homes within five years. One FHLBank attendee stated that there is an operational and financial cost associated with recording the agreement, and cited the operational cost associated with calculating the amount of subsidy to be recovered. Another FHLBank attendee indicated that administrative costs are increased if the loan associated with the subsidy agreement is sold, particularly if it is sold to an institution that is not a member of the FHLBank.

A FHLBank attendee observed that obtaining the information necessary to perform the calculation of net gain to determine the amount of AHP subsidy to be repaid can be difficult, such as where the original lender that provided the mortgage and AHP subsidy to the household is not the lender providing the mortgage to the subsequent purchaser of the home. Another FHLBank attendee pointed out that the calculation of net gain is also problematic when the AHP subsidy was used for owner-occupied rehabilitation without an accompanying purchase by the household and documentation of the household's original purchase price and capital improvements on the home may no longer be available.