FEDERAL HOME LOAN BANK OF CINCINNATI

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President

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Via Electronic Mail: RegComments@fhfa.gov

Federal Housing Finance Agency
1700 G Street, N.W.
Washington, DC 20552
Attention: Public Comments/RIN 2590-AA04

Subject: Federal Housing Finance Agency
Interim Final Rule: Affordable Housing Program Amendments: Federal Home Loan Bank Mortgage Refinancing Authority
RIN 2590 – AA04

Dear Federal Housing Finance Agency Public Comments Coordinator:

The Federal Home Loan Bank of Cincinnati (FHLBank) is pleased the Federal Housing Finance Agency (FHFA) has promulgated the Interim Final Rule (IFR) to allow the use of Affordable Housing Program (AHP) subsidy to refinance mortgages for households facing delinquency and default. We appreciate that the FHFA recognizes the importance of using AHP subsidy for refinancing assistance.

We offer the following comments on specific provisions of the IFR relating to eligible programs, retention requirements, and required counseling agency involvement. In general, it would be preferable for the rule to:

- Allow Members to use AHP subsidy to help refinance loans for any income-eligible borrower facing delinquency or default, based on their own assessment of the borrower's repayment capacity, within limits to be developed by the FHLBank, including loan-to-value ratio, debt-to-income ratio, and other loan terms;
- Not require the standard AHP ownership retention language since it requires no repayment after a subsequent refinancing, even if the borrower takes cash out; and
- Not require referral to a counseling agency to determine eligibility for refinancing.

Each of these is explained more fully below:

1. Eligible programs:

"The interim final rule does not authorize the use of AHP subsidy in conjunction with private refinancing programs, Bank-sponsored targeted advances programs for refinancing, Bank member loan refinancing programs such as the San Francisco Bank AHP refinancing pilot program, or refinancing of MPF or MPP loans."

Comment: The direct benefit of any AHP subsidy provided in a refinancing will accrue to the homeowner/borrower. However, the funds will be used to pay off the original loan, whether it was a "good" loan or a "bad" loan. The Member institution refinancing the loan benefits only indirectly because they will have made a more affordable mortgage that is more likely to be repaid – but the subsidy funds will be paid to the original lender or current owner of the loan.

It seems inconsistent that a Member could refinance a loan made by a different Member or by a non-member but that they could not refinance a loan that they had made. While the FHFA correctly wants to avoid rewarding a lender for its poor underwriting or investment decisions, the IFR makes it possible to benefit another lender who made poor underwriting or investment decisions. Eliminating the opportunity for Members to refinance a loan they made will have a chilling effect upon the utilization of scarce and valuable AHP resources. We encourage the FHFA to reconsider the preclusion of Members from refinancing loans they originated.

In that same vein, the FHLBanks should be allowed to use AHP subsidy to refinance loans purchased under MPF or MPP. In the IFR, loans that had been sold to Fannie or Freddie might be eligible, but loans sold to the FHLBank would not. Regardless of who purchased the mortgages, the ultimate beneficiary is the homeowner who gets a more affordable mortgage. This inclusion of MPP and MPF loans would facilitate the FHFA's goal of providing assistance to all income-eligible borrowers.

2. Required retention language:

"Under the Banks' current AHP competitive application and home purchase set-aside programs, AHP retention agreements, which may be subordinate liens or other forms of legally enforceable agreements, are used in conjunction with all types of mortgage financing provided by all federal, state and local agencies, including other FHA programs. Because the AHP regulation requires that AHP subsidy only be repaid from any net gain from the sale or refinancing, the AHP repayment requirement should not interfere with any appreciation or equity sharing requirements of the eligible targeted refinancing programs. Requiring AHP retention agreements for the AHP set-aside refinancing program would also maintain consistency between the refinancing program and all other AHP programs, which are subject to the retention agreement requirement. Accordingly, the interim final rule requires that a household assisted under the AHP set-aside refinancing program be subject to an AHP five-year retention agreement in accordance with § 1291.6(c)(5)."

Comment: It is respectfully suggested that the ownership retention agreement in the regulation does not provide any protection against a subsequent refinancing through which an owner might receive cash. Under the existing retention language:

> In the case of a sale or refinancing of the unit prior to the end of the retention period, an amount equal to a pro rata share of the AHP subsidy that financed the purchase, construction, or rehabilitation of the unit, reduced for every year the seller owned the unit, shall be repaid to the FHLBank from any net gain realized upon the sale or refinancing, unless: … (C) Following a refinancing, the unit continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism.

In effect, the owner can refinance, take cash out, leave the retention mechanism in place, and not have to repay any amount of AHP subsidy. If this interpretation of the regulatory provision is incorrect, we respectfully request further guidance on the matter.

3. Required involvement by a counseling agency:

"Accordingly, § 1291.6(f)(5) of the interim final rule requires that a household seeking AHP assistance must obtain counseling for foreclosure mitigation and qualification for refinancing by an eligible targeted refinancing program, through the NFMC program or other counseling program used by a state or local government or housing finance agency. Bank members would refer interested households to an NFMC program participant, or to a state or local government or housing finance agency counseling program, which would determine whether the households are eligible to have their loans refinanced through an eligible targeted refinancing program. Households determined by a counseling organization to qualify for refinancing under an eligible targeted refinancing program would then be referred to participating Bank members, who would enroll the households in the AHP set-aside refinancing program upon determination of their AHP income eligibility.

Under the interim final rule, the NFMC program and other permissible counseling organizations would thereby act as a gateway for households seeking refinancing assistance."

Comment: The IFR would create an additional and unnecessary constraint for the consumer using AHP subsidy by requiring that they be referred to a counseling agency for certification of eligibility. This requirement adds a barrier to refinancing without any certain benefit. It requires an intermediary to determine eligibility which will add time to the process and will discourage borrowers and Members from using the program. While counseling has proven to be beneficial in many cases, we do not think it should be required in this situation. We respectfully suggest that such a decision should be left to the lender and the borrower. We have every confidence that Members could evaluate the eligibility of applicants for assistance and provide affordable mortgages based on conventional lending standards and any additional requirements the FHLBank would impose for eligibility.

The FHLBank also offers the following comment on the Amendment to Scoring Criteria under the Second District Priority:

Accordingly, the interim final rule amends § 1291.5(d)(5)(vii) of the AHP regulation to permit a Bank to establish one or more housing needs in the Bank's district under the Second District Priority scoring criterion.

FHFA believes that the severity of the housing market and the urgent need for housing assistance create exigent circumstances for amending the Second District Priority scoring criterion through an interim final rule. An immediate change is also necessary to allow the Banks and their Advisory Councils the opportunity to make any scoring revisions in this regard to their AHP Implementation Plans that would be applicable to their 2009 AHP competitive application funding rounds. FHFA specifically requests comment on whether this scoring change benefits the AHP competitive application program.

Comment: The additional flexibility provided by this provision in the IFR is greatly welcomed and we applaud the FHFA for giving the FHLBanks the opportunity to add much-needed priorities peculiar to the individual FHLBank Districts. The FHLBank will certainly consider additional criteria under the Second District Priority for its competitive offerings in 2010 and has begun discussions with its Advisory Council.

On behalf of the FHLBank, we appreciate your consideration of these comments regarding the Interim Final Rule.

Sincerely,

David H. Hehman
President

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