FORMS USED BY THE FDIC—Continued

Form	Title	Reference	Paperwork Reduction Act Clearance Number
	Certification of Income Eligibility for the Affordable Housing Program	12 USC 1831q	3064–0116
	Interagency Biographical and Financial Report	12 USC 1815(a), 1816, 1817(j).	3064–0006
	Interagency Bank Merger Act Application	12 CFR 303.60–303.67	3064–0015
	Interagency Notice of Change in Director or Senior Executive Officer	12 CFR 303.100–303.104.	3064–0097
	Interagency Notice of Change in Control	12 CFR 303.80–303.87	3064–0019
	Purchaser Eligibility Certification	12 CFR 340.7	3064–0135

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FEDERAL HOUSING FINANCE BOARD

12 CFR Part 951

[No. 2002–15]

RIN 3069–AB14

Affordable Housing Program Amendments

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulation governing the operation of the Affordable Housing Program (AHP) to improve the operation and effectiveness of the AHP. The changes include: making the requirements for approval of post-completion project modifications the same as the current requirements for pre-completion project modifications; allowing the Federal Home Loan Banks (Banks) to define ''homeless household'' for purposes of scoring applications for AHP subsidies to finance housing for such households; allowing the Banks to award scoring points to projects using Federal government properties, and to projects using non-Federal government properties conveyed for an amount significantly below their fair market value; permitting the Banks to allow members or project sponsors to re-use repaid AHP direct subsidy to assist another AHP-eligible household to purchase or rehabilitate an owner-occupied unit in the same project; permitting a Bank to allocate up to the greater of $3 million or 25 percent of its annual required AHP contribution for the subsequent year to the current year's AHP competitive application program; adding the Federal Financial Institutions Examination Council as a source of area median income data that may be used to determine household income eligibility; removing the requirement that the amount of AHP subsidies offered by a Bank in each funding period must be comparable; removing the requirement that the Banks must determine the feasibility of projects before their applications may be scored; and allowing the Banks up to one year and 120 days after completion of a rental project to review the documentation received from the project owner for project compliance.

EFFECTIVE DATE: The final rule shall be effective on May 17, 2002.

FOR FURTHER INFORMATION CONTACT: Charles E. McLean, Deputy Director, (202) 408–2537, Melissa L. Allen, Program Analyst, (202) 408–2524, Office of Policy, Research and Analysis; or Sharon B. Like, Senior Attorney-Advisor, (202) 408–2930, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 10(j)(1) of the Federal Home Loan Bank Act (Bank Act) requires each Bank to establish a program to subsidize the interest rate on advances to members of the Bank System engaged in lending for long-term, low- and moderate-income, owner-occupied and affordable rental housing at subsidized interest rates. *See* 12 U.S.C. 1430(j)(1). The Finance Board is required to promulgate regulations governing the AHP. *See* 12 U.S.C. 1430(j)(1), (9). The Finance Board's existing regulation governing the operation of the AHP, which made comprehensive revisions to the AHP, was adopted in August 1997 and became effective January 1, 1998. *See* 62 FR 41812 (August 4, 1997) (*codified at* 12 CFR part 951).

Various amendments have been made to the AHP regulation since 1998 in order to clarify AHP requirements and improve the operation and effectiveness of the AHP. The Banks, members, project sponsors and Finance Board staff have, over the course of implementation of the AHP, identified additional amendments that it is believed would improve the operation and effectiveness of the AHP. On December 27, 2001, the Finance Board published in the **Federal Register** a proposed rule that would amend the AHP regulation to improve the operation and effectiveness of the AHP. *See* 66 FR 66813 (December 27, 2001). The proposed rule provided for a 60-day comment period.

The Finance Board received comments on the proposed rule from 41 parties. Commenters included: 9 Banks; 2 Bank Affordable Housing Advisory Councils; 1 financial services holding company representing a Bank member; 25 Native American tribal housing authorities, tribally designated housing entities, and tribes; 1 Native American housing trade association; 1 community development lender; 1 nonprofit housing lender; and 1 community development corporations trade association. Commenters generally supported some or all of the proposed amendments. Comments that raised issues beyond the scope of the proposed rule changes are not addressed in this final rule, but will be considered by the Finance Board in any future rulemaking under the AHP. The provisions of the proposed rule on which significant comments were received are discussed below.

II. Analysis of Final Rule

A. Definitions—§ 951.1

1. Removal of Definition of ''Homeless Household''—§ 951.1

For the reasons discussed in section F. below, the final rule removes the definition of ''homeless household'' in § 951.1 of the AHP regulation, and allows each Bank to define the term for purposes of scoring applications for AHP subsidy to finance housing for

homeless households under § 951.6(b)(4)(iv)(D).

2. Inclusion of FFIEC in Definition of ''Median Income for the Area''—§ 951.1

Under the AHP regulation, households are eligible for AHP subsidies if they have an income at or below the targeted income level, expressed as a percentage of median income for the area, specified in the AHP application. *See* 12 CFR 951.5(b)(1), 951.6(b)(4)(iv)(C). Section 951.1 of the AHP regulation defines ''median income for the area'' generally as one or more of the following, as determined by the Bank:

a. The median income for the area, as published annually by the U.S. Department of Housing and Urban Development (HUD);

b. The applicable median family income, as determined under 26 U.S.C. 143(f) and published by a state mortgage revenue bond program;

c. The median income for the area, as published by the U.S. Department of Agriculture; or

d. The median income for any definable geographic area, as published by a Federal, state or local government entity for purposes of that entity's housing programs, and approved by the Finance Board, at the request of a Bank, for use under the AHP. *See* 12 CFR 951.1.

As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the Federal Financial Institutions Examination Council (FFIEC) is a Federal government source that publishes updated median income data for areas, based on existing HUD median income data. Since the FFIEC median income data is derived from existing HUD data, which is a permissible source of area median income data for determining the income eligibility of households under the AHP regulation, the Finance Board believes that the Banks should also be able to use such FFIEC data for determining household income eligibility. This change would be consistent with the Finance Board's recent amendment to the definition of ''median income for the area'' in its Community Investment Cash Advance (CICA) Programs Regulation to include FFIEC as a source of median income data that may be used to determine income eligibility for projects and households funded under CICA programs. *See* 66 FR 50293 (October 3, 2001) (*codified at* 12 CFR 952.3).

Therefore, under the proposed rule, new paragraphs (1)(ii) and (2)(ii) would be added to the existing definition of ''median income for the area'' in § 951.1 to include FFIEC as a data source, and the remaining paragraphs would be renumbered accordingly. Commenters generally supported this proposed change.

Accordingly, the final rule adopts, without change, the proposed amendments to § 951.1 to include FFIEC as a source of median income data.

