



REGULATORY INTERPRETATION 1999-RI-16 AND NO-ACTION POSITION

Date: October 8, 1999

Subject: Treatment of Retention Periods for Affordable Housing Program Lease-Purchase Projects

Request Summary/Background:

A number of Federal Home Loan Banks (FHLBanks) have asked how the Affordable Housing Program (AHP) regulatory retention periods apply to AHP-funded projects involving lease-purchase units. Specifically, questions have arisen as to what the appropriate retention period is for these types of projects, and whether the retention period begins at the time of the household's date of occupancy of the unit as a tenant or at the time of purchase of the unit by the tenant or other eligible household.

Analysis:

AHP Subsidy Used for Construction or Rehabilitation of Lease-Purchase Units

The retention issue has arisen in the context of AHP lease-purchase projects where the AHP subsidy is used for the construction or rehabilitation of units that initially are leased to eligible households for a limited period of time and subsequently sold to such households or other eligible households. Because the AHP subsidy is being used at the outset to provide rental units to eligible households, such projects at the outset should be treated as rental, rather than owner-occupied, projects subject to the retention, eligibility, scoring and other requirements specifically applicable to rental projects under the AHP regulation. *See* 12 C.F.R. §§ 960.1 (definition of “retention period” for rental project), 960.5(b) and 960.6(b)(4). Thus, for example, at least 20 percent of the units in the project at the outset must be occupied by and affordable for very low-income households (20 percent requirement), *see* 12 C.F.R. §§ 960.1 (definition of “rental project”) and 960.5(b)(1), and the applicable retention period is 15 years from the date of project completion, *see* 12 C.F.R. §§ 960.1 (definition of “retention period” for rental project), 960.13(c)(5) and 960.13(d)(2).

However, once the unit is sold to an eligible occupying tenant or other eligible household, the unit should be treated as an owner-occupied unit with a retention period of five years starting from the date of project completion. *See* 12 C.F.R. §§ 960.1 (definition of “retention period” for owner-occupied project), 960.13(c)(4) and 960.13(d)(1). The retention agreement should provide for this situation accordingly.¹ The period during which the unit was leased to an eligible household prior to being sold

¹ The AHP regulation provides that the retention agreement shall require that the FHLBank or its designee be given notice of any sale or refinancing of a rental “project” occurring prior to the end of the retention period. *See* 12 C.F.R. §§ 960.13(c)(5)(ii) and 960.13(d)(2)(ii). The term “project” in these sections may be interpreted to include any units within the project. Thus, under the regulation, the FHLBank should be given notice of the sale of any rental units occurring during

(whether sold to such occupying tenant or some other eligible purchaser) shall be credited toward meeting the five-year retention period, because the AHP subsidy was providing a benefit during this period. For example, if a tenant leases a unit for two years and the unit then is sold to the tenant or some other eligible household, the unit would be treated upon sale as an owner-occupied unit with a retention period of five years from the date of project completion. Since the unit already was leased to an eligible household for two years starting from the date of project completion, those two years would be credited toward meeting the five-year retention period, leaving a balance of three years remaining on the retention period. At the time of sale of the unit, no rescoring or modification of the project application by the FHLBank would be necessary.

Any units not sold would continue to be treated as rental units subject to the 15-year retention period.

AHP Subsidy Used for Downpayment and/or Closing Cost Assistance for Lease-Purchase Units

The retention issue also has arisen in the context of AHP lease-purchase projects where the units initially are leased for a limited period of time to eligible households and subsequently sold to such households or other eligible households using the AHP subsidy for downpayment or closing cost assistance. Even though the units initially are leased to eligible households, the AHP subsidy is not being used at the outset to provide rental units to eligible households, but rather is being used at a later date to assist eligible households in purchasing the units. Therefore, such projects at the outset should be treated as owner-occupied, rather than rental, projects subject to the retention, eligibility, scoring and other requirements specifically applicable to owner-occupied projects under the AHP regulation. *See* 12 C.F.R. §§ 960.1 (definition of “retention period” for owner-occupied projects), 960.5(b) and 960.6(b)(4). Thus, for example, at project completion, the units must be occupied by very low- or low- or moderate-income households (the 20 percent requirement for rental projects would not apply), *see* 12 C.F.R. §§ 960.1 (definition of “owner-occupied project”) and 960.5(b)(1), and the retention period is five years from the date of purchase of the unit (closing), *see* 12 C.F.R. §§ 960.1 (definition of “retention period” for owner-occupied project), 960.13(c)(4) and 960.13(d)(1). The period during which the unit was leased to an eligible household prior to being sold may not be credited toward meeting the five-year retention period, because the AHP subsidy was not providing any benefit during this period.

No-Action Position:

Finance Board staff will not recommend supervisory or other action to the Board of Directors of the Finance Board for any AHP projects approved prior to January 1, 2000 that are not in compliance with the AHP regulatory retention period requirements as interpreted by this Regulatory Interpretation.

If you have any questions, please contact Janet M. Fronckowiak, Acting Deputy Director, Program Assistance Division, at (202) 408-2575.

A Regulatory Interpretation applies only to the particular transaction or activity proposed by the requestor, may be relied upon only by the requestor, and is subject to modification or rescission by action of the Board of Directors of the Finance Board. 64 Fed. Reg. 30880 (June 9, 1999), *to be codified at* 12 C.F.R. part 903.

the applicable retention period. However, in order to eliminate any uncertainty in this regard, the FHLBanks should include specific language in their retention agreements providing that the FHLBank or its designee be given notice of any sale of rental units within the project occurring during the applicable retention period.