

FEDERAL HOUSING FINANCE BOARD

BOARD OF DIRECTORS MEETING

OPEN SESSION

Washington, D.C.

Wednesday, April 9, 2008

ANDERSON COURT REPORTING
706 Duke Street, Suite 100
Alexandria, VA 22314
Phone (703) 519-7180 Fax (703) 519-7190

1 PARTICIPANTS:

2 Board Members

3 RONALD A. ROSENFELD, Chairman

4 ROY A. BERNARDI, Director

5 GEOFFREY BACINO, Director

6 ALICIA R. CASTANEDA, Director

7 ALLAN I. MENDELOWITZ, Director

8 SHELIA WILLIS, Secretary

9 Also Present

10 NEIL R. CROWLEY

11 STEPHEN M. CROSS

12 SHARON LIKE

13 CHARLES MCLEAN

14 CHRIS BOSLAND

15 J.P. GREEN

16 DARRIS MEEKS

17 BILL GLAVIN

18 TOM DOOLITTLE

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1 P R O C E E D I N G S

2 (9:57 a.m.)

3 CHAIRMAN ROSENFELD: Good morning,
4 everyone. I call this meeting of the Board of
5 Directors of the Federal Housing Finance Board to
6 order.

7 Today we will have an open session
8 followed immediately by a closed session where the
9 board will receive updates of examination and
10 supervisory findings. We now need to vote to
11 approve closing the latter portion of today's
12 meeting as required by the Sunshine Act and
13 Finance Board regulations.

14 And since the closed portion of today's
15 meeting will contain sensitive and confidential
16 bank examination information, I would ask for a
17 motion to seal the transcript of this portion of
18 the meeting.

19 Director Castaneda?

20 DIRECTOR CASTANEDA: Mr. Chairman, I
21 move to close the portion of today's meeting at
22 which we will receive updates of examination and

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1 supervisory findings and further that we
2 determine that the record and transcript of this
3 closed portion of the meeting be kept
4 confidential.

5 CHAIRMAN ROSENFELD: Thank you for the
6 motion. Is there any discussion of the motion?
7 Any discussion?

8 (No response)

9 CHAIRMAN ROSENFELD: Do I have a second?

10 DIRECTOR MENDELOWITZ: I second.

11 CHAIRMAN ROSENFELD: Director
12 Mendelowitz. Will the secretary please call the
13 roll in the motion?

14 MS. WILLIS: On the item before the
15 board, Director Bacino, how do you vote?

16 DIRECTOR BACINO: Yes.

17 MS. WILLIS: Director Canstaneda?

18 DIRECTOR CASTANEDA: Yes.

19 MS. WILLIS: Director Mendelowitz?

20 DIRECTOR MENDELOWITZ: Yes.

21 MS. WILLIS: Director Bernardi?

22 DIRECTOR BERNARDI: Yes.

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1 MS. WILLIS: Chairman Rosenfeld?

2 CHAIRMAN ROSENFELD: Yes. The motion is
3 carried and the subsequent portion of our meeting
4 will be closed and the transcript will remain
5 closed and confidential. Thank you.

6 Now, let us turn to the public portion
7 of today's meeting. We will be considering
8 proposed amendments to the affordable housing
9 program regulation.

10 I see Mr. McLean will be making the
11 presentation.

12 MR. MCLEAN: Yes, I will. Good morning,
13 Mr. Chairman and members of the board. We are
14 before you to recommend approval of a notice for
15 public comment of proposed rulemaking that would
16 amend the affordable housing program regulation to
17 permit the Federal Home Loan Banks to provide
18 homeownership set aside funds for refinancing and
19 restructuring certain adjustable rate and
20 nontraditional mortgage loans made to low or
21 moderate income households.

22 As you know, on January 15, 2008,

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1 pursuant to a request by the Federal Home Loan
2 Bank of San Francisco, the Finance Board approved
3 board resolution 2008-01.

4 That board resolution approved waivers
5 of certain homeownership set aside program
6 provisions of the AHP regulation that allowed the
7 San Francisco Bank to establish a temporary pilot
8 program to provide AHP direct subsidy to enable
9 eligible households with adjustable rate mortgages
10 or nontraditional loans held by a San Francisco
11 Bank member to refinance or restructure their
12 loans into affordable long term fixed rate fully
13 amortizing mortgages.

14 Because refinancing an existing home
15 mortgage loan would be a new use of AHP subsidy,
16 at that time, we recommended that the matter be
17 addressed through rulemaking and subject to public
18 notice and comment.