B. Permitting Banks to Allocate AHP Funds From the Subsequent Year's Required Annual AHP Contribution to the Current Year's Competitive Application Program—§ 951.3(a)(2)

The AHP regulation provides that in cases where the amount of AHP homeownership set-aside funds applied for by members in a given year exceeds the amount available for that year, a Bank may allocate up to the greater of $3 million or 25 percent of its annual required AHP contribution for the subsequent year to the current year's homeownership set-aside programs. *See* 12 CFR 951.3(a)(1). The AHP regulation does not allow the Banks to make a similar allocation of AHP funds from the subsequent year's required annual AHP contribution to the current year's AHP competitive application program. *See* 12 CFR 951.3(a)(2).[1]

As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, a number of Banks have indicated that there may be special circumstances in which it would be beneficial to have the flexibility to allocate a portion of the subsequent year's required AHP contribution to fund additional applications in the current year under the competitive application program. Such special circumstances could include natural or man-made disasters or other emergencies, or sudden changes in market conditions or demand caused by significant economic changes, that increase the need for funds for affordable housing projects in the current year. Another circumstance might be a demand for additional AHP funds for use in conjunction with a special allocation of housing funds made by a Federal, state or local government agency in the current year.

Several Banks also have raised the issue that a change in generally accepted accounting principles in the United States, contained in Statement of Financial Accounting Standards (SFAS) 133, could cause fluctuations in a Bank's net earnings and thereby cause fluctuations in the Bank's required AHP contributions from year to year. Allowing the Banks to allocate AHP funds from the subsequent year's required AHP contribution to the current year under the competitive application program would give the Banks flexibility to mitigate some of these year-to-year fluctuations in required AHP contributions.

The Finance Board agrees that allowing allocation of AHP funds from the subsequent year's required AHP contribution to the current year's competitive application program could be beneficial to the AHP. The Finance Board recognizes that allowing such allocation of AHP funds may result in fewer AHP funds available for the subsequent year. However, the overall amount of AHP funds available would not decrease; a portion of the funds would simply be available in the current year rather than in the subsequent year. Moreover, there is no guarantee in any case that the amount of AHP funds available in a given year will be the same as the amount available in the previous year, given fluctuations in Bank net earnings from year to year.

Therefore, under the proposed amendment to § 951.3(a)(2), a Bank, in its discretion, could allocate up to the greater of $3 million or 25 percent of its annual required AHP contribution for the subsequent year to the current year's competitive application program. This authority would be separate from and in addition to a Bank's existing authority to allocate up to the greater of $3 million or 25 percent of its annual required AHP contribution for the subsequent year to the current year's homeownership set-aside programs at such Bank. *See* 12 CFR 951.3(a)(1). As with the homeownership set-aside programs, a Consumer Price Index (CPI) adjustment provision would be included in the regulation for the maximum dollar limit under the competitive application program. Commenters generally supported these proposed changes.

Accordingly, the final rule adopts, without change, the proposed amendments to § 951.3(a)(2) to allow a Bank to allocate up to the greater of $3 million or 25 percent of its annual required AHP contribution for the subsequent year to the current year's competitive application program, as well as the CPI adjustment provision.

C. Removal of Requirement that Banks Offer Comparable Amounts of AHP Subsidies in Each Funding Period—§ 951.6(b)(1)

The AHP regulation provides that the amount of AHP subsidies offered by a Bank in each funding period under the

[1] Each Bank is required generally to contribute annually to its AHP 10 percent of its net earnings for the previous year. If the aggregate amount of such annual payments by all of the Banks is not at least $100 million, each Bank must contribute to its AHP its *pro rata* share of $100 million. *See* 12 U.S.C. 1430(j)(5).

competitive application program shall be comparable. *See* 12 CFR 951.6(b)(1). As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, a number of Banks have suggested that this requirement be removed, in order to give the Banks flexibility to offer different amounts of AHP funds in each funding period to coincide with the funding cycles of other key funding sources in the Bank's district, or with different demands based on market or housing construction cycles. The Finance Board agrees that it would be beneficial for the Banks to have greater flexibility to manage their AHP funding in this way.

Therefore, under the proposed rule, the requirement in § 951.6(b)(1) that the amount of AHP subsidies offered in each Bank's funding period must be comparable would be removed. Commenters generally supported this proposed change.

Accordingly, the final rule adopts, without change, the proposed amendment to § 951.6(b)(1) removing the requirement that the amount of AHP subsidies offered in each Bank's funding period must be comparable.

D. Removal of Requirement that Banks Determine Compliance of AHP Applications With Eligibility Requirements Before Scoring Applications—§ 951.6(b)(4)(i)

The AHP regulation provides that projects receiving AHP subsidies pursuant to a Bank's competitive application program must meet the eligibility requirements of the regulation. *See* 12 CFR 951.5(b). The AHP regulation further provides that a Bank shall score only those applications meeting the eligibility requirements of § 951.5(b). *See* 12 CFR 951.6(b)(4)(i). This means that a Bank must first determine whether each application received satisfies all of the regulatory eligibility requirements, including an assessment of each project's financial feasibility, before the Bank may score the application.

As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, a number of Banks have maintained that, given the high volume of applications received, it is burdensome and time consuming to have to determine the eligibility, and in particular, the financial feasibility, of each application before the application may be scored, especially when many of the applications determined to be eligible end up scoring too low to be awarded AHP funds. The Banks have suggested that it would be more efficient to be able to score the applications first, and then determine their eligibility starting with the highest scoring applications and continuing on down the list, until all of the AHP subsidy is committed. The Finance Board agrees that the Banks should have the discretion to determine which approach works best for that Bank. Section 951.5(b) would still require that AHP subsidy may only be awarded to projects meeting the regulatory eligibility requirements, including financial feasibility. *See* 12 CFR 951.5(b).

Therefore, under the proposed rule, the requirement in § 951.6(b)(4)(i) that the Bank score only those applications meeting the regulatory eligibility requirements would be removed. Commenters generally supported this proposed change.

Accordingly, the final rule adopts, without change, the proposed amendment to § 951.6(b)(4)(i) removing the requirement that the Bank score only those applications meeting the regulatory eligibility requirements.

E. Permitting Banks to Award Scoring Points to Projects Using Properties Conveyed by the Federal Government, and to Projects Using Properties Conveyed by Non-Federal Government Entities for an Amount Substantially Below Their Fair Market Value—§ 951.6(b)(4)(iv)(A)

The AHP regulation includes, as one of nine criteria for scoring AHP applications, the creation of housing using a significant proportion of units or land donated or conveyed for a ''nominal'' price by the Federal government or any agency or instrumentality thereof, or by any other party. *See* 12 CFR 951.6(b)(4)(iv)(A). A ''nominal'' price is defined in the regulation as a small, negligible amount, most often one dollar, and may be accompanied by modest expenses related to the conveyance of the property for use by the project. *See* 12 CFR 951.6(b)(4)(iv)(A). Scoring points, therefore, may not be awarded to projects using Federal government or non-Federal government properties that were conveyed for more than a ''nominal'' price.

