



Raymond R. Christman
President and Chief Executive Officer

April 24, 2006

Federal Housing Finance Board
1625 Eye Street, N.W.
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:

On December 28, 2005, the Federal Housing Finance Board ("Finance Board") published a proposal to amend the Affordable Housing Program ("AHP") regulations applicable to the Federal Home Loan Banks (the "FHLBanks"). This letter sets forth the comments of the Federal Home Loan Bank of Atlanta (the "Bank") with respect to that proposal.

The Bank supports many of the proposed changes and considers them substantial improvements. We particularly support the approach of the proposed amendments to consolidate the existing regulatory provisions governing the competitive program and the set aside program -- now located in many different sections of the current regulation -- into a single separate section for each program. This improved organization of the regulation will help the FHLBanks, members, and sponsors more easily understand the various rights and responsibilities that accompany participation in AHP. In addition, the proposed regulations correctly recognize that over the years the FHLBanks have acquired greater experience and expertise in administering AHP, and provide each FHLBank with appropriate additional discretion to tailor its program to meet the policy goals outlined by the Finance Board. The proposed regulations generally provide a greater focus on outcomes rather than dictating precise procedures, which is commendable.

It is in the context of what we believe to be our shared goals -- increasing the clarity of the AHP regulation and substituting where appropriate individual FHLBank responsibility for prescriptive system-wide rules -- that the Bank submits the comments, suggestions, and questions below.

1. Definition of "AHP Project" (§951.1). The Bank understands that the defined term "AHP project" now excludes households receiving homeownership set-aside grants. The proposed rule appears to create a discrepancy between the definition and the use of "AHP project" in §951.9(c). Given the new definition of "AHP project," the subheading of § 951.9(c) -- "Application to existing AHP projects" -- seems to imply that that section would not apply to retention agreements for homeownership set-aside projects. The Bank seeks clarification that all the provisions in §951.9(c) apply equally to homeownership set-aside projects.

2. Definition of “Owner-Occupied Project” and Treatment of Mobile Homes (§951.1). The proposed regulation revises the definition of “owner-occupied project” to add language specifying that manufactured housing may qualify as an owner-occupied project. In Regulatory Interpretation 2000-RI-4 And No-Action Position (May 26, 2000), the Finance Board provided guidance specifying when a mobile home park project is to be considered owner-occupied and when it is deemed rental. The Bank seeks clarification whether the rules set forth in that regulatory interpretation survive the proposed rule. Specifically, the Bank recommends that the regulation should specify that projects in which AHP subsidy is used to finance the acquisition or construction of rental mobile home units and/or rental pads underlying the units qualify as “rental projects” under the proposed regulation. The Bank also recommends that if the AHP subsidy is used only to finance the rental pads, with the tenants providing their own units, the project would qualify as “rental.” In addition, the Bank recommends that the regulation clarify how retention documents should be handled for owner-occupied mobile home units that are not attached to real estate since such units would not be eligible for a deed restriction. Sales contracts, while legally enforceable, would not ensure that the retention provisions are carried out.
3. Definition of “Sponsor” (§951.1). The Bank supports the revised definition of “sponsor,” which would give each FHLBank the authority and obligation to define what it means for an entity to have an ownership stake or integral involvement in a project sufficient to qualify as the sponsor of that project. The Bank agrees with the Finance Board that this will permit individual FHLBanks to discourage gaming of non-profit sponsor scoring for rental projects, in which projects receive points for the involvement of entities having no more than a nominal stake in the project.
4. Calculation of Annual AHP Contribution (§951.2). The Bank understands that the proposed rule changes how an individual FHLBank’s annual contribution is calculated. Under the current rule, in the event that the aggregate of all contributions to be made by all of the FHLBanks under the usual formula (i.e., 10% of a FHLBank’s net earnings for the year) is not \$100 million or more, then the collective contribution is set at \$100 million, and all FHLBanks contribute a pro rata share of that amount based on relative earnings among the FHLBanks for that year. The proposed rule adds a proviso to the pro rata sharing formula to prevent any FHLBank from contributing more than the total amount of the FHLBank’s annual earnings. In the event this new provision is invoked, it would appear that the other FHLBanks would be required to contribute more than their pro rata share. The Bank suggests that the proposed rule should allow for these other FHLBanks to “recover” the excess contribution from the undercontributing FHLBank in future years. The Bank asks that the Finance Board clarify whether an FHLBank that is required to overpay in a given year will have a carry-forward credit against future required AHP contributions.
5. AHP Implementation Plan - Retention Period for Owner-Occupied Rehabilitation Projects (§951.3). The proposed rule provides that the five-year retention period for rehabilitation of owner-occupied units, where there is no closing, commences upon completion of the rehabilitation work. The existing regulation refers only to five

