NATIONAL ASSOCIATION OF HOME BUILDERS

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October 5, 2009

Federal Housing Finance Agency
4th Floor
1700 G Street, NW
Washington, DC 20552
ATTN: Public Comments/RIN 2590-AA04

Re: Affordable Housing Program Amendments: Federal Home Loan Bank Mortgage Refinancing Authority; RIN 2590-AA04

Dear Sir/Madam:

On behalf of more than 200,000 members of the National Association of Home Builders (NAHB), I am pleased to respond to the request for comments on the Federal Housing Finance Agency's (FHFA) Affordable Housing Program (AHP) Amendments. Among other things, FHFA is seeking comments that would authorize the Federal Home Loan Banks (FHLBanks) to provide AHP subsidies for eligible mortgage refinances outside of the Federal Housing Administration's (FHA) Hope for Homeowners (H4H) Program.

NAHB is a national trade association representing individuals and companies involved in the production of housing and related activities. Each year, NAHB's builder members construct about 80 percent of all new housing in America. NAHB's builder members are mostly small businesses with limited capital of their own. These small businesses depend almost entirely upon commercial banks and thrifts for housing production credit. Our surveys show that 90 percent of all loans for residential land acquisition, development and construction (AD&C) come from commercial banks and thrifts, many of whom are members of the FHLBank System. Therefore, NAHB views the FHLBanks as crucial components of the housing finance system.

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Background

FHLBank Programs

The public policy mission of the FHLBanks was expanded with The Financial Institutions Reform, Recovery, and Enforcement Act of 1989, which established an AHP. By statute, each of the 12 FHLBanks is required to contribute at least 10 percent of its previous year's net earnings, subject to a minimum annual combined FHLBank System contribution of $100 million, in the form of AHP subsidies. Subsidies are allocated to FHLBank member institutions through grants or below market-rate advances. By statute, AHP subsidies must be used to: (1) finance the purchase, construction, or rehabilitation of rental housing in which at least 20 percent of the units will be occupied by and affordable for households with incomes at or below 50 percent of the area median income; or (2) assist homeownership for families with incomes at or below 80 percent of the area median income.

The FHLBanks provide AHP assistance in two ways: (1) competitive application programs or CAP; and (2) AHP set-asides. The majority of the FHLBanks' AHP subsidy is made available through the CAP. AHP regulations ***require*** that each FHLBank establish a CAP under which members submit applications on behalf of one or more sponsors of eligible housing projects and these projects must meet certain regulatory criteria to be eligible for assistance.

In addition to the CAP, in 1995 the Board ***authorized*** the FHLBanks, at their discretion, to set aside a portion of annual required AHP contributions for the purpose of promoting homeownership for low-or moderate-income (LMI) households. Set-aside funds may be used for downpayment assistance, closing costs, or counseling costs in connection with the purchase or rehabilitation of owner-occupied units. A FHLBank may allocate up to the greater of $4.5 million or 35 percent of its AHP funds each year for non-competitive homeownership set-aside purposes. At least one-third of these funds must be used to assist first-time home buyers.

Recent Developments

In April 2008, the Federal Housing Finance Board (FHFB) published a proposed rule that amended the AHP program and would have extended to all FHLBanks the temporary authority, granted to the FHLBank of San Francisco through a pilot program, to use AHP set-aside funds for mortgage refinances or restructurings. The temporary authority was given an expiration date of July 30, 2010.

Before FHFB established a final rule, the *Housing and Economic Recovery Act of 2008* (HERA) was enacted in July 2008. Section 1218 of HERA requires FHFA (created by HERA as successor to the FHFB) to permit the FHLBanks to use AHP homeownership set-aside funds to refinance mortgages for LMI households. To implement Section 1218 of HERA, FHFA amended its AHP regulation on October 17, 2008 to authorize the FHLBanks to establish AHP set-aside refinancing programs to provide direct subsidy to their members to assist in the refinancing of LMI mortgages under H4H for the purposes of reducing loan principal and/or paying FHA approved closing costs.

