Federal Home Loan Bank of New York

May 13, 2008

Federal Housing Finance Board
1625 Eye Street, N.W.
Washington, DC 20006
Attention: Public Comments

Subject: Federal Housing Finance Board
Proposed Rule: Affordable Housing Program Amendments
RIN Number 3069 – AB35
Docket Number 2008-09

Dear Federal Housing Finance Board Public Comments Coordinator:

On behalf of the Federal Home Loan Bank of New York ("New York Bank"), thank you for the opportunity to offer comments regarding the above-referenced proposed amendments ("Proposed Amendments") to the Federal regulation ("AHP Regulation") that governs the operation of the Affordable Housing Program ("AHP") as promulgated by the Federal Housing Finance Board ("Finance Board").

The New York Bank applauds the Finance Board for considering the idea of offering families the opportunity to access AHP homeownership set-aside subsidies in order to refinance or restructure nontraditional or subprime owner-occupied mortgage loans. Since its inception, the primary mission of the Federal Home Loan Bank System ("FHLBank System") has been to provide an efficient, reliable, and equitable source of mortgage financing throughout our nation. The current subprime mortgage crisis provides an opportunity for the AHP to be a major distribution channel of private subsidy dollars in order to preserve homeownership for thousands of low- and moderate-income Americans. The New York Bank commends the Finance Board for having the foresight to consider providing the FHLBank System with new opportunities to set aside additional AHP subsidy in order to capably respond to the challenges that have arisen during this crisis.

Since the New York Bank recently began the process of evaluating how the AHP may be prudently expanded in order to support the refinancing of owner-occupied units, we welcome the opportunities contained in the Proposed Amendments. We believe that the Proposed Amendments aggressively offer preventative alternatives that will, if adopted, help safeguard affordable homeownership while maintaining property values and the desirability of neighborhoods in this region. As such, we support most of the changes contained in the Proposed Amendments.

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However, we do have some comments with respect to certain parts of the proposal at which we believe further guidance, clarification or changes would better serve the needs of our District. A brief summary of our comments regarding the Proposed Amendments are highlighted below. In addition, a detailed discussion of our comments is attached to this document, along with an addendum that outlines recent foreclosure statistics that pertain to our District.

- The Proposed Amendments would, if adopted, wisely prohibit those FHLBank members who have underwritten subprime loans from charging qualified households certain costs associated with refinancing, such as prepayment penalties or pay-off fees. On the other hand, the aforementioned restrictions would be difficult to impose upon a nonaffiliated lender (that is, an entity that is not a stockholder of a FHLBank). Nevertheless, it is the very households who are struggling with unaffordable, non-traditional mortgages that nonaffiliated lenders have originated *who are in the greatest need of assistance*. Since the focus should be on assisting eligible families, we prefer to use AHP subsidy funds as a rescue tool whereby our members serve as liberators. As such, we urge the Finance Board to permit members to access AHP subsidies in order to save low- and moderate-income households from these unaffordable loans and thereby prevent foreclosure. Because the potential benefits to families far outweigh any negatives, member banks should have the flexibility to access AHP subsidy funds in connection with traditional, conventional mortgages that they (or their affiliates) originate in order to refinance or restructure subprime loans for qualified households, regardless of whether or not the entity that originated the subprime loan was a member of the FHLBank System.

- AHP subsidy funds should directly benefit qualified households in the most effective and efficient manner. As such, the Proposed Amendments, if adopted, should include additional language that permits the FHLBanks discretion in restricting AHP subsidy funds to those members (or their affiliates) who actually originate a permanent mortgage that will refinance or restructure a nontraditional or unconventional loan.

- In accordance with industry standards, the Finance Board should consider lowering the maximum permitted total housing cost ratio to a level that does not exceed 38½ percent.

