FEDERAL HOUSING FINANCE AGENCY
Division of Housing Mission and Goals

ADVISORY BULLETIN

AB 2020-03

GUIDANCE ON THE USE OF PROXIES FOR DETERMINING THE INCOME OF SUBSEQUENT PURCHASERS OF OWNER-OCCUPIED UNITS SOLD BY AHP-ASSISTED HOUSEHOLDS DURING THE AHP RETENTION PERIOD

July 17, 2020

Purpose

This Advisory Bulletin (AB) contains guidance, pursuant to the Affordable Housing Program (AHP) regulation, on the Federal Home Loan Banks' (FHLBanks) or their designees' use of proxies for determining whether the subsequent purchaser of an owner-occupied unit sold, transferred, or assigned by an AHP-assisted household during the AHP five-year retention period is low- or moderate-income (LMI). Specifically, the guidance provides for the use of a proxy based on the U.S. Department of Housing and Urban Development's (HUD) HOME Investment Partnerships Program (HOME) and Housing Trust Fund (HTF) homeownership value limits for existing housing. The AB also discusses the option for FHLBanks to adopt an alternative proxy or proxies that are reliable indicators that the subsequent purchaser is LMI. In addition, the AB provides guidance on documentation requirements as well as content of a FHLBank's AHP Implementation Plan.

Background

The Federal Housing Finance Agency's (FHFA) AHP regulation provides that, for each household that receives AHP subsidy for purchase, for purchase in conjunction with rehabilitation, or for construction of an owner-occupied unit, the unit must be subject to a retention agreement.[1] The retention agreement must provide that, if the AHP-assisted household sells, transfers, or assigns (hereafter referred to as "sells," for ease of reading) the unit within five years of closing on the unit, the FHLBank is to be repaid a *pro rata* portion of the AHP subsidy from any net proceeds realized by the household minus the household's investment, subject to certain exceptions.[2] One such exception is when the AHP-assisted household sells the unit to a LMI household, *i.e.*, a household with income at or below 80 percent of the area median income (AMI).[3] This exception predates the 2018 AHP final rule.[4] Because subsequent purchasers of

[1] 12 CFR 1291.23(d)(1); 1291.42(e); 1291.15(a)(7); *see also Questions and Answers on the November 28, 2018 Final Rule--Part I* (July 2019), available at fhfa.gov.
[2] 12 CFR 1291.15(a)(7)(v); 1291.1 (par. (1) of the definition of "retention period").
[3] 12 CFR 1291.15(a)(7)(ii)(B); 1291.1 (definition of "low- or moderate-income household").
[4] 12 CFR 1291.9(a)(7)(ii)(B) (Jan. 1, 2018 edition).

units sold by AHP-assisted households are under no obligation to provide income documentation to the FHLBanks or their designees for purposes of determining the AHP-assisted household's AHP subsidy repayment obligation, it has been difficult for FHLBanks and their designees to determine subsequent purchasers' actual incomes and, therefore, whether this subsidy repayment exception applies. Accordingly, FHFA requested comments in the 2018 AHP proposed rule preamble on potential geographically-based and person-based proxy approaches for determining subsequent purchaser income.

After reviewing the comments received on the proposed rule, FHFA determined in the 2018 AHP final rule that the use of proxies for determining subsequent purchaser income would facilitate the FHLBanks' implementation of the LMI subsequent purchaser exception.[5] Accordingly, the final rule revised the regulation to provide for the use of proxies pursuant to guidance to be issued by FHFA for determining a subsequent purchaser's income. Specifically, the final rule provides that for any sale by an AHP-assisted household of an owner-occupied unit after a date established by FHFA in the guidance, a FHLBank or its designee must determine the subsequent purchaser's income using one or more proxies that are reliable indicators of the subsequent purchaser's income, which may be selected by the FHLBank pursuant to the guidance, unless documentation demonstrating the subsequent purchaser's actual income is available.[6] This AB contains the guidance referenced in the final rule on the use of proxies for this purpose.

Guidance

The Proxy: HUD HOME and HTF Homeownership Value Limits for Existing Housing

FHFA has determined that the sale of an owner-occupied unit by an AHP-assisted household at a price that is at or below the applicable HUD HOME and HTF homeownership value limit for existing housing (hereinafter "value limit") is a reliable indicator that the subsequent purchaser of the unit is LMI.[7] In reaching this conclusion, FHFA analyzed Home Mortgage Disclosure Act (HMDA) data which indicates that, in 2018, approximately 58 percent of national HMDA-reported home sales at or below the applicable value limit were to LMI purchasers. Significantly, in the ten states in which the greatest number of AHP owner-occupied subsidies under the FHLBanks' competitive application programs and homeownership set-aside programs were awarded in 2018, over 65 percent of such sales were to LMI purchasers.

FHFA also analyzed the 2018 HMDA income data to determine the percentage of homebuyers who purchased a home above the applicable value limit that were LMI. FHFA found that only 14.6 percent of 2018 HMDA homebuyers who purchased a home above the applicable value limit were LMI, making it relatively unlikely that applying the HOME and HTF price limits as a proxy would be under-inclusive of low-and-moderate income subsequent purchasers.

