

with copies of such comments to be sent to Mary M. McLaughlin, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this proposed regulation are found in 12 CFR Part 215. This information is required to evidence compliance with the requirements of section 22(h) of the Federal Reserve Act. The respondents and recordkeepers are for-profit financial institutions, including small businesses. Records must be retained for two years.

The Federal Reserve System may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100-0036.

The proposed amendments are expected to provide for some reduction in the recordkeeping and disclosure practices of state member banks, and would not affect the banks' reporting requirements to the Federal Reserve System. The recordkeeping and disclosure requirements on extensions of credit by the reporting banks to insiders of the bank and its affiliates are contained in the information collection for the Consolidated Reports of Condition and Income (FFIEC 031-034; OMB No. 7100-0036).

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve System, no issue of confidentiality under the Freedom of Information Act arises.

Comments are invited on: (a) Whether the proposed revision to the collection of information is necessary for the proper performance of the Federal Reserve System's functions, including whether the information has practical utility; (b) ways to enhance the quality, utility, and clarity of the information to be collected; and (c) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

List of Subjects in 12 CFR Part 215

Credit, Federal Reserve System, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, and pursuant to the Board's authority under section 22(h) of the Federal Reserve Act (12 U.S.C. 375b), the Board is amending 12 CFR Part 215, subpart A, as follows:

PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS (REGULATION O)

1. The authority citation for part 215 continues to read as follows:

Authority: 12 U.S.C. 248(i), 375a(10), 375b(9) and (10), 1817(k)(3) and 1972(2)(G)(ii); Pub. L. 102-242, 105 Stat. 2236.

2. Section 215.2 is amended as follows:

a. Paragraph (d) introductory text and paragraphs (d)(1) through (d)(3) are redesignated as paragraph (d)(1) introductory text and paragraphs (d)(1)(i) through (d)(1)(iii), respectively;

b. A new paragraph (d)(2) is added; and

c. Paragraph (e)(2) is revised.

The addition and revisions read as follows:

§ 215.2 Definitions.

* * * * *

(d)(1) * * *

(2) *Exception.* Extensions of credit to a director of an affiliate of a member bank (other than a company that controls the bank) shall not be subject to §§ 215.4, 215.6, and 215.8, provided that—

(i) The board of directors of the member bank adopts a resolution identifying (by name or by title) all persons authorized to participate in major policymaking functions of the member bank, and the director of the affiliate is not included in the resolution and does not actually participate in such major policymaking functions;

(ii) The assets of the affiliate do not constitute more than 10 percent of the consolidated assets of the company that controls the member bank and is not controlled by any other company; and

(iii) The director of the affiliate is not otherwise subject to §§ 215.4, 215.6, and 215.8.

(e) * * *

(2) Extensions of credit to an executive officer of an affiliate of a member bank (other than a company that controls the bank) shall not be subject to §§ 215.4, 215.6, and 215.8, provided that—

(i) The board of directors of the member bank adopts a resolution identifying (by name or by title) all persons authorized to participate in major policymaking functions of the member bank, and the executive officer of the affiliate is not included in the resolution and does not actually participate in such major policymaking functions;

(ii) The assets of the affiliate do not constitute more than 10 percent of the consolidated assets of the company that

controls the member bank and is not controlled by any other company; and

(iii) The executive officer of the affiliate is not otherwise subject to §§ 215.4, 215.6, and 215.8.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 4, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96-28719 Filed 11-7-96; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 960

[No. 96-72]

Amendment of Affordable Housing Program Regulation

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend its regulation governing the operation of the Affordable Housing Program (AHP or Program). Among the significant changes made by the proposed rule are: Transfer of approval authority for AHP applications from the Finance Board to the Federal Home Loan Banks (Banks); modification of the competitive scoring process under which AHP subsidies are allocated among housing projects; establishment of specific standards and retention periods for monitoring of AHP-assisted housing projects; and clarification and expansion of the types of remedies available in the event of noncompliance with AHP requirements.