- A household should be eligible for AHP assistance *regardless* of their payment history as well as the nature of an existing or potential delinquency. We are concerned about the Finance Board's intent to establish an asset test as an eligibility requirement for AHP homeownership set-aside subsidy. Such a threshold would not only be difficult to verify, but also deviate from the eligibility standards currently set forth in the AHP Regulation.

- AHP-subsidized refinancing and restructuring assistance should be available to *all* eligible households throughout our District. Although current statistics indicate that clusters of foreclosures are occurring in metropolitan communities within our District at an alarming rate, the fact that foreclosures are occurring in all types of communities and neighborhoods throughout our District is equally shocking. Therefore, we *are not* in favor of AHP subsidy funds being targeted to certain specific neighborhoods.

- We urge the Finance Board to take this opportunity to eliminate the existing rules which permit owner-occupants to refinance their dwellings and take out equity, without having to repay any AHP subsidy, as long as their units continue to be subject to a legally enforceable subordinate lien agreement. We believe that stricter AHP regulatory provisions would help ensure that those households who would benefit from the adoption of the Proposed Amendments can be simultaneously freed of unaffordable debt and restrained from repetitively making irresponsible financial choices.

Thank you in advance for your consideration of our comments. We are grateful for the Finance Board's efforts to revise the AHP Regulations in a way that will help us build on the strong foundation that has led to the AHP's past success. We look forward to an even stronger future.

If you have any questions, do not hesitate to contact either Joseph Gallo, Vice President and Director of Community Investment, at (212) 441-6851 or myself at (212) 441-6808.

Sincerely,

Paul B. Héroux
Senior Vice President and
Head of Member Services

Federal Home Loan Bank of New York's Detailed Comments
Proposed Rule: Affordable Housing Program Amendments

1. Actions that the New York Bank Has Already Taken to Help Address the Effects of the Subprime Crisis

As you are aware, the New York Bank, in partnership with its members, launched its "Fresh Start Program" in 2007 as a Community Lending Program initiative to provide foreclosure prevention assistance to qualified homeowners whose incomes do not exceed 115% of the area median. The Fresh Start Program targets homeowners who are burdened with subprime mortgages with nontraditional terms and conditions, including unaffordable interest rate recasting provisions.

Despite the recent successes of the Fresh Start Program, participating households must meet the member bank's standard underwriting criteria and qualify for a new conventional mortgage, based on the appraised value of their property. Unfortunately, such prerequisites can become relatively hard to satisfy for those households whose incomes are below 80% of the area median. Due to home price devaluations and high debt-to-income ratios, households whose incomes are below 80% of the area median are often precluded from qualifying for a new conventional mortgage and therefore cannot benefit from the Fresh Start Program. However, if the Proposed Amendments are implemented, many of these households will be able to access AHP subsidy funds and be able to refinance oppressive loans into affordable, long-term fixed rate mortgages with reasonable terms and conditions.

2. Appropriate Limitations on AHP Homeownership Set-Aside Subsidies

With respect to helping to address the effects of the subprime crisis, we prefer to use AHP subsidy funds as a rescue tool whereby our members serve as liberators. It has been the New York Bank's experience that its members are heavily regulated financial institutions that enforce conservative and ethical lending practices. Moreover, our members did not originate the preponderance of loans that are now defaulting at unprecedented rates. Rather, predatory mortgage brokers and unscrupulous lenders who devised unconventional loan products and deceived working class borrowers are to blame for this debacle. Consequently, it is those homeowners who are struggling with unaffordable, nontraditional mortgages that were originated by nonaffiliated lenders (that is, entities who are not stockholders of the Federal Home Loan Banks) *who are the persons in the greatest need of AHP subsidy.*

Currently, the AHP Regulation permits member banks to access AHP direct subsidy in order to provide down payment and closing cost assistance to eligible households who are purchasing a home, regardless of whether the household is financing the purchase with the member providing the AHP assistance, with another member, or with a nonaffiliated lender. In accordance with § 951.6(c)(6) of the AHP Regulation, the New York Bank, in its discretion, does require a member to be the end-loan provider on the assisted home purchase.

