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Federal Housing Finance Board
1625 Eye Street NW
Washington, DC 20006
Attention: Public Comments

Re: Federal Housing Finance Board
Proposed Rule: Affordable Housing Program Amendments
RIN Number 3069-AB26, Docket Number 2005-23

Ladies and Gentlemen:

The Federal Home Loan Bank of Dallas (the "Dallas Bank") appreciates the opportunity to comment on the Proposed Rule issued by the Federal Housing Finance Board (the "Finance Board") regarding amendments (the "Amendments") to the Affordable Housing Program ("AHP") regulation found at 12 C.F.R. part 951 (the "Regulation").

The Dallas Bank supports the stated efforts of the Finance Board to remove prescriptive requirements from the Regulation, clarify certain operational requirements, remove certain authorities and otherwise streamline and reorganize the Regulation. With regard to some of the proposed Amendments, the Dallas Bank has questions or comments for the Finance Board, which questions and comments are discussed below underneath the relevant section of the Amendments.

Definitions: Proposed § 951.1

Rental project. The Amendments in proposed 12 C.F.R. § 951.1 would revise the definition of "rental project" to explicitly add emergency shelters and single-room occupancy housing as types of rental housing. The Dallas Bank requests that the Finance Board clarify whether a nursing home could also qualify as a "rental project." In the Finance Board's discussion of proposed 12 C.F.R. § 951.5(c)(3)(i), the Finance Board mentions that Federal Home Loan Banks ("FHLBanks") may take into account non-financial household or project characteristics, *such as housing for the elderly*, in determining whether a project's costs are reasonable. The Dallas Bank requests that the Finance Board clarify whether this reference to "housing for the elderly" implies that a nursing home could qualify as an AHP project, specifically a "rental project."

Retention period: The Amendments in proposed 12 C.F.R. § 951.1 propose to amend the definition of “retention period” to clarify that, in the case of rehabilitated units that currently are occupied by the owner and do not involve a closing, the retention period would commence on the date of completion of the rehabilitation. The Dallas Bank requests guidance from the Finance Board regarding what constitutes acceptable documentation from the member or project sponsor documenting the date of completion of the rehabilitation. For example, would a certification from the member and/or project sponsor certifying to the date of completion of the rehabilitation be sufficient?

Removal of Acceleration Authority

The Finance Board is proposing to remove the existing provisions in the Regulation (currently located in 12 C.F.R. § 951.3(a)(1)(i), (1)(ii) and (2)) that permit an FHLBank to accelerate or “borrow” AHP funds from the subsequent year to fund the current year’s homeownership set-aside programs and competitive application programs. The Amendments in proposed 12 C.F.R. § 951.5(g)(5) (currently 12 C.F.R. § 951.8(c)(4)), however, still allow an FHLBank to draw from the FHLBank’s required AHP contribution for the subsequent year to fund members’ requests for increases of previously-approved AHP subsidy amounts (to the extent the requested subsidy increase could not be funded from the current year’s AHP funds). The Dallas Bank seeks clarification from the Finance Board as to whether an FHLBank could still fund a requested AHP subsidy increase in one year by accelerating or “borrowing” funds from the FHLBank’s required AHP contribution for the next year despite the elimination of the general acceleration or “borrowing” provisions from the Regulation.

Use of AHP Subsidy by Revolving Loan Funds: Proposed § 951.5(c)(13)

Proposed 12 C.F.R. § 951.5(c)(13) will allow FHLBanks to provide AHP subsidies to members for lending by revolving loan funds to eligible projects and households under an FHLBank’s competitive application program. The Dallas Bank requests that the Finance Board provide the following additional information and clarifications regarding the use of AHP subsidy by revolving loan funds.

The Amendments contemplate that a member would submit an application for a revolving loan fund. The Dallas Bank requests that the Finance Board clarify that only one application would be required for the revolving loan fund, which would be submitted prior to the revolving loan fund’s initial round of lending and that separate applications for subsequent rounds of lending would not be required. Would the application need to include details only on the revolving loan fund’s initial round of lending, or would the application also need to include details regarding anticipated subsequent rounds of lending? If the application did not include details regarding subsequent rounds of lending, would the application be scored solely on the details provided for the initial round of lending? Assuming no applications with regard to subsequent rounds of lending are required, when the revolving loan fund conducts subsequent rounds of lending is any review by an FHLBank of that round of lending required (for example, to determine compliance with the Regulation and the approved application)?

