FHLBank ATLANTA
A FEDERAL HOME LOAN BANK

June 13, 2008

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

Re: Federal Housing Finance Board. Proposed Rule: Affordable Housing Program Amendments
RIN Number 3069-AB35; Docket Number 2008-09.

Ladies and Gentlemen:

On April 9, 2008, the Federal Housing Finance Board ("Finance Board") published a proposal to amend the Affordable Housing Program ("AHP") regulations applicable to the Federal Home Loan Banks (the "FHLBanks") by adding a new paragraph 951.6(f) allowing for the establishment of loan refinance or restructuring set-aside programs. This letter sets forth the comments of the Federal Home Loan Bank of Atlanta (the "Bank") with respect to that proposal.

The Bank supports many of the proposed changes and considers them substantial improvements. However, the Bank believes that the proposed rule's specificity may inhibit each FHLBank's ability to make a refinance program successful within its respective district. Given the varying effects of the sub-prime crisis in different regions of the country, as well as the variances in policy and intermediary responses from state to state, the need for flexibility in designing and implementing loan refinance or restructuring set-aside programs is paramount. The Bank believes that the ultimate success of the refinance programs created pursuant to the regulatory authority granted by this proposed rule can be measured only by whether the FHLBanks are able to deliver funds to member institutions in an efficient, compliant and prompt manner, and whether the member institutions are able to assist their customers in the same manner. Accordingly, the Bank is concerned that the rule as proposed may curtail the efficient and prompt utilization of a refinance program by members and their customers. With these general concerns as a backdrop, the Bank provides additional comments, suggestions, and questions below.

1. **<u>Definition of "at risk of foreclosure</u>."** The proposed regulation appears to limit the refinancing and restructuring authority to potential participants that are at risk of losing their homes due to unaffordable increases in monthly payments after interest rate reset or principal and interest payment recast. The Bank understands that the earliest a household could enroll and be eligible for the program is 120 days prior to the date upon which the interest rate is scheduled to adjust. The Bank questions

whether FHLBanks should be required to wait until such time as the potential participant's interest rate adjustment is imminent and foreclosure is more likely to occur. Rather, the Bank suggests that each FHLBank should have the flexibility to define when a homeowner is "at risk" of foreclosure based on the type of mortgage product and financial profile of the homeowner, without regard for the imminent nature of the interest rate reset.

2. **Member Eligibility and Participation.** The Bank agrees with the Finance Board that any program organized under paragraph 951.6(f) should be limited to loans held and serviced by members or their affiliates, without regard for whether the member or affiliate originated the loan or purchased it following origination, and without regard for whether the borrower is a first-time homebuyer or previously has refinanced the loan. In addition, the Bank supports the Finance Board's suggestion that participating members should be required to make the mortgage on the assisted mortgage refinance.

3. **Household access and notification.** Paragraph (4)(i) of the proposed rule requires that members inform all loan customers of the availability of AHP direct subsidy under a refinancing program. The requirement to inform all customers of a member seems overly burdensome, considering that only a smaller subset of households will be eligible to access the AHP subsidy. Considering that the majority of members should be able to readily identify loans that contain the eligible characteristics as set forth under the proposed rule, the Bank suggests that the final rule be revised such that members are required only to notify loan customers that fit the profile of customer and loan type that are eligible to participate in a refinancing program.

4. **Delinquency prior to adjustment.** The proposed rule, at paragraph (6)(i), requires that the household has not been more than 30 days delinquent on its loan payments prior to the adjustment in the interest rate or principal and interest payments. The Bank believes this standard is difficult for at-risk homeowners to achieve and suggests that the final rule adopt the widely-accepted industry standard that the household is not currently more than 30 days delinquent at the time of application, and has not been more than 30 days delinquent twice in the 12 months prior to application.

5. **Unsustainable loan payment after adjustment.** Paragraph 6(ii) of the proposed rule requires that, as a result of the adjustment in the interest rate or principal and interest payments, the household has or will have a total housing cost ratio exceeding 45 percent. The preamble to the proposed rule references the FDIC, Conference of State Bank Supervisors, and American Association of Residential Mortgage Regulators September 4, 2007 joint statement. The Bank requests clarification of the terminology used in such joint statement and the preamble to the proposed rule with respect to determination of total housing cost. The proposed rule seems to suggest that household income should be used for such determination, whereas the joint statement appears to be limited to the borrower's debt-to-income ratio. Although the Bank agrees that household income should be reviewed for income verification, as required under the current AHP regulations, the determination of total housing cost should be limited to borrower's income when calculating whether the total

housing cost exceeds the requisite 45 percent eligibility threshold. In recognition of the varied circumstances and economic conditions across the FHLBank districts, the Bank suggests that the final rule allow for each FHLBank to establish a maximum total housing cost ratio at or lower than 45 percent.

6. **Maximum home equity.** The Bank supports the requirement at paragraph 6(iii) of the proposed rule requiring that the household's equity in the home may not exceed the greater of $50,000 or 20 percent of the newly appraised value of the home. The Bank believes the inclusion of this requirement reinforces the need for a member or affiliate to make the refinancing loan. The cooperative nature of the FHLBank system is such that member institutions are in the best position to assess the creditworthiness of their customers, and the FHLBank offering a source of funds should be allowed to rely on such member's underwriting analysis.