As such, we concur that our members should be more than mere conduits of AHP subsidy funds. In other words, AHP direct subsidies that are used to refinance or restructure nontraditional or unconventional loans must be limited to leveraging mortgages that our members or their affiliates directly originate and/or hold. Furthermore, AHP subsidy funds must directly benefit qualified households in the most effective and efficient manner. Consequently, the Proposed Amendments, if adopted, should reflect additional language that permits the FHLBanks discretion in restricting AHP subsidy funds to those members (or their affiliates) who actually originate a permanent mortgage that will refinance or restructure a nontraditional or unconventional loan.

In that case, the Finance Board should permit AHP subsidy funds to be used to finance prepayment penalties and pay-off fees to nonaffiliated lenders in order that our members may step in and effectively refinance these nonconventional loans for qualified low- and moderate-income households. We also support the concept of using AHP subsidy in order to directly reduce negative equity, write down interest rates, and/or leverage other federal, state, and local programs that are designed to assist qualified households in refinancing or restructuring unconventional or nontraditional mortgages (which, should include non-purchase money first mortgages, second mortgages, home equity loans, and other unaffordable secured housing debt) into a single newly consolidated first mortgage.

For those FHLBank members whose affiliates may have been involved in the subprime mortgage market, we are concerned that the Proposed Amendments may unintentionally encourage such members to exhaust limited AHP subsidy funds and restructure non-performing assets in a self-serving manner, thereby potentially gaining a "windfall." Nevertheless, this possible downside is outweighed by the demonstrated need of the households who would benefit from AHP assistance and who may not otherwise be able to negotiate a refinancing or restructuring of their loans. Consequently, we endorse the parameters that the San Francisco FHLBank recently established under its pilot program for their members and their affiliates. Specifically, a member who receives AHP subsidy should refinance or restructure an existing subprime mortgage so that the resulting consolidated loan is a fixed-rate, fully amortizing first mortgage with a term of at least 30 years. We also concur that such members must be required to waive prepayment penalties, cancel outstanding late charges, prepare payoff statements and legal documents at no charge, and provide other financial concessions that wind up matching the amount of AHP subsidy provided to each household on a two-to-one basis.

3. Household Qualification Thresholds

The Finance Board has requested comment on whether the proposed 45% total housing cost ratio limit is an appropriate threshold for assessing a low- or moderate-income household's ability to sustain monthly housing payments. *A 45% ratio limit is too high.*

Although the underwriting guidelines of Fannie Mae, Freddie Mac, the Federal Housing Administration ("FNA"), and the Veterans Administration ("VA") do not formally define "affordability," these agencies have established underwriting standards that specify customary debt-to-income ratios. According to Fannie Mae and Freddie Mac, 28% is the customary 'front-end ratio' (i.e., monthly housing debt as a percentage of gross monthly household income) that households must typically satisfy in order to qualify for a conventional mortgage. Furthermore, Fannie Mae and Freddie Mac have established 36% as the customary 'back-end ratio' (i.e., total monthly debt expenses as a percentage of gross monthly household income). Although neither the FHA nor the VA employ a front-end ratio, these agencies have established 41% is the customary back-end ratio. Since the mean back end ratio is 38.5%, the Finance Board should consider *lowering* the maximum permitted total housing cost ratio to a *38.5% level*, based on the foregoing mortgage industry standards.

According to the Proposed Amendments, the household's equity in the home may not exceed the greater of $50,000 or 20% of the newly appraised value of the home. The Finance Board has requested comment on whether a maximum household equity is an appropriate eligibility requirement. We concur that these limits are reasonable and customary.