years from “closing” for all owner-occupied projects. In the Bank’s experience, sponsors of such projects typically ask the homeowner to sign the retention document before the rehabilitation work commences, as often it can be difficult to obtain that signature after the homeowner has received the benefit of the work. The document is then recorded after the work is completed. Under the revised regulation, this practice would not be feasible, as the sponsor cannot know the precise date of completion before the work commences. The Bank proposes that each FHLBank should have the flexibility to define in its Implementation Plan “completion” for purposes of determining the commencement of the retention period for owner-occupied rehabilitation projects. If such change is incorporated into the final rule, the Bank intends to define “completion” for owner-occupied rehabilitation projects as the date the homeowner signs the retention agreement. In the Bank’s experience, there typically is no more than 30 days between the date of the retention agreement and the date of actual completion of the work.

6. Advisory Council (§951.4). The Bank supports the Finance Board’s changes relating to the Advisory Council in that FHLBanks would be given the flexibility to appoint Advisory Council members to terms shorter than three years and the annual deadline for the submission by an Advisory Council of its affordable housing and community lending analysis would be extended from March 1 to May 1.
7. Time Limits for Use of Subsidy (§951.5(b)(6)). The proposed rule retains the eligibility requirement that competitive AHP subsidy, at the time of application, 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. However, given that the current regulation and the proposed rule give the FHLBanks the discretion in their AHP Implementation Plan to set a different time limit for use of AHP subsidies -- one that may be shorter or longer than 12 months -- the regulation should only require that, at application, the project be likely to comply with the time limit established by the FHLBank pursuant to §§951.3(a)(2) and 951.5(g)(2).
8. Need for Subsidy (§951.5(c)(2)). The proposed rule, at §951.5(c)(2), states that a competitive application project’s cash uses of funds must equal its cash sources of funds, and appears to eliminate the former requirement that the estimated sources and uses of funds analysis include estimates of the market value of in-kind donations and volunteer professional labor or services. Under the current regulation, an application must demonstrate need based on the project’s estimated total sources and uses of funds. According to the preamble of the proposed regulation, this change is intended to provide the FHLBanks with more opportunities to assist smaller projects and projects with higher production or operating costs. The preamble states that experience since 1998 indicates that estimates of non-cash costs generally do not affect the amount of subsidy needed for a project. Therefore the Bank believes that it should not matter whether non-cash sources and uses are included in project development budgets, and the final regulation should not limit analysis only to cash sources and uses.

In addition, the preamble states that the proposed regulation supersedes Regulatory Interpretation RI-1999-03, which required the FHLBanks to calculate need for

subsidy using a formula that takes into account such in-kind and donated labor and materials. The Bank raises concerns that if the proposed regulation does supersede RI-1999-03 it may prove problematic for sponsors that obtain in-kind donations and volunteer professional labor and services. For example, when project sponsors prepare budgets for Low Income Housing Tax Credits or Community Development Block Grants, they must show line items for in-kind donations and volunteer professional labor. The Bank interprets the proposed rule to require project sponsors to prepare a separate development budget for AHP applications that only shows cash sources and uses, causing potential for confusion, opportunities for project sponsors to “game” the system, and onerous reporting burdens for project sponsors. Moreover, the proposed rule does not specify whether the face value of promissory notes should be used to calculate estimated cash sources of funds. In RI-1999-03, the Finance Board recognized that in some applications the promissory note between the sponsor and the buyer was considered as a source of funds at face value, which would tend to overstate the sources, as the promissory notes are generally at little or no interest cost to the buyer. In other cases, the promissory note was excluded from the analysis altogether, which tends to understate the sources of funds. The Bank believes that if the face value of promissory notes is used, the proposed rule may cause the majority of applications from the very project sponsors the proposed rule intends to benefit, such as Habitat for Humanity, to be rejected since the sponsor mortgage frequently exceeds the cash costs associated with the unit. Therefore, the Bank seeks guidance in determining the appropriate amount of cash sources under the proposed rule. Finally, the Bank suggests that an alternative to establishing a separate “need for subsidy” requirement would be to rely on the Bank’s feasibility guidelines as the basis for determining eligibility for subsidy. The Bank believes that if the sources equal the uses and the Bank’s feasibility guidelines are met, then the AHP funds would be an essential part of the project financing.