19 Accordingly and in light of the interest
20 by other banks in offering such a program, we
21 recommend that the proposed rule under
22 consideration solicit public comments on whether

1 AHP subsidy should be used in the manner
2 authorized by the board resolution 2008-01.

3 The proposed amendments to the AHP
4 regulation would temporarily add authority for all
5 the banks to establish a refinancing program under
6 the homeownership set aside provisions in section
7 951.6 of the Finance Board's regulations.

8 The authority would allow the banks to
9 assist low or moderate income homeowners who are
10 at risk of losing their homes as a result of
11 monthly payment increases due to interest rate
12 resets or changes in the loan's amortization rate.

13 The proposed rule requests comments on
14 the requirements for the proposed refinancing set
15 aside program. It also solicits comments on other
16 ways in which AHP subsidy could be used to assist
17 eligible households in refinancing their
18 adjustable rate or nontraditional mortgages.

19 For example, by helping to refinance
20 loans that are not held by bank members, by
21 assisting households to qualify for new loans from
22 federal, state, and local government refinancing

1 programs, or by providing community based
2 assistance for areas where avoiding foreclosures
3 could have a more significant and broader impact.

4 The purpose of the program would be to
5 assist low or moderate-income households that
6 cannot afford payment increases due to interest
7 rate increases or payment recast to amortized,
8 reamortized principle and interest on an
9 adjustable rate or nontraditional mortgage in
10 their primary residences.

11 The assistance would help provide the
12 households with a stable mortgage payments for the
13 life of the loan. The initial loan must be held
14 by a bank member or its affiliates. The mortgage
15 must be an adjustable rate or nontraditional
16 mortgage originated on or before July 10th of
17 2007.

18 The member must make the new loan, which
19 must be a fixed rate, fully amortizing first
20 mortgage with a term of at least 30 years. The
21 interest rate on the new loan must be at or below
22 a current market rate and result in a household's

1 total housing costs being no greater than 45
2 percent of income.

3 The AHP subsidy may be used to reduce
4 the principle of the new loan to achieve a maximum
5 loan to value ratio of 97 percent or reduce the
6 interest rate below a current market rate or to
7 pay for counseling costs for the household.

8 The maximum amount of AHP direct subsidy
9 would be \$25,000 per household. The Federal Home
10 Loan Bank member institution refinancing the
11 mortgage would be required to match the amount of
12 AHP subsidy to each household under two to one
13 basis.

14 For example, to qualify for \$10,000 of
15 AHP's subsidy, the member would have to contribute
16 \$20,000 to the eligible cost of the refinancing.
17 The member would not be compensated for foregoing
18 the scheduled interest rate reset. The member
19 would be prohibited from charging or counting
20 towards its matching amount certain fees, such as
21 prepayment fees, origination fees, and discount
22 points.

1 To promote long term affordability, if
2 the member or other entity forecloses on the AHP
3 assisted loan during the five-year retention
4 period, the member would be required to repay the
5 amount of AHP subsidy on a prorata basis.

6 The banks are permitted to allocate
7 two-thirds of their set aside authority to such
8 refinancing programs. If the banks were to use
9 the maximum proposed refinancing set aside
10 authority in 2008, they could provide almost \$75
11 million in AHP subsidy. The proposed new
12 authority would expire on June 30, 2011.

13 We recommend that the board adopt the
14 proposed rule amending the AHP regulation
15 contained in your board book allowing for a 60-day
16 comment period.

17 We are ready to respond to any questions
18 you may have.

19 CHAIRMAN ROSENFELD: Thank you. Any of
20 the other board members wish to comment?

21 DIRECTOR BERNARDI: I see you raised the
22 direct subsidy from \$15,000 to \$25,000 for higher cost

1 areas such as San Francisco and New York.

2 MR. MCLEAN: Yes.

3 CHAIRMAN ROSENFELD: Any other comments?

4 (No response)

5 CHAIRMAN ROSENFELD: Well, if there's
6 nothing else --

7 DIRECTOR CASTANEDA: I do have -- it's
8 not -- I don't have any questions, but I would
9 like to say something for the record, if I may,
10 Mr. Chairman.

11 When we approved the waiver for the San
12 Francisco Bank in January, I had two main concerns
13 which I spelled out at that time. First, that the
14 program be neither perceived nor operated as a bank
15 for members and second, since that action reversed
16 a long held position of this agency, that any
17 further action beyond the San Francisco pilot
18 program be conducted after a full notice and
19 comment from interested, as they call theirs, in
20 an APA consistent proceeding.

21 With respect to my first concern, I had
22 hoped we would gain experience under the San

1 Francisco program to inform our deliberations
2 under these APA proceedings. Unfortunately, it
3 appears the bank the only submitted its proposed
4 procedures to our staff for review within the last
5 couple of weeks. That's correct, right?

