

**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 Officers (CIO) on Owner-Occupied Retention
Agreements
August 27 2018; 10:00 a.m. to 11:00 a.m. Eastern Standard Time**

FHFA Attendees: Sandra Thompson, Deputy Director, Division of Housing Mission and Goals; Ted Wartell; Eric Howard; Tiffani Moore; and Adam Pecsek

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

Summary: On August 27, 2018, FHFA staff held a conference call with the above-listed FHLBank CIOs to obtain additional information about their respective FHLBanks' comments on the proposed rule, specifically the proposed elimination of the requirement that AHP subsidies for owner-occupied units be accompanied by a retention agreement. The following is a summary of this discussion as captured by FHFA staff, and solely reflects the opinions of the attendees.

Subsidy Threshold Amount

FHFA staff noted that, in previous comments, various FHLBanks had opposed the proposed elimination of owner-occupied retention agreements, suggesting instead that the FHLBanks be permitted to use or not use retention agreements at their discretion. FHFA staff observed that one of the stated rationales for this request was that, although (according to some FHLBanks) the risk of fraud or abuse is modest in connection with the AHP set-aside programs, the risk may be greater in connection with the FHLBanks' competitive programs where the subsidy amounts are higher. FHFA staff asked attendees whether this concern would be addressed if the final rule were to require owner-occupied retention agreements only if the initial subsidy amount exceeded a certain threshold, and otherwise eliminate the requirement. One FHLBank attendee identified this as a reasonable approach, but indicated that there would likely not be FHLBank consensus on this issue if the threshold amount were established by FHFA, and also opined that any FHLBank favoring such a threshold would likely prefer the discretion to establish its own threshold. This attendee stated that the most significant consideration in administration of retention agreements is the relationship between the benefits and costs, and that these differ significantly from district to district.

This same attendee indicated that, whereas subsidy amount is one appropriate consideration in determining whether a retention agreement is an appropriate deterrent mitigate the risk of abuse, it is not the only consideration. This attendee noted, as an example, that a FHLBank may be less inclined to regard a retention agreement as necessary if a sponsor of an owner-occupied project were an experienced, sophisticated sponsor with a longstanding reputation for integrity. Therefore, according to this attendee, the FHLBanks would prefer broad discretion. Another FHLBank attendee supported this preference for broad FHLBank discretion,

and indicated that the attendee's FHLBank's AHP participants are mainly community banks, which this attendee regards as unlikely to facilitate fraud or abuse.

Subsidy Recovery Calculation

Under the current regulatory requirements, in the event that an AHP-subsidized owner-occupied unit is refinanced or sold within the five-year retention period, recovery of the subsidy is calculated based on a prorated amount of the "net gain." FHFA staff noted, echoing the relevant discussion of this issue in the preamble to the proposed rule, that this calculation incorporates the original purchase price of the property and asked whether any other calculation might be appropriate, specifically a method focused on the proceeds available at transfer or refinance.

Two FHLBank attendees characterized the "net gain" calculation as operationally burdensome, and alleged difficulty in obtaining the original purchase price of the property in some circumstances. Another FHLBank attendee supported this claim, stating that homeowners may be less likely to stay with a specific lending institution over the course of multiple transactions than they were earlier in the AHP's history, limiting a member or FHLBank's ability to gather the necessary information (i.e., original purchase price), and that therefore this calculation methodology may be outdated. This same attendee indicated that members unable to calculate the amount of subsidy to be recovered under the current regulatory requirement currently face challenges in timely responding to mortgagors' requests for payoff statements.

Two FHLBank attendees indicated that, in the event the final rule retained some version of the owner-occupied retention agreement requirement, FHFA should consider ease of administration in the calculation methodology. One attendee specified that the calculation should only consider information readily available at the time of refinance or transfer.

With respect, specifically, to calculation of AHP subsidy to be recovered on subsidies issued for rehabilitation, as opposed to purchase, one FHLBank attendee stated that that any calculation requiring the original purchase price would be "unworkable." This attendee indicated the administrative concerns implicated by calculation of subsidy to be recovered for rehabilitation subsidies are "more complicated" than for purchase subsidies, but emphasized that any formula adopted by FHFA should work for both purchase and rehabilitation.

Proxies for Purchaser Income

The current regulation provides an exception to the subsidy recovery obligation on owner-occupied units if the unit is transferred to a low- or moderate-income homeowner. FHFA staff observed that some FHLBanks have indicated difficulty in obtaining the information necessary to determine purchaser income, and also noted the discussion in the preamble to the proposed rule regarding the possible use of proxies for purchaser income. FHFA solicited the FHLBank attendees' opinions concerning the use of proxies. Two attendees indicated that a significant consideration should be accessibility of readily available data, and that any complicated proxy, or proxy that cannot be easily calculated based on accessible information, would likely not resolve any current operational burden.