

**Affordable Housing Program
Notice of Proposed
Rulemaking
Published March 14, 2018**



AHP Allocation Overview

Competitive

- Must allocate at least 50% for a General Fund (GF)
 - Must approve alternates if funds become available
- May allocate, in the aggregate, up to 40% to a maximum of 3 Targeted Funds (TF)
 - Subject to phase-in requirements
 - Must approve alternates if funds become available

Set Aside

- May allocate up to the greater of 40% or \$4.5 million for Homeownership Set-Aside Program(s)

AHP Allocation Required Outcomes

- At least 10% of the annual AHP contribution must be for the statutory priority of home purchases.
- At least 55% of the annual AHP contribution awarded under the General and Targeted Fund(s) and Homeownership Set-Aside Programs must be for at least two of three regulatory priorities and each of those regulatory priorities must receive at least 10% of the 55%.
 - If a project meets both priorities, it may only be counted toward meeting one of them.
 - A FHLBank may not count a project as meeting the priority if the project satisfies one of the FHFA regulatory priorities, but that regulatory priority was not identified in the FHLBank's Targeted Community Lending Plan.
- At least 55% of funds in the General and Targeted Funds must be for the statutory priority of donated property or non-profit sponsorship. If a project meets both, it may be counted toward meeting only one.
- At least 55% of rental units in the General and Targeted Funds must be for 50% AMI.
- Failure to Meet FHFA Required Outcomes
 - “Re-rank” otherwise competitive projects to ensure compliance with required outcomes
 - FHLBank prepares a housing plan and could be required to repay AHP in the amount of the shortfall

Governance – Board of Directors

The full Board of Directors would be required to:

- Meet with the Advisory Council on a quarterly basis
- Approve AHP applications
- Approve policies for and amendments to the competitive program's General Fund and any Targeted Funds, as well as the Homeownership Set Aside-Programs.
 - Targeted Community Lending Plan
 - AHP Implementation Plan

The Board of Directors could continue to delegate to a committee, but not to FHLB employees, responsibility to:

- Appoint Advisory Council members
 - Consider AHP project modification requests for increases in AHP subsidy
 - Adopt the AHP Conflicts of Interest policy
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Targeted Community Lending Plan (CLP)

FHLBanks would be required to conduct market research on affordable housing needs in their districts, and identify and assess which among them are most significant.

- The market research of the CLP would provide the basis for funding allocations to and scoring criteria for the General Fund, any Targeted Funds, and Set-Aside Program(s).
 - Identified needs must be included in the CLP at least six months before the beginning of the CLP year.
 - If the CLP does not identify as a need one of the FHFA regulatory priorities and the FHLBank awards funds to a project that responds to that regulatory priority, then the FHLBank may not count that project toward meeting the FHFA's outcome requirements.
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AHP Implementation Plan

FHLBanks would be required to specify funding allocations to and include requirements for the General Fund, any Targeted Funds, and Set-Aside Program(s).

- Scoring criteria for each Fund must flow logically from the analyses and identified housing needs in the CLP, which should lead to AHP awards meeting those needs.
 - The IP must specify:
 - What controls are in place to ensure that the Targeted Fund is designed to receive a sufficient number of applications to facilitate a genuinely competitive scoring process.
 - How the FHLBank will decide under which Fund to approve a project that applies to and is competitive under more than one Fund
 - The possibility of re-ranking scored applications for the purpose of meeting FHFA outcome requirements.
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AHP General and Targeted Funds

Enhanced sponsor capacity evaluation at application and each disbursement

- The definition of a project sponsor would include all affiliates and team members, such as the general contractor.
- Sponsors would be required to provide certifications or respond to specific questions about whether the sponsor, as defined above, has engaged in misconduct as defined in the FHFA's Suspended Counterparty Program regulation or as defined by the FHLBank.

Projects that are occupied at the time of AHP application

- These projects would be allowed to satisfy AHP's income and rent restrictions at move-in rather than at the time of application so long as the project has a relocation plan approved by another funder for the households that would not meet the AHP requirements.

Maximum AHP subsidy limits

- FHLBanks may adopt a limit to the amount a sponsor may be awarded in an AHP funding round.
 - The maximum subsidy per project and per unit may differ for the General Fund and each Targeted Fund.
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Need for Subsidy

- Cash flow from the operating pro forma would be considered when evaluating the need for subsidy.
 - Preamble sets forth additional analyses.
 - Capitalized operating reserves – The FHLBank must evaluate the reasonableness of reserves when the amount exceeds the FHLBank’s benchmark.
 - Supportive services – If a government entity provides operating subsidies that fund both housing operating costs and supportive services and these operating subsidies cannot be readily bifurcated, the supportive services income and expenses should be captured in the project’s operating pro forma.
 - Cash flow – if the cash flow or debt coverage ratio exceeds the FHLBank’s benchmarks, the FHLBank must assess if the project could have reasonably paid for debt service on a larger loan.
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Scoring Methodology

For each Fund, FHLBanks establish scoring criteria, related definitions, and 100-point scale

- Scoring criteria for each Fund must:
 - Flow logically from the analyses and identified housing needs in the CLP
 - Ensure that the FHLBank meets FHFA outcome requirements, e.g., statutory and regulatory priorities
- For the purpose of satisfying FHFA outcomes requirements, a FHLBank may deviate from the normal descending ranking selection order to the minimum extent necessary by re-ranking scored applications and alternates that meet the outcomes requirements above the lowest-scoring applications and alternates that do not meet the outcomes requirements.

Alternates in the General Fund must be funded within one year of approval if previously committed subsidy becomes available.

- Previously committed subsidy may not be re-purposed for a Targeted Fund or the Set -Aside Program.

