

April 26, 2006

Federal Housing Finance Board
1625 Eye St., 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

Thank you for the opportunity to provide comments on proposed changes to the regulations governing the Affordable Housing Program (AHP). The FHLBank Topeka Affordable Housing Advisory Council (AHAC) appreciates the efforts of the Federal Housing Finance Board directors and staff in taking action to improve the program. The AHP has developed over the years into an outstanding program that truly has played a major role in addressing the needs for affordable housing. It is in the spirit of improving this already outstanding program that we provide these comments. Overall, the Affordable Housing Advisory Council of the Topeka Bank is supportive of the changes being proposed. Particularly noteworthy are the changes with respect to monitoring and eligibility of revolving loan funds and loan pools. The provisions of the proposed rule were reviewed at the March 2006 meeting of the AHAC of the Topeka Bank. The issues identified in this comment letter were developed as a result of that discussion and subsequent discussion by members of the AHAC of the Topeka Bank.

We offer the following comments and recommendations regarding the proposed rule, which we believe would enhance the effectiveness of the AHP in helping the FHLBanks accomplish their housing finance mission.

§951.1 Definitions.

We note that there is no definition of “first-time homebuyer” in the proposed rule and there is no specific reference to requiring the FHLBanks to include a definition in the AHP Implementation Plans. We recommend that the rule be amended to require the FHLBanks to establish a definition of “first-time homebuyer” as part of each FHLBank’s Implementation Plan as it is important that program users know how the term is defined for the purposes of the set-aside and competitive programs (if applicable).

§951.4 Advisory Councils. The AHAC of the Topeka Bank supports the flexibility of the proposed rule in permitting an FHLBank to appoint Affordable Housing Advisory Council member to serve an initial term of “up to” 3 years, to allow an FHLBank to structure its AHAC members’ terms so that no more than a third of the terms will expire in any one year. We believe this will provide for a greater degree of continuity in council membership, which we feel is

important. We support the proposed rule's requirement that Advisory Councils elect certain officers, and the extension of the deadline for the annual AHAC report to the Finance Board from March 1 to May 1.

§951.5 Competitive Program Requirements.

We support the proposed rule's flexibility in permitting, but not requiring, the use of AHP subsidies for revolving loan funds and loan pools. Federal funding to support affordable housing has declined significantly over the last 20 years. Current budget deficits and the growth in federally funded non-housing entitlement programs suggest that the situation is not likely to improve in the foreseeable future. In this light, it is imperative that significant providers of funding for affordable housing seek to maximize the impact of those funds. We believe that revolving loan funds and loan pools may offer an opportunity to enhance the impact of AHP subsidies. We support allowing FHLBanks the option to use AHP grants in conjunction with revolving loans funds and loan pools. The AHAC encourages the Finance Board to recognize that the unique nature of revolving loan funds and loan pools may not fit the proposed rules scoring and monitoring regimens. The nature of these programs will require flexibility on the part of the Banks during implementation and the Finance Board at the time of program oversight, in order for AHP funds to be used successfully in a manner consistent with the intent of the AHP.

Although no significant changes to current scoring requirements were included in the proposed regulation, we urge the Finance Board to consider making changes in this area. Each FHLBank's AHP should target the most critical affordable housing needs in its district. Those needs should be identified through an assessment process that includes Bank members and staff, the perspective and insight provided by the AHAC and knowledgeable sources outside the bank. In addition project scoring should be designed so that projects targeted to meet those critical needs receive the highest scores and are selected for funding. FHLBanks must have sufficient flexibility in designing scoring criteria in order to allow for those needs to be fully integrated into the scoring process. FHLBank flexibility to customize scoring criteria to the identified needs is a critical element in determining the overall effectiveness of the AHP. Under the current regulation, too many of the scoring criteria are predetermined. We urge the Finance Board to modify the AHP regulation to provide significantly greater flexibility to the FHLBanks in consultation with their respective Advisory Councils in adopting scoring criteria that are tailored to the needs in their districts.

With respect to specific district priority scoring criteria under proposed §951.5(d)(5), we recommend combining First District priority and Second District priority into one scoring category to be identified as "District priorities" with no predetermined list of priorities such as those now included in First District priority of the proposed rule. This will permit a FHLBank to better tailor its AHP to the specific and sometimes unique characteristics of its district. If, however the Finance Board determines to leave this portion as is in its final rule, we suggest clarification of the term "such as" as used in the scoring portion of the proposed rule. Is the term intended to limit the FHLBank's scoring factors only to those specifically cited in the regulation or does this term specifically permit other factors to be introduced by a FHLBank?

As to the special needs criterion available under the First District Priority (should the First District Priority be retained unchanged in the final rule) the Banks should be given discretion to define special needs and the factors eligible for credit under this criterion as part of the Implementation Plan. Specifically, there are special populations recognized by other federal agencies housing programs such as large families (HUD) and farm workers (USDA) that should also be able to be considered in the Affordable Housing Program. Allowing this level of flexibility would also be consistent with the requirements of the AHP authorizing statute 12USC1430(j)(9)(G) to promote the use of the AHP in conjunction with other federal programs.