The proposed rule is in furtherance of the Finance Board's continuing effort to devolve management and governance authority to the Banks. It also is consistent with the goals of the Regulatory Reinvention Initiative of the National Performance Review.

DATES: Comments on this proposed rule must be received in writing on or before February 6, 1997.

ADDRESSES: Comments should be mailed to: Elaine L. Baker, Secretary to the Board, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Charles E. McLean, Deputy Director, Housing and Community Development, (202) 408-2537, Richard Tucker, Associate Director, Housing and Community Development, (202) 408-2848, or Diane E. Dorius, Associate

Director, Housing and Community Development, (202) 408-2576, Office of Policy; or Sharon B. Like, Senior Attorney-Advisor, (202) 408-2930, or Brandon B. Straus, Attorney-Advisor, (202) 408-2589, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 10(j)(1) of the Federal Home Loan Bank Act (Act) requires each Bank to establish a Program to subsidize the interest rate on advances to members of the Federal Home Loan Bank System (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 Program. See *id.* The Finance Board's existing regulation governing the operation of the Program is set forth in part 960 of the Finance Board's regulations. See 12 CFR part 960. The Program has been operating successfully for approximately six years.

As a result of the Finance Board's and the Banks' experience in administering the Program, on January 10, 1994, the Finance Board issued a notice of proposed rulemaking that proposed changes to improve operation of the Program. See 59 FR 1323 (Jan. 10, 1994). The Finance Board received over 100 comment letters. During the following 18-month period, the Finance Board was without a quorum and was unable to take action on the proposed rule. On November 1, 1995, the Finance Board published for comment a proposal to amend the existing AHP regulation to authorize the Banks, in their discretion, to establish limits on the maximum amount of AHP subsidy that may be requested per member, per project application, or per project unit, for a given funding period. See 60 FR 55487 (Nov. 1, 1995) (Subsidy Limits Proposal). The Finance Board received 25 comment letters on the Subsidy Limits Proposal.

Given the passage of time since the 1994 notice of proposed rulemaking, and the experience of the Finance Board and the Banks in overseeing and administering the Program, the Finance Board is issuing a new comprehensive proposal to revise the Program. The Finance Board will consider all comments it receives before taking final action, including comments received in response to the proposed rules published in January 1994 and November 1995 and this notice of

proposed rulemaking. However, those who submitted comments in response to the previous proposed rules may wish to update their earlier submissions.

As further discussed below in the Analysis of Proposed Rule section, the proposed rule makes changes to a number of the existing regulatory provisions governing the Program, including: (1) scoring and approval of AHP applications for funding; (2) retention of AHP-assisted housing; (3) monitoring of AHP-assisted housing; (4) and remedies for noncompliance with AHP requirements. These changes are intended to provide clearer standards for operation of the Program and reduce regulatory burden, while continuing to identify and prevent misuse of AHP subsidies. Many of the changes codify successful practices developed by the Banks in implementing the Program.

The proposed amendments also should make the Program more responsive to low- and moderate-income housing needs in each of the twelve Bank Districts (Districts), increase efficiency in the administration of the Program, and enhance coordination of the Program with other housing programs whose funds are used in conjunction with AHP subsidies. The proposed rule also reorganizes and streamlines the text of the regulation.

The Finance Board is proposing these changes in the larger context of its proposal to decentralize the authority to make final funding decisions for AHP projects. While section 10(j) of the Act requires each Bank to establish a Program, and vests in the Finance Board broad authority to supervise the Banks' AHP activities through regulations implementing the Act, section 10(j) does not specifically assign the responsibility for operating the Program to the Finance Board. See 12 U.S.C. 1430(j). Under the existing regulation, each Bank is largely responsible for the administration of its Program, including the evaluation and processing of applications for AHP funding. See 12 CFR 960.5 (a) through (e). However, final funding decisions for AHP projects currently are made by the Finance Board. See *id.* § 960.5(f)(3). The proposed rule makes a fundamental change to the Program by vesting the Banks, instead of the Finance Board, with the authority to make final funding decisions for AHP projects, subject to regulatory limitations. See proposed § 960.8(b). Decentralization of funding decisions under the Program is consistent with the Finance Board's ongoing efforts to transfer to the Banks those functions performed by the Finance Board that are related to Bank management and governance. Further, the Finance Board believes that, in light

of the Banks' six years of experience evaluating and processing AHP applications, the Banks are fully prepared to take on this new authority. The Finance Board will continue to exercise its supervisory oversight role through examinations of each Bank's Program.

