



April 27, 2006

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

Re: Federal Housing Finance Board  
Proposed Rule: Affordable Housing Program Amendments  
RIN Number 3069-AB26  
Docket Number 2005-23  
70 FR 76938 (December 28, 2005)

Dear Sir or Madam:

America's Community Bankers<sup>1</sup> is pleased to comment on the proposed amendments to the Federal Housing Finance Board's ("Finance Board") affordable housing program (AHP) regulation. The proposed amendments would make the following seven principal changes:

- Add definitions of certain key terms to create certainty;
- Reorganize the regulation so that operational provisions relating to the competitive application program and the homeownership set-aside program would be fully contained within separate sections of the regulation making it easier to understand the operations of each program;
- Permit the use of the AHP subsidy by loan pools and revolving loan funds under the competitive application program at the discretion of each Federal Home Loan Bank ("Bank");
- Prohibit restrictions on the use of AHP funds by projects located outside the Bank's district and scoring preferences for in-district projects in recognition of the expansion of interstate banking;

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<sup>1</sup> America's Community Bankers is the member driven national trade association representing community banks that pursue progressive, entrepreneurial and service-oriented strategies to benefit their customers and communities. To learn more about ACB, visit [www.AmericasCommunityBankers.com](http://www.AmericasCommunityBankers.com).

- Delete provisions in the current regulation that allow a Bank to accelerate AHP contributions from the following year into the current year;
- Delete provisions in the regulation that would increase annually the maximum allowable dollar amount of the Bank's allocation to its homeownership set-aside program and maximum allowable dollar acceleration amount under the Bank's competitive application program, based on the annual inflation rate so homeownership projects do not take a higher proportional share of funds than rental projects; and
- Replace prescriptive monitoring requirements in the current regulation that detail specific monitoring and control processes with standards based on required outcomes rather than prescribed control processes.

### **ACB Position**

In general, ACB supports the proposed amendments as a way to provide clarity in the operations of the AHPs of the Banks. However, we have concerns about some of the proposed changes and believe that others need clarification.

#### Financial Incentives from Member Institutions

The notice of proposed rulemaking specifically requests comments on whether member institutions should be required to provide additional financial incentives, when utilizing the AHP or homeownership set-aside programs. We do not support requiring member institutions to provide additional financial incentives. Such a requirement would only increase the overall cost of participating in the programs and could result in diminished participation in the programs.

#### Cash Back

In connection with the homeownership set-aside program, the proposed amendment would prohibit a member institution from providing cash back to a participating household at the closing on the mortgage loan subsidized under the program. ACB does not support this restriction, as currently written. Assuming a participating household has met the requirement for a required minimum down payment or match, a borrower should be allowed to receive cash back not to exceed the amount of prepaid deposits.

Eligible borrowers often use assets to pay a deposit or earnest money in connection with the purchase of the house. A lender should be allowed to provide cash at closing to reimburse an eligible household for these deposits. Additionally, the borrower may be required to set aside cash at closing to make required repairs that will take place post closing. In those instances, a borrower should be able to receive cash at closing to make needed repairs. The proposal would place a financial burden on eligible

households and be difficult for member institutions and escrow agents to implement and control.

#### Income Eligibility – Temporary Condition

The proposal would clarify that a household's income for eligibility purposes would be determined at the time the member and the Bank accept the household into the homeownership set aside program. The preamble to the regulation amplifies that it is the Finance Board's expectation that the Banks, through implementing policies, will exclude individuals whose low- or moderate-income status is "temporary," such as students, who have a reasonable prospect for a substantial increase in income upon entering the workforce. ACB opposes the directive to exclude persons whose eligibility may be temporary.

It cannot be assumed that a college student will be above the income eligibility requirements soon after graduation. The proposal penalizes consumers for their potential to improve their economic circumstances at some point in the future. The Finance Board should consider the case of someone who has lived his or her life in poverty and could benefit from the housing subsidy provided by the AHP, but would be penalized under the proposal simply because the person has enrolled in college.

#### Monitoring Agreements

Proposed section 951.9(5)(ii) would require a member institution to maintain a separate monitoring agreement with a project sponsor and project owner. ACB supports the current format, where there is a monitoring agreement, devised by the Bank, and executed by all parties (Bank, member and sponsor). The current agreements adequately outline the role and responsibilities of the Bank, member and sponsor. No tangible benefit could be derived from requiring member institutions to develop additional, separate agreements. The requirement for separate agreements can only increase the cost and administrative burden for participating in the program.

#### Flexibility in Scoring to Meet the Needs of All Communities in a District

The Banks serve diverse communities with needs for affordable housing funds. Each Bank's AHP should be able to target the most critical affordable housing needs in its district. However, the current and proposed requirements for scoring competing applications for AHP grants leads to a rigidity that may prevent a Bank from serving the affordable housing needs of all communities in its district. The Finance Board should modify the AHP regulation to provide greater flexibility to the Banks in adopting scoring criteria that are tailored to the needs in their districts. Such flexibility would allow a Bank to serve the needs of the largest urban areas as well as the smallest rural communities within its district. Additionally, the regulation should provide that when setting AHP scoring criteria, the Banks should consult with the member institutions and take their views into account.

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ACB appreciates the opportunity to comment on this matter. Please contact the undersigned at 202 857-3132 or [ijones@acbankers.org](mailto:ijones@acbankers.org), if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Ike Jones". The signature is written in a cursive style with a large, stylized "I" and "J".

Ike Jones  
Vice President and Legislative Counsel