1. Properties Donated or Conveyed by the Federal Government

As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, in a number of markets throughout the country, there are substantial quantities of foreclosed housing units owned by HUD and other Federal government agencies. Allowing the Banks to award scoring points for projects using properties conveyed by the Federal government, regardless of the amounts charged for their conveyance, would be consistent with the Bank Act provisions encouraging the use of AHP funds in projects involving housing owned or held by the Federal government, and coordination of the AHP with other Federal or federally-subsidized affordable housing activities to the maximum extent possible. *See* 12 U.S.C. 1430(j)(3)(B), (j)(9)(G).

Therefore, under the proposed rule, § 951.6(b)(4)(iv)(A) would have been amended to provide that a Bank may award scoring points to projects using a significant proportion of housing units conveyed by the Federal government or any agency or instrumentality thereof, ''regardless of the amount charged for such conveyance.'' Commenters generally supported this proposed change. A Bank commenter and Bank Affordable Housing Advisory Council commenter argued that projects that limit acquisition costs are better positioned to charge low rents and, therefore, serve very low-income households, and should be able to receive more scoring points on that basis. Consequently, these commenters did not want the Banks to be required to give the same number of scoring points to projects using Federal government properties conveyed at market value as are given to projects using properties conveyed at below-market value. The commenters recommended allowing the Banks to decide, in their discretion, whether to award variable scoring points that would give more points for projects using properties conveyed for an amount significantly below their fair market value, whether conveyed by a Federal or non-Federal government entity.

The regulation currently allows the Banks to designate a scoring criterion as a variable-point criterion if there are varying degrees to which an application satisfies the criterion. *See* 12 CFR 951.6(b)(4)(iii). The Finance Board agrees that the Banks should have discretion to determine whether to award variable scoring points for projects using properties conveyed by the Federal government, as well as non-Federal government entities, depending on the amount charged for such properties. The language in proposed § 951.6(b)(4)(iv)(A)(*3*) would not prohibit variable scoring for non-Federal government properties, but the ''regardless of the price of conveyance'' language in proposed § 951.6(b)(4)(iv)(A)(*2*) for Federal government properties could be interpreted to prohibit such variable scoring for projects using Federal government properties.

Accordingly, consistent with the proposed rule, the final rule removes the ''nominal'' price requirement for properties conveyed by Federal government entities in § 951.6(b)(4)(iv)(A)(*2*), and the language is clarified to allow for variable scoring depending on the amount charged for the conveyance of such properties. The final rule also corrects an oversight in the proposed rule by allowing scoring points to be awarded for projects using a significant proportion of land conveyed by a Federal government entity.

2. Properties Donated or Conveyed by Non-Federal Government Entities

As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, a number of Banks also have maintained that the definition of ''nominal'' in the existing regulation may be too restrictive in not recognizing the variety of ways in which properties are being conveyed by non-Federal government entities to affordable housing project sponsors under different local market conditions in each Bank district. For example, properties may be conveyed to project sponsors for a price of one dollar, for a price that is more than one dollar but significantly below the property's fair market value, or for payment of liens on the property such as back taxes, or the administrative costs of transferring the property, which may be more than one dollar but significantly below the property's fair market value. The Banks have suggested that the regulation should explicitly allow scoring points to be awarded for properties conveyed from non-Federal government entities under these circumstances, where the amounts paid for the properties are significantly below their fair market value. The Finance Board agrees that this could be beneficial to the AHP, and that the Banks should have the discretion to define what is an amount significantly below the fair market value of the property, since these amounts may vary depending on local market conditions in each Bank district.

Therefore, under the proposed rule, § 951.6(b)(4)(iv)(A) would be amended by removing the ''nominal price'' requirement and adding language clarifying that a Bank may award scoring points for projects using a significant proportion of properties conveyed by a non-Federal government entity at an amount that is significantly below their fair market value, as defined by the Bank in its AHP implementation plan. As noted above, the language in proposed § 951.6(b)(4)(iv)(A)(*3*) does not prohibit variable scoring for non-Federal government properties, based on the amount charged for conveyance of the property. Commenters generally supported the proposed change.

Accordingly, consistent with the proposed rule, the final rule adopts the proposed amendment to § 951.6(b)(4)(iv)(A)(*3*) removing the ''nominal price'' requirement and providing that a Bank may award scoring points for projects using a significant proportion of properties conveyed by a non-Federal government entity at an amount that is significantly below their fair market value, as defined by the Bank in its AHP implementation plan. The final rule also corrects an oversight in the proposed rule by allowing scoring points to be awarded for projects using a significant proportion of land conveyed by a non-Federal government entity for an amount significantly below its fair market value.

F. Removal of Definition of ''Homeless Household'' for Purposes of the Homeless Households Scoring Criterion—§ 951.6(b)(4)(iv)(D)

The AHP regulation also includes as a scoring criterion the creation of housing for homeless households, as further described in the regulation. *See* 12 CFR 951.6(b)(4)(iv)(D). The term ''homeless household'' is defined in the regulation as a household made up of one or more individuals, other than individuals imprisoned or otherwise detained pursuant to state or federal law, who:

1. Lack a fixed, regular and adequate nighttime residence; or

2. Have a primary nighttime residence that is:

a. A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

b. An institution that provides a temporary residence for individuals intended to be institutionalized; or

c. A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

See 12 CFR 951.1.

As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, a number of Banks have maintained that this definition of ''homeless household'' should include persons in certain additional situations who may be viewed as homeless, or at imminent risk of homelessness. For example, although the current definition covers victims of domestic violence living in organized shelters, it does not cover victims of domestic violence in rural areas where there are no organized shelters and the victims may have no alternative but to live in the homes of their abusers. Nor does the definition cover persons living in shared overcrowded housing in extremely cold climates where there is a shortage of organized shelters and it is impossible to survive living on the streets or in cars. Other situations may include children living in foster care who are about to reach the age of 18 and must leave the foster care system, and households facing imminent loss of their homes due to condemnation or eviction. The Finance Board agrees that the Banks should be able to award scoring points for projects serving these additional types of households. The Finance Board believes that the Banks should have the discretion to define what is a ''homeless household,'' since the types of homeless households may vary depending on local conditions in each Bank district. Allowing the Banks to define what is a ''homeless household'' would be consistent with the discretionary authority the Banks already have under the scoring criteria in the AHP regulation to define and provide preferences for other targeted groups, such as special needs households or first-time homebuyers. *See* 12 CFR 951.6(b)(4)(iv)(F)(*1*), (*3*).

Therefore, under the proposed rule, the definition of ''homeless household'' in § 951.1 would be removed and § 951.6(b)(4)(iv)(D) would be amended to provide that, for purposes of scoring applications that reserve units for ''homeless households,'' a ''homeless household'' shall have the meaning as defined by the Bank in its AHP implementation plan. Commenters generally supported this proposed change.