Proposed 12 C.F.R. § 951.5(c)(13)(ii)(B) states that the revolving loan fund's subsequent lending of repaid AHP subsidy shall be subject to retention periods, monitoring and recapture requirements that the FHLBank shall adopt. Proposed 12 C.F.R. § 951.5(c)(13)(i), regarding initial use of subsidy, does not mention that the initial use of subsidy shall be subject to monitoring or recapture requirements that the FHLBank shall adopt. Is an FHLBank required to adopt monitoring or recapture requirements for the initial round of lending or do the general requirements of the Regulation regarding monitoring and recapture apply to the initial round of lending? If so, does the Finance Board expect that the FHLBank would or could establish different requirements for retention, monitoring and recapture for subsequent lending of repaid AHP subsidy, or that those requirements should be the same as or similar to the requirements for the initial round of lending? How long would an FHLBank be expected to monitor and possibly recapture any AHP subsidy that was used for subsequent rounds of lending?

The Amendments contemplate that a revolving loan fund could use the AHP subsidy for lending to owner-occupied projects or rental projects. Currently, due to some of the differing characteristics and requirements of owner-occupied projects as opposed to rental projects, the Dallas Bank enters into different agreements with members and project sponsors or owners depending on whether the project is an owner-occupied project or a rental project. Does the Finance Board anticipate that FHLBanks would draft agreements with its members and projects sponsors or owners specifically for the use of AHP subsidy by a revolving loan fund? Are there any requirements, other than the requirements in proposed 12 C.F.R. § 951.9, that the Finance Board would expect to see specifically in AHP agreements with revolving loan funds?

Proposed 12 C.F.R. § 951.5(c)(13)(iii) provides that the revolving loan fund shall return to the FHLBank any repaid AHP subsidy that will not be used according to the requirements in 12 C.F.R. § 951.5(c)(13). Also, in proposed 12 C.F.R. § 951.5(c)(10)(ii)(C), a project sponsor that is a revolving loan fund is required to demonstrate its ability to track the use of the AHP subsidy. For how long does the revolving loan fund have to track its use of the AHP subsidy? Do these requirements mean that the revolving loan fund must continually segregate funds in the amount of the AHP subsidy as funds are repaid? If the revolving loan fund always uses repaid AHP subsidy according to the requirements in 12 C.F.R. § 951.5(c)(13) but decides to end its existence or otherwise stop lending to eligible projects and households, at that time would the revolving loan fund be required to repay the amount of the AHP subsidy?

Use of AHP Subsidy in Loan Pools: Proposed § 951.5(c)(14)

Proposed 12 C.F.R. § 951.5(c)(14) will allow FHLBanks to provide AHP subsidies to members for projects involving the purchase of eligible AHP-assisted loans to AHP-eligible households for inclusion in a loan pool under an FHLBank's competitive application program. The Dallas Bank requests that the Finance Board provide the following additional information and clarifications regarding the use of AHP subsidy in loan pools.

The Amendments contemplate that a member would submit an application for an AHP subsidy to be used in a loan pool. The Dallas Bank requests that the Finance Board clarify that only one application would be required for the loan pool, which would be submitted prior to the anticipated initial purchase of loans, and that separate applications for any subsequent purchases of loans would not be required. Also, the Amendments imply that the application would describe either the forward commitment or the initial round of loans to be purchased. If the application did not include details regarding subsequent purchases of loans, would the application be scored solely based on the details provided for the forward commitment or the initial purchases of loans? Assuming no applications with regard to subsequent purchases of loans are required, when the loan pool sponsor purchases loans to replace initial loans that were repaid, does an FHLBank have to review each round of loans purchased (for example, to determine compliance with the Regulation and the approved application)?

Proposed 12 C.F.R. § 951.5(c)(14)(ii) requires that both the initial purchase of loans for the AHP loan pool and subsequent purchases of loans to substitute for repaid loans in the pool shall be made pursuant to the terms of any forward commitment. If loans are purchased pursuant to a forward commitment, and any of the terms of the forward commitment change, would the member and loan pool sponsor be required to ask the FHLBank for a modification to the terms of the approved application (assuming the forward commitment is required to be described in the application)?