6 MR. MCLEAN: The 25th of March.

7 DIRECTOR CASTANEDA: Obviously, no
8 business has therefore been conducted under the
9 program, so we really don't have any idea how this
10 is going to be worked out. But I am at least glad
11 that today we are addressing the APA issue.

12 And I confess that I continue to have
13 some concerns about the proposal, particularly
14 regarding the scope of the agency's authority in
15 this area under the Bank Act, as well as with the
16 possible unintended consequences of trying to open
17 up the existing program to address new needs.

18 While we have the best of intentions, as
19 I said in January, these extraordinary and urgent
20 times for many American homeowners cry out for new
21 solutions. We don't know where this precedent
22 would lead. We have tried to limit that scope as

1 best as we might, but it's still possible that
2 what we may seem a good step today may come to be
3 a burden tomorrow. There have been new needs only
4 by crowding out other traditional AHP
5 beneficiaries.

6 As our staff noted in our briefing, the
7 AHP is very often oversubscribed by traditional
8 beneficiaries as it is. The burden falls for
9 refinancers no matter how meritorious may be may
10 well mean even more people who might ordinarily
11 have benefited from the program must go without
12 assistance.

13 A program cannot be all things to all
14 people. That is not to say that we ought not to
15 make these changes. But it does suggest that we
16 need to be mindful of the tradeoffs and potential
17 ramifications down the road.

18 As I say, I'm not sure where I will come
19 out at the end of the day, so I am very helpful
20 that we will get thoughtful comments from across
21 the spectrum as we go forward, not just on the
22 specifics but also on the embedded policy and

1 legal issues raised by the proposal.

2 And frankly, it seems to me that on the
3 basis put forth in the preamble, the Finance Board
4 authority to create new uses for the AHP fund is
5 claimed to be quite broad, perhaps overly so and
6 to an extent not consistent with Congress's
7 intent. I am not a lawyer, but this seems to
8 assert almost complete authority to define the
9 problem. And I'm not sure Congress gave us that
10 much authority here.

11 At the same time, I'm not sure that we
12 need to make such sweeping claims to support the
13 proposed action. But that's another reason again
14 why I would be looking forward to hear all the
15 comments. Thank you.

16 CHAIRMAN ROSENFELD: Director
17 Mendelowitz?

18 DIRECTOR MENDELOWITZ: Yeah. Because of
19 issues that Director Castaneda raised, I'd like to
20 get a clarification from our general counsel.

21 Is it your view that we have the legal
22 authority to implement this regulation?

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1 Crowley, I'm not a lawyer and it's obvious that
2 you're a very good one, so I take that that answer
3 means yes?

4 MR. CROWLEY: Yes, it does.

5 DIRECTOR MENDELOWITZ: Thank you.
6 Secondly, one of the things I said when we
7 discussed the waiver in San Francisco was that I
8 thought it made little sense to be spending money
9 putting new folks into homes at the same time that
10 large numbers of other folks are losing homes if
11 we could prevent that because the attendant
12 external cost disruption, et cetera, you know, I
13 think made a good case for why we should try to
14 traditionally use some AHP money in this
15 direction.

16 And I'm happy to see that the board
17 moved expeditiously to go from what was a waiver
18 in January for one bank to a proposed regulation
19 on which we can get comments and get wisdom
20 throughout the system and how to structure it well
21 and implement this according to the requirements
22 of the administrator's procedures act. So, I

1 thank you and I thank all the staff who worked on
2 this and did it so quickly.

3 Third, I don't want anyone to think that
4 this is going to make a major difference in what
5 we're seeing. I think I saw estimates that the
6 foreclosure rate this year is going to be two
7 million. Director Castaneda yesterday told me
8 that she saw estimates it was 1.6 million. And
9 this is a program that will help some people, a
10 small number of people if all the banks implement
11 it, but it's not going to solve the crisis.

12 But in the face of the firestorm that's
13 before us, helping somebody is better than helping
14 no one. So, I really endorse this.

15 The last thing I'd like to raise is the
16 differences between the circumstances in the San
17 Francisco district which lead to the structuring
18 of their proposed waiver that in fact are almost
19 unique to the San Francisco district and they're
20 not similar to circumstances in other districts.
21 And that is in San Francisco, the San Francisco
22 Bank had a lot of members who held mortgages on

1 their balance sheet that in fact placed homeowners
2 at risk of losing their homes.

3 And the member nexus there specifically
4 involved the member taking a hit of two dollars
5 for every one dollar of AHP money in order to make
6 a -- one, efficient restructuring of the mortgage
7 and two, efficient use of AHP money, namely the
8 lender has to take a serious hit and that was the
9 constraint that made sure the AHP money wasn't
10 willy nilly dissipated in poor ways.

