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April 27, 2006

Federal Housing Finance Board
1625 Eye Street, NW
Washington, DC 20006

ATTENTION: Public Comments

Subject: Federal Housing Finance Board
Proposed Rule: Affordable Housing Program Amendments at 12 CFR Part 951
RIN Number 3069-AB26
Docket Number 2005-23

In accordance with the request for comments in regard to the Proposed Rule for Affordable Housing Program Amendments as published in the Federal Register on December 28, 2005, the Neighborhood Reinvestment Corporation, now doing business as NeighborWorks America, submits the following comments for consideration.

Background Information Regarding NeighborWorks America:

The Neighborhood Reinvestment Corporation, now doing business as NeighborWorks America, is a public nonprofit corporation established by an act of Congress in 1978 (P.L. 95-557).

NeighborWorks America's mission is to expand affordable housing opportunities and strengthen distressed urban, suburban and rural communities across America, through a national network of local community-based partnership organizations composed of community residents, private sector representatives and local government entities – known collectively as the NeighborWorks® network.

In pursuing its mission, NeighborWorks America:

- Provides technical assistance, training, information services and other resources and funding (that is leveraged many times over by private sector funding) to its affiliated NeighborWorks® network members, and also provides training, information services and other resources to the broader affordable housing and community development industry;
- Coalesces public and private support for local, regional and national community reinvestment efforts;
- Contributes to public policy discussions concerning affordable housing and other means of transforming communities and improving the lives of lower-income families;
- Monitors changes in the field, assesses the need for new approaches, and initiates research or programmatic initiatives to address those needs; and
- Provides support to Neighborhood Housing Services of America (NHSAs) which serves as the NeighborWorks network's secondary market for nonconventional community development loans.

The NeighborWorks® network founded by NeighborWorks America has evolved to an impressive network of more than 240 locally-directed nonprofit organizations working to expand affordable housing opportunities and support community revitalization efforts in more than 4,300 urban, suburban and rural communities across the United States -- in 50 states, the District of Columbia and the Commonwealth of Puerto Rico.

NeighborWorks® organizations operate in our nation's largest cities and in some of its smallest rural communities. In FY 2006 alone, the NeighborWorks® network will generate nearly \$3 billion in direct reinvestment in distressed communities across the nation.

The following comments are informed by our experience in working with these local NeighborWorks® organizations and their local, regional and national lending partners.

Comments on Proposed Rule:

Since its inception in 1990, the Affordable Housing Program (AHP) has become one of the nation's most flexible and most important vehicles for encouraging partnerships between member lending institutions and nonprofit housing sponsors, and for stimulating the production and rehabilitation of single family and multifamily affordable housing and assisting low- and moderate-income families attain the American dream of home ownership.

NeighborWorks America is supportive of each of the rule changes being proposed at this time, with one exception (indicated immediately below), and applauds the efforts of the Federal Housing Finance Board and the Federal Home Loan Banks to increase the AHP program's flexibility and responsiveness to the needs of its member institutions and its nonprofit and public entity sponsors.

Homeowner and homebuyer counseling:

The one area of concern we have with the proposed rule is the intention to make homeowner and homebuyer education optional [Section 951.5 (15)(ii) Counseling]. There have been a number of studies, along with the deep experience of NeighborWorks America and its affiliated NeighborWorks organizations in facilitating home ownership for more than 100,000 households of modest means that verify the critical importance of housing counseling and homeowner/homebuyer education. And, that prove a direct correlation to loan performance and the ability of a family to sustain successful long-term homeownership. We firmly believe that housing counseling and homebuyer education should be a requirement for any individual or family involved in the purchase or rehabilitation of an owner-occupied home using AHP subsidies, and we encourage the Finance Board to reconsider its position in regard to this issue.

Use of AHP subsidy by revolving loan funds and loan pools:

NeighborWorks America would like to particularly urge approval of the proposed rule change which would explicitly authorize the Banks, at their discretion, to allow AHP funds to be used for revolving loan funds and loan pools.

Currently, AHP funds can be directly applied to a wide range of eligible affordable housing activities. They cannot, however, be used for loan pool reserves, partial loan guarantees or other collateralized loan arrangements that serve to highly leverage other financing. It seems arbitrary to allow (for example) \$100,000 of AHP funds to be used to directly fund an AHP eligible activity, but not allow that same \$100,000 to be used in a revolving loan fund or loan pool reserve that can easily leverage \$1 million to \$2 million or more in other funds that can then be used to support additional AHP eligible activities and serve the target population.

In supporting this proposal, NeighborWorks America would like to urge consideration of the following points:

- Any decision to provide AHP funding in support of revolving loan funds or loan pools should be (as proposed) "at the discretion of" the individual FHLBanks. Each FHLBank should decide whether this option is good for them.