9. Revolving Loan Funds and Loan Pools (§951.5(c)(13) and (14)). The proposed rule gives each FHLBank the discretion to permit revolving loan funds and loan pools to apply for competitive AHP funds. However, it is not clear from the text of the rule how a Bank would score a revolving loan fund or loan pool application, as each structure contemplates multiple projects, which may not be identified at the time of application, ultimately receiving AHP funds.

While the Bank supports innovation in AHP and recognizes that offering loan fund and loan pool structures is elective, the Bank has several concerns with the provisions in the proposed regulation. First, the AHP scoring process demands that each project be comparable on an individual basis with the other projects, based on each of the scoring criteria set forth in the regulation. However, both revolving loan funds and loan pools contemplate the use of a single grant of AHP subsidy to benefit multiple projects (i.e., the multiple recipients of loans from the fund and the multiple loans purchased to form the loan pool). With respect to revolving loan funds, the proposed rule indicates that the benefited projects need not even be identified by the fund at the outset. The Bank believes that the proposed regulation would benefit by providing guidance as to how, under the proposed regulation’s scoring criteria, an FHLBank should score a single application that covers multiple projects (which may

or may not be identified at the time of application). The Bank also believes monitoring revolving loan funds or loan pools would prove to be extremely difficult. The Bank suggests that the concerns about scoring and monitoring revolving loan funds and loan pools may be partially alleviated by creating the loan fund and loan pool structures as set-aside programs that are separate from the competitive application program. Such set-aside programs could then have their own scoring criteria defined by the FHLBanks in their Implementation Plans, allowing the FHLBanks to compare like projects, and specify monitoring procedures that are reasonable for loan funds or pools.

10. Threshold Criteria for Project Sponsors and Projects. The Bank recommends that the final regulation allow for FHLBanks to elect to include in their Implementation Plans certain minimum threshold criteria for all projects that receive AHP funds through either the competitive application program or a set-aside program in order to encourage project owners and project sponsors to promote “green building” initiatives. For example, an Implementation Plan may require the use of energy efficient appliances or adherence to specified green building construction guidelines.
11. Scoring (§951.5(d)). The Bank believes the proposed regulation makes two significant modifications to the scoring system under §951.5. First, the scoring for projects located in federal disaster areas under the first district priority would be amended to include allocation of those points to projects that provide housing outside of those disaster areas to households displaced due to a disaster. The Bank believes that further clarification to narrow the basis for disaster area priority would benefit the final regulation. For example, the Bank suggests that the proposed regulation should specify that only FEMA “major disaster” declarations should be eligible for AHP assistance, and that scoring preference should be granted only for housing provided in counties qualifying for “Individual Assistance” as part of such declaration, or housing for families dislocated from such counties. Second, it appears that an FHLBank would no longer be authorized to provide a scoring preference to projects located inside that FHLBank’s district. The Bank would like to confirm that it may grant scoring preference for in-district disasters, or in-district projects serving evacuees of a disaster. With respect to projects serving evacuees, the Bank recognizes that establishing eligibility requirements and monitoring long-term compliance for rental projects serving evacuees would present difficulties and therefore also asks that the final regulation include provisions waiving income eligibility requirements for evacuees and the requirement for long-term monitoring of projects specifically serving evacuees as long as the initial occupants are evacuees. Alternatively, the Bank suggests that income eligibility requirements be waived for evacuees, but other or subsequent tenants of rental projects be required to meet AHP income targeting established in the application during the remainder of the retention period. The Bank also suggests that, consistent with past Finance Board actions, the regulation specifically waive the income eligibility requirements for a stipulated period of time for any existing AHP rental projects that provide housing to evacuees. Alternatively, the Bank suggests that to the extent an FHLBank is providing housing assistance for major disaster evacuees, the needs of such evacuees might be better met through an FHLBank set-aside program that provides funds to evacuees desiring to purchase new homes following a disaster. Finally, the Bank seeks clarification whether it may

choose more than one “housing need” as a basis for awarding Second District Priority points.