Accordingly, the final rule adopts, without change, the proposed amendments removing the definition of ''homeless household'' from § 951.1, and providing in § 951.6(b)(4)(iv)(D) that, for purposes of scoring applications that reserve units for ''homeless households,'' a ''homeless household'' shall have the meaning as defined by the Bank in its AHP implementation plan.

G. Making the Requirements for Post-Completion Modifications the Same as the Current Requirements for Pre-Completion Modifications—§§ 951.7, 951.9

1. The AHP regulation sets forth different requirements that must be satisfied in order for a Bank to approve, in its discretion, a modification to the terms of a project's approved

application, depending on whether the modification would be made prior to or after the project's completion. The regulation provides that a Bank, in its discretion, may approve a modification request, including requests for additional AHP subsidy, made prior to project completion, provided that:

a. The project, incorporating any such changes, would meet the regulatory eligibility requirements;

b. The application, as reflective of such changes, continues to score high enough to have been approved in the funding period in which it was originally scored and approved by the Bank; and

c. There is good cause for the modification.

See 12 CFR 951.7.

2. A Bank, in its discretion, may approve modification requests, not including requests for additional AHP subsidy, made after project completion, provided that:

a. The project, incorporating any material changes, would meet the regulatory eligibility requirements;

b. The application, as reflective of such changes, continues to score high enough to have been approved in the funding period in which it was originally scored and approved by the Bank;

c. The project is in financial distress, or is at substantial risk of falling into such distress (financial distress requirement); and

d. The project sponsor or owner has made best efforts to avoid noncompliance with the terms of the application for subsidy and the requirements of the regulation.

See 12 CFR 951.9.

As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, because a Bank may not approve additional AHP subsidy for a post-completion modification of a project, projects seeking additional AHP subsidy would have to submit a new application for subsidy in a regular competitive application funding period and score highly enough to be approved in that funding period. Projects may be unable to score successfully in the new funding period because the scoring criteria and priorities in the new funding period may not be the same as those applicable in the funding period when the projects were originally approved. Some Banks have argued that they should be able to approve modifications of completed projects for good cause even when the project is not faced with financial distress. A number of Banks also have indicated that the inability to provide additional AHP subsidy to completed but troubled projects makes it difficult or impossible for the Banks to participate with other funding sources in workout arrangements to help such projects retain their affordable units or forestall financial distress. The projects may then fail to comply with their AHP regulatory requirements or application commitments, subjecting them to possible recapture of the AHP subsidy. *See* 12 CFR 951.12. The Finance Board believes that it would be beneficial for such projects if the Banks had more flexibility to participate in such workouts.

Therefore, under the proposed rule, § 951.9, including the financial distress requirement, would be removed, and § 951.7 would be amended to include authorization for the Banks, in their discretion, to approve increases in subsidy after project completion and to otherwise make the post-completion modification requirements the same as those currently applicable to pre-completion modifications. Commenters generally supported these proposed changes.

The **SUPPLEMENTARY INFORMATION** section of the proposed rule included a discussion of the requirement in § 951.7(a)(2) that a project, as proposed to be modified, must continue to score high enough to have been approved in the funding period in which it was originally scored and approved by the Bank, in order to be approved for a modification. In some cases, the project may need to be modified because of changed market conditions, but the project, as modified, would not continue to score high enough to have been approved in its original funding period. While recognizing this issue, the Finance Board expressed concern about the potential that modifications offer for an applicant to manipulate the scoring system by making overly optimistic commitments in its AHP application that it knows it cannot reasonably meet in order to score successfully, with the anticipation of getting a modification after approval to reduce those commitments. The Finance Board noted that it has a waiver process that would enable the Finance Board, upon a showing of good cause, to waive the rescoring requirement for a modification, on a case-by-case basis. *See* 12 CFR 907.2. Based on these concerns, under the proposed rule, the rescoring requirement in § 951.7(a)(2) would be retained.

Commenters generally supported, and one Bank in particular strongly endorsed, retaining the rescoring requirement. One Bank commenter opposed retaining the rescoring requirement for post-completion modification requests, on the basis that other limitations could be incorporated into the AHP regulation to address the concerns about scoring manipulation. The Bank suggested the adoption of three standards for assessing post-completion modification requests for projects that cannot rescore successfully, including a requirement that the Bank make a factual determination that no intentional manipulation occurred or over-commitments were made in the initial AHP application. In the alternative, the Bank recommended that rescoring only be required for modification requests received during the first year after project completion.

The Finance Board's objective in amending the AHP regulation is to give the Banks greater flexibility in determining how to deal with post-completion modifications. The Finance Board's view is that the circumstances surrounding an individual request for a post-completion modification may vary widely, and the regulatory standards proposed by the Bank are likely to reduce the Bank's flexibility rather than to increase it. For example, it may be difficult for a Bank to make a factual determination that there was no intentional overcommitting in the application. Moreover, there may be instances where a post-completion modification would be appropriate even if the project sponsor is shown to have overcommitted in the application, such as where affordable units would be lost and their low- or moderate-income occupants displaced if the modification were not approved. The Bank always has the discretion to set its own standards, within the existing regulatory framework, for approving or denying modification requests that can successfully rescore. In the case of modification requests that cannot rescore successfully, a showing of good cause could form the basis for requesting a waiver of the rescoring requirement from the Finance Board. The Finance Board does not believe that requiring a Bank to obtain a waiver from the Finance Board if a modification request cannot rescore successfully would impose such an undue burden on the Bank as to warrant a change in the long-standing requirement for rescoring of modification requests. The Finance Board also does not agree that the Bank's alternative proposal of a one-year time limit for the rescoring requirement will eliminate the possible incentive to manipulate the scoring system. Therefore, the final rule does not adopt the Bank's suggestions to remove the rescoring requirement, or to limit the

time period for rescoring of post-completion modification requests.

Accordingly, the final rule adopts, without change, the proposed amendment removing § 951.9, including the financial distress requirement, and the proposed amendment to § 951.7 authorizing the Banks, in their discretion, to approve increases in AHP subsidy after project completion and otherwise making the post-completion modification requirements the same as those currently applicable to pre-completion modifications.

H. Providing the Banks With Up to One Year and 120 Days From Rental Project Completion to Complete the Initial Monitoring of Such Project—§ 951.10(c)(2)

1. The AHP regulation provides that within the first year after completion of a rental project, the project owner must:

a. Certify to the Bank that the services and activities committed to in the AHP application have been provided in connection with the project; and

b. Provide a list of actual tenant rents and incomes to the Bank, and certify that the tenant rents and incomes are accurate and in compliance with the rent and income targeting commitments made in the AHP application, and that the project is habitable.

See 12 CFR 951.10(a)(2)(ii).