According to the Proposed Amendments, the new consolidated mortgage must have a maximum loan-to-value ratio of 97% of the newly appraised value of the home. The Finance Board has requested comment on whether a minimum equity requirement would be appropriate, or whether it would be reasonable to permit a loan-to-value ratio of up to 100% of the newly appraised value of the home. We likewise concur that the 97% loan-to-value ratio is reasonable and customary.

According to the Proposed Amendments, a household may not have been more than 30 days delinquent on their loan payments prior to the adjustment in the interest rate or principal and interest payments. The Finance Board has requested comment on whether a household should be eligible for AHP assistance if they were more than 30 days delinquent prior to an interest rate adjustment. The Finance Board has also requested comment on whether a household should be eligible only if the cause of its existing or potential delinquency is the interest rate adjustment, and not other personal financial setbacks, such as job loss, illness, or divorce. Any household who is experiencing financial distress related to an unaffordable mortgage should be eligible for refinance assistance under the AHP. In accordance with the current AHP Regulation, *the FHLBanks should not dictate underwriting criteria to members.* It should suffice if a member determines that a low- or moderate-income household is creditworthy and qualifies to refinance or restructure an unconventional or nontraditional mortgage. Establishing arbitrary payment history thresholds or prying into personal financial affairs places the FHLBanks in the position of retail mortgage underwriters. This proposal would, if adopted, create superfluous regulatory oversight and force the FHLBanks to act beyond their scope of reasonable authority in efficiently administering the AHP.

According to the Proposed Amendments, a household may not have more than $35,000 in total financial assets, excluding equity in the home being refinanced, tax-deferred retirement and education savings, and liquidated assets that are used to finance certain costs specified in § 951.6(f)(7) of the AHP Regulation. The Finance Board has requested comment on whether an asset test is an appropriate eligibility requirement. In accordance with the current AHP Regulation, the FHLBanks are not required to apply an asset test in determining household eligibility. Although households should be encouraged to draw on any personal liquidity prior to requesting subsidy to refinance or restructure a mortgage, *such an asset test would be arbitrary, difficult to implement, and impact different regions throughout the country in a disproportionate manner.* Likewise, this proposal would create additional bureaucracy and open the door to initiating asset tests for other AHP-assisted households, including first-time homebuyers and owner-occupants who request home renovation subsidy.

The Finance Board has requested comment on whether $25,000 is the appropriate limit on the amount of AHP subsidy that can be provided per household under the Proposed Amendments. Since this proposed limit exceeds the New York Bank's $20,000 per household maximum, we have no objection.

4. Geographical Targets and Community Groups

The Finance Board has requested comment on whether AHP-subsidized refinancing and restructuring assistance should be targeted to households located in neighborhoods and communities that may be at higher risk for defaults and foreclosures. As evidenced by the statistics that are attached hereto, the subprime crisis affects every region of our District. Therefore, *AHP-subsidized refinancing and restructuring assistance should be available to all eligible households throughout our District, on an as-needed basis.* In consideration of the diversity of our District, we believe that any centralized directive to target specific neighborhoods would be both arbitrary and exclusionary. We are also concerned that such a proposal might, if adopted, encourage "reverse redlining" while undermining certain scoring preferences already allowed in the current AHP Regulation that encourage economic diversity.

Nevertheless, we enthusiastically support the partnering of members and approved not-for-profit counseling agencies in efforts to help relieve some of the effects of the subprime mortgage crisis. Any mortgage refinancing or restructuring program that utilizes AHP set-aside subsidies should be modeled after the First Home Club℠ ("FHC"), our traditional first-time homebuyer assistance program that has been a proven success and which has helped to competently prepare households for homeownership responsibilities since 1996. Under the FHC, households are enrolled with members through approved private, not-for-profit housing counseling agencies. Prior to closing, households must attend homebuyer education classes and complete a formal credit counseling program.