12. Scoring – Promotion of Empowerment (§951.5(d)(5)(v)). The Bank believes that “promotion of empowerment,” properly understood, should not be as narrow a concept as that set forth in Regulatory Interpretation 2005-RI-03. Any service or program that contributes to the tenants’ or homeowners’ independence and ability to live in a more self-sufficient manner should be considered an empowerment activity eligible for points in this category. Specifically, the Bank desires to have the flexibility to include any youth service or program, health care service or program, meal program or transportation program that either directly or indirectly benefits the AHP project and assists residents. The Bank believes that these types of programs and services provide valuable opportunities to residents to better their daily lives, even if not tied directly to economic opportunities. For example, a transportation service that serves a senior living facility and allows the residents to visit the grocery store and drug store to purchase their own food and medications should receive points under this scoring criterion, even though such transportation service is not used to move such residents toward better economic opportunities.
13. Scoring - District Priorities (§951.5(d)(5)(vi)). The Bank asks that the Finance Board consider providing the FHLBanks more flexibility in establishing District Priorities and scoring requirements, rather than having to follow the prescribed First District and Second District Priority mechanism in the current AHP regulation. Although the prescribed First District and Second District Priorities served a valid purpose at the outset of AHP, the FHLBanks now have over 15 years of experience with the competitive application program and greater insight into the affordable housing needs of each FHLBank’s district. The Bank proposes that the now-separate First and Second District Priorities should be consolidated, and each FHLBank should be permitted to award the consolidated points to projects on the basis of priority criteria chosen by each FHLBank in its Implementation Plan.
14. Set Aside Program Allocation (§951.6). The proposed regulation makes certain modifications to the rules for determining how much of an FHLBank’s overall AHP contribution may be allocated to its set aside program. Those modifications include (1) removing an FHLBank’s ability to accelerate or “borrow” a portion of a future year’s set aside allocation for use in the current year; (2) ceasing the inflation indexing of the dollar cap alternative available to an FHLBank in determining its set aside program allocation; and (3) consolidating the now-separate program authorities for general (i.e., not first-time homebuyer focused) set aside programs and first-time homebuyer set aside programs. The Bank endorses these changes and believes such changes offer greater flexibility should it wish to make revisions to its AHP in the future.
15. First-Time Homebuyer Set-Aside Program §951.6(c). Because the proposed regulation specifies that units in an FHLBank’s set-aside program are not included in the definition of “AHP project,” (see comment no. 1 above), the proposed regulation’s prohibition of any in-district AHP project preference would appear on its face to apply only to the competitive application program. The Bank’s current

practice is to restrict its First-time Homebuyer Program only to in-district units. The Bank would like to confirm that it may continue to restrict its First-time Homebuyer Program to only in-district units.

The Bank notes that minimum eligibility requirements for participants in a homeownership set-aside program, as set forth in §951.6(c)(2), are to be determined at the time the participant is “enrolled in the program.” The Bank’s First-time Homebuyer Program does not “enroll” families; rather, eligibility is determined by a member institution prior to requesting a disbursement of set-aside funding for down payment and closing cost assistance to be used in concert with closing a permanent mortgage loan. Therefore, the Bank requests the flexibility in its Implementation Plan to provide the timing for determination of eligibility requirements, which time shall be reasonably in advance of the submission of a request for set-aside funding.

Finally, with respect to the “financial incentives” provision at §951.6(c)(6), the Bank notes that the language of the proposed regulation does not seem to match the Finance Board’s intent as stated in the preamble, and proposes the following language to clarify that members, not FHLBanks, are required to provide financial incentives for participation in homeownership set-aside programs:

(6) Member financial incentives. The Bank shall require that members provide financial or other incentives to the participating household in connection with the provision of the AHP direct subsidy.

16. Competitive Program -- Initial Monitoring (§951.7(a)(1)). The Bank supports the changes to the initial monitoring regime that allow each FHLBank to adopt its own initial monitoring policies and procedures, so long as they meet certain goals. The Bank believes this will likely result in streamlined initial monitoring procedures. In addition, the Bank supports no longer being required to monitor the habitability of AHP rental projects.

The Bank suggests that the on-site review requirement be removed from the initial monitoring provisions, because this requirement was performed in conjunction with the habitability requirement, which is being eliminated from the proposed regulation. In addition, the Bank requests that each FHLBank be provided the discretion to (a) determine a reasonable risk-based sampling plan for conducting initial monitoring (rather than being required to conduct initial monitoring for each project), and (b) set reasonable standards for what constitutes project completion as part of each FHLBank’s Implementation Plan.

17. Long Term Monitoring (§951.7) – Reliance on Housing Agencies to Monitor Low Income Housing Tax Credit Projects. Consistent with initial monitoring, the Bank endorses the proposed changes to the long term monitoring regime, which would allow each FHLBank to substitute its own long-term monitoring policies for the existing prescriptive rules. The Bank believes this should result in a less burdensome monitoring obligation for AHP participants. Moreover, with respect to projects receiving federal Low Income Housing Tax Credits, the Bank understands that the proposed rule would make it much easier for FHLBanks to rely on monitoring by the

governmental agency tasked with administering the tax credits, by removing the requirement that FHLBanks negotiate agreements with such agencies to obtain their commitment to monitor on the FHLBanks' behalf. Reliance on these governmental entities would substantially lessen FHLBanks' long-term monitoring workload and avoid subjecting those project sponsors to overlapping monitoring regimes.

