**MINUTES**
**of the**
**FIFTH MEETING**
**of the**
**MORTGAGE FINANCE AUTHORITY ACT**
**OVERSIGHT COMMITTEE**

**November 30, 2009**
**State Capitol**
**Room 309**
**Santa Fe**

The fifth meeting of the Mortgage Finance Authority (MFA) Act Oversight Committee was called to order by Representative José A. Campos, vice chair, at 10:10 a.m. on Monday, November 30, 2009, in Room 309 of the State Capitol in Santa Fe, New Mexico.

**Present**
Rep. José A. Campos, Vice Chair
Rep. Janice E. Arnold-Jones
Sen. Mark Boitano
Rep. Ernest H. Chavez
Sen. Cisco McSorley

**Absent**
Sen. Nancy Rodriguez, Chair
Sen. Eric G. Griego
Rep. Joni Marie Gutierrez

**Advisory Members**
Sen. Rod Adair
Rep. Thomas A. Anderson
Rep. Andrew J. Barreras
Rep. Sandra D. Jeff
Sen. Richard C. Martinez
Rep. Dennis J. Roch
Rep. Benjamin H. Rodefer
Sen. Sander Rue

Rep. James Roger Madalena
Sen. Gerald Ortiz y Pino

**Staff**
Pam Ray, Staff Attorney, Legislative Council Service (LCS)

**Guest Legislator**
Rep. Brian F. Egolf, Jr.

**Guests**
The guest list is in the archive file.

**Handouts**
Copies of all handouts and written testimony are in the archive file.

**MFA Update**

Representative Campos welcomed committee members and guests to the meeting and then gave the floor to Jay Czar, director, MFA, and Erin Quinn, senior policy and program advisor, MFA.

Mr. Czar began the meeting by describing the federal legislation extending the federal tax credit of $8,000 for new home purchases and also the new tax credit of $6,500 for refinancing homes. These will be effective for actions taken by April 2010.

The committee questioned where the state stands historically on the current foreclosure rate. Two percent of prime mortgages held in the state are in foreclosure. Additional questions included whether mortgage companies have stopped issuing subprime mortgages and what percent of all foreclosures are from subprime or adjustable rate mortgages (ARMs).

Mr. Czar stated that about 10 percent of all of the foreclosed properties in New Mexico were foreclosed on ARMs. He noted that for the last two years wages have been flat and housing prices have been increasing. People are now finding it difficult to get mortgages, and once people lose their jobs, the value of their property may be decreasing. Ms. Quinn commented that the hope is that most people have been able to refinance their properties out of the ARMs to fixed-rate mortgages and that this occurred before housing prices started to slide.

**MFA Rule and Regulation Amendments**

Marjorie Martin, attorney, MFA, presented the proposed amendments to the MFA rules. As requested by the committee at its October 26, 2009 meeting, the rule amendment proposals were posted on the MFA web site for 30 days. Ms. Martin stated that there had been one comment. Posting a new rule for 30 days is now required. The committee approved the proposed amendments to the MFA rules unanimously.

**MFA Legislative Proposals**

MFA staff presented three proposals to the committee for its endorsement. They were as follows:

1. .180263.1SA would remove weatherization contractors from the requirement to obtain a permit from the state; Senator Martinez will be the sponsor of this bill;

2. .180265.1SA is an appropriation of $250,000 for oversight of regional housing authority functions that the MFA has been performing; Senator Mary Kay Papen will be the sponsor of this bill; and

3. .180264.1SA amends the definition of "affordable housing project" in the Affordable Housing Tax Credit Act that would allow the MFA to work on affordable housing projects in towns with populations greater than 100,000; Senator Rodriguez will sponsor this bill.

**Minutes**

The minutes of the October 23, 2009 meeting were approved unanimously.

**Committee Questions**

Questions from the committee requested information on the status of affordable housing in the Silver City, Lordsburg and Deming areas. The federal government has increased the number of border agents and, in some cases, the military in border communities, and housing has been unavailable.

**Alternative Energy Districts**

Mr. Pollard had his comments in a handout for the committee. He began by discussing the Federal Housing Finance Agency (FHFA), which is the oversight agency for Freddie Mac, Fannie Mae and the 12 federal home loan banks. He presented his agency's concerns regarding the alternative energy loan district retrofit programs created in House Bill 572 (HB 572) and Senate Bill 647 (SB 647), adopted in the 2009 legislative session. The concerns are in two areas: lending practices and energy standards.

Energy efficiency in home construction is a concern throughout the country. HB 572 and SB 647 authorized counties or municipalities to create districts, including those homeowners who wish to retrofit their properties with alternative energy, predominantly solar, equipment for electrical generation, space heating and cooling and water heating. Several states have adopted laws similar in nature to the New Mexico laws. His agency has two main concerns with these laws. The first is that lending practices may be affected by the laws because the addition of a financial burden to the cost of the home may cause some borrowers to be unable to qualify for mortgages. The second concern is that the standards for the equipment that is eligible for loans authorized by HB 572 and SB 647 are not defined in law and many times are not further defined by the local governing bodies enacting ordinances to implement those acts.

When established, the districts would allow private or public sources to lend money to homeowners to retrofit their homes with solar or other energy-saving equipment and allow the loan to be added as an extra assessment collected with the property tax. In some cases (SB 647), the loan will run with the property upon sale.