2. The regulation further provides that each Bank must take the steps necessary to determine that:

a. Within the first year after completion of a rental project, the services and activities committed to in the AHP application have been provided in connection with the project; and

b. The AHP subsidies were used for eligible purposes, the project's actual costs were reasonable and customary in accordance with the Bank's project feasibility guidelines, and the subsidies were necessary for the financial feasibility of the project, as currently structured.

See 12 CFR 951.10(c)(2).

As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, a number of Banks have indicated that if a rental project owner does not provide its certifications and other documentation to the Bank until late in the first year after project completion, the Bank may not be able to complete its reviews of the documentation and make its determinations of compliance under § 951.10(c)(2) by the end of that year, as prescribed by the regulation. The suggestion has been made that the Banks be given some additional reasonable period of time after receipt of the project owners' documentation to conduct their own review and compliance determinations.

The Finance Board concurs that the Banks should have sufficient time to complete the compliance reviews. The Finance Board also believes that this time period should apply not only for completing the services and activities review, but also for the review of eligible purposes, actual costs and feasibility required under existing § 951.10(c)(2)(ii).

Therefore, § 951.10(c)(2) of the proposed rule would have been amended to require each Bank to complete the compliance reviews required thereunder within 120 days after receiving the rental project owner documentation.

Commenters generally supported this proposed change. One Bank commenter supported the change, provided the Banks would still have up to one year from project completion to complete the compliance review. The Finance Board agrees that, consistent with the existing regulatory monitoring framework for rental projects, the review period should commence from the date of project completion rather than from the date of receipt of the project documentation. The Finance Board also has determined that, regardless of when the documentation is received during the first year after project completion, for ease of implementation, the Banks should have up to one year and 120 days from the date of project completion to complete their compliance reviews.

Accordingly, the final rule revises § 951.10(c)(2) to provide that each Bank must complete the compliance reviews required thereunder within one year and 120 days after rental project completion.

I. Bank Authority To Allow Re-Use by Members or Project Sponsors of Repaid AHP Direct Subsidies in the Same Owner-Occupied Project—§§ 951.3(b)(1)(ix); 951.8(b)(2), (c)(5); 951.10(a)(1)(i), (b)(1)(ii), (c)(1); 951.12(e)(2); 951.13(d)(1)

1. Authority of Banks, in Their Discretion, To Adopt Re-Use Programs For Repaid AHP Direct Subsidy—§§ 951.3(b)(1)(ix), 951.12(e)(2)

As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, prior to 1995, sponsors of owner-occupied projects were allowed to re-use repaid AHP direct subsidies to provide the same kind of direct subsidy assistance to other eligible households in the same project in accordance with the project sponsor's approved AHP application. In 1995, the Finance Board discontinued authorization of AHP direct subsidy re-use programs for new AHP projects, pending a comprehensive review and revision of the AHP regulation.

The current AHP regulation, which went into effect in 1998, continues to prohibit such re-use of repaid AHP direct subsidies by members or project sponsors. Specifically, § 951.13(d)(1) of the AHP regulation provides generally that a member must ensure that an owner-occupied unit that is purchased, constructed, or rehabilitated with the proceeds of an AHP direct subsidy is subject to a deed restriction or other retention agreement requiring that if the unit is sold to an income-ineligible household or refinanced prior to the end of the five-year retention period and is no longer subject to a deed restriction, a *pro rata* share of the subsidy shall be repaid to the Bank. *See* 12 CFR 951.13(d)(1). The Bank must use these repaid AHP subsidies to fund project modifications, interest-rate increases in approved projects, homeownership set-aside applications, or an approved alternate project if sufficient other funds are available. *See* 12 CFR 951.8(c)(4), 951.12(e), 951.14(a)(2).

A number of Banks and project sponsors have requested that the Finance Board allow members, in the case of AHP direct subsidies provided through a homeownership set-aside program, or project sponsors, in the case of AHP direct subsidies provided through the competitive application program, to re-use repaid AHP direct subsidies in the same project in the ways described above. The Banks and project sponsors maintain that allowing such re-use of repaid direct subsidies can be an efficient use of AHP subsidies. The amounts repaid generally would be quite small, the project sponsor would receive no additional AHP subsidy from the Bank, and the re-used AHP subsidy would continue to assist other AHP-eligible households in the same project in accordance with the original AHP application commitments. Any household assisted through the re-use of repaid direct subsidy would be subject to a new five-year retention agreement. *See* 12 CFR 951.5(a)(5), 951.13(d)(1). Permitting such re-use of repaid direct subsidies could help those project sponsors whose projects are aimed at maintaining a core of homeowners in particular areas to promote neighborhood stabilization and revitalization in those areas. For the reasons discussed above, the Finance Board agrees that the Banks should have the authority to allow the re-use of repaid AHP subsidies in the same project.

Therefore, under § 951.12(e)(2) of the proposed rule, members or project sponsors would be able to re-use repaid AHP direct subsidies in the same project if authorized by the Bank, in its discretion, in its AHP implementation plan and within the time period specified by the Bank in the plan. Commenters generally supported this proposed change.

Accordingly, consistent with the proposed rule, § 951.12(e)(2) of the final rule generally authorizes each Bank to adopt AHP direct subsidy re-use programs. The final rule makes some technical changes to the language in § 951.12(e)(2) to provide greater clarity, and makes a conforming change to § 951.3(b)(1) by adding paragraph (ix), which requires each Bank to include in its AHP implementation plan any requirements, including time limits, for re-use of AHP direct subsidies.

2. Inclusion of Rehabilitation Costs as Eligible Re-Use Costs—§ 951.12(e)(2)

As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the Finance Board intended that repaid AHP direct subsidy be eligible for re-use for the same purposes as the original use of the subsidy, *i.e.,* for downpayment, closing cost, rehabilitation or interest rate buydown assistance. A commenter noted that the language in proposed § 951.12(e)(2) did not specifically include rehabilitation costs as an eligible use of repaid AHP subsidy.

Accordingly, § 951.12(e)(2) of the final rule corrects this omission by adding rehabilitation costs as an eligible use of repaid AHP direct subsidy.