With regard to compliance review at the time of disbursements, §951.5(g)(3) of the proposed rule provides: *Compliance upon disbursement of AHP subsidies. A Bank shall establish policies and procedures for determining, prior to its initial disbursement of AHP subsidies for an approved project, and prior to subsequent disbursement if the need for AHP subsidy has changed, that the project meets the eligibility requirements of paragraph (c) of this section and all obligations committed to in the approved AHP application.*” According to the description of this section of the proposed rule in the Supplementary Information section: *“The requirement to repeatedly verify project compliance during every stage of the disbursement process may be more than is necessary to ensure compliance with the rules, and effectively precludes a Bank from using its best judgment to determine whether the circumstances of a particular AHP project warrant repeated verification of compliance with the rules. The proposed amendment would give the Banks greater latitude in determining when it is appropriate to verify compliance prior to disbursing AHP funds.”* However, §951.5(g)(3) of the proposed rule quoted above states that the FHLBank must establish policies and procedures for determining whether the project continues to meet applicable eligibility requirements and all obligations committed to in the approved application at the time of initial disbursement *“...and prior to subsequent disbursements if the need for AHP subsidy has changed...”* The AHAC of the Topeka Bank understands this to mean that an evaluation of the need for subsidy will be required at initial disbursement and for every disbursement thereafter in order to determine whether the need for subsidy has changed and, consequently, an evaluation of eligibility and all obligations committed to in the approved application will be required. We believe that if our interpretation is correct, an undue and unnecessary burden will still be imposed on the FHLBanks and on participating members and project sponsors. We recommend that the required evaluation of need for subsidy at every disbursement be deleted from the proposed rule and limit the evaluation of need for subsidy to the initial disbursement.

§951.6 Set-aside Program. The current mandatory homebuyer education requirement for the set-aside program should be retained. Homeownership counseling has been shown to be an important factor in promoting the success of homeownership among low- and moderate-income households, especially first-time homebuyers. The mandatory homebuyer education requirement of the current regulation was established at a time when it was important for federal agencies to recognize the importance of homebuyer education. The continued importance of homebuyer education should be recognized by retaining mandatory homeownership counseling for AHP set-aside programs.

§951.7 Monitoring. The Finance Board is to be complimented on proposing to allow more flexibility for individual FHLBanks to design monitoring programs so long as these meet the

listed performance objectives. We support the proposed replacement of a portion of the current regulation's prescriptive nature and associated deadlines with more broadly stated performance objectives intended to give the FHLBanks more latitude in the type and frequency of reports and certifications. Requiring monitoring controls based on performance objectives allows the FHLBanks to better tailor controls to the risks presented. It is often easy to justify enhanced controls as the benefit (reduced risk) is clear but the cost is often hidden, especially when those costs are not borne by the grant dollars themselves as is the case with the AHP. But it must be recognized that every dollar unnecessarily spent on controls ultimately means that FHLBanks, members and project sponsors have fewer resources to further their missions. The Banks need to have the flexibility to tailor controls appropriately to the risk, both in terms of the nature of that risk as well as its severity. The amount of AHP dollars in a project is typically a relatively small percentage (usually less than 5 percent) compared to overall project funding. The compliance burden associated with using AHP funding should be consistent with its share of overall project cost. Very often, other programs are involved at a much higher funding level and incorporate their own set of requirements for feasibility, subsidy need and monitoring. We strongly support the proposed rule's provision allowing greater reliance on monitoring provided by other funding sources.

AHAC of the Topeka Bank supports the Finance Board's intent to simplify the monitoring requirements for program users through the provisions allowing for third-party monitoring. However, the provisions of the regulation do not provide definitive direction to the Banks for third party monitoring sufficient to alleviate concerns that third party monitoring will be practical for the Banks. For the third party monitoring by agencies administering the Low-Income Housing Tax Credit (LIHTC) program, the regulation allows for third party monitoring only if the "compliance profiles of the AHP and LIHTC programs continue to be substantially equivalent." In the supplementary information to the proposed rule, the Finance Board provides an explanation as to why the statutory income and affordability requirements of the AHP and LIHTC are similar. However, the provisions of the regulation and supplementary information do not address how or if the Finance Board views the competitive scoring commitments required of AHP applicants to be substantially equivalent. The provision in the proposed rule for third party monitoring associated with non-LIHTC programs only references income targeting, rent and retention requirements. If the Finance Board intends to allow for third party monitoring of AHP projects the regulation and supplementary information must be modified to make a clear and definitive statement that the Finance Board believes the requirements associated with specific programs such as those of the HUD 202/811 program and HOME program, USDA Rural Development programs, and the LIHTC program are substantially equivalent as to income targeting, rent, retention and competitive scoring factors. Uncertainty as to the Finance Board's intent in this area will necessitate that the Banks not exercise the third-party monitoring option in order to avoid potential compliance issues.

We appreciate the opportunity to provide comments to the Federal Housing Finance Board regarding the proposed rule. While we recommend a number of changes and clarifications, in general we are supportive of the proposed rule and believe that it represents an improvement over the current rule.

Sincerely,

Federal Home Loan Bank of Topeka Affordable Housing Advisory Council

Jo Ellen Davidson, Chairperson

June Bailey

Vicky Dayton

Michael Maroney

Dena Sherrill

Rich Brierre, Vice Chairperson

Becky Christofferson

David Herlinger

Roger Nadrchal

Duke Tsoodle