11 But in many of the other districts they
12 don't have members who in fact hold these kind of
13 adjustable rate mortgages on their balance sheets.
14 And in order for other districts to operate a
15 program like this to help at risk homeowners,
16 those others districts probably need to have a
17 program that has a member nexus in which the
18 member refinances and the outstanding loan will be
19 held by someone else.

20 And so, I really think that it's
21 imperative if we want this program to have a broad
22 based operability throughout the whole system that

1 we do get good comments to the proposed rule that
2 specify how the program and the rule can be
3 adjusted to make it possible for this kind of
4 program to work effectively in districts where
5 they don't have members in the home loan bank in
6 the district who in fact put at risk mortgages on
7 their balance sheet. Thank you.

8 MR. CROWLEY: I believe that the
9 proposed rule asks among many questions that it
10 does seek comment on, I believe it does request
11 those ones you mentioned.

12 DIRECTOR CASTANEDA: Charles, has the
13 San Francisco Bank know how many of their members
14 may have --

15 MR. MCLEAN: No. We have not obtained
16 that information from the San Francisco Bank.

17 DIRECTOR CASTANEDA: We don't know
18 whether it's one member or five or six?

19 MR. MCLEAN: Not directly from --

20 DIRECTOR CASTANEDA: We don't have hat
21 information yet?

22 MR. MCLEAN: No.

1 CHAIRMAN ROSENFELD: Any other comments?

2 DIRECTOR BACINO: One quick question,
3 Mr. Chairman. First of all, Charles and Sharon,
4 thank you for the briefing or briefings as you
5 guys had to make a couple of return trips to my
6 office.

7 Since the San Francisco waiver was
8 approved, you mentioned others have expressed some
9 interest in looking at something similar to this;
10 correct?

11 MR. MCLEAN: Yes.

12 DIRECTOR BACINO: Did we incorporate
13 some of their thoughts?

14 MR. MCLEAN: Yes, we did. We have both
15 discussed in the preamble and requested comments
16 regarding key aspects of some of the approaches
17 that we've heard from them so that they can be
18 considered for inclusion in the final rule.

19 DIRECTOR BACINO: Okay. And you know,
20 just finally, I would urge -- I mean, we tend not
21 to sometimes get a huge outside audiences at these
22 things, but I would urge anybody who is interested

1 to please make sure they comment. I mean, I think
2 we do our job better and write better regulations
3 with more input from people who are part of the
4 system and stakeholders and shareholders in what
5 we do.

6 DIRECTOR BERNARDI: Just a general
7 comment. This proposal seems to mirror FHA
8 Secure. You're looking at individuals who have
9 basically been keeping up with their payments but
10 that the reset is going to substantially harm
11 them.

12 And there are a significant number of
13 proposals out there to help us through these
14 crises, as you can imagine. And the
15 administration will be presenting one today to
16 Congress as well.

17 I think the key point here is just
18 making sure that when you do the refinancing, do
19 the underwriting, we do it a little bit better
20 than it's been done in the past, not casting
21 aspersions to any particular lending institution.

22 But if we do it that way, like Allan

1 indicated, this -- I think the flexibility is good
2 here. I think it's good to be able to assist
3 additional folks who are in difficulty.

4 CHAIRMAN ROSENFELD: Mr. McLean, I'd
5 like to get a personal assurance from you that no
6 AHP funds are being diverted to buying you
7 beautiful neckties.

8 MR. MCLEAN: You have that assurance,
9 Mr. Chairman.

10 CHAIRMAN ROSENFELD: If there is nothing
11 else, I would accept a motion to approve
12 publication of a notice of proposed rulemaking in
13 our federal register regarding the Affordable
14 Housing Program and the authority for staff to
15 make technical and conforming changes.

16 Is there a motion?

17 DIRECTOR BACINO: So moved.

18 CHAIRMAN ROSENFELD: Director Bacino.
19 Do I have a second?

20 DIRECTOR CASTANEDA: Second.

21 CHAIRMAN ROSENFELD: Director Castaneda,
22 thank you. Would secretary please call the roll?

1 MS. WILLIS: On the item before the
2 board, Director Bacino, how do you vote?

3 DIRECTOR BACINO: Yes.

4 MS. WILLIS: Director Castaneda?

5 DIRECTOR CASTANEDA: Yes.

6 MS. WILLIS: Director Mendelowitz?

7 DIRECTOR MENDELOWITZ: Yes.

8 MS. WILLIS: Director Bernardi?

9 DIRECTOR BERNARDI: Yes.

10 MS. WILLIS: Chairman Rosenfeld?

11 CHAIRMAN ROSENFELD: Yes. The motion is
12 adopted. This ends the open session of the
13 meeting. We will reconvene in closed session in
14 three minutes.

15 (Whereupon, at 10:16 a.m., the

16 PROCEEDINGS were adjourned.)

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