3. Authority of Banks, in Their Discretion, to Require Return of Repaid AHP Direct Subsidy to the Bank For Re-Use, or to Permit Member or Project Sponsor to Retain Repaid AHP Direct Subsidy For Re-Use—§§ 951.12(e)(2), 951.13(d)(1)

As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, because of concerns about members or project sponsors being able to earn interest on idle repaid direct subsidies pending their re-use, the proposed rule would have retained the current regulatory requirement that any repaid AHP direct subsidy must be returned to the Bank. *See* 12 CFR 951.13(d)(1). The Bank then would re-disburse the subsidy to the member or project sponsor for another eligible household in the same project. Several Bank commenters opposed this requirement on the basis that it would be so cumbersome, inefficient and costly to administer as to negate the benefit that might otherwise be realized from an AHP subsidy re-use program. One Bank stated that the amount of interest earned on modest amounts of repaid AHP direct subsidy over relatively brief periods of time would be minimal and, therefore, the repaid subsidy should not have to be returned to the Bank. Another Bank recommended adopting a ''materiality'' test under which the Banks would be allowed to determine, in their AHP implementation plans, whether to require the return to the Bank of repaid AHP subsidy of $5,000 or less, provided that repaid subsidy not returned to the Bank be held by the member or project sponsor in a non-interest-bearing account pending re-use. Another Bank stated that any concerns about idle repaid subsidy could be addressed by requiring the Banks to establish in their AHP implementation plans appropriate accounting and use controls, such as additional reporting requirements, certifications by members or project sponsors, or the right to audit members' or project sponsors' books and records. The Bank noted that such safeguards, coupled with the existing provisions of § 951.13(d)(1), which require the execution of new five-year retention agreements for each new household assisted with AHP subsidy, should ensure that repaid AHP subsidy is re-used both promptly and appropriately.

The Finance Board agrees that existing monitoring requirements, as well as new disbursement and monitoring requirements included in the final rule and discussed further below in section I.4., should ensure that any repaid AHP subsidy retained by a member or project sponsor will be re-used promptly and in compliance with the requirements of the AHP regulation and the commitments of the approved AHP application.

Accordingly, § 951.12(e)(2) of the final rule provides that the Bank shall have discretion, as provided in its AHP implementation plan, to determine whether to allow members and project sponsors to retain repaid AHP direct subsidies for re-use in the same project, or to require their repayment to the Bank for subsequent disbursement by the Bank to the members or project sponsors for re-use in the same project. If a Bank should decide to allow members or project sponsors to retain repaid AHP direct subsidies for re-use, the Bank would have the discretion to determine any requirements to place on the project sponsor's administration of those funds during the period before their re-use.

The final rule also makes conforming changes to § 951.13(d)(1), which requires execution of a five-year retention agreement for each new household assisted with AHP direct subsidy, including re-used AHP direct subsidy, to incorporate the repayment obligations to the Bank, or to the member or project sponsor, depending on whether or not the Bank has authorized retention and re-use of repaid AHP direct subsidy by the member or project sponsor.

4. Disbursement and Initial Monitoring Requirements for Re-Use of Repaid AHP Direct Subsidies—§§ 951.8(b)(2), (c)(5); 951.10(a)(1)(ii), (b)(1)(ii), (c)(1)

a. Notice to Bank and Member of Disbursement of Repaid AHP Direct Subsidies Under Homeownership Set-Aside Program and Competitive Application Program—§ 951.8(b)(2), (c)(5)

In order to ensure the timely use of repaid AHP direct subsidies, § 951.12(e)(2) of the final rule, consistent with the proposed rule, requires a Bank to specify in its AHP implementation plan the time period within which the repaid subsidies must be re-used for an eligible household. Under the proposed rule, the repaid subsidies would have been repaid to the Bank. Since the Bank would have been re-disbursing the repaid subsidies to the member for re-use under both the homeownership set-aside program and the competitive application program, the Bank would have been able to verify, upon its disbursement of the repaid subsidies, whether the re-use was in compliance with the requirements of the AHP regulation and the commitments of the approved AHP application.

However, under § 951.12(e)(2) of the final rule, a member or project sponsor, pursuant to the homeownership set-aside program or competitive application program, respectively, may, if authorized by the Bank, retain the repaid subsidies for re-use rather than return them to the Bank for subsequent disbursement. Under the current AHP regulation, prior to initial disbursement of homeownership set-aside funds by a Bank to a member, the Bank must require the member to certify that the funds will be provided to a household meeting the eligibility requirements of § 951.5(a)(2) and that they will be provided in accordance with the homebuyer counseling requirements of § 951.5(a)(7), if applicable. In order for the Bank to be able to verify compliance of the re-use of homeownership set-aside funds that have been repaid to and retained by a member, the Bank would need to receive a certification from the

member prior to disbursement by the member of the repaid subsidy.

Accordingly, the final rule amends § 951.8(b)(2) by adding a requirement that prior to disbursement by a member of homeownership set-aside funds repaid to and retained by such member, the Bank shall require the member to provide a certification to the Bank on household eligibility and homebuyer counseling requirements, if applicable.

In addition, in order for the Bank and the member to be able to verify compliance of the re-use of subsidies repaid to and retained by the project sponsor under the competitive application program (see further discussion of initial monitoring requirements in sections I.4.c. and d. below), the Bank and member would need to be notified of when the repaid subsidies are being re-used by the project sponsor.

Accordingly, the final rule amends § 951.8 by adding paragraph (c)(5), which requires that, prior to disbursement by a project sponsor of AHP subsidy repaid to and retained by such project sponsor, the project sponsor shall provide written notice to the member and the Bank of its intent to disburse the repaid subsidy to a household satisfying the requirements of the AHP regulation and the commitments in the approved AHP application.

b. Initial Monitoring Requirements for Project Sponsors Under Competitive Application Program—§ 951.10(a)(1)(i)

Under the initial monitoring requirements of the existing AHP regulation, where AHP subsidies are used under the competitive application program to finance the purchase of owner-occupied units, project sponsors must maintain household income verification documentation available for review by the member or the Bank. *See* 12 CFR 951.10(a)(1)(i). The final rule makes this provision applicable where AHP subsidies are used initially under the competitive application program to finance the rehabilitation of owner-occupied units, a technical oversight in the existing regulation. This provision also applies where AHP subsidies approved under the competitive application program are repaid and provided to new eligible households in the same project, pursuant to a Bank's subsidy re-use program.

c. Initial Monitoring Requirements for Members Under Competitive Application Program—§ 951.10(b)(1)(ii)

Under the initial monitoring requirements of the existing AHP regulation, within one year after disbursement to an owner-occupied project of all approved AHP subsidies under the competitive application program, the member must review the project documentation and certify to the Bank that:

(i) The AHP subsidies have been used according to the commitments made in the approved AHP application; and

(ii) The AHP-assisted units are subject to deed restrictions or other legally enforceable retention agreements or mechanisms meeting the requirements of § 951.13(d)(1). *See* 12 CFR 951.10(b)(1)(ii). This one-year time frame would not be feasible under a subsidy re-use program, where AHP subsidies may be repaid and re-used at any time. Under a subsidy re-use program, the member should be reviewing the project documentation and making the required certifications within some reasonable period of time after each re-use of repaid subsidy. The Finance Board believes that 60 days would be such a reasonable time period.

