



December 16, 2008

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

**Re: Affordable Housing Program Amendments
RIN 2590-AA04**

Dear Sir or Madam:

The Mortgage Bankers Association¹ (MBA) appreciates the opportunity to comment on the Federal Housing Finance Agency's (FHFA) interim final rule implementing section 1218 of the Housing and Economic Recovery Act (HERA).² The interim final rule provides temporary authority to the Federal Home Loan Banks (FHLBanks) to use Affordable Housing Program (AHP) homeownership set-aside funds to subsidize certain troubled borrower assistance programs.³ In our comments below, MBA suggests the interim final rule be revised in order to maximize the potential for AHP set-aside funds to assist borrowers currently facing difficulties in meeting their housing finance obligations.

Background

The AHP is a hallmark of the FHLBank System and its mission to support community development through affordable housing and community investment. FHLBank AHP grants and low-interest loans are catalysts for the construction and revitalization of housing targeted to people with low- and moderate-incomes.

AHP funds are primarily disbursed by FHLBanks through their individual competitive application programs. In a typical competitive AHP application, FHLBank members submit applications on behalf of one or more sponsors of eligible projects to purchase, construct, or rehabilitate housing for households whose incomes are below the area's median income (AMI).

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate financial industry, an industry that employs more than 370,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,400 companies include all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web Site: www.mortgagebankers.org.

² Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, § 1218 Stat. 2654 (2008).

³ Interim Final Rule, 73 Fed. Reg. 61660-61665 (Oct. 17, 2008).

The FHLBank Act also requires a portion of AHP funds to be awarded through a homeownership set-aside program. Under this program, FHLBanks provide AHP funds directly to their members to facilitate homeownership by low- and moderate-income households. Eligible households receive AHP set-aside funds in the form of grants to be used for down-payment, closing costs, counseling or rehabilitation assistance in connection with the household's purchase or rehabilitation of an owner-occupied unit.

The AHP homeownership set-aside program was recently amended by HERA, which, among other things, temporarily authorizes FHLBanks to use AHP homeownership set-aside funds to "refinance loans that are secured by a first mortgage on a primary residence of any family having an income at or below 80 percent of the median income of the area."⁴

HERA directed the FHFA to implement the law's AHP amendments by issuing regulations establishing the percentage of AHP set-aside funds that can be used according to the statutes provisions. The FHFA issued the interim final rule pursuant to HERA's directive.

According to the interim final rule, FHLBanks are permitted to use AHP set-aside funds to provide direct subsidies to low-or moderate-income households who qualify for refinancing under the Federal Housing Administration's (FHA) HOPE for Homeowners Program (HFH).⁵

MBA Position

MBA appreciates the willingness and capacity of the FHLBanks to serve as critical on-call sources of liquidity for their members during these turbulent economic times. MBA also supports the FHFA's efforts to channel FHLBank AHP funds toward assisting borrowers facing financial difficulties as a result of current market conditions. MBA believes the interim final rule is aligned with the AHP's statutory purpose of increasing the availability of financing for affordable housing for low- or moderate-income households.

MBA believes the interim final rule is a positive response to the current housing market crisis. However, we suggest the interim final rule be modified to more closely align it with language and purpose of the statute it is implementing.

Eligible Loans

As mentioned above, the interim final rule limits the use of AHP set-aside funds to HFH eligible loans. MBA notes that this limitation is significantly more restrictive than HERA's statutory language.

Section 1218 of HERA specifies all but one of the parameters regarding the use of FHLBank AHP set-aside funds for refinancing assistance. The statute permits AHP set-aside funds to subsidize programs for refinancing loans that meet the following requirements:

- First mortgage;
- Financing the borrower's primary residence; and
- The borrower's income must be at or below 80 percent of the AMI.

⁴ Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, § 1218 Stat. 2654 (2008).

⁵ Interim Final Rule, 73 Fed. Reg., 61662, (Oct. 17, 2008).

The only express discretionary authority given to the FHFA by HERA is in setting the percentage of AHP set-aside funds that can be directed to refinancing programs. As a result, there is no express authority for the FHFA to modify the borrower and loan requirements that are specifically included in the statute.