Proposed 12 C.F.R. § 951.5(c)(14)(iii) states that each AHP-assisted owner-occupied unit receiving AHP direct subsidy shall be subject to an AHP 5-year retention agreement as required under 12 C.F.R. § 951.5(c)(9)(i). The Dallas Bank requests that the Finance Board clarify this requirement. The Amendments contemplate that AHP funds may be provided to loan pool sponsors in the form of direct subsidies or subsidized advances. The loan pool sponsor would then use the AHP funds to purchase eligible AHP-assisted loans. Does this requirement mean that, at the time a loan pool sponsor purchases an eligible AHP-assisted loan, if the loan is related to an AHP-assisted owner-occupied unit receiving AHP direct subsidy, the unit at that time must already be subject to an AHP 5-year retention agreement? If AHP funds were provided to the member for an owner-occupied unit in the form of a subsidized advance, would that owner-occupied unit not be required to be subject to a 5-year retention agreement? Or does this requirement mean that on the date the loan is purchased by the loan pool sponsor the loan pool sponsor must ensure that beginning on that date the owner-occupied unit becomes subject to a 5-year retention agreement?

Proposed 12 C.F.R. § 951.5(c)(14)(ii) states that initial and subsequent purchases of loans for the AHP loan pool shall be subject to time limits on the use of the AHP subsidy as specified by the FHLBank in its AHP implementation plan. Is this the only specific requirement for loans pool that an FHLBank is required to determine compliance with? Is an FHLBank required to adopt monitoring or recapture requirements for the initial or subsequent purchases of loans? Do the general requirements of the Regulation regarding monitoring and recapture apply to the initial or subsequent purchases of loans? How long would an FHLBank be expected to monitor and possibly recapture AHP subsidy granted for the purchase of loans for an AHP loan pool?

As mentioned above, due to some of the differing characteristics and requirements of owner-occupied projects as opposed to rental projects, the Dallas Bank enters into different agreements with members and project sponsors or owners depending on whether the project is an owner-occupied project or a rental project. Does the Finance Board anticipate that FHLBanks would draft agreements with its members and project sponsors or owners specifically for the use of AHP subsidy in a loan pool? Are there any requirements, other than the requirements in proposed 12 C.F.R. § 951.9, that the Finance Board would expect to see specifically in AHP agreements with loan pool sponsors?

In proposed 12 C.F.R. § 951.5(c)(10)(iii)(C), a project sponsor that establishes a loan pool is required to demonstrate its ability to track the use of the AHP subsidy. For how long does the project sponsor that establishes a loan pool have to track its use of the AHP subsidy? Do these requirements mean that the loan pool sponsor must continually segregate funds in the amount of the AHP subsidy as loans are repaid? If the loan pool always uses repaid AHP subsidy according to the requirements in 12 C.F.R. § 951.5(c)(14) but decides to end its existence or stop purchasing eligible AHP-assisted loans, at that time would the member and/or loan pool sponsor be required to repay the amount of the AHP subsidy?

Progress towards Use of AHP Subsidies: Proposed § 951.5(g)(2)

Currently 12 C.F.R. § 951.8(c)(1) requires that an FHLBank specify a time period in its AHP Implementation Plan for the drawdown and use of the AHP subsidy. Proposed 12 C.F.R. § 951.5(g)(2) would not retain this requirement but would instead require each FHLBank to establish policies and procedures, such as time limits, for determining whether progress is being made towards drawdown and use of AHP subsidies by approved projects, and whether to cancel an application approval for lack of such progress. The purpose of these changes, as stated by the Finance Board, is to give the FHLBanks greater capacity to manage the process of determining whether delays in the timing of a project are significant enough to affect a particular project's ability to draw down and use the subsidy.

The Dallas Bank supports the deletion of the current requirement that an FHLBank specify a time period in its AHP Implementation Plan for the drawdown and use of the AHP subsidy. The Dallas Bank has worked with several AHP projects that have encountered delays due to changes in funding, legal or community challenges or other events. Projects involving tax credits are one example of a type of project that in the Dallas Bank's experience has encountered challenges requiring the member involved with the project to request an extension for the time of completion for the project. Additionally, for projects involving Native American sponsors or located on Native American land, the Dallas Bank in its AHP Implementation Plan allows those projects up to five years from the time of their approval until their completion, rather than the three years the Dallas Bank allows other projects. These projects implicate tribal law and require the involvement of tribal governmental bodies and therefore routinely need more time in order to bring the projects to completion.

