



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

December 28, 2010

MORTGAGEE LETTER 2010-42

TO: ALL APPROVED MORTGAGEES

SUBJECT: Federal Home Loan Bank - Affordable Housing Program, Homeownership
Set-Aside Grant Program

This Mortgagee Letter (ML) provides guidance concerning the use of the Federal Home Loan Bank (FHLB), Affordable Housing Program (AHP), Homeownership Set-Aside Program in conjunction with Federal Housing Administration (FHA) insured financing. This guidance refers to the Homeownership Set-Aside Program for purposes of downpayment assistance only and is effective immediately. This ML does not provide any guidance regarding any other eligible use of FHLB AHP grant funds.

FHLB AHP Set-Aside Program and FHA-Insured Financing

The FHLB AHP Homeownership Set-Aside Program was created to assist low- to moderate-income homebuyers. The FHLB AHP is administered by the FHLB through its 12 member banks, pursuant to regulations promulgated by the Federal Housing Finance Agency, a Federal agency. The Federal Housing Administration (FHA) considers AHP Set-Aside funds to be an acceptable source of downpayment assistance, which can be used in conjunction with FHA-insured mortgage financing. AHP Set Aside funds can also be used by borrowers to satisfy the 3.5 percent minimum cash investment required by National Housing Act section 203(b)(9)(A).

FHLB AHP Set-Aside Program is a Grant Program – HUD Handbook 4155.1, Paragraph 5.C.1.a is Not Applicable

The FHLB AHP regulations provide that AHP Set Aside funds are direct subsidies that must be provided to borrowers in the form of a grant. AHP participants/homebuyers are required by FHLB AHP regulations to execute a 5-year Retention Agreement, which, in turn, is recorded against the property or gives rise to a deed restriction not a second mortgage lien. FHA, however, has received inquiries from program participants regarding certain provisions addressing secondary financing in HUD Handbook 4155.1, and whether those provisions apply to the FHLB AHP Set Aside Program. In particular, HUD Handbook 4155.1, 5.C.1.a, explains, in part, that for FHA purposes secondary financing is, “[a]ny financing, other than an FHA-insured first mortgage, that creates a lien against the property is considered secondary financing. Such financing is *not* considered a gift, even if it is a ‘soft’ or ‘silent’ second or has other features forgiving the debt.”

Paragraph 5.C.1.a of HUD Handbook 4155.1 does not apply to the FHLB AHP Set Aside Program. That Handbook provision addresses any “financing” made in conjunction with FHA-insured financing, which, in turn, gives rise to a second mortgage lien against the property (regardless of when or whether repayment is required) not grant assistance.

AHP Retention Agreement & FHA Restrictions on Conveyance

FHLB AHP regulations require homebuyers using Homeownership Set-Aside Program funds to execute a Retention Agreement whereby the homebuyer agrees to remain an owner-occupant of the property for a period of five (5) years. If the homebuyer does not remain the owner-occupant, the homebuyer must repay a pro-rata portion of the grant assistance. To comply with FHA requirements at 24 CFR 203.41 and Mortgagee Letter 94-02, which address downpayment assistance and restrictions on conveyance when the downpayment assistance is part of an eligible government affordable housing program, the Retention Agreement must provide that the FHLB will have ultimate control over the AHP grant funds if the funds are repaid by the homeowner.

As required by FHA regulations at 24 CFR 203.41(c)(2), the Retention Agreement must also include language terminating the legal restrictions on conveyance (*i.e.* the five year owner occupant requirement) if title to the property is transferred by foreclosure, deed-in-lieu of foreclosure, or if the first mortgage is assigned to the Secretary of HUD. The first mortgage lender must also ensure that the FHLB AHP grant documents (*e.g.*, the Retention Agreement and other supporting documents) comport with all FHA requirements, including, but not limited to, addressing termination of any restrictions on conveyance.

If you have questions regarding this Mortgagee Letter, please call 1-800-CALL-FHA (1-800-225-5342). Persons with hearing or speech impairments may access this number via TDD/TTY by calling 1-877-TDD-2HUD (1-877-833-2483).

Sincerely,

/s/

David H. Stevens
Assistant Secretary for Housing-
Federal Housing Commissioner