January 14, 1999

Vice President, Community Investment
Federal Home Loan Bank

NO-ACTION LETTER: Noncompliance With Section 960.5(b)(2)(ii)(B) of the Revised Affordable Housing Program Regulation (1999-NAL-01)

Dear Mr. :

This is in response to your July 7, 1998 and August 19, 1998 letters to Janet M. Fronckowiak of the Office of Policy, Research and Analysis, in which the Federal Home Loan Bank (FHLBank) requested a conditional waiver of the appraisal requirement in section 960.5(b)(2)(ii)(B) of the Federal Housing Finance Board's (Finance Board) revised Affordable Housing Program (AHP) regulation for the property involved in the [redacted] Project (Project). *See* 62 Fed. Reg. 41812, 41831 (Aug. 4, 1997) *(to be codified at* 12 C.F.R. § 960.5(b)(2)(ii)(B)). As discussed further below, given the special circumstances of this case, Finance Board staff will not take supervisory action against the FHLBank for noncompliance with section 960.5(b)(2)(ii)(B) of the AHP regulation in connection with the Project, on the condition that the FHLBank review a current appraisal obtained by the Project from a certified independent appraiser, and if such appraisal indicates a current "as-is" market value for the property of less than $350,000, the FHLBank will not fund the Project with AHP subsidy.[1]

Background

In its 1998 AHP first funding period, the FHLBank approved an application from [redacted] Bank, a member of the FHLBank, on behalf of [redacted] Corporation (Corporation), for an AHP direct subsidy in the amount of $192,000 for the Project, conditioned upon receiving Finance Board approval of a waiver of the regulatory appraisal requirement. Corporation will use the AHP subsidy to pay for costs of constructing a three-story, rental housing building with 48, 1-bedroom units targeted to elderly households with incomes at or below 60 percent of area median income. The total development cost for the Project is $ 3,940,520. Other funding sources for the Project include Low Income Housing Tax Credits, and loans from Corporation and Bank.

On August 27, 1997, Corporation executed a sales agreement with the property owner, which established a purchase price of $350,000 for the property involved in the Project. At the time of execution of the sales agreement, Corporation did not have a current independent appraisal for the property. The last appraisal for the property had been completed in February 1989. Corporation's determination of the sales price for the property was based on its own internal feasibility analysis of the Project. Bank currently holds two mortgages totaling $1,014,677 on the property, and the property owner is in default on the mortgages. Upon sale of the property, the proceeds will be applied to discharge part of the property owner's outstanding debt to Bank, with Bank taking a loss on the property.

[1] Finance Board staff has determined that, given the specific facts of this case, a No-Action Letter, rather than a Regulatory Waiver, is the appropriate response to the FHLBank request.

The FHLBank has requested approval by the Finance Board of a conditional waiver of the AHP regulatory appraisal requirement because, at the time of execution of the sales agreement (August 1997), Corporation did not contemplate using AHP funds, and the specific appraisal requirement in the revised AHP regulation was not in effect. The waiver would be conditioned on: (i) the Project's obtaining a current appraisal of the property from a certified independent appraiser indicating a current "as-is" market value of $350,000 or greater; and (ii) if such appraisal indicates a current "as-is" market value for the property of less than $350,000, the FHLBank would not fund the Project with AHP subsidy.

Analysis

The Finance Board's revised AHP regulation, effective January 1, 1998, requires that, in the case of property sold to a project upon which a member providing AHP subsidy holds a mortgage or lien, the purchase price of such property, as reflected in the project's development budget, may not exceed the market value of the property as of the date the purchase price for the property was agreed upon. The regulation further provides that the market value of such property is deemed to be the "as-is" or "rehabilitated" value of the property, whichever is appropriate, as reflected in an independent appraisal of the property performed within six months prior to the date the purchase price for the property was agreed upon.

Because the Project did not anticipate using AHP funds, it did not anticipate that it would have to show that the $350,000 purchase price for the property did not exceed the property's market value and, therefore, the Project did not obtain an independent appraisal of the property within six months prior to August 27, 1997. The FHLBank, thus, is unable to meet the regulatory requirement that it determine whether the purchase price of the property exceeded its market value based on a then-current appraisal of the property. The Finance Board concurs in the FHLBank proposal that, in the absence of such an appraisal in the special circumstances of this case, a reasonable alternative would be for the FHLBank to compare the August 27, 1997 purchase price with the current market value of the property, as evidenced by a current independent appraisal obtained by the Project. Therefore, Finance Board staff will not take supervisory action against the FHLBank for noncompliance with section 960.5(b)(2)(ii)(B) of the AHP regulation, on the condition that the FHLBank review a current appraisal obtained by the Project from a certified independent appraiser, and if such appraisal indicates a current "as-is" market value for the property of less than $350,000, the FHLBank will not fund the Project with AHP subsidy.

Please contact Richard Tucker, Deputy Director, Program Assistance Division, Office of Policy, Research and Analysis, at (202) 408-2848, if you have any questions.

Sincerely,

/s/ *William W. Ginsberg*
William W. Ginsberg
Managing Director

cc: Bruce A. Morrison William C. Apgar J. Timothy O'Neill
Deborah F. Silberman James L. Bothwell Mitchell Berns Richard Tucker