For the above reasons, the Dallas Bank encourages the Finance Board to also eliminate the minimum eligibility requirement in proposed 12 C.F.R. § 951.5(c)(6) (currently 12 C.F.R. § 951.5(b)(3)) that an AHP subsidy must be likely to be drawn down by the project or used by the project to procure other financing commitments within 12 months of the date of approval of the application for AHP subsidy funding the project. While the Dallas Bank understands that this requirement only need be met when the application for subsidy is being reviewed, and need not ultimately come to fruition, eliminating this requirement would allow the FHLBanks to consider projects for approval with special needs in which, from the outset, the FHLBank is aware that drawing down or otherwise using the subsidy within 12 months may not be likely. The Dallas Bank believes the policies and procedures the Amendments would require the Dallas Bank to establish will allow the Dallas Bank to adequately determine if a project is moving diligently towards drawdown and use of the subsidy, without the need for any specific time requirements. Alternatively, if the Finance Board believes an initial time limit for the drawdown or use of the subsidy should remain in the Regulations, the Dallas Bank suggests that the Finance Board extend the initial time limit from 12 months to 24 months.

**Progress towards Use of AHP Subsidies and Compliance upon Disbursement:
Proposed § 951.5(g)(2) and (3)**

In addition to the requirement in proposed 12 C.F.R. § 951.5(g)(2) that each FHLBank establish policies and procedures for determining whether progress is being made towards drawdown and use of AHP subsidies, proposed 12 C.F.R. § 951.5(g)(2) and (3) would require each FHLBank to establish policies and procedures for determining, prior to initial disbursement of AHP subsidy, and prior to subsequent disbursement if the need for AHP subsidy has changed, whether the project continues to meet the applicable eligibility requirements and all obligations committed to in the approved AHP application. The Amendments do not provide any specific provisions that FHLBanks should include in these policies and procedures. The Dallas Bank requests that the Finance Board include in the final rule implementing the Amendments any specific provisions that the Finance Board believes these policies and procedures should include. The Dallas Bank also requests that the Finance Board clarify that FHLBanks have a great deal of latitude in adopting these policies and procedures so that the policies and procedures can be flexible enough to allow the FHLBanks to work with the needs of various AHP projects. Additionally, the Dallas Bank requests that the Finance Board recognize that at times FHLBanks will need to grant exceptions to these policies and procedures. The Dallas Bank would authorize exceptions in its policies and procedures and would document and report such exceptions accordingly.

Disaster Areas and Displaced Households Scoring Criterion: Proposed § 951.5(d)(5)(vi)(E)

In addition to the current scoring criterion for applications that would provide housing for persons located in a disaster area, proposed 12 C.F.R. § 951.5(d)(5)(vi)(E) would permit an FHLBank to award scoring points for applications proposing to provide housing for low- or moderate-income households that have been displaced from a federally declared disaster area due to a disaster, irrespective of the household's current residential location. The Dallas Bank strongly supports the addition of this scoring criterion. The Dallas Bank, however, recognizes that after a disaster, such as the hurricanes that struck the Gulf Coast of the United States in 2005, the residential location of a household may be in flux for an indeterminable amount of time. Households that relocate to locations outside of the disaster area may return to the disaster area once it has been restored or may relocate to other locations due to that location's proximity to family, friends or employment. Therefore, a project with housing that is initially earmarked for households may ultimately not be able to be fully or even partially occupied by households displaced from federally declared disaster areas, resulting in the project's not complying with the number of displaced persons committed to in the approved AHP application for the project. In those situations, would an FHLBank be required to cancel the project and recapture the subsidy, even if the noncompliance with the terms of the approved application was not the fault of the member or the project sponsor or owner?