- Banks should only fund revolving loan funds or loan pools for nonprofit sponsors who can demonstrate the capacity to manage this type of program and who have utilized prior AHP funds to the full satisfaction of the Bank. The ability to receive AHP funds in support of revolving loan funds or loan pools should be viewed, on an ongoing basis, as a ‘privilege’ that needs to be earned through good performance with previously entrusted AHP funds.
- Although AHP funds should be allowed to be ‘pooled’ with other private and public funds, the sponsoring organization should have a “fund accounting” financial management system that can separately account for the AHP funds through an annual A-133 type audit to show that the AHP funds are appropriately identified, segregated, and appropriately used by the sponsor organization.
- Any interest revenue generated by the AHP fund participation in a revolving loan fund or loan pool should be used for AHP eligible activities only, and not for general operating support of the fund or the sponsoring organization.
- Monitoring must continue to be an important element. The application for AHP funding should set forth the specific parameters for the fund, including issues such as: how many loans are projected per year, the average size and terms of such loans, the average income and/or income-eligibility limits of the borrowers served by the fund, etc. And then, the performance of the revolving loan fund or loan pool should be monitored against those stated parameters and for income compliance. Clearly, the monitoring associated with revolving loan funds or loan pools should not become more onerous for Banks than the current monitoring of properties. We would recommend that consideration be given to an approach such as monitoring the funds for five (5) years or until rolled over twice as capital. The monitoring of the funds should include (as part of the audit or through a programmatic report submitted by the fund sponsor) a review of related issues such as property rehabilitation procedures and lending processes to insure quality control as well as appropriate income targeting.
- Care needs to be given to assure that any procedures required in implementing the revolving loan fund policy or in protecting or monitoring the AHP assets serve to obstruct or negate the nature of the revolving loan fund.
- The AHP regulations should allow for the sale of loans made through an AHP-funded revolving loan fund or loan pool to a secondary mortgage market, thereby allowing the funds to be re-lent over and over – provided that the corpus amount of the AHP funds continue to be used by the sponsor organization only for AHP eligible activities, or returned to the Bank.
- The regulation as proposed has revolving loan funds and loan pools in the competitive portion of the AHP program. We’re not clear why the decision shouldn’t be left to each FHLBank whether to fund revolving loan funds or loan pools from the competitive portion or the set-aside portion of AHP.

Our understanding is that there have been three regulatory impediments that currently prevent revolving loan funds from being implemented using AHP funds:

1. Interest can not be taken on AHP funds.

Proposed Solution: If any interest earned were earmarked for “lending activities” and not for general operating support it would not represent a ‘taking’ of interest – and would not open the floodgates and invite other proposals for AHP funding for operating support.

2. The full benefit of the AHP funds has to accrue to the end customer. This has apparently been interpreted to mean no loans.

Proposed Solution: A shallower benefit would accrue to each customer touched by the AHP funds but the “total dollar amount” of the AHP funds would indeed accrue to many customers over time – benefiting low- and moderate-income borrowers by making their loan more affordable through second mortgages, reasonable interest rates and other approaches.

3. Banks have used a five year lien on AHP-funded properties to guarantee compliance with the AHP regulations in regard to income eligibility and affordability.

Proposed Solution: Banks should monitor the revolving loan fund or loan pool for compliance, rather than the property. This could be accomplished through a standard annual audit and an A-133 supplement to the audit. Banks, through an AHP Agreement with the sponsor organization can also maintain a legal claim on the AHP funds, which could result in a recapture of the AHP funds if a revolving loan fund or its sponsoring organization is found to be out-of-compliance.

Other recommendations/clarifications:

We would also suggest:

