



Number: 2008-01
Date: January 15, 2008

FEDERAL HOUSING FINANCE BOARD

Waiver of AHP Regulation to Permit Refinancing of Subprime Mortgage Loans

WHEREAS, section 10(j)(1) of the Federal Home Loan Bank Act (Bank Act) (12 U.S.C. § 1430(j)(1)) requires each Federal Home Loan Bank (Bank) to establish an Affordable Housing Program (AHP) pursuant to Federal Housing Finance Board (Finance Board) regulations, which are codified at 12 C.F.R. part 951;

WHEREAS, section 10(j)(2) of the Bank Act (12 U.S.C. § 1430(j)(2)) provides that the Finance Board's regulations shall permit Bank members to use AHP subsidies to: (A) finance homeownership by families with incomes at or below 80-percent of the median income for the area; or (B) finance the purchase, construction, or rehabilitation of rental housing, at least 20 percent of the units of which will be occupied by and affordable for very low-income households for the remaining useful life of such housing or the mortgage term;

WHEREAS, section 10(j)(9) of the Bank Act (12 U.S.C. § 1430(j)(9)) requires the Finance Board to adopt regulations implementing the AHP provisions of the Bank Act, and provides that those regulations shall specify the activities that are eligible to receive AHP subsidies;

WHEREAS, section 951.6(c)(4) of the Finance Board's regulations (12 C.F.R. § 951.6(c)(4)) authorizes a Bank to disburse AHP direct subsidies under the homeownership set-aside program to pay for down payment, closing costs, counseling, or rehabilitation assistance in connection with a household's purchase or rehabilitation of an owner-occupied unit, to be used as the household's primary residence, but does not permit the subsidies to be used to refinance or restructure an existing residential mortgage loan on such a property;

WHEREAS, the Federal Home Loan Bank of San Francisco (San Francisco Bank), by a submission dated November 21, 2007, as amended on November 29 and December 24, 2007, has requested that the Finance Board waive certain provisions of the AHP regulation so that the Bank may establish a program under which it would provide AHP grant subsidy on a non-competitive basis to refinance or restructure low- or moderate-income borrowers' existing non-traditional adjustable rate mortgage loans that are held by San Francisco Bank members or their affiliates. All such loans either must have become unaffordable to those households or be projected to become unaffordable because of increased payments resulting from adjustments in the interest rates or loan principal that occur subsequent to origination;

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WHEREAS, the San Francisco Bank's proposal would permit members to use AHP subsidy to: (i) reduce the principal balance of the existing mortgage loan to be no greater than 97 percent of the property's appraised value; (ii) buy down the interest rate of the new fixed-rate mortgage loan so that the household's monthly payments for interest, principal, taxes, insurance, and fees are no greater than 45 percent of income; (iii) pay other reasonable third-party, mortgage-related restructuring costs of the refinanced or modified loan; and (iv) pay the borrowers' homeownership or credit counseling costs in connection with such loan refinancing or modification;

WHEREAS, section 907.2(a) of the Finance Board's regulations (12 C.F.R. § 907.2(a)) authorizes the Board of Directors to waive any provision, restriction, or requirement of its regulations not otherwise required by law, if doing so is not inconsistent with the law and would not adversely affect any substantial existing rights, provided that the Board determines either that application of the particular provision would adversely affect achievement of the purposes of the Bank Act or that good cause exists;

WHEREAS, Office of General Counsel staff has reviewed the San Francisco Bank's waiver request and has determined that the AHP regulatory provisions that are the subject of the waiver are not otherwise required by law and a waiver, if approved, would neither be inconsistent with the law nor adversely affect any substantial existing rights; and

WHEREAS, Office of Supervision staff has reviewed the San Francisco Bank's waiver request and recommends approval, subject to certain conditions, because the program would allow the Bank to assist low- or moderate income borrowers in its district who face the prospect of default and foreclosure on their mortgage loans as a result of adjustments to the interest rates or principal of their existing mortgage loans, which will make their mortgage loans unaffordable.