For example, the Dallas Bank notes that for any project initially earmarked for a certain number of very low-income households and low- or moderate-income households, the number of people from each income group that ultimately occupy the project can change between the time the project is approved for a subsidy and the time the project is complete and ready for occupancy. Such change can occur for a number of reasons beyond the control of the member and/or project sponsor or owner. Assuming the project continued to score high enough to have been approved by the Dallas Bank in the funding period in which it was originally scored and approved by the Dallas Bank, the Dallas Bank could approve a modification to the project's income target. Otherwise, if the project no longer scored high enough to have been approved, the Bank would be required to cancel the project and recapture the subsidy.

The Dallas Bank suggests that with regard to projects for displaced persons, the Finance Board allow flexibility with regard to rescoring or canceling these projects if the projects ultimately cannot house the number of displaced persons committed to in the approved application. For example, if the project were unable to be fully occupied by households displaced from federally declared disaster areas, could any vacancies instead be filled with very low-income households without the Bank being required to rescore and possibly cancel the project?

Member Financial Incentives: Proposed § 951.6(c)(6)

With regard to member financial incentives and proposed 12 C.F.R. § 951.6(c)(6), the Finance Board specifically requested comment on (1) whether it should require all originators of AHP-assisted mortgage loans to provide financial or other incentives in connection with the mortgage financing, irrespective of whether the originator is a member or nonmember, (2) whether the current financial incentive requirement should remain as a mandatory requirement or be made a matter of discretion for the FHLBank, as a preferential selection criterion for its homeownership set-aside program, and (3) whether additional incentives should be required, such as a matching funds requirement, member-provided financing, or preference to a member working in partnership with a nonprofit sponsor assisting first-time homebuyers to qualify for a mortgage.

With regard to (1), the Dallas Bank does not believe the Regulation should require that all originators of AHP-assisted mortgage loans provide financial or other incentives in connection with the mortgage financing, particularly originators that are nonmembers. Since AHP-assisted mortgage loans can be risky for originators to make, the Dallas Bank does not want to take any actions that could discourage this type of mortgage financing. Also, requiring originators other than members to provide financial or other incentives in connection with the mortgage financing could be problematic, since originators other than an FHLBank's members do not enter into an agreement with the FHLBank.

With regard to (2), the Dallas Bank believes that FHLBanks should not be required to establish incentives for members to provide financial or other assistance in connection with providing the homeownership set-aside subsidy. Instead, FHLBanks should be allowed to establish incentives as a preferential selection criterion for their homeownership set-aside programs. For example, the Dallas Bank currently requires members providing mortgage financing to a participating household to provide financial or other incentives in connection with such mortgage financing. As an incentive, if the member contributes at least \$350 toward incentives in connection with the mortgage financing or a homebuyer education course, then the Dallas Bank will match the homebuyer's contribution towards down payment and closing costs at a ratio of 4:1 rather than 3:1.

With regard to (3), the Dallas Bank does not believe any additional incentives should be required but believes that the current incentive requirements are sufficient.

Financing Costs: Proposed § 951.6(c)(7)

Proposed 12 C.F.R. § 951.6(c)(7) requires that the rate of interest, points, fees and any other charges for loans used directly or indirectly in conjunction with the AHP direct subsidy shall not exceed a reasonable market rate of interest, points, fees and other charges for loans of similar maturity, terms and risk. The Dallas Bank requests clarification from the Finance Board on the meaning of "reasonable" market rate. The Dallas Bank typically compares the rate of interest, points, fees and any other charges for AHP loans against the *current* market rate of interest, points, fees and any other charges for a loan of similar maturity, terms and risk. Does the Finance Board believe that "current" market rates and other charges under some circumstances might not qualify as "reasonable" market rates and other charges?

Reliance on Other Monitoring: Proposed § 951.7(a)(2)(ii)(B)(1)

For AHP projects that are allocated federal Low-Income Housing Tax Credits (tax credits) ("LIHTC"), under proposed 12 C.F.R. § 951.7(a)(2)(ii)(B)(1) an FHLBank may rely on the monitoring by the state-designated housing credit agency administering the tax credits of the income targeting, rent and retention period requirements applicable under the LIHTC Program, provided that the compliance profiles of the AHP and the LIHTC program continue to be substantively equivalent. The Dallas Bank requests clarification from the Finance Board on the meaning of "substantively equivalent." Does the Finance Board consider "substantively equivalent" to mean the same as "substantially equivalent?" Also, if the compliance profiles of the AHP and the LIHTC change and differ from one another in the future, how different can those compliance profiles be before the Finance Board will no longer consider them to be "substantively equivalent?" Is there any objective standard the Finance Board would use to evaluate any future differences?