We have observed that the partnering of members and community groups has been fruitful. The foreclosure rate for FHC-assisted households is well below the national average. In order to ensure an equally high level of success for households who request AHP subsidy for refinancing or loan restructuring purposes, we enthusiastically support homeownership and credit counseling that is provided by an approved agency. Moreover, in order to help the household avoid delinquency or foreclosure through poor financial management or unsuitable refinancing in the future, we endorse *pre-closing as well as post-closing counseling.* Formal credit counseling and ongoing education are valid and essential tools in developing and maintaining financial responsibility and we believe that it can help those households who have fallen into the subprime trap and have a history of financial intemperance. Consequently, we also support the use of AHP subsidy to offset *pre-closing as well as post-closing counseling costs* that the household incurred in connection with the refinancing or restructuring of their loan.

5. Another Proposed Model

The Finance Board has requested comment on other ways in which AHP direct subsidy funds might be used to assist households at risk of foreclosure. We commend the Finance Board for offering many thoughtful strategies that utilize AHP subsidy as a means of preventing foreclosures. *However, the Proposed Amendments do not fully address how AHP subsidy can be used to assist households who have already experienced a foreclosure.*

We would like to note here that the New York Bank is currently in the process of developing a new AHP homeownership set-aside program that would help assist households in reacquiring a primary residence if they have already lost their home through foreclosure, or if a not-for-profit organization or other housing agency has purchased their property, and the household continues to occupy the dwelling under a lease-repurchase arrangement. The New York Bank's Community Investment staff has recently been involved in a pilot initiative in Somerset County, New Jersey that will partner not-for-profit organizations and our members in assisting families who face eviction and possibly being made homeless. We anticipate that this endeavor will serve as a model for a program that can help many families throughout our District keep their homes and stabilize their standard of living.

6. Agreements

According to § 951.9(a)(7)(ii)(c) of the AHP Regulation, an owner-occupant is permitted to refinance their unit and take out equity without having to repay a pro rata share of AHP subsidy, provided "that the unit continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism." We acknowledge that this provision was intended to empower AHP-assisted homeowners and allow AHP subsidy funds to be used as an equity building source. However, as we previously mentioned, some households who stand to benefit from the Proposed Amendments have a history of financial irresponsibility. If the Proposed Amendments are adopted, we believe that the foregoing provision would undermine the Bank's efforts in helping to respond to the subprime crisis and restore financial integrity within the homeownership market.

We therefore recommend that, if adopted, the Proposed Amendments should incorporate a revision to § 951.9(a)(7)(ii)(c) of the AHP Regulation that would require any household who uses AHP subsidy in order to refinance or restructure an unconventional or nontraditional mortgage to repay a pro rata share of the AHP subsidy if that household subsequently chooses to refinance their property and take out equity prior to the conclusion of the five-year AHP regulatory compliance period.

Addendum to Comment Letter
Foreclosure Statistics Related to the Second District

According to estimated forecasts set forth in a report on the Subprime Lending Crisis that Sen. Charles E. Schumer and Rep. Carolyn B. Maloney issued in October 2007, the nation will experience "approximately 1.3 million foreclosures and a loss of housing wealth of more than \$103 billion through the end of 2009 (including approximately \$71 billion in direct costs to homeowners and \$32 billion in indirect costs caused by the spillover effects of foreclosures)."

According to an analysis that the U.S. Department of Housing and Urban Development Office ("HUD") of Policy Development and Research published in February 2006, there are an estimated 364,433 outstanding subprime loans currently held by homeowners in New York State alone. Of those, 67,836 (or 18.6%) are expected to wind up in foreclosure by the end of 2009. Below are county-by-county statistics related to subprime mortgages that affect upstate New York:

- The Capital Region has an estimated 28,878 borrowers with subprime loans and the total outstanding subprime debt for this region is over \$3.7 billion.

- Central New York has an estimated 17,462 borrowers with subprime loans and the total outstanding subprime debt for this region is nearly \$1.6 billion.

- The Rochester-Finger Lakes Region has an estimated 21,018 borrowers with subprime loans. The total outstanding subprime debt for this region is nearly \$2 billion.