II. Analysis of Proposed Rule

A. Definitions—§ 960.1

Changes to individual definitions in § 960.1 of the existing AHP regulation, see 12 CFR 960.1, are discussed below in the context of specific regulatory requirements, with the exception of the definitions of "direct subsidy," "subsidized advance," "subsidy," and "cost of funds," which are discussed here.

1. Definition and Calculation of AHP Subsidy

a. *In general.* Under the Program, the Banks provide subsidies to finance AHP-eligible housing through: (1) advances with reduced interest rates, known as "subsidized advances;" and (2) direct cash grants, known as "direct subsidies." See *id.* § 960.3. Under the existing regulation, the terms "subsidized advance" and "direct subsidy" are not defined. However, the existing regulation defines the term "subsidy" as "direct cash payments under the Program or the net present-value of the foregone interest revenues to the Bank from making funds available under the Program at rates below the cost of funds." See *id.* § 960.1(n).

The existing rule defines "cost of funds" as "the estimated cost of issuing Bank System consolidated obligations with maturities comparable to those of the subsidized advances, as published from time to time by the Federal Home Loan Bank System's Office of Finance." See *id.* § 960.1(f).

Based on the Finance Board's and the Banks' experience over the past six years in calculating subsidies in the context of the various kinds of financing structures used by members and AHP projects, the Finance Board is proposing to add definitions of "subsidized advance" and "direct subsidy" and to amend the definitions of "subsidy" and "cost of funds" to provide clearer guidance to the Banks in calculating the amount of AHP subsidy necessary for a proposed project. These changes also are intended to ensure that the AHP subsidy is passed through from the Bank to the ultimate borrower. See 12 U.S.C. 1430(j)(9)(E).

b. *"Direct subsidy."* The proposed rule defines "direct subsidy" as "an AHP subsidy in the form of a direct cash

payment.” See proposed § 960.1. Direct subsidies may be used either as cash grants to projects or to write down the interest rate on a loan to the project. The new definition of “subsidy” includes language that clarifies how direct subsidies are to be calculated when they are used to write down the interest rate on a loan to a project. See *id.* Specifically, if a direct subsidy is used to write down the interest rate on a loan extended by a member, sponsor, or other party to a project, the direct subsidy must equal the net present value of the interest foregone from making the loan below the lender's market interest rate (calculated as of the date the AHP application is submitted to the Bank, and subject to adjustment under § 960.9(c)(1)). See *id.*

c. “Subsidized advance”. The proposed rule defines “subsidized advance” as “an advance to a member at an interest rate reduced below the Bank's cost of funds, by use of a subsidy.” See *id.*

The proposed rule defines “subsidy,” for purposes of determining the amount of the interest rate subsidy incorporated in a subsidized advance, as “the net present value of the interest revenue foregone from making a subsidized advance at a rate below the Bank's cost of funds, determined as of the date of disbursement of the subsidized advance or the date prior to disbursement on which the Bank first manages the funding to support the subsidized advance through its asset/liability management system, or otherwise. See *id.*

d. “Cost of funds”. The proposed rule defines “cost of funds” as “for purposes of a subsidized advance, the estimated cost of issuing Bank System consolidated obligations with maturities comparable to that of the subsidized advance.” See *id.* The Finance Board specifically requests comments on whether the interest rate subsidy incorporated in a subsidized advance should be defined by reference to a Bank's market advance rate, rather than the Bank's cost of funds. This would allow a Bank to use AHP subsidies to pay its regular advance mark-up where AHP subsidy is delivered to a project through a subsidized advance. Arguably, this eliminates a perceived disincentive to the Banks to make subsidized advances, versus direct subsidies. However, an argument can be made that the form in which AHP subsidies are delivered to projects, *i.e.*, subsidized advances versus direct subsidies, is determined by the financing structures used by proposed projects, not by the preferences of Banks in funding such projects. Consequently,

it is argued that allowing Banks to use AHP subsidies to pay their regular advance mark-up would not affect the level of subsidized advances made by Banks and would use more AHP subsidies to produce the same amount of affordable housing.