The following are the issues that the FHFA has identified as needing to be addressed by a local government adopting an energy financing district.

1. First liens. SB 647 and HB 572 establish the energy-retrofit liens as liens with priority above all others. This subordinates existing mortgages to the new liens. This would mean that during a foreclosure, a bank holding a mortgage would have the contract altered so that the bank has to take on this additional expense above the value of the mortgage held.

2. Underwriting. Prudent underwriting standards are critical to any lending program. There are no comprehensive, national standards for underwriting criteria for these lending programs. As the states develop these districts, they will have to experiment and develop their own underwriting criteria.

3. Lending standards. There should be lending standards established by each local government creating energy-retrofit districts.

**Best Practices**

1. Tax liens. Although most of the state laws authorizing creation of alternative-energy loan districts state that the loans should be given first priority, Mr. Pollard believes that this is unnecessary and could reduce the effectiveness of the programs because of the effect on banks and mortgage lenders. He made two suggestions for changing the law:

A. the loans should be made as unsecured energy-efficiency loans, which are still paid through a person's property tax bill as an obligation, but not as a priority; or

B. the loan may be made a priority based on the time of recording the loan, which means that mortgages recorded prior to the loan would hold a greater priority, but mortgages filed after would be aware of the priority of the energy-efficiency loan.

2. Underwriting. High standards are essential for a loan program to be effective to ensure that counties are repaid by all participant homeowners. The standards should include a guarantee of service of the energy improvements that extends, at least for the duration of the loan payback, an explanation of the financing options and identification of the expected energy savings from equipment approved for use in the program. Borrowers should be screened for the ability to repay their loans.

**Good Lending Criteria**

1. Regulated financial institutions. A local government should engage a regulated financial institution to administer an energy-efficiency loan program rather than a contractor or energy company. This will help mitigate potential fraud and provide consumer protection. This would include assigning the financial institution with which a local government contracts the routine lending services and collections. The financial institution would initiate loans as required by law, provide escrow services as necessary for monthly or other periodic payments and participate in hearings regarding collection efforts. Collection could be made easier if the financial institution has a record of and experience with the entire transaction. A regulated financial institution also will help ensure non-discriminatory lending practices and fair lending pursuant to the multitude of federal laws dealing with lending practices.

2. Prudent lending standards. Both the borrower's ability and willingness to repay a debt and whether the property affords sufficient collateral to support the loan should be included in the lending standards adopted by the local government for the energy-efficiency loan program. The loan should be determined to be a sustainable proposition for the homeowner over the term of the loan and beyond.

**Components of Prudent Underwriting**

1. Assessment of a borrower's ability and willingness to repay a loan.

2. Determination and assessment of a borrower's home equity and property valuation.

3. Prohibition of conflicts of interest.

4. Requirements for clear, robust consumer disclosures, including that the borrower may lose the borrower's home for failure to repay the energy loan.

5. Prohibition of marketing to borrowers with weak or poor credit.

6. Restrictions on the use of the loan funds to the actual improvements and reasonable administrative costs. Add-ons such as extended warranties or credit insurance should be prohibited from being included in the energy loan amount for consumer protection.

7. Hazard insurance requirements should be included by the local government so that the homeowner's insurance provides full coverage for the energy improvements approved by the energy-efficiency loan program.

8. Cost-effectiveness of the energy systems should be a requirement for approval of an energy-efficiency loan for a project. The program should have standards that must be used to determine the cost-effectiveness of a system or equipment that apply to the local conditions.

**Lien Notification to Loan Servicers**

A financial institution administering an energy-efficiency loan program should be required by the local government to notify all existing mortgages upon placement of a newly created energy lien to allow the mortgage servicers to exercise their contractual rights and to work with the homeowner.

**Tax Bills**

The energy loan payments and remaining outstanding balance should be required to be separately stated from the property tax bill in energy-efficiency loan districts.

**Fraud Prevention**

Local governments should protect against fraudulent activities that could arise to take advantage of homeowners and energy-efficiency loan applicants. Some schemes such as "copy cat" fraud scams have occurred. These scams might employ use of logos, information and other representations that appear to offer similar services. State attorneys general, state consumer protection agencies and better business bureaus should be alerted to possible fraudulent practices and should be asked to provide assistance in deploying an energy-efficiency program and providing a watchful eye for fraudulent activity.

Only Santa Fe County has enacted ordinances to implement SB 647 and HB 572. Otero, Dona Ana and Bernalillo counties are reviewing the laws and are interested in implementing an energy-efficiency loan program.

Committee comments included:

• if large numbers of New Mexico residents participate in the energy-efficiency loan programs, there should be a beneficial effect on the market for solar and other alternative energy equipment, including reduced costs of installation, capital and eligible equipment;

- most manufacturers now give 25-year warranties on solar systems;

- the hot water systems now installed have fewer moving parts and, therefore, fewer parts that can fail;

- there are calculators online to help a purchaser determine what equipment would be needed to provide electricity or heat or cool a home or water system; and

- paving districts generally do not create a burden as large as could be created by the loan necessary to effectively install an alternative energy system.

**Adjournment**

The committee adjourned at 1:17 p.m.