



REGULATORY INTERPRETATION 2005-RI-04

October 20, 2005

Subject:

“Special Needs” Scoring Criterion Under the Affordable Housing Program (AHP): Large Families and Farm Workers.

Request Summary:

A Federal Home Loan Bank (Bank) has requested a Regulatory Interpretation regarding whether large families or farm workers qualify as households with special needs under the “Special Needs” scoring criterion in the AHP regulation.

Conclusion:

Large families and farm workers do not qualify as households with special needs under the “Special Needs” scoring criterion in the AHP regulation.

Background:

The Bank maintains that large families and farm workers should qualify under the “Special Needs” scoring criterion, on the basis that these populations are equivalent to the specific special needs populations cited in the AHP regulation because housing for these groups exhibits unique characteristics not associated with housing for non-special needs populations. The Bank cites as support for its position the fact that guidance of the Department of Housing and Urban Development (HUD) groups large families and migrant farm workers with other special needs groups as household types with certain needs that could benefit from assistance under HUD housing programs. The Bank also states that large families and farm workers will be disadvantaged by exclusion from the “Special Needs” scoring category.

Discussion:

The AHP regulation provides that a Bank may allocate scoring points under the First District Priority’s “Special Needs” scoring criterion for:

The creation of housing in which at least 20 percent of the units are reserved for occupancy by households with special needs, such as the elderly, mentally or physically disabled persons, persons recovering from physical abuse or alcohol or drug abuse, or persons with AIDS; or the creation of housing that is “visitable” by persons with physical disabilities who are not occupants of such housing.

12 C.F.R. § 951.6(b)(4)(iv)(F)(1). The “Special Needs” scoring criterion provides an illustrative list of the types of populations the Federal Housing Finance Board (Finance Board) considers to have special needs that may be addressed through the AHP. The Finance Board previously has opined that a Bank has discretion to include other household groups in this scoring criterion that the Bank deems to have special needs similar to the types listed, which must be identified in the Bank’s AHP Implementation Plan. *See Questions and Answers Regarding the Affordable Housing Program - Part 2, Q&A #11*, 64 Fed. Reg. 12079, 12080 (March 11, 1999). Thus, any additional household groups included by a Bank under the “Special Needs” scoring criterion must be groups defined, per se, as possessing the age, disability, illness, or abuse characteristics listed in the regulation.

Large families and farm workers are not groups intrinsically possessing the age, disability, illness, or abuse characteristics listed in the regulation and, therefore, do not have special needs similar to the types listed. The characterization of such groups by another agency is not relevant, because the Finance Board is required to interpret the meaning of the term “special needs” under the specific language of the AHP regulation and not under another agency’s differing housing laws, regulations and policies. Accordingly, large families and farm workers do not qualify as households with special needs under the “Special Needs” scoring criterion in the AHP regulation.

A Regulatory Interpretation is subject to modification or rescission by action of the Board of Directors of the Finance Board. 12 C.F.R. part 907.
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