B. Operation of Program and AHP Implementation Plans—§ 960.2

1. Program Operation

Proposed § 960.2(b) provides that each Bank's Program shall be governed solely by the requirements set forth in 12 U.S.C. 1430(j) and part 960, and a Bank shall not adopt any additional substantive AHP requirements, except as expressly provided in part 960. This is intended to make clear that the Finance Board intends its AHP regulation to “occupy the field” with regard to substantive requirements governing the Program. A Bank is prohibited from adopting additional substantive rules or policies governing its Program, unless expressly authorized to do so by a provision of the AHP regulation.

2. AHP Implementation Plans

The existing regulation requires each Bank's board of directors to adopt an AHP implementation plan annually, a copy of which must be submitted to the Finance Board annually. See 12 CFR 960.2(b). Proposed § 960.2(c) requires adoption of the plan by December 1 of each year, and prohibits the board of directors from delegating responsibility for adoption of the plan to Bank officers or other Bank employees.

A Bank's implementation plan must set forth: (1) the Bank's project cost guidelines, adopted pursuant to proposed § 960.3(b); (2) the Bank's schedule for AHP funding periods, adopted pursuant to proposed § 960.6(a); (3) any District threshold requirements, adopted pursuant to proposed § 960.7(b); (4) the Bank's AHP scoring guidelines, adopted pursuant to proposed § 960.8(a); (5) the Bank's procedures for verifying a project's use of AHP subsidies within a reasonable period of time pursuant to proposed § 960.9(a); (6) the Bank's procedures for verifying compliance upon disbursement of AHP subsidies pursuant to § 960.9(b); (7) the requirements for any homeownership assistance program adopted pursuant to proposed § 960.12; and (8) the Bank's policies and procedures for carrying out the Bank's monitoring obligations under proposed § 960.13.

A Bank must give its Advisory Council a reasonable period of time to review the Bank's plan and any

subsequent amendments and provide its recommendations to the Bank's board of directors prior to adoption. This provision is intended to expand the Advisory Councils' role in advising the Banks on how AHP subsidies should be allocated to meet the low- and moderate-income housing and community development programs and needs in their Districts. A Bank's plan, and any amendments, must be made available to members of the public, upon request.

Proposed § 960.2(d) carries forward the requirement in § 960.6(a) of the existing regulation that each Bank shall provide reports and documentation concerning the Program as the Finance Board may request from time to time. See *id.* § 960.6(a). A Bank must provide promptly to the Finance Board and the Advisory Council a copy of the AHP implementation plan and any amendments.

C. Eligible Costs—§ 960.3

1. General

The proposed rule revises § 960.3 of the existing regulation by clarifying the kinds of activities and costs that are eligible to be financed with AHP subsidies. See *id.* § 960.3. The Act requires each Bank to establish a Program “to subsidize the interest rate on advances to members engaged in lending for long term, low- and moderate-income, owner-occupied and affordable rental housing * * *.” See 12 U.S.C. 1430(j)(1). The Act further provides that AHP subsidized advances are to be used to: (1) finance homeownership by families with incomes at or below 80 percent of the median income for the area (*i.e.*, low- or moderate-income households); or (2) finance the purchase, construction, or rehabilitation of rental housing, at least 20 percent of the units of which will be occupied by and affordable for very low-income households for the remaining useful life of such housing or the mortgage term. See *id.* § 1430(j)(2).