Out-of-district awards must be feasible under the General Fund

- If a FHLBank awards points for in-district projects, it cannot do so in a way that excludes out-of-district projects from the General Fund.
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FHFA Outcome Requirements

Annual Report

- FHLBank must demonstrate its compliance with the FHFA's outcome requirements.

Statutory Priorities

- At least 55% of the AHP funds allocated to the General Fund and any Targeted Fund(s) must
 - Be sponsored by a nonprofit organization; or
 - Include donated property
 - At least 10% of the annual required AHP contribution must be for home purchases by low- or moderate-income households. This may be accomplished under any combinations of the FHLBank's General Fund, Targeted Funds, and Set-Aside Programs.
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FHFA Outcome Requirements, continued

Regulatory Priorities

- First Regulatory Priority: Income Targeting - At least 55% of all rental units under the General Fund and any Targeted Fund(s) must be targeted to 50% AMI or below.
 - Second Regulatory Priority:
 - Underserved Communities and Populations
 - Creating Economic Opportunity
 - Affordable Housing Preservation
 - At least 55% of the annual AHP contribution awarded under the General and Targeted Fund(s) and Homeownership Set-Aside Program(s) must be for at least two of these three “second” regulatory priorities and each such regulatory priority must receive at least 10% of the funds.
 - If an awarded project meets more than one of the “second” regulatory priorities, it may only be counted toward meeting one of them.
 - A FHLBank may not count a project as meeting the priority if the project satisfies one of the “second” FHFA regulatory priorities, but that regulatory priority was not identified in the FHLBank’s Targeted Community Lending Plan.
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FHFA Outcome Requirements, continued

Second Regulatory Priority 1 of 3

Underserved Communities and Populations may be satisfied if:

- At least 50% of the units are for:
 - Homeless households
 - Special needs households and the project provides supportive services or access to supportive services
 - Definition of special needs expanded to include formerly incarcerated persons; victims of domestic violence; dating violence; sexual assault or stalking; and unaccompanied youth.
 - Other targeted households without a supportive services requirement
 - Definition of other targeted households includes: agricultural workers; military veterans; persons with disabilities; Native Americans; multi-generational households; households requiring larger units.
 - At least 20% of the units are rental housing for households at or below 30% AMI.
 - Housing in rural areas defined according to the FHFA's Duty to Serve regulations (% not specified).
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FHFA Outcome Requirements, continued

Second Regulatory Priority 2 and 3 of 3

Creating Economic Opportunity may be satisfied by projects that provide:

- Empowerment services
 - Definition of empowerment expanded to include child care; adult daycare; afterschool care; tutoring; health services; and workforce preparation and integration.

- Other Residential Economic Diversity
 - Definition consistent with existing regulation, i.e., mixed-income in low- or moderate-income neighborhoods, or affordable housing in neighborhoods or cities where the median income is equal to or exceeds the median income for the larger surrounding area.

Affordable Housing Preservation may be satisfied by projects that provide:

- Affordable Homeownership Preservation
 - Defined as rehabilitation, shared-equity homeownership programs, owner-occupied housing with energy or water efficiency improvements, and other housing finance strategies to preserve homeownership

 - Affordable Rental Preservation
 - Defined as rental housing in need of rehabilitation or with energy or water efficiency improvements; affordable housing under project- and tenant-based Section 8, Section 236; Section 221(d)(4); Section 202; Section 811; McKinney-Vento homeless assistance; USDA Section 515; LIHTC; and other comparable state and local affordable housing programs.
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Monitoring

Retention Agreements for Owner-Occupied Housing

- Either eliminate entirely the retention requirement for owner-occupied units or, if retained, the FHFA requests comment on:
 - Notice of sale should be required to be given to both the FHLBank and the member, rather than to one or the other.
 - What the subsidy repayment method should be.
 - What reasonable basis could be offered to assume that the subsequent purchaser of an AHP-assisted unit is an eligible household, i.e., proxies.
 - If repayment amounts of \$1,000 or less should be forgiven.

LIHTC Projects

- No longer required to submit income and rent backup documentation at initial monitoring.
 - Add a requirement for the member to modify its agreement with the project sponsor to notify the FHLB if the project goes out of compliance with the LIHTC income-targeting or rent requirements during the 15-year monitoring period, and for the FHLBank to review these notices.
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Monitoring, continued

Initial and long-term monitoring for projects with certain federal funds

- Initial monitoring – Continue requirement for sponsor certifications and rent rolls, and eliminate requirement for other back-up documentation.
- Long-term monitoring – Continue requirement for annual sponsor certifications, and eliminate requirement for rent rolls and other back-up documentation.
 - Federal funds include: HUD Section 202 and 811, USDA Section 514 and 515.

Enhanced long-term monitoring certifications

- Add requirement for annual sponsor certifications to include information about the on-going financial viability of the project, such as the status of its property tax and loan payments, vacancy rate, and whether it is in compliance with other funding sources.

Remedial Actions for Noncompliance

- Modifications may not be used for the sole purpose of curing noncompliance.
 - When repayment of AHP subsidy is required, a FHLB must consider, in addition to other established criteria, the financial capacity of the sponsor or owner, assets securing the AHP subsidy, and other assets of the project sponsor or owner.
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Set-Aside

- FHLBanks must justify the establishment of any set-aside programs in its Targeted Community Lending Plan.
 - Increases maximum allocation of funds to the set-aside program from the greater of 35% of the annual required AHP contribution or \$4.5 million to the greater of 40% of the annual required AHP contribution or \$4.5 million.
 - Increases the maximum grant amount for each household from \$15,000 to \$22,000 with an annual upward adjustment in accordance with the FHFA's Housing Price Index.
 - Refer to Monitoring Slide for details about the FHFA's proposals regarding retention agreements for owner-occupied units.
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