- The Hudson Valley has an estimated 50,175 borrowers with subprime loans and the total outstanding subprime debt for this region is over \$14.8 billion.

- The North Country has an estimated 9,457 borrowers with subprime loans and the total outstanding subprime debt for this region is over \$996 million.

- The Southern Tier has an estimated 12,312 borrowers with subprime loans and the total outstanding subprime debt for this region is over \$1 billion.

- Western New York has an estimated 24,390 borrowers with subprime loans and the total outstanding subprime debt for this region is over \$2.1 billion.

The aforementioned HUD analysis also indicated that the estimated loss of property values that will result from subprime foreclosures will total almost \$9.4 billion across New York State. Combined with an estimated \$56 million loss in tax revenues from foreclosed properties, total economic losses related to the subprime crisis will cost New Yorkers \$9.5 billion.

Notwithstanding this due diligence, the aforementioned HUD analysis indicated that the estimated loss of property values that will result from subprime foreclosures will total almost $6.3 billion across New Jersey. Combined with an estimated 39 million loss in tax revenues from foreclosed properties, total economic losses related to the subprime crisis will cost New Jersey residents over $6.4 billion.

Meanwhile, the Senate and General Assembly of the State of New Jersey enacted legislation on May 1, 2003 that erected various safeguards against predatory mortgage lending. These laws including the following requirements:

a) Lenders must certify that borrowers are realistically capable of repaying a loan;
b) Borrowers must receive financial counseling when they choose to incorporate points and other origination fees into their mortgage; and
c) Such expenses may not exceed 2 percent of the total loan principal amount.

According to New Jersey Citizen Action, between 13,500 and 16,500 New Jersey homeowners are likely to face foreclosure as a result of high-cost, subprime loans in 2007 alone. In 2006, three New Jersey cities (namely Camden, Newark and Edison) ranked among the 50 U.S. metropolitan areas that experienced the highest foreclosure rates. Conditions reportedly continue to worsen for these neighborhoods. There are currently 179,873 estimated outstanding subprime mortgages in New Jersey and 35,117 subprime foreclosures (or 19.5%) are expected to occur between the third quarter of 2007 and the end of 2009.

1. 5 New York State zip codes are among the 500 hardest hit zip codes for the most number of foreclosures filed in 2007:
   - Bedford-Stuyvesant/Crown Heights, Brooklyn (11233)
   - East New York, Brooklyn (11207 and 11208)
   - Jamaica, Queens (11434)
   - Springfield Gardens, Queens (11413)

2. 5 New Jersey State zip codes are among the 500 hardest hit zip codes for the most number of foreclosures filed in 2007:
   - Sicklerville (08081)
   - Plainfield (07060)
   - Jackson (08527)
   - Toms River (08753)
   - Irvington (07111)

3. Out of 588 Micropolitan Areas studied by Neighborhood Reinvestment ranked for the number of delinquent households,
   - Trenton-Ewing, NJ with 790 households reported delinquent ranks third; Jamestown-Dunkirk-Fredonia, NY and Amsterdam, NY rank in the top quarter; and
     The four such areas in Puerto Rico rank from 581st to 588th with zero to six delinquent households.

4. Out of the 100 Largest Metropolitan Areas, the foreclosure rate is highest for these three areas within the Second District:
   - Camden, NJ (ranked 37th)
   - Newark, NJ (ranked 45th)
   - Suffolk/Nassau, NY (ranked 54th)

5. The 5 counties in New York State with the highest foreclosure rates are Suffolk, Putnam, Queens, Richmond and Albany Counties.

6. The 5 counties in New Jersey State with the highest foreclosure rates are Passaic, Union, Burlington, Camden and Ocean Counties.

7. The Homeownership Preservation Foundation's national hotline was contacted by 25,000 households residing in the Second District in 2006 and 247,078 in 2007.