According to the interim final rule, the FHFA's rationale for coupling the use of the AHP subsidy to the HFH program was to "leverage and enhance the effectiveness of each program."⁶ Although MBA is an active supporter of the HFH Program, the HFH Program is but one of many tools available to the industry to assist distressed borrowers. In fact, a number of federal, state, local and private sector initiatives have been proposed or implemented since the FHFA issued this interim final rule. It is conceivable that the effectiveness of many of these programs also would be enhanced by leveraging them with AHP set-aside funds. Additionally, given the constant flux in the current financial markets, MBA believes the availability of AHP set-aside funds may spur innovation in the development of additional and more efficient borrower assistance programs. Further, some financial institutions that are actively engaged in assisting borrowers in distress are not mortgage servicers or otherwise eligible to participate in the HFH program. As a result, these institutions would be ineligible to receive AHP set-aside funds according to the interim final rule.

Therefore, MBA requests the interim final rule be revised to maximize the use of AHP set-aside funds by permitting such funds to complement any borrower assistance program that fits within HERA's parameters. MBA believes an alternative measure FHFA could use to implement HERA's requirements while accommodating industry dynamism is to incorporate HERA's statutory language into the interim final rule, and issue periodic guidance regarding specific supervisory concerns and guidelines. Issuing guidance rather than regulations also enables the FHFA to respond to market fluctuations expeditiously.

Eligible Uses

MBA also suggests the FHFA revise the list of eligible uses of AHP set-aside funds. As mentioned above, the HERA does not limit the permissible use of AHP set-aside funds to HFH support. The HERA also does not limit funds to FHA-approved closing costs. MBA believes that including such limits in the interim final rule precludes financial institutions from obtaining subsidies for other equally efficient borrower assistance programs.

Some borrower relief programs assist borrowers in resolving their monthly financial obligations without incurring the expenses associated with refinancing and principal write-downs. Other types of borrower relief include loan term extensions, second liens with delayed repayment schedules, or special forbearance accommodations. MBA believes these programs also merit funding from AHP set-aside subsidies. For this reason, MBA reiterates its request for the interim final rule to be revised to permit the use of AHP set-aside for subsidizing any borrower assistance program that fits within HERA's parameters.

Eligible Lenders

MBA is pleased that the FHFA expanded the lender eligibility restrictions beyond what the agency included in its April 2008 proposed regulation, which limited AHP set-aside recipients to FHLBank members.⁷ Nevertheless, because the entire housing finance system is under

⁶Interim Final Rule, 73 Fed. Reg., 61661, (Oct. 17, 2008).

⁷ Interim Final Rule, 73 Fed. Reg. 20552, (Apr. 16, 2008).

duress, MBA urges the FHFA to enable FHLBanks to disburse AHP set-aside funds in a more expansive manner than is currently permitted under the interim final rule.

Under the interim final rule, only FHLBank members, and FHA-approved lenders that are not FHLBank members are eligible to receive AHP funds. A possible consequence of this restriction is that some consumers may be precluded from financial relief simply because their financial institutions do not meet the interim final rule's eligibility requirements. MBA suggests AHP assistance should be based on borrower need rather than lender characteristics. We therefore request the interim final rule be modified so that AHP set-aside funds can be used to assist otherwise eligible borrowers regardless of whether the holder of the loan is an FHA-approved lender.

Conclusion

MBA commends the FHFA for its efforts to channel resources of the government sponsored enterprises toward assisting borrowers who are currently experiencing serious housing finance challenges. MBA requests the FHFA consider our suggested modifications to the interim final rule. MBA believes the modifications will ensure AHP set-aside funds are distributed equitably, and will help protect against further deterioration in the housing and mortgage market. We appreciate the Finance Board's consideration of MBA's views. Please contact Michael Carrier, Associate Vice President, Secondary and Capital Markets to further engage MBA on these issues. Mr. Carrier can be reached by phone at 202-557-2870 or email at mcarrier@mortgagebankers.org.

Sincerely,

A handwritten signature in black ink that reads "John A. Courson". The signature is written in a cursive, slightly slanted style.

John A. Courson
Chief Operating Officer
Mortgage Bankers Association