Proposed § 960.3(a) implements this statutory requirement. It provides that AHP subsidies may be used to finance: (1) the purchase, construction, or rehabilitation of owner-occupied housing by or for very low- or low- or moderate-income households; and (2) the purchase, construction, or rehabilitation of rental projects where at least 20 percent of the units in the project are occupied by and affordable for very low-income households. The Finance Board wishes to make clear that those units in excess of 20 percent are not required to be, but may be committed to be, occupied by and

affordable for very low- or low- or moderate-income households.

2. Definitions of "Low- and Moderate-Income Household" and "Very Low-Income Household"

Section 10(j)(13)(A) of the Act defines the term "low- or moderate-income household" as a household that has an income of 80 percent or less of the area median. See *id.* § 1430(j)(13)(A). Section 10(j)(13)(B) of the Act defines the term "very low-income household" as a household that has an income of 50 percent or less of the area median. See *id.* § 1430(j)(13)(B).

The Finance Board's existing regulation defines "low- and moderate-income households" as households for which the aggregate income is 80 percent or less of the area median income, and "very low-income households" as households for which the aggregate income is 50 percent or less of the area median income. See 12 CFR 960.1 (g), (o). "Median income" is defined as "the median family income for an area as determined and published by the U.S. Department of Housing and Urban Development [(HUD)]." *Id.* § 960.1(h). "Area" is defined as "a metropolitan statistical area, a county, or a nonmetropolitan area, as established by the U.S. Office of Management and Budget." *Id.* § 960.1(c).

Under section 3 of the United States Housing Act of 1937, the Secretary of HUD annually publishes median income limits for 2,700 metropolitan statistical areas (MSAs), counties, and nonmetropolitan statistical areas, and makes adjustments to these limits for various local conditions as well as for household size. See 42 U.S.C. 1437a(b)(2). In some areas, the Secretary adjusts the income limit downward to take into account prevailing construction costs, low housing costs, or unusually high household incomes.

To date, the Finance Board has interpreted § 960.1 (c) and (h) of the existing regulation to require the use of the income limits published by HUD, including HUD's adjustments for household size, in determining household eligibility under the Program. On November 5, 1993, the Finance Board published for comment a proposal to amend the definitions of the terms described above in order to redefine the AHP income limits without certain adjustments incorporated in the HUD income limits. See 58 FR 58988 (Nov. 5, 1993). This proposal also was part of the Finance Board's January 10, 1994 proposal. See 59 FR 1323 (Jan. 10, 1994).

Proposed § 960.1 continues to require the use of HUD income limits, including

adjustments for household size, in determining household eligibility under the Program. One reason for this approach is that arguably, in more affluent areas, limited AHP resources should go to those households that have greater need for housing assistance relative to households at the higher end of the median income scale. Failure to use HUD downward adjustments may create a preference for relatively affluent areas over other areas within a state.

On the other hand, the HUD adjustment may result in an inappropriate exclusion of certain relatively higher income households from affordable housing in a particular local market on the basis that housing costs are lower or household incomes are higher in that market than in other regions of the United States. Although using HUD's income limits, including the downward adjustment, decreases the number of households in an area that are eligible to receive assistance under the Program, such areas may continue to have many households with incomes below HUD's adjusted income limits who are ready and able to qualify for AHP-assisted housing.

By adopting the HUD program standards, including regional caps and variations for family size, the Finance Board has made it obligatory to use the HUD schedule for all AHP projects, even where no HUD money is involved. There are other legitimate federal, state, and local government sources for area median income data which may be valid and more accurate measures of local economic conditions than the HUD schedule, which reflects internal adjustments to the data furnished by the U.S. Department of Commerce.

There has been concern that the current regulation has precluded AHP participation in any state or local, public or private program that does not conform to the HUD schedule or formula for adjusting for family size. In some cases, a member may not be able to generate an AHP project in an area where it offers banking services, simply because the member's market area is a higher-cost area that is not compatible with HUD's program limits.

The alternatives discussed below would not change the income eligibility standards of 80 percent and 50 percent of area median income, but would provide greater flexibility in determining the basis on which these percentages are calculated.