Monitoring Requirements: Proposed § 951.7(a) and (b)

Proposed 12 C.F.R. § 951.7(a) requires that an FHLBank adopt and implement written policies and procedures for monitoring rental projects. An FHLBank may use a reasonable, risk-based sampling plan to select the rental projects to be monitored and to review the back-up and any other project documentation received by the FHLBank. The Dallas Bank requests that the Finance Board clarify whether an FHLBank must select its sample of rental projects from different types of rental projects and if the sample must be statistically valid. Also, proposed 12 C.F.R. § 951.7(a)(2)(ii) requires that an FHLBank's monitoring policies and procedures take into account risk factors such as the amount of AHP subsidy in the project, type of project, size of project, location of project, sponsor experience and any monitoring provided by a federal, state or local entity as described in 12 C.F.R. § 951.7(a)(2)(ii). Are these risk factors that an FHLBank should use to develop its reasonable, risk-based sampling plan to select the rental projects to be monitored, or are these risk factors referring to another determination that an FHLBank must make?

Proposed 12 C.F.R. § 951.7(b) allows an FHLBank to use a reasonable sampling plan to select the households to be monitored under the homeownership set-aside program. The Dallas Bank notes that 12 C.F.R. § 951.7(b) does not specify that this sampling plan be "risk-based." Should the sampling plan for the homeownership set-aside program also be a "risk-based" sampling plan and should it be statistically valid? If so, what risk factors, if any, should the FHLBanks take into account in developing the sampling plan?

Repayment of AHP Subsidy by Project Sponsor or Owner: Proposed § 951.8(b)(2)

Proposed 12 C.F.R. § 951.8(b)(2) would add a provision allowing an FHLBank to determine whether a project sponsor or owner must repay AHP subsidies directly to the FHLBank or to the member, which would then repay the FHLBank, in the event that the project fails to comply with any of the AHP requirements. The purpose of the proposed change is to give the FHLBanks greater flexibility in managing how AHP subsidies are required to be repaid in the event of a failure to comply with the rules. The Dallas Bank requests guidance from the Finance Board on how an FHLBank should determine whether to pursue recapture from the member or from the project sponsor or owner, or whether FHLBanks are required to pursue both the member and the project sponsor or owner. If an FHLBank makes a good faith determination to pursue either the member or the project sponsor or owner, but not both, will that good faith determination be sufficient for the Finance Board? Will the Finance Board require an FHLBank to pursue both the member and the project sponsor or owner?

Monitoring Agreements: Proposed § 951.9(a)(5)

Under proposed 12 C.F.R. § 951.9(a)(5)(i), the FHLBanks' agreements with their members must set forth the members' specific monitoring responsibilities, as required under the FHLBanks' monitoring policies and procedures. Additionally, proposed 12 C.F.R. § 951.9(a)(5)(ii) requires members to have in place agreements with projects sponsors or owners in which project sponsors or owners agree to comply with the monitoring requirements applicable to such parties, as established by the FHLBank in its monitoring policies and procedures. The Dallas Bank requests clarification from the Finance Board regarding what specifically must be set forth in these agreements. Does this provision require that an FHLBank set forth its entire monitoring policies and procedures in its agreements or only that an FHLBank must specify which monitoring requirements from its monitoring policies and procedures apply to that member and project sponsor or owner? If an FHLBank amends its monitoring policies and procedures, what effect will that have on the agreements with members and with projects sponsors or owners that are already executed and in effect? The Dallas Bank suggests that FHLBanks not be required to specifically set forth monitoring policies, procedures or requirements in these agreements but instead reference applicable monitoring policies, procedures or requirements "as amended from time to time" in the agreements with the members and the project sponsors or owners.

We appreciate the Finance Board's consideration of the Dallas Bank's comments and concerns. Should you have any questions with respect to the foregoing, please do not hesitate to contact Charles Lockyer, General Counsel at 214.441.8716, or Faith McManus, Assistant General Counsel at 214.441.8590.

Sincerely,



Terry Smith