Accordingly, the final rule amends § 951.10(b)(1)(ii) to provide that, within 60 days after receipt of a notice of disbursement of repaid subsidy provided by the project sponsor pursuant to § 951.8(c)(5), the member must review the project documentation and make the certification on re-use of the AHP subsidy and existence of the retention agreement.

d. Initial Monitoring Requirements for Banks Under Competitive Application Program—§ 951.10(c)(1)

The initial monitoring requirements of the existing AHP regulation provide generally that a Bank must take the steps necessary to determine, based on a review of the documentation for a sample of projects and units within one year of receiving the member certifications described above, that:

(i) The households receiving the AHP subsidies under the competitive application program were income-eligible;

(ii) The AHP subsidies were used for eligible purposes, the project's actual costs were reasonable and customary in accordance with the Bank's project feasibility guidelines, and the subsidies were necessary for the financial feasibility of the project; and

(iii) The AHP-assisted units are subject to legally enforceable retention agreements meeting the requirements of § 951.13(d)(1).

See 12 CFR 951.10(c)(1). As discussed above, this one-year time frame would not be feasible under a subsidy re-use program, nor is the sampling approach appropriate, where AHP subsidies may be repaid and re-used, and accompanying certifications received from members, at any time. Rather, the Bank should be reviewing the project documentation and member certification for each re-use of repaid subsidy upon receipt by the Bank of such certification.

Accordingly, the final rule amends § 951.10(c)(1) to provide that the Bank must review the project documentation and member certification for each disbursement of repaid AHP subsidy under a subsidy re-use program, upon receipt of such certification.

J. AHP Subsidy Re-Use Programs Involving Loan Pools

Proposed § 951.13(c)(1)(iii) would have allowed the Banks to authorize the re-use of the unused AHP interest rate subsidy of prepaid mortgage loans to subsidize the interest rate on another mortgage loan to an eligible household that replaced the prepaid mortgage loan in a pool of mortgage loans held by the member. The only comments received on this proposal were from four entities that currently participate together in a particular type of AHP-assisted loan pool transaction in one Bank district. The commenters indicated that the actual loan pool structure used in this transaction is different from the structure set forth in the proposed rule. The commenters recommended that the final rule authorize the re-use of unused AHP subsidy in the type of loan pool structure used by the commenters. The commenters also recommended that the current regulatory five-year retention period requirement for owner-occupied projects, which applies to individual mortgage loans within the pool, be amended to apply broadly to a pool of AHP-assisted mortgage loans. *See* 12 CFR 951.13(c)(4), (d)(1).

The commenters' loan pool proposal differs significantly from the loan pool proposal set forth in the proposed rule, and Finance Board staff has determined that additional information is needed on the nature of this proposal before a determination can be made on whether to authorize the re-use of unused AHP subsidy in such a transaction.

III. Paperwork Reduction Act

The final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

IV. Regulatory Flexibility Act

The final rule applies only to the Banks, which do not come within the meaning of ''small entities,'' as defined

in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Thus, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 951

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

Accordingly, the Finance Board hereby amends part 951, title 12, chapter IX, Code of Federal Regulations, as follows:

PART 951—AFFORDABLE HOUSING PROGRAM

1. The authority citation for part 951 continues to read as follows:

Authority: 12 U.S.C. 1430(j).

2. Amend § 951.1 by:

a. Removing the definition of ''Homeless household''; and

b. In the definition of ''Median income for the area'', redesignating paragraphs (1)(ii) through (1)(iv) and paragraph (2)(ii) as paragraphs (1)(iii) through (1)(v) and paragraph (2)(iii), respectively; and adding new paragraphs (1)(ii) and (2)(ii).

The revisions read as follows:

§ 951.1 Definitions.

* * * * *

Median income for the area.

(1) * * *

(ii) The median income for the area obtained from the Federal Financial Institutions Examination Council;

* * * * *

(2) * * *

(ii) The median income for the area obtained from the Federal Financial Institutions Examination Council;

* * * * *

3. Amend § 951.3 by:

a. Revising paragraph (a)(2);

b. In paragraph (b)(1)(vii), removing the word ''and'' at the end of the paragraph;

c. In paragraph (b)(1)(viii), removing the period at the end of the paragraph and adding ''; and'' in its place; and

d. Adding paragraph (b)(1)(ix).

The additions and revisions read as follows:

§ 951.3 Operation of program and adoption of AHP implementation plan.

(a) * * *

(2) *Competitive application program.* That portion of a Bank's required annual AHP contribution that is not set aside to fund homeownership set-aside programs shall be provided to members through a competitive application program, pursuant to the requirements of this part. A Bank may allocate up to the greater of $3 million or 25 percent of its annual required AHP contribution for the subsequent year to the current year's competitive application program. Beginning in 2002 and for subsequent years, the maximum dollar limit set forth in this paragraph (a)(2) shall be adjusted annually by the Finance Board to reflect any percentage increase in the preceding year's Consumer Price Index (CPI) for all urban consumers, as published by the Department of Labor. Each year, as soon as practicable after the publication of the previous year's CPI, the Finance Board shall publish notice by **Federal Register**, distribution of a memorandum, or otherwise, of the CPI-adjusted limit on the maximum competitive application dollar amount.

(b) * * *

(1) * * *

(ix) Any requirements, including time limits, for re-use of repaid AHP direct subsidy, adopted by the Bank pursuant to § 951.12(e)(2).

* * * * *

4. Amend § 951.6 by:

a. Removing the last sentence in paragraph (b)(1);

b. Removing the first sentence in paragraph (b)(4)(i);

c. Revising paragraph (b)(4)(iv)(A); and

d. Revising paragraph (b)(4)(iv)(D).

The revisions read as follows:

§ 951.6 Procedure for approval of applications for funding.

* * * * *

(b) * * *

(4) * * *

(iv) * * *

(A) *Use of donated or conveyed government-owned or other properties.* The creation of housing using a significant proportion of:

(*1*) Land or units donated or conveyed by the Federal government or any agency or instrumentality thereof; or

(*2*) Land or units donated or conveyed by any other party for an amount significantly below the fair market value of the property, as defined by the Bank in its AHP implementation plan.

* * * * *

(D) *Housing for homeless households.* The creation of rental housing, excluding overnight shelters, reserving at least 20 percent of the units for homeless households, the creation of transitional housing for homeless households permitting a minimum of six months occupancy, or the creation of permanent owner-occupied housing reserving at least 20 percent of the units for homeless households. For purposes of this paragraph, the term ''homeless households'' shall have the meaning as defined by the Bank in its AHP implementation plan.

* * * * *

§ 951.7 [Amended]

5. Amend § 951.7 by:

a. In the section heading, adding the words ''or after'' between the words ''to'' and ''project''; and

b. In the introductory text of paragraph (a), adding the words ''or after'' between the words ''to'' and ''final''.

6. Amend § 951.8 by:

a. Revising paragraphs (b)(2) introductory text, (b)(2)(i) and (b)(2)(iii); and

b. Adding paragraph (c)(5).

The revisions and addition read as follows:

§ 951.8 Procedure for funding.