Based on comments received on the October 2008 AHP amendments and continuing adverse conditions in the mortgage market, FHFA has determined that in order for the AHP set-aside refinancing program to be implemented successfully for the benefit of the intended households, the scope of the program authority should be broadened and the FHLBanks should have greater flexibility in executing the program. Accordingly, FHFA issued the subject Interim Final Rule (IFR), effective August 4, amending the AHP program.

Summary of Amendments

FHFA is seeking comments on the IFR which authorizes the FHLBanks to provide AHP subsidy through their members to assist in the refinancing of mortgages under eligible federal, state and local programs for targeted refinancing, including Fannie Mae and Freddie Mac (the Enterprises) programs, in addition to the H4H program. The IFR also reinstates the requirement that at least one-third of a FHLBank's aggregate annual set-aside allocation be targeted for first time homebuyers. In addition, the IFR increases the amount of future annual statutory AHP homeownership set-aside funds that can be accelerated from a future year to the current year to the greater of $5 million or 20 percent (up from the greater of $2 million or 20 percent) of the annual AHP contributions for the current year. The IFR also allows FHLBanks to establish one or more housing needs in its District under the Second District Priority scoring criterion under the CAP. Finally, the IFR retains the sunset date of July 30, 2010 despite the fact that H4H will sunset on September 30, 2011 and other Enterprise and state and local refinancing and foreclosure mitigation programs will continue into the future.

NAHB Position

Expansion of Eligible Targeted Refinance Programs

Under the October 2008 IFR, FHFA linked AHP refinancing set-aside funds to the H4H program as it was believed that use of the AHP subsidy in conjunction with that FHA program would leverage and enhance its effectiveness. In addition, FHFA believed that linking the programs would ensure that the full range of federal assistance to affected homeowners was available quickly and would provide the flexibility that the FHLBanks and their members needed to make the AHP refinancing program successful. It is clear that, while well intended, the H4H program has experienced limited usage, rendering the current AHP refinancing authority of limited utility.

In a December 16, 2008 comment letter, NAHB expressed concern that the October 2008 IFR would limit the use of a broader menu of foreclosure prevention techniques by linking the use of AHP set-aside funds solely to the H4H program. NAHB believes that the FHLBanks and their members should be provided the flexibility to utilize those programs and solutions that best meet the needs of the borrower. Many FHLBank members have experience with various programs and have had long standing relationships with the Enterprises, FHA and state and local housing agencies. The FHLBanks and their members are in the best position to determine the most effective foreclosure mitigation approaches so the FHLBank AHP should not be restricted exclusively to H4H.

Accordingly, this IFR provides that loans are eligible for refinancing with AHP subsidy if they are refinanced under an eligible targeted refinancing program which is defined as a program offered by the Department of Housing and Urban Development (HUD), the Department of Agriculture (USDA), the Enterprises, a state or local government, or a state or local housing finance agency for the limited purpose of refinancing first mortgages on primary residences. The IFR does not limit eligible targeted refinancing programs to those in existence as of the effective date of the rule. For example, FHFA notes that refinancing programs are continually evolving with new programs being developed based on refinancing needs and housing market conditions. FHFA does not wish to preclude the use of AHP subsidy with any future programs that are consistent with the purposes of the rule. NAHB supports this amendment.

Funding Allocation

Prior to the October 2008 amendments, the AHP regulation required that at least one-third of a FHLBank's aggregate annual homeownership set-aside allocation be targeted for first-time homebuyers. FHFA's October 2008 amendments changed this requirement by allowing the FHLBanks to allocate the maximum permissible homeownership set-aside allocation entirely to mortgage refinancings. However, FHFA was persuaded by commenters, including NAHB, who felt that efforts to promote new home purchases could contribute to recovery and stabilization of the housing market. Thus, this IFR reinstates the requirement that at least one-third of a FHLBank's annual set-aside allocation be targeted to assist first-time homebuyers, regardless of whether the set-aside allocation is being used for homeownership or refinancing assistance, or both. NAHB continues to believe that the one-third first-time homebuyer threshold should be maintained.