In light of the Finance Board's statutory mandate to ensure that the AHP regulation coordinates the Program with other federal and federally-subsidized affordable housing activities to the maximum extent possible, see 12

U.S.C. 1430(j)(9)(G), a more flexible definition would allow the Program to continue to conform with HUD programs while improving its compatibility with other housing programs, such as state mortgage revenue bond programs, that use different income statistics or different household size adjustments.

The alternatives would allow: (1) median income to be established using any reliable source for current area information and be determined for counties and other applicable state and local subdivisions as well as MSAs; (2) any adjustment for family size to be made in conformance with the requirements of the lead or controlling funding source or program; and (3) the use of whatever median income standard and adjustment is being used by the sponsoring or funding entity for the project, provided that the standard is from a legitimate state or federal source that regularly provides such information on income. The Finance Board specifically requests comments on these alternatives.

3. Definition of "Affordable"

The proposed rule eliminates the existing definition of "affordable for very low-income households," see 12 CFR 960.1(b), and replaces it with a definition of "affordable," which is defined to mean that the monthly housing costs charged to a household for an AHP-assisted rental unit cannot exceed 30 percent of the income of a household of the maximum income and size expected, under the commitment made in the approved AHP application, to occupy the unit (assuming occupancy of 1.5 persons per bedroom or 1.0 person per unit without a separate bedroom). See proposed § 960.1. Under the revised definition, the affordability concept can now be applied not only to very low-income households, but also to low- or moderate-income households. In addition, the revisions clarify that the rent for those units designated for occupancy by households with a specific income level cannot exceed 30 percent of the income of a household of the maximum income and size expected, under the commitment made in the approved AHP application, to occupy the unit (assuming occupancy of 1.5 persons per bedroom or 1.0 person per unit without a separate bedroom). See *id.* For example, if a unit is designated for occupancy by a four-person household with a maximum income equal to 40 percent of the median income for the area and the household occupying the unit is a three-person household whose income is 35 percent of the median income for the

area, the rent should be equal to 30 percent of 40 percent of the median income for the area for a four-person household. This is necessary because project rent projections, which determine, in part, the amount of subsidy needed by a project, are based on the assumption that rents will be set based on the maximum income and size of households expected to occupy designated very low-income units. The proposed definition of "affordable" also incorporates the new proposed definition of "monthly housing costs." See *id.*

4. Eligible Costs

Proposed § 960.3(b) clarifies the language in the existing regulation describing the costs that are eligible to be paid with AHP subsidies. See 12 CFR 960.3(c). Proposed § 960.3(b) provides that AHP subsidies may be used to pay only for the customary and standard costs typically incurred, at fair market prices, to purchase, construct, or rehabilitate AHP-eligible housing. In addition, the Banks are required to evaluate the reasonableness of project costs, based upon project cost guidelines adopted by the Bank. Section 10(j)(9)(F) of the Act requires the Finance Board to establish maximum subsidy limitations under the Program, and section 10(j)(9)(D) of the Act requires the Finance Board to ensure that a preponderance of assistance provided under the Program is ultimately received by low- and moderate-income households. See 12 U.S.C. 1430(j)(9)(D), (F). Requiring that project costs be reasonable is one way of keeping projects from being over-subsidized, ensuring that a preponderance of the funds are received by the targeted households, through the lowering of their housing costs and avoiding any undue benefit to the intermediaries in the development process. The proposal that Banks undertake a project cost review of each application merely codifies the existing practice of many of the Banks.

5. Ineligible Costs

Proposed § 960.3(c) sets forth the following costs that may not be paid using AHP subsidies.

a. Pre-development expenses.

Proposed § 960.1 defines "pre-development expenses" as "expenses for the purpose of determining the feasibility of a proposed project." Examples of such expenses include architectural, legal, and engineering fees and survey costs incurred to determine the feasibility of a proposed project. The Finance Board believes that, based on its experience with the Program, there is

a great likelihood that expenses incurred during the pre-feasibility period, rather