Comment #30

FHLBank
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Building Communities Together

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Federal Housing Finance Agency
1625 Eye Street, N.W.
Washington, DC 20006
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

Ladies and Gentlemen:

On behalf of the Federal Home Loan Bank of Topeka (FHLBT), we appreciate the opportunity to comment on the Affordable Housing Program Amendments interim final rule published by the Federal Housing Finance Agency (FHFA) on October 17, 2008.

FHLBT applauds the FHFA's efforts to implement Section 1218 of the Housing and Economic Recovery Act of 2008, which allows FHLBanks until July 30, 2010, to use AHP homeownership set-aside funds to refinance low- or moderate-income households' mortgage loans. This proposed initiative, if properly implemented, will provide the FHLBanks the opportunity to be part of the solution to the current housing crisis. In the following comments we offer suggestions to enhance the rule's effectiveness.

Most importantly, FHLBT urges the FHFA to revise the rule to provide broader, more flexible authority to each FHLBank to provide AHP assistance specifically designed to address the mortgage problems arising in its district.

First, we are concerned that a loan is not eligible for AHP subsidy under the rule unless it is refinanced under the HOPE for Homeowners Program of the Federal Housing Administration (FHA). Since it appears that the HOPE Program is not a significant resource for most of the problem loans in our district, this serious limitation will probably prevent FHLBT from offering AHP assistance to most of the households in our district that need this subsidy. In addition, in some cases it may be more effective to provide assistance at an earlier stage, before conditions have deteriorated to the extent that the loan is eligible under the HOPE Program. Therefore, we urge the FHFA to revise the proposed rule to allow FHLBanks to provide AHP subsidy to assist members or their affiliates in refinancing troubled loans, regardless of whether the loan is being refinanced under the HOPE Program.

Second, before the FHA issues insurance under the HOPE Program, the borrower must make the first mortgage payment due. Thus, it would be possible for a borrower to receive AHP funds, miss the first payment and consequently become ineligible for the HOPE Program. This could cause a compliance issue for the FHLBanks unless the rule is revised to remove the HOPE Program requirement.

Third, we note that the impact of the foreclosure crisis has spread beyond subprime loans. Delinquencies are increasing in prime and Alt-A loans and foreclosure activity is negatively impacting non-delinquent borrowers in neighborhoods with high numbers of foreclosures. Moreover, we believe that borrowers are facing foreclosure for a wide variety of reasons, which are not necessarily addressed by the HOPE Program or other currently existing homeowner refinance assistance programs. Foreclosures have the same serious consequences for individual borrowers and neighborhoods regardless of the reason for the delinquency.

Therefore, we request that the rule be revised to allow an FHLBank to design its AHP assistance program so that any household experiencing financial distress due to an unaffordable mortgage would be eligible for refinance assistance, regardless of whether the loan is subprime or nontraditional and regardless of the reason for the financial distress. This would give each FHLBank authority to provide AHP assistance specifically designed to address the mortgage problems arising in its district.

Another important benefit of a flexible approach is that this financial crisis has placed the nation in uncharted waters where it has been very difficult to anticipate what possible solutions will work best. A flexible rule would allow FHLBanks to make changes and try new approaches as they gain experience in addressing these difficult problems.

FHLBT has no interest nor intent in promoting the use of AHP to bail out lenders that made poorly-underwritten loans or borrowers who obtained loans by intentionally providing inaccurate information to lenders. However, we believe the downturn in the economy has created problems for lenders and borrowers who acted in good faith and originated loans using reasonable underwriting standards. For example, borrowers may face temporary difficulties that cause them to fall behind on their loan payments. Consequently, we believe that a more flexible rule will allow FHLBanks to provide AHP assistance that will often enable lenders to avoid foreclosure and, instead, restructure loans for the benefit of the borrower, lender and the neighborhood.