However, it is not clear to the Bank how the proposed regulation defines "reliance" on housing agencies to perform monitoring of Low Income Housing Tax Credit projects. The Bank understands that so long as the requirements for receipt of Low Income Housing Tax Credits and AHP funds are substantively equivalent, the Bank is not required to receive or review reports, or take any additional steps beyond periodically confirming that such requirements remain substantively equivalent going forward. To that end, the Bank questions whether §951.7(a)(ii)(B)(3) (*"The entity agrees to provide reports to the Bank on the project's incomes and rents for the full 15-year AHP retention period"*) and §951.7(a)(ii)(B)(4) (*"The Bank reviews the reports from the monitoring entity to confirm that they comply with the Bank's monitoring policies and procedures"*) are applicable to §951.7(a)(ii)(B)(1) (*"Tax Credit Monitoring"*). If such sections are not applicable to Tax Credit Monitoring, the Bank believes these sections should be properly numbered as §951.7(a)(ii)(B)(2)(iii) and §951.7(a)(ii)(B)(2)(iv). In addition, with respect to the proviso that reliance on tax credit monitoring should continue only so long as the compliance profiles of the two programs remains substantively equivalent, we believe that this determination would be made most efficiently by the Finance Board, rather than requiring all 12 FHLBanks to duplicate the effort required to monitor changes in the LIHTC program. Such a change also would prevent individual FHLBanks from adopting conflicting positions on whether reliance on tax credit monitoring remains permissible.

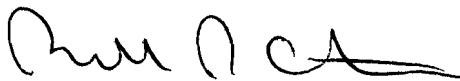
18. Competitive Program -- Long Term Monitoring (§951.7(a)(2)). Currently, the AHP regulation requires long-term monitoring to commence in the second year after project completion -- i.e., only one year after the initial monitoring period ends. The Bank believes this period between initial monitoring and long-term monitoring is too short, and suggests that long-term monitoring should not commence until the third year following project completion.
19. Remedial Action for Noncompliance (§951.8). Under both the existing regulation and the proposed amendment, a member would be released from liability to an FHLBank for repayment of misused AHP subsidy if it is unable to recapture the subsidy from the noncomplying sponsor/owner after the exercise of "reasonable collection efforts." The Bank is concerned that a member may escape recapture liability if the member improperly documents the transaction (e.g., by not getting a retention document signed and recorded) but then aggressively asserts its deficient legal rights against the sponsor/owner in the collection phase, to no avail. Based on the Bank's interpretation of Regulatory Interpretation 2003-RI-01, the Bank believes that a member should not escape recapture liability if its collection efforts are affected adversely by the member's failure to follow the retention agreement requirements. The Bank asks the Finance Board to consider expressly incorporating in the final regulation the Bank's interpretation of "reasonable collection efforts" -- that a

member's efforts will not be deemed reasonable if the member failed to document the transaction correctly in the first place.

20. AHP Agreement – Monitoring (§951.9). The existing regulation requires an FHLBank's AHP agreement with a member to subject the member to the monitoring scheme set forth in the regulation. The proposed rule amends this language to provide that the agreement must bind the member to the FHLBank's monitoring policies and procedures to be adopted in accordance with proposed §951.7, and further stipulates that those policies and procedures must be "set forth in the agreement." (§951.7). Requiring that FHLBanks restate monitoring policies and procedures in full will be operationally cumbersome, because each time an FHLBank adopts new monitoring policies and procedures, the FHLBank would be required to obtain amendments to all prior AHP agreements. The Bank believes that its current practice of incorporating monitoring requirements, as such requirements may change from time to time, by reference in its AHP agreement protects it equally, and provides for greater consistency in its supervision and oversight of its AHP, by allowing the Bank to effectuate changes simply by amending its Implementation Plan without having to amend existing AHP agreements. Additionally, the Bank recommends that the new provision in the proposed rule allowing relocation of households to other properties (951.9(a)(7)(iii)(B)) be removed. Such a provision would be exceedingly difficult to track and monitor as the new property is not likely to have the same features as those scored and approved in the original application. We believe that such an accommodation could be part of a workout plan for noncompliant projects, but should not be included as an allowed provision for all rental projects.

We appreciate the Finance Board's consideration of our comments and concerns. Should you have any questions with respect to the foregoing, please do not hesitate to contact Greg Mayfield, General Counsel, at (404) 888-5319.

Sincerely,



Raymond R. Christman