7. **Maximum household financial assets.** Paragraph 6(iv) of the proposed rule requires that households may not have more than $35,000 in total financial assets, excluding equity in the home being refinanced, tax-deferred retirement savings and education savings, and assets liquidated by the household to pay for eligible uses of AHP subsidy as defined in paragraph (7). The Bank believes this provision will be difficult to administer and may be unduly burdensome. For example, the proposed rule does not state whether it requires an analysis of the average value of financial assets over a specified time, or a determination of gross or net financial assets. Moreover, the provision does not appear to require a determination of other assets that could be liquidated to assist in the home refinance. By failing to require such an analysis, this proposed requirement would seem to penalize those customers that saved cash or cash equivalents, yet reward those customers that spent their income on illiquid assets. However, the Bank believes that an analysis of illiquid assets would serve only to further complicate the accurate, prompt and compliant administration of a mortgage refinance program, and may add an additional burden to potential customers. As noted above, the Bank believes that as between the member and the FHLBank, the member is in the best position to make this determination. Alternatively, the Bank suggests that the "needs analysis" required under paragraph (6) may be performed by a third party specializing in debt management and credit counseling. The Bank suggests that the final rule allow the FHLBank flexibility to contract with a certified third party to perform such needs analysis and make recommendations to the FHLBank regarding the need for refinancing or restructuring, and eligibility to participate in a refinancing program.

8. **Member requirement to match AHP subsidy.** Although the Bank supports the requirement that a member using AHP subsidy to refinance or restructure its own or an affiliate's loan would have to match an amount equal to at least twice the AHP subsidy, the Bank suggests that the Finance Board clarify how a member may indirectly pay such amount of AHP matching funds. The text of the proposed rule at paragraph (8) seems to indicate this indirect payment is by waiver of fees that otherwise would be charged. Specifically, the Bank requests further clarification as to whether there are other forms of match payment by members that the Finance Board would deem to be "indirect" payments.

9. **<u>Prohibition of certain member fees</u>.** The Bank supports the Finance Board's prohibition on the member's charging prepayment fees on the original loan, foreclosure expenses incurred prior to the date of the restructuring or refinancing, or additional fees listed in paragraph (9) that are associated with the original loan.

10. **<u>Use of AHP subsidy for principal reduction</u>.** The Finance Board requested comment on whether the AHP direct subsidy should be used to pay down principal or to provide equity. The Bank supports the use of AHP direct subsidy to be used to pay down principal or to provide equity rather than as part of an interest rate buydown, because it allows the program to operate more simply and directly, and may allow potential participants to qualify for a new loan from a federal state or local government entity offering a program specifically targeted toward refinancing subprime or nontraditional loans. However, the Bank recognizes that certain members may wish to structure a refinance as an interest rate buydown, and suggests that the Finance Board provide the regulatory flexibility for a refinance and restructuring program to allow for such election.

11. **<u>Use of AHP subsidy by community-based organizations</u>.** The Bank supports the regulatory flexibility to allow members to apply for AHP direct subsidy to be distributed through community-based organizations, rather than directly to households. In many instances, community-based organizations are able to take a larger view of the need for assistance in order to stabilize neighborhoods that have been affected more severely by heightened foreclosure rates. However, the Bank suggests that further clarification would be necessary before such a structure could be implemented under the AHP set-aside requirements.

12. **<u>Approval of refinance or restructuring programs</u>.** The Bank supports the inclusion in the final rule of a provision allowing an FHLBank to apply to the Finance Board for prior approval to establish an AHP refinancing program not covered by the final rule.

13. **<u>Funding Allocation</u>.** The Bank suggests that the funding allocation for a refinancing set-aside program should be excluded from the total set-aside allocation prior to calculating the one-third requirement for assistance of first-time homebuyers. Rather than limit the amount of funds available to first-time homebuyers, the Bank recommends that the rule permit up to an additional 15 percent of available AHP subsidy to be allocated to a set-aside refinancing program, pursuant to each FHLBank's board of directors' determination after consultation with such FHLBank's Advisory Council.

14. **<u>Eligible uses of AHP direct subsidy</u>.** Paragraph (7)(iv) provides that homeownership or credit counseling costs in connection with an interest rate buydown and/or principal reduction are eligible for use of AHP direct subsidy. The Bank believes that members and homeowners also would benefit from foreclosure prevention/credit counseling regardless of whether such counseling ultimately results in a loan refinance or restructuring. After a household completes debt management and household budgeting counseling, they may discover that they can afford their current loan without the need for a subsidized "product solution." In many

instances, rebudgeting household finances may result in ability to continue to pay on the existing loan without need for further AHP subsidy. Members would benefit from the ability to offer AHP-subsidized counseling "free" to their customers, which may in turn mitigate the number of foreclosures and associated costs incurred by the member, without going through a full refinance or loan restructuring program (again resulting in potential additional costs to the member). To that end, the Bank suggests that paragraph (7)(iv) be revised to read, "Foreclosure mitigation, debt management, homeownership or credit counseling costs." In addition, if such counseling does not result in a recommendation from the counseling service for refinancing or restructuring, the requirement that a retention mechanism be recorded encumbering the potential applicant's real property, and obligations of repayment of AHP subsidy, should be inapplicable and expressly acknowledged as ineligible in the final rule.

We appreciate the Finance Board's consideration of our comments and concerns. Should you have any questions with respect to the foregoing, please do not hesitate to contact Jill Spencer, Chief Operating Officer, at (404) 888-8520.

Sincerely,

Richard A. Dorfman