[5] 83 Fed. Reg. 61186, 61204 (Nov. 28, 2018).
[6] 12 CFR 1291.15(a)(7)(ii)(B).
[7] For more information on these value limits, how they are derived, and their function in the applicable HUD programs, see the HOME and HTF program pages on the HUD Exchange website at www.hudexchange.info.

Because proxies are approximations, no proxy can definitively determine the income of a subsequent purchaser. FHFA acknowledges this limitation of proxies generally, and the possibility that any proxy based on house sales price might fail to fully account for gentrification of areas in which the home is located, as noted by some commenters on the proposed rule. In rapidly gentrifying areas, a comparatively higher percentage of non-LMI purchasers may purchase homes at or below the value limit than in areas experiencing lower rates of gentrification.

However, as noted above, the data generally suggest that house sales price at or below the applicable value limit reliably indicates that the subsequent purchaser is LMI. This proxy indicates subsequent purchaser LMI status even more reliably when the review analyzes the ten states with the highest number of AHP owner-occupied subsidies historically.

In addition, although FHFA's priority in selecting a proxy is identifying one that reliably indicates subsequent purchaser income, FHFA has selected one that, as applied to AHP-assisted households, weighs in favor of allowing households to retain AHP subsidy and thereby enjoy the full benefits of homeownership. FHFA analyzed data available under the FHLBanks' homeownership set-aside programs to determine the likelihood that any particular AHP-assisted household would be required to repay AHP subsidy under the value limits proxy. In 2018, only 7.7 percent of AHP-assisted households who received set-aside grants in connection with purchase purchased their homes at a price greater than the applicable value limit, which suggests that the large majority of home sales by AHP-assisted households will qualify for the LMI subsequent purchaser exception under this proxy.[8]

Implementing the Proxy

The FHLBanks or their designees may use the value limits, posted on the HUD Exchange, as a proxy for determining whether the exception to the AHP subsidy repayment requirement for sales to subsequent LMI purchasers applies. HUD calculates and posts the value limits annually on the HUD Exchange website. FHFA will also post the value limits on its website and notify the FHLBanks when new annual value limits are available.

However, if a FHLBank or its designee has documentation demonstrating the subsequent purchaser's actual income, the FHLBank may not apply the value limits proxy or any other proxy to determine subsequent purchaser income. If neither the FHLBank nor its designee has such documentation, and the FHLBank elects to apply the value limits proxy, the FHLBank or its designee must use the value limits in effect at the time the AHP-assisted household sells its unit during the AHP five-year retention period. The FHLBank or its designee will determine the applicable value limit based on the specific county where the unit is located and the size of the unit (*i.e.*, 1-unit, 2-unit, 3-unit, or 4-unit). The FHLBank or its designee will then compare the price at which the AHP-assisted household sold the unit to that value limit. If the sales price is less than or equal to the value limit, the subsequent purchaser is regarded as LMI under the value

[8] FHFA does not collect the prices at which competitive application program subsidy recipients purchase or sell their homes. FHFA also does not collect the prices at which homeownership set-aside program subsidy recipients purchase their homes, unless the subsidy is used in connection with purchase (e.g., down payment assistance). In 2018, 68 percent of all AHP owner-occupied subsidies were awarded through set-aside programs, and 92 percent of set-aside subsidies were used in connection with purchase.

limits proxy. If the sales price is more than the applicable value limit, the subsequent purchaser is not regarded as LMI under the value limits proxy. The FHLBank or its designee must document its determinations under the value limits proxy.

Alternative Bank Proxies

In lieu of or in addition to the value limits proxy, a FHLBank may, in its discretion, adopt an alternative proxy or proxies that are reliable indicators that the subsequent purchaser of an owner-occupied unit sold by an AHP-assisted household is LMI. The FHLBank should retain documentation and data that provide a sufficient basis for the adoption of the alternative proxy or proxies, including an explanation of how the proxy or proxies reliably indicate(s) that the subsequent purchaser is LMI. In addition, as with application of the value limits proxy, the FHLBank should document its determinations under an alternative proxy for each subsequent purchaser's income.

AHP Implementation Plans

The FHLBanks must ensure that their AHP Implementation Plans include the specific proxy or proxies they have chosen to adopt pursuant to this AB.[9] If a FHLBank adopts more than one proxy, its AHP Implementation Plan must include the policies determining which proxy or set of proxies will be applied in any particular circumstance. If these policies provide for the application of more than one proxy per sale, they must specify how conflicting determinations of subsequent purchaser LMI income will be resolved.[10]

Effective Date

This AB is effective for any sale of an owner-occupied unit by an AHP-assisted household that occurs on or after January 1, 2021 and is during the unit's AHP five-year retention period. However, FHFA strongly encourages the FHLBanks to implement this AB before that date as practicable.

FHFA has statutory responsibility to ensure that the regulated entities carry out their missions consistently with the provisions and purposes of FHFA's statute and the regulated entities' authorizing statutes. Advisory Bulletins describe supervisory expectations in particular areas and are used in FHFA examinations of the regulated entities. For comments or questions pertaining to this Advisory Bulletin, contact Ted Wartell at Ted.Wartell@fhfa.gov or by phone at 1-202-649-3157; or Tiffani Moore at Tiffani.Moore@fhfa.gov or by phone at 1-202-649-3304.

[9] 12 CFR 1291.15(a)(7)(ii)(B).
[10] 12 CFR 1291.13(b)(6).