The AHP set-aside authority has been a successful addition to the original AHP regulation. It is based on a broad set of parameters to be adhered to by FHLBanks that choose to exercise it. FHLBT recommends that the FHFA adopt the same approach in enhancing the set-aside program to allow for refinancing troubled loans. The provisions of the current set-aside program should be modified with enhanced flexibility to give the FHLBanks the authority to develop loan refinancing programs appropriate to foreclosure issues in individual FHLBank districts.

The best approach would be to require the FHLBanks to develop and submit the policies applicable to their set-aside programs for refinancing in the same manner as other AHP programs—as part of the AHP implementation plan. The resulting flexibility would allow the individual FHLBanks to develop programs that meet the unique needs of the FHLBank districts in addressing the current mortgage crises, while preserving the necessary oversight role of the FHFA.

We also offer the following comments applicable to specific sections of the rule:

Eligible Lender Participants

Under the rule, an FHLBank may provide the AHP direct subsidy to members that are FHA-approved lenders for the purpose of refinancing an eligible loan into an FHA-insured loan originated by the member. The rule also allows an FHLBank to offer the subsidy to members that will in turn provide it to FHA-lenders that are not members of the FHLBank. We suggest that the refinancing initiative be expanded to include homeowner refinance products offered by our members that are not FHA-approved lenders. Restricting the eligible lender participants to members that are FHA-approved lenders unnecessarily limits the use of AHP subsidy for foreclosure prevention.

Household Income Eligibility

According to the rule, eligible borrowers who receive AHP assistance under a mortgage refinance program must earn less than 80 percent of the area median income, adjusted for family size, based on an IRS tax return or other equivalent standards. The borrower's housing debt-to-income ratio, as of March 1, 2008, must have been greater than 31 percent, or such higher amount as the FHA deems appropriate. Under the existing set-aside programs, FHLBanks are required to use current income to calculate a future projection for income eligibility and to include all income from all adult household members in their calculations, but FHA income determination may not be comparable.

Consequently, we suggest that it would be preferable to allow FHLBanks to rely on the FHA's income and debt-to-income ratio calculations or those of other approved program underwriters rather than require the FHLBanks to recalculate income or debt ratios. In the event that the authority to refinance loans is extended to non-FHA related loans, the FHLBanks should be allowed to establish income calculation and other program requirements consistent with those used by other sources of financing involved in the refinancing.

AHP Retention Agreements

The five-year retention agreement requirement of the current AHP regulation does not apply to refinancings under the rule. However, in some cases an FHLBank may prefer to require a retention agreement to be able to enforce, and provide an incentive for

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compliance with, the refinancing assistance requirements. Consequently, we recommend that the rule be revised to allow FHLBanks to use the current AHP set-aside retention requirement for refinancing assistance at their discretion.

Use of AHP Subsidy for MPF Loans

We recommend that the rule be revised to authorize the AHP set-aside program to be utilized in conjunction with the modification of loans owned in Mortgage Partnership Finance (MPF) portfolios. This would allow members to apply on an individual household basis for AHP funds to assist families at risk of foreclosure whose loans are owned in MPF portfolios. Funds would be provided to the household with net income at or below 80 percent of area median income at the time of the AHP subsidy disbursement request in order to restructure the MPF loan. The AHP funds could not be utilized by the member, the supplemental mortgage insurance provider, or the FHLBank to absorb losses but must be provided to benefit the homeowner. The five-year retention and pro-rata recapture obligations could remain. A set-aside program for MPF would be effective in providing immediate foreclosure relief and would also reaffirm the FHLBank System's leadership tradition of providing mortgage funding to the nation during all economic cycles.

Thank you for your consideration of our comments. We look forward to assisting our members in finding new solutions to the mortgage foreclosure crisis.

If you have any questions, please contact Chris Imming, First Vice President and Director of Housing and Community Development (785-438-6029), Brad Hodges, Senior Vice President (785-438-6003), or me (785-438-6001).

Sincerely,

Andrew J. Jetter
President and CEO