



REGULATORY INTERPRETATION 1999-RI-01

Date: January 14, 1999

Subject: Affordable Housing Program Certifier Fees

Request Summary:

A Federal Home Loan Bank (Bank) has requested that the Federal Housing Finance Board (Finance Board) determine whether Affordable Housing Program (AHP) funds may be used to pay certifier fees charged to households by a nonprofit housing agency that is not the project sponsor to process documents in connection with loan closings.

Analysis and Interpretation:

The answer to the question depends upon how the FHLBank defines the term “certifier fees,” regardless of whether or not the entity performing the certification is the project sponsor or owner. The Finance Board used the following definition of the term “certifier fees” in a March 18, 1998 response to another FHLBank regarding certifier and filer fees:

A certifier fee is a fee paid to the “certifier” of the application by the homebuyer. In consideration of this fee, the certifier agrees:

- a. To complete this application and certification document.
- b. To verify the accuracy of the copies of the closing statement, title insurance policy, financial statement and “Buyout Verification Form.”
- c. To initial each of the documents to attest to its being a true and accurate copy of the original documents to be used at closing.
- d. To receive the limited loan agreement, forgivable promissory note, forgivable mortgage and voucher from the sponsor and have the applicants execute the documents.
- e. To have all individuals who will be legal or equitable owners of the property sign the forgivable mortgage, forgivable promissory note and limited loan agreement.
- f. To present for payment the fully executed limited loan agreement, forgivable promissory note, forgivable mortgage and voucher to a participating member bank.
- g. To receive and transmit the check issued by the member bank to the closer or the applicant.
- h. The certifier agrees that, if the real estate transaction is not closed within 30 days of the issuance of the check by the member-affiliated bank, the certifier will return the check to the sponsor.

The Finance Board considers the types of activities listed above to be administrative costs of the project attributable to the sponsor, which are not eligible uses of AHP funds. *See* 12 C.F.R. § 960.5(b). If the FHLBank's definition of the certifier's activities is the same as, or substantially similar to, the above definition, then the answer to your question is the same as the answer that Finance Board staff provided in 1998 to the other FHLBank: AHP funds may not be used to pay for administrative costs of the project. If the FHLBank defines certifier fees differently, then Finance Board staff would have to review the types of costs included in such a definition in order to be able to answer your question.

You posed additional questions involving scenarios in which the certifier is verifying information for multiple third parties, including the FHLBank, and in which the certification to the FHLBank is an ancillary function to the overall review of eligibility as part of the resident approval process. Again, the type of activities performed by the certifier is the determining factor in whether or not payment of a certifier fee is an eligible use of AHP subsidy.

<p>This is a Finance Board regulatory interpretation within the meaning of the Procedures for Requests and Applications adopted by the Board of Directors of the Finance Board pursuant to Resolution Number 98-51, dated October 28, 1998. The regulatory guidance set forth herein may be relied upon subject to modification or rescission by action of the Board of Directors of the Finance Board.</p>
