



Federal Housing Finance Board

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June 10, 1998

Re: Monitoring Requirements for Bank AHP Set-Aside Homeownership Programs

This is in response to your memorandum of April 28, 1998 to Janet Fronckowiak, regarding the monitoring requirements under the revised Affordable Housing Program (AHP) regulation for Federal Home Loan Bank (Bank) set-aside homeownership programs involving the purchase of owner-occupied units (set-aside homeownership programs) authorized under § 960.3(a)(1) of the AHP regulation. See 12 C.F.R § 960.3(a)(1). As further discussed below, we agree with your conclusion that the monitoring requirements set forth in § 960.10 of the AHP regulation do not apply to set-aside homeownership programs. See *id.* § 960.10. Set-aside homeownership programs are subject to the certification requirements set forth in § 960.8(b)(2) of the AHP regulation. See *id.* § 960.8(b)(2).¹

Section 960.8(b)(2) provides that, prior to disbursement of set-aside homeownership funds by a Bank to a member, the Bank shall require the member to certify, among other things, that the funds received from the Bank will be provided to a household meeting the eligibility requirements of § 960.5(a)(2). See *id.* § 960.8(b)(2)(i). Section 960.10 sets forth the initial monitoring requirements for project sponsors, members and Banks with respect to owner-occupied and rental projects. See *id.* § 960.10. The language of § 960.10 neither expressly applies to nor expressly exempts set-aside homeownership programs from the monitoring requirements of § 960.10. The specific reference to set-aside monitoring requirements in § 960.8(b)(2) and the lack of such reference in the more general provisions of § 960.10 imply that set-aside homeownership programs are subject only to the monitoring requirements of § 960.8(b)(2) and not to the monitoring requirements of § 960.10, which apply to the Banks' competitive application programs. This inference is supported by the fact that § 960.10 contains terminology that would be inapplicable to set-aside homeownership programs, as well as

¹ This response does not address the issue of whether the monitoring requirements of § 960.10 apply to units rehabilitated under a Bank's set-aside program. We understand that the Federal Home Loan Bank of _____ current set-aside program does not include funding for such rehabilitation costs.

requirements that would be duplicative of § 960.8(b)(2) certification requirements or inapplicable to set-aside homeownership programs based on their differing nature from competitive application programs. For example, § 960.10 refers throughout to “projects,” a term that generally is not applicable to set-aside homeownership programs under which individual households receive AHP direct subsidies from members to assist in the purchase of owner-occupied units. These points are discussed further below in response to the specific questions raised by your memorandum.

1. Are the project sponsor certification requirements identified in § 960.10(a)(1)(ii) applicable to set-aside homeownership programs?

No. As discussed above, § 960.10 was not intended to apply to set-aside homeownership programs. Section 960.10(a)(1)(ii) sets forth certification requirements for “project sponsors,” but set-aside homeownership programs generally do not have sponsors. Thus, as you note in your memorandum, the sponsor certification requirements in § 960.10(a)(1)(ii) cannot apply to set-aside homeownership programs where there are no sponsors involved in the programs.

2. Are members participating in set-aside homeownership programs required to meet the certification requirements of both §§ 960.8(b)(2) and 960.10(b)(1)(ii)?

No. As discussed above, § 960.10 was not intended to apply to set-aside homeownership programs. Members participating in such programs need only meet the certification requirements of § 960.8(b)(2). The requirement in § 960.10(b)(1)(ii)(A) that a member participating in a set-aside homeownership program certify, within one year after disbursement to a project of all approved AHP subsidies, that the subsidies have been used according to the commitments made in the AHP application, would be essentially duplicative of the requirement in § 960.8(b)(2)(i) that a member certify, prior to the disbursement of set-aside funds, that the funds will be provided to a household meeting the eligibility requirements of § 960.5(a)(2). Under set-aside homeownership programs, members usually request the AHP funds close to the time of the expected closing of the sale of the unit to the household. Thus, § 960.8(b)(2) requires certification prior to disbursement to ensure that the household is in fact eligible to receive the AHP funds. Under the competitive application programs, the timing of members’ requests for disbursement of AHP funds varies and, therefore, § 960.10(b)(1)(ii)(A) requires that the member’s certification take place within one year after disbursement of all subsidies has been made to the project. As you note in your memorandum, applying the certification requirements of § 960.10(b)(1)(ii)(A) to set-aside homeownership programs would result in the member making the same certification twice -- before disbursement of the AHP funds and again after disbursement of the funds -- which is not necessary.

3. Is a Bank’s set-aside homeownership program subject to the monitoring requirements of § 960.10(c)(1) and, if not, may the Bank nevertheless apply the project and unit sampling approach authorized under § 960.10(c)(1) to such program?

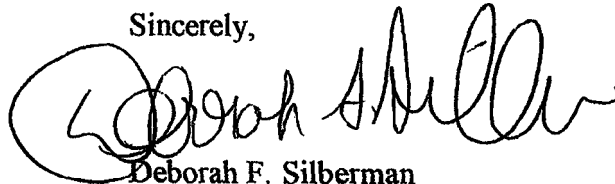
No. First, as discussed above, § 960.10 was not intended to apply to set-aside homeownership programs. As you note in your memorandum, the timing of the Bank’s required review under § 960.10(c)(1) of project back-up documentation is keyed to the receipt of

§ 960.10(b)(1)(ii) member certifications, which, as discussed under Question 2 above, would essentially duplicate the certifications required under § 960.8(b)(2) and, therefore, are not applicable to set-aside homeownership programs. Moreover, as you also note, the requirement in § 960.10(c)(1)(ii) that the Bank determine that the project's actual costs were reasonable and customary in accordance with the Bank's project feasibility guidelines, and that the subsidies were necessary for the financial feasibility of the project, would be inapplicable to set-aside homeownership programs given the nature of such programs.

Second, § 960.8(b)(2) provides that the Bank must require the member' to certify that AHP funds received from the Bank will be provided to a household meeting the eligibility requirements of § 960.5(a)(2). See id. § 960.8(b)(2). Implicit in this provision is the requirement that the Bank review each certification in order to determine whether the household satisfies the eligibility requirements, prior to disbursing funds to the member for the closing on the sale of the unit to the household. A similar requirement that the Bank review every certification received from members can be construed in the language of §§ 960.10(b)(1)(ii) and (c)(1). Section 960.10(c)(1) provides that each Bank must take the steps necessary to determine, based on a review of the documentation for a sample of projects and units within one year of receiving the § 960.10(b)(1)(ii) member certifications, that, among other things, the incomes of the households that own the AHP-assisted units did not exceed the levels committed to in the AHP application at the time the households were qualified by the sponsor to participate in the project. See id. § 960.10(c)(1). The sampling language in § 960.10(c)(1), by its terms, applies only to the back-up documentation supporting the certifications, not to the certifications themselves.²

If you have any further questions, please contact Janet Fronckowiak of the Office of Policy at (202) 408-2575, or Sharon B. Like, Senior Attorney-Advisor of the Office of General Counsel, at (202)408-2930.

Sincerely,



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cc: William W. Ginsberg
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² Note that the requirement that the Banks must review all certifications also is expressly stated in § 960.11(a)(3)(iii) in connection with certifications received from members and project owners for long-term monitoring of rental projects. See id. § 960.11(a)(3)(iii).