- Under Section 951.1 – Definitions: Revolving Loan Fund – That the definition of principal payments into the fund explicitly include borrower repayments as well as sales of loans on the secondary market.
- Under Section 951.1 Definitions: Sponsor (2) – That the last portion of this section be modified (by changing “and” to “and/or” so that the section reads: “. . . or by qualifying borrowers **and/or** providing or arranging financing for the owners of the units.”
- Under both Section 951.5 – Competitive application program (7)(ii) – Counseling Costs – and Under Section 951.6 – Homeownership set-aside programs (8) (ii) -- That clarification be provided to the statement that “The cost of the counseling has not been covered by another funding source, including the member.” Frequently, other funding sources may pay for a *portion* of the full counseling costs. While we are sure you are not seeking to preclude that, we can envision potential confusion on this point. At what point can one safely conclude that partial counseling payments made by others does not constitute covering all of the costs of counseling, and does not disqualify payment from the AHP grant. Perhaps the language in this section should specifically state that this section is not intended to disqualify AHP payment for counseling if partial payment has been made by another funding source, including the member. But under no circumstance should the total amount received for counseling exceed the actual costs of such counseling.
- Under Section 951.7 – Competitive application program (8) – Refinancing – To clarify how this section relates to the refinancing of single owner-occupied units a statement should be added at the end of this section to read: “. . . including the rehabilitation of the existing unit of an owner occupant or multi-family sponsor.
- Under Section 951.5 Competitive application program (9) Retention (i) – Owner-Occupied projects – Language should be added to the effect that: In the case of re-uses of subsidies by a revolving loan fund or loan pool, once the subsidy has been used to support qualified borrowers for a period of five years, the retention period has been met, even if the sponsor chooses to continue the use of the subsidy to additional qualified borrowers as the funds are paid back after the five year period.
- Under Section 951.5 – Competitive Application program (13) Use of AHP subsidy by revolving loan funds -- A statement such as the following should be added to subsection (iii): The revolving loan fund should return to the Bank any repaid AHP subsidy that will not be used in accordance with the requirements of this paragraph (c)(13), with recognition that once the retention period required by the subsidy has been reached (five years for owner-occupied properties and fifteen years for rental properties) the subsidy shall be regarded as ‘earned’ and can continue to be used without risk of recapture by the Bank. The intent would be to encourage continued use in accordance with the original program guidelines but to avoid the costs and complexity of monitoring forever.
- Under Section 951.5 Competitive application program (ii) Forward Commitment (B) – Clarification is needed as to how the deed restriction requirement fits into the allowed purchase of initial round loans, without a forward commitment. This section should also clarify that the Federal Housing Finance Board may (at its discretion) accept the use of a legally binding alternative to the deed restriction.

- Under Section 951.6 – Homeownership set-aside programs (c) (2) (iii) re. first-time homebuyer. The final sentence in this section refers to units assisted as part of a disaster relief effort. As currently written, it would seem the unit would have to go to a first-time homebuyer to qualify for points. This might have to do with the magnitude of the disaster, but in the face of a significant disaster such as Hurricane Katrina, it would seem that any units assisted as part of a disaster relief effort should get points, whether or not they are assisting existing owners to recover or assisting first-time homebuyers in the disaster area. It would seem that units targeted to people displaced by such a disaster (who may have been forced to relocate to areas outside the disaster area) should also qualify for points.
- Under Section 951.9 Agreements (7) Retention agreements for owner-occupied units – While this section is quite thorough and appropriate in addressing ‘typical’ transactions, some clarification seems necessary to assure that the requirements do not preclude legitimate transactions involving strategies such as interest buy-downs.

A few additional comments:

- Regarding Section 951.5(c) (14) (iii): We are supportive of the proposal to eliminate the five year retention agreement requirement for owner-occupied units assisted with subsidized advances. We encourage the Finance Board to extend this change to owner-occupied units assisted with a permanent mortgage loan whose interest rate is subsidized with AHP direct subsidies.
- Regarding Section 951.7: We support replacing the current long-term monitoring provisions with a risk-based approach to monitoring. Further, the proposed regulations require FHLBanks to review “backup documentation”. We believe the Finance Board should clarify that FHLBanks will not be required to collect and review back-up documentation for every unit in every project, but may be permitted to use a risk-based sampling model to select the rental projects and the specific units in those projects that will be sampled.
- Regarding Section 951.9: To facilitate increased use of AHP subsidy in support of affordable housing development on Native American lands, Hawaiian homelands or other restricted use properties, we encourage the Finance Board to allow FHLBanks increased flexibility in determining legally enforceable retention mechanisms. One approach would be to permit the substitution of loans within a pool, or other approaches that meet the intent of a legally enforceable retention mechanism, particularly where more traditional/typical instruments (such as deeds of trust or liens) are not available or appropriate for n otherwise qualifying affordable housing project.

Closing Comment:

Again, NeighborWorks America supports each of the proposed changes contained in the Affordable Housing Program Amendments; Proposed Rule published in the Federal Register on December 28, 2005 – with the exception of the proposal to have housing counseling and homebuyer/homeowner education as an “optional” element of the AHP Program. We strongly believe that housing counseling should be required for any new or existing homeowner benefiting from an AHP subsidy.

We have an especially strong interest in the proposal to allow individual FHLBanks to fund, at their discretion, revolving loan funds or loan pools.

We thank you for your consideration of these comments and for your overall efforts to improve affordable housing opportunities for underserved families and individuals across the country.

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with any questions or concerns you may have regarding these comments.

Sincerely,

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