NOW, THEREFORE, IT IS RESOLVED that, the Board of Directors finds good cause to waive, and hereby waives:

- (1) Section 951.6(c)(4) (12 C.F.R. § 951.6(c)(4)), to permit the San Francisco Bank to use the AHP subsidy to: (i) reduce the principal balance of the existing mortgage loan to be no greater than 97 percent of the property's appraised value; (ii) buy down the interest rate of the new fixed-rate mortgage loan so that the household's monthly payments for interest, principal, taxes, insurance, and fees are no greater than 45 percent of income; (iii) pay other reasonable third-party, mortgage-related restructuring costs of the refinanced or modified loan; and (iv) pay the borrowers' homeownership or credit counseling costs in connection with such loan refinancing/modification; and
- (2) Section 951.6(c)(3) (12 C.F.R. § 951.6(c)(3)), to permit the San Francisco Bank to use AHP subsidy in excess of the otherwise applicable limit of \$15,000 per household, provided the amount of such subsidy does not exceed \$25,000 per household.

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IT IS FURTHER RESOLVED that these waivers are subject to the following conditions:

- Any member receiving an AHP allocation under this program must contribute two-thirds of the restructuring costs for the benefit of the homeowner in order to utilize AHP subsidy;
- In administering its program to use AHP subsidy to support the refinancing or restructuring of eligible adjustable-rate non-traditional mortgage loans, the San Francisco Bank may not make any material changes to the elements of its program, as described in its submissions to the Finance Board;
- The waiver of sections 951.6(c)(4) and 951.6(c)(3) expire on December 31, 2009, and the San Francisco Bank may not commit AHP subsidy to households under the program subsequent to that date;
- Any mortgage loan that is to be refinanced or restructured using AHP subsidy may not have an outstanding principal balance in excess of the current Fannie Mac/Freddie Mac conforming loan limit of \$417,000 prior to the refinancing or restructuring;
- In determining the need for AHP subsidy for an interest-rate buydown, the San Francisco Bank must calculate the interest-rate subsidy as the difference between: (i) the Freddie Mac Primary Mortgage Market Survey weekly national average 30-year fixed-rate mortgage rate; and (ii) the lower, fixed rate necessary to ensure that total housing costs (which include principal and interest, mortgage insurance premiums, property taxes, hazard insurance, flood insurance, and homeowner or condominium association dues) is less than or equal to 45 percent of income for the household;
- The San Francisco Bank must ensure that any member using AHP subsidy to refinance or restructure a mortgage loan does not impose on the borrower any foreclosure expenses that the member incurred prior to the date of the AHP-assisted loan refinancing or restructuring, or count such foreclosure expenses as eligible member costs;
- The San Francisco Bank must require any member using AHP subsidy to refinance or restructure a mortgage loan to repay to the Bank a *pro rata* share of the AHP subsidy if the member, any affiliate of the member, or any other entity forecloses on an AHP-assisted refinanced or restructured loan or accepts a deed in lieu of foreclosure, within five years of the refinancing or restructuring;
- The San Francisco Bank must require all participating members to inform all customers with eligible mortgages of the availability of AHP subsidy to assist in the refinancing or restructuring of their mortgage loans and to make assistance to eligible households available on a first-come, first-served basis;
- The San Francisco Bank must provide all members equitable access to AHP subsidy by establishing a period of time during which all members may apply and after which the Bank will determine the amount of AHP subsidy it will reserve for each participating member based on the number and amount of member requests, a member's capacity to perform under the terms of the program, and the amount of AHP subsidy available;

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- The San Francisco Bank must establish operating policies and procedures for the administration of the program, including how members will reserve AHP subsidy, that are satisfactory to the Director of the Office of Supervision prior to disbursing any AHP subsidy under this program;
- The San Francisco Bank must comply with all other requirements of 12 C.F.R. part 951 including, but not limited to, the first-time homebuyers one-third homeownership set-aside allocation requirement and the homeownership set-aside program monitoring requirements; The San Francisco Bank must amend its AHP Implementation Plan to incorporate the policies and criteria approved in this Resolution, including specifying all eligible costs that a member may count towards the two-thirds loan restructuring costs the member may absorb;
- The San Francisco Bank may not make individual exceptions to the applicability of the policies and criteria set forth in its AHP Implementation Plan, including its requirements for household eligibility, financing eligibility, eligible member costs, and calculation of the AHP subsidy; and

The board of directors of the San Francisco Bank must concur in the terms and conditions of this Resolution, including revised or added program requirements that were not in the Bank's original submission approved the Bank's board of directors, before the Bank may implement the program.

By the Board of Directors
of the Federal Housing Finance Board



Ronald A. Rosenfeld
Chairman