Acceleration of Future AHP Contributions

Under the Federal Home Loan Bank Act, a FHLBank is required to contribute at least 10 percent of its prior year's earnings to its current year's AHP. AHP regulations permit a FHLBank, at its discretion, to accelerate from the subsequent year's required annual AHP contribution for use in the current year an amount up to the greater of $2 million or 20 percent of its required annual AHP contribution of the current year. The ability to accelerate funds from future required AHP contributions enables FHLBanks that had little or no earnings in the previous year to make some level of AHP funding available in the current year to assist homeowners and renters.

Due to the current unprecedented financial conditions, the IFR amends the regulation to increase the maximum amount that a FHLBank may accelerate in any one year to the greater of $5 million or 20 percent of required annual AHP contributions for the current year. In addition, because of uncertainty in future earnings, and the possibility that some FHLBanks may be in a position of having little or no required AHP contribution in subsequent year(s), the IFR allows a FHLBank to credit the amount of accelerated contributions against required AHP contributions over one or more of the subsequent five years.

NAHB generally supports such programmatic flexibility as the FHLBanks are in the best position to determine the most efficient uses of limited AHP resources. However, NAHB is concerned that such acceleration of AHP funds for the refinancing program may reduce resources made available to CAP, especially if future earnings are relatively weak and accelerated funds are credited against future required AHP contributions. Because of this focus on refinancing, it is possible that some FHLBanks could make little or no contributions to CAP programs into the foreseeable future.

Competitive Application Program (Second District Priority Scoring)

Under the current CAP scoring system, the Second District Priority scoring criterion permits a FHLBank to establish only one housing need in its district. FHFA believes that current housing market conditions have generated an urgent need for more flexibility in the FHLBanks' capacity to respond under the AHP. Accordingly, the IFR amends the AHP regulation to permit FHLBanks to establish one or more housing needs in its District under the Second District Priority scoring criterion. Permitting the FHLBanks to establish one or more housing needs under the Second District Priority scoring criterion would allow the AHP competitive application program to complement efforts of the AHP refinancing set-aside program and other targeted refinancing programs for foreclosure prevention. FHFA believes that the severity of the housing crisis has created exigent circumstances for amending the scoring criterion through an IFR.

The IFR does not make clear whether a FHLBank could establish housing needs under the Second District Priority that would result in an expanded allocation to homeownership set-asides. Due to the acute need for rental housing, NAHB recommends that FHFA specify that each FHLBank must continue to maintain its current homeownership set-aside percentage with the option of altering the mix of projects within the set-aside program if they decide to provide subsidies for member loan refinancings under this IFR. In this way, the establishment of more than one housing need under Second District Priority will not result in an expansion of homeownership set-aside programs at the expense of rental housing subsidies. NAHB also believes the set-aside program limitation (the greater of $4.5 million or 35 percent of available AHP funds) should not be increased, since such a change necessarily would be at the expense of the CAP.

Sunset Date

The July 30, 2010 sunset for the refinancing set-aside AHP is premature given the ongoing efforts of the Enterprises and state and local housing agencies to help refinance at risk mortgages and should be extended until at least the September 30, 2011 sunset date for H4H.

Conclusion

Thank you again for the opportunity to comment on FHFA's IFR to amend the FHLBanks' AHP. NAHB strongly supports expanding the menu of permissible refinancing programs that may be used with the AHP refinancing set-aside. Further, we support the reinstatement of the one-third set aside allocation for first time home buyers. However, we urge FHFA not to make any changes to the AHP that would reduce or encroach on the operations of the CAP as this could reduce affordable rental units at a time when supply of these units is critically needed. Finally, we would like to see the sunset of the refinance AHP program lengthened.

Please direct questions regarding this matter to John Dimitri, NAHB's Director of Financial Institutions and Capital Markets, at 202-266-8529, or via e-mail at jdimitri@NAHB.com.

Sincerely,

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