* * * * *

(b) * * *

(2) *Member certification upon disbursement.* Prior to disbursement by a Bank to a member of homeownership set-aside funds, or prior to disbursement by a member of homeownership set-aside funds repaid to and retained by such member pursuant to a subsidy re-use program authorized by the Bank under § 951.12(e)(2), the Bank shall require the member to certify that:

(i) The funds received by the member will be provided to a household meeting the eligibility requirements of § 951.5(a)(2);

(ii) * * *

(iii) Funds received by the member for homebuyer counseling costs will be provided according to the requirements of § 951.5(a)(7).

(c) * * *

(5) *Project sponsor notification of re-use of repaid AHP direct subsidy.* Prior to disbursement by a project sponsor of AHP direct subsidy repaid to and retained by such project sponsor pursuant to a subsidy re-use program authorized by the Bank under § 951.12(e)(2), the project sponsor shall provide written notice to the member and the Bank of its intent to disburse the repaid subsidy to a household satisfying the requirements of this part and the commitments in the approved AHP application.

§ 951.9 [Removed]

7. Remove § 951.9.

8. Amend § 951.10 by:

a. In paragraph (a)(1)(ii), inserting the words ''or rehabilitation'' between the words ''purchase'' and ''of'';

b. Revising paragraph (b)(1)(ii) introductory text;

c. Revising paragraph (c)(1) introductory text; and

d. Revising paragraph (c)(2) introductory text and paragraph (c)(2)(i).

The revisions read as follows:

§ 951.10 Initial monitoring requirements.

* * * * *

(b) * * *

(1) * * *

(ii) Within one year after disbursement to a project of all approved AHP subsidies, or in the case of a re-use of repaid AHP direct subsidy pursuant to § 951.12(e)(2), within 60 days after receipt of a notice of disbursement of such repaid subsidy provided by a project sponsor pursuant to § 951.8(c)(5), the member must review the project documentation and certify to the Bank that:

* * * * *

(c) *Requirements for Banks*—(1) *Owner-occupied projects.* Each Bank must take the steps necessary to determine, based on a review of the documentation for a sample of projects and units within one year of receiving the member certifications described in paragraph (b)(1)(ii) of this section, or, in the case of a re-use of repaid AHP direct subsidy pursuant to § 951.12(e)(2), based on a review of the documentation for the re-use upon receipt of the member certification for such re-use described in paragraph (b)(1)(ii) of this section, that:

* * * * *

(2) *Rental projects.* Each Bank must take the steps necessary to determine that, based on a review of the documentation described in paragraph (a)(2)(ii) of this section within one year and 120 days after completion of a rental project:

(i) The services and activities committed to in the AHP application have been provided in connection with the project; and

* * * * *

9. Amend § 951.12 by:

a. In paragraphs (a)(1)(ii), (a)(2)(i)(B) and (b)(2), removing the phrase ''§§ 951.7 or 951.9'' wherever it appears, and adding, in its place, the phrase ''§ 951.7''; and

b. Revising paragraph (e).

The revision reads as follows:

§ 951.12 Remedial actions for noncompliance.

* * * * *

(e) *Use of repaid subsidies*—(1) *Use of repaid AHP subsidies in other AHP-eligible projects.* Except as provided in paragraph (e)(2) of this section, amounts of AHP subsidy, including any interest, repaid to a Bank pursuant to this part shall be made available by the Bank for other AHP-eligible projects.

(2) *Re-use of repaid AHP direct subsidies in same project.* AHP direct subsidy, including any interest, repaid to a member or project sponsor under a homeownership set-aside program or the competitive application program, respectively, may be repaid by such parties to the Bank for subsequent disbursement to and re-use by such parties, or retained by such parties for subsequent re-use, as authorized by the Bank, in its discretion, in its AHP implementation plan, provided all of the following requirements are satisfied:

(i) The member or the project sponsor originally provided the direct subsidy as downpayment, closing cost, rehabilitation or interest rate buydown assistance to an eligible household to purchase or rehabilitate an owner-occupied unit pursuant to an approved AHP application;

(ii) The AHP direct subsidy, including any interest, was repaid to the member or project sponsor as a result of a sale by the household of the unit prior to the end of the retention period to a purchaser that is not a low-or moderate-income household; and

(iii) The repaid AHP direct subsidy is made available by the member or project sponsor, within the period of time specified by the Bank in its AHP implementation plan, to another AHP-eligible household to purchase or rehabilitate an owner-occupied unit in the same project in accordance with the terms of the approved AHP application.

* * * * *

10. Revise § 951.13(d)(1)(ii), (d)(1)(iii) and (d)(1)(iv), to read as follows:

§ 951.13 Agreements.

* * * * *

(d) * * *

(1) * * *

(ii) In the case of a sale of the unit prior to the end of the retention period, an amount equal to a pro rata share of the direct subsidy that financed the purchase, construction, or rehabilitation of the unit, reduced for every year the seller owned the unit, shall be repaid to the following parties, as applicable, from any net gain realized upon the sale of the unit after deduction for sales expenses, unless the purchaser is a low-or moderate-income household:

(A) To the Bank: If the Bank has not authorized re-use of the repaid subsidy pursuant to § 951.12(e)(2); if the Bank has authorized re-use of the repaid subsidy but not retention of such subsidy by the member or project sponsor pursuant to § 951.12(e)(2); or if the Bank has authorized retention and re-use of such subsidy by the member or project sponsor pursuant to § 951.12(e)(2) and the repaid subsidy is not re-used in accordance with the requirements of the Bank and § 951.12(e)(2); or

(B) To the member or project sponsor for re-use by such member or project sponsor, if the Bank has authorized retention and re-use of such subsidy by the member or project sponsor pursuant to § 951.12(e)(2);

(iii) In the case of a refinancing prior to the end of the retention period, an amount equal to a pro rata share of the direct subsidy that financed the purchase, construction, or rehabilitation of the unit, reduced for every year the occupying household has owned the unit, shall be repaid to the following parties, as applicable, from any net gain realized upon the refinancing, unless the unit continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism described in this paragraph (d)(1):

(A) To the Bank: If the Bank has not authorized re-use of the repaid subsidy pursuant to § 951.12(e)(2); if the Bank has authorized re-use of the repaid subsidy but not retention of such subsidy by the member or project sponsor pursuant to § 951.12(e)(2); or if the Bank has authorized retention and re-use of such subsidy by the member or project sponsor pursuant to § 951.12(e)(2) and the repaid subsidy is not re-used in accordance with the requirements of the Bank and § 951.12(e)(2); or

(B) To the member or project sponsor for re-use by such member or project sponsor, if the Bank has authorized retention and re-use of such subsidy by the member or project sponsor pursuant to § 951.12(e)(2); and

(iv) The obligation to repay AHP subsidy to the Bank, or to the member or project sponsor, as applicable, shall terminate after any foreclosure.

* * * * *

Dated: April 10, 2002.

By the Board of Directors of the Federal Housing Finance Board.

John T. Korsmo,

Chairman.

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