



NAHB
NATIONAL ASSOCIATION
OF HOME BUILDERS

HOUSING FINANCE & LAND DEVELOPMENT

DAVID L. LEDFORD
SENIOR STAFF VICE PRESIDENT

December 16, 2008

Federal Housing Finance Agency
1625 Eye Street, NW
Washington, D.C. 20006
ATTN: Public Comments/RIN 2590-AA04

Re: Affordable Housing Program Amendments: Federal Home Loan Bank Mortgage Refinancing Authority

Dear Sir or Madam:

On behalf of the 235,000 member firms of the National Association of Home Builders (NAHB), I welcome the opportunity to respond to your request for comments on the Federal Housing Finance Agency's (FHFA's) Interim Final Rule related to Affordable Housing Program (AHP) amendments for the Federal Home Loan Banks (FHLBanks). The Interim Final Rule would allow FHLBanks to use AHP homeownership set-aside funds to refinance and/or restructure low- or moderate-income households' mortgage loans.

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.

Background

Effective July 30, 2008, the Federal Housing Finance Regulatory Reform Act (Reform Act) of 2008, Division A of the Housing and Economic Recovery Act (HERA) of 2008, transferred the supervisory and oversight responsibilities of the Federal Housing Finance Board (FHFB) over the FHLBanks to FHFA. The FHLBanks continue to operate under regulations promulgated by FHFB until FHFA issues its own regulations.

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This Interim Final Rule adds new provisions that allow the FHLBanks to use AHP set-aside funds to provide direct subsidies to low- or moderate-income households who qualify for refinancing assistance under the Hope for Homeowners (H4H) Program established by the Federal Housing Administration (FHA) under Title IV of HERA.

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) assist homeownership for families with incomes at or below 80 percent of the area median income, or (2) 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.

The FHLBanks provide 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 CAP, in 1995 the Board *authorized* the FHLBanks, at their discretion, to set aside a portion of annual required AHP contributions to establish programs for the purpose of promoting homeownership for low- or moderate-income households. Set-aside funds may be used for down-payment 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.

Summary of Amendments to Affordable Housing Regulations

The mortgage refinance and restructuring program was developed in response to the continuing credit crisis and the distress in the owner-occupied housing market. Many borrowers are now unable to sell their homes or refinance to get relief from unaffordable mortgages. The refinancing set-aside program authorized by the Interim Final Rule is designed to more directly help members assist households at risk of foreclosure by providing more affordable fixed-rate, fully amortizing, first-lien mortgages with a term of at least 30 years.

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FHFA is authorizing the FHLBanks to establish AHP homeownership set-asides for the purpose of refinancing or restructuring low- or moderate-income borrowers' non-traditional and subprime mortgage loans. The new authority, which is not limited to mortgages held or originated by FHLBank member institutions, would allow commitments of AHP subsidy until July 30, 2010 and would include loans in the pipeline by that date.

The requirements of the proposed rule are similar to those specifically authorized by FHFB for the San Francisco FHLBank on January 15, 2008. At that time, FHFB waived certain provisions of the AHP regulation to permit the San Francisco FHLBank to use the AHP subsidy to allow its members to help eligible households to refinance or restructure their existing residential mortgage loans. On April 9, 2008, FHFB issued a proposed rule that would allow all FHLBanks to engage in the newly authorized set-aside program.

Before FHFB took final action on the proposed amendments to the AHP regulations, HERA was enacted. Title IV of HERA also required establishment by the FHA of the temporary H4H Program, which will expire on September 30, 2011. Under the Interim Final Rule, FHFA has linked AHP refinancing set-aside funds to the H4H program as it is their belief that use of the AHP subsidy in conjunction with the FHA program will leverage and enhance the effectiveness of each program. In addition, FHFA believes that linking the programs will ensure that the full range of federal assistance to affected homeowners is available quickly and will provide the flexibility that the FHLBanks and their members need to make the AHP refinancing program successful.

There are two eligible uses for the AHP direct subsidy, which is capped at \$15,000 per household. The subsidy can be used to reduce the outstanding principal balance of the household's loan below the maximum loan-to-value ratio required under the H4H program in order to enable the household to meet the applicable mortgage debt-to-income ratios. In addition, under the new AHP refinancing authority, a member may use the AHP subsidy to pay FHA approved loan closing costs. In order to be refinanced under the H4H program, an eligible loan must meet all applicable underwriting requirements and other FHA standards.

NAHB Position

NAHB recognizes that distress in the mortgage markets has made it difficult for many borrowers to sustain homeownership, especially for those who financed their home purchase with non-traditional or subprime mortgages. NAHB generally supports foreclosure prevention efforts that would keep qualifying borrowers in their homes by refinancing or restructuring loans to achieve more reasonable terms. Successful foreclosure mitigation efforts will slow downward pressure on home prices and absorb unsold inventories of single family homes. The amendments to the AHP program will provide additional tools for foreclosure prevention.

However, NAHB is concerned that the Interim Rule limits use of a broader menu of foreclosure prevention techniques by linking the use of AHP set-aside funds solely to the H4H

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program. This is a key difference between the FHFA's Interim Rule and that previously proposed by the FHFBA. FHFA requests comment on whether the FHLBanks should be authorized to use AHP set-aside funds to assist distressed homeowners refinancing under other programs, aside from H4H, such as those offered by Fannie Mae and Freddie Mac, FHA Secure, or state housing finance agencies. NAHB believes that the FHLBanks and their members should be provided the flexibility to utilize those programs and solutions which best meet the need of the borrower. Many FHLBank members have experience with FHA Secure and have had long standing relationships with Fannie Mae and Freddie Mac and state housing agencies. The FHLBanks and their members are in the best position to determine the most effective mitigation approach so the FHLBank AHP should not be restricted to H4H at the exclusion of all others.

In addition, our support for the Interim Final Rule is conditioned on the premise that the programs are conducted in such a fashion so as to not diminish the FHLBanks' subsidies for affordable housing production. NAHB is concerned that the new AHP regulations could create additional demand on limited affordable housing resources and possibly reduce funding availability through the CAP if FHLBanks were to increase their set-aside percentages. NAHB believes it is important that the AHP set-aside not encroach on the operations of the CAP. The CAP is a key source of liquidity for Low Income Housing Tax Credit projects, which provide rental units affordable to low-income households. This program has been very successful and the majority of the FHLBanks affordable housing resources have been allocated to this important program.

NAHB recommends that each FHLBank continue to maintain its current homeownership set-aside percentage and to alter the mix of projects within the set-aside program if they decide to provide subsidies for member loan refinancings and restructurings under this Interim Final Rule. In this way, funding through the CAP will not decline because of an increase in the percentage allocation to the homeownership set-aside program. 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.

Further, NAHB supports set-asides for first time homebuyers. The current program requires that one-third of the FHLBanks aggregate annual set-aside allocation be used to assist first-time homebuyers. The current requirements for the set-aside program have proven successful and the annual threshold should not be modified or eliminated. This first-time homebuyer threshold should be maintained whether the FHLBanks elect to use the set-aside allocation primarily for refinancing or for other homeownership programs.

Finally, in response to the FHFA's request for comment, NAHB does not object to a 15-month extension of the June 30, 2010 sunset date to be co-extensive with that of the H4H program which expires on September 30, 2011.

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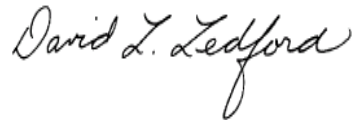
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Conclusion

Thank you again for the opportunity to comment on FHFA's Interim Final Rule on amendments to the FHLBanks' AHP. NAHB supports FHFA's actions to provide the FHLBanks the option to use AHP homeownership set-aside funds to assist member foreclosure prevention efforts. 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. Further, we urge FHFA to expand the menu of permissible refinancing programs that may be used with the AHP refinancing set-aside. NAHB is available to answer any questions you may have concerning this statement.

Sincerely,

A handwritten signature in cursive script that reads "David L. Ledford".

David L. Ledford
Senior Staff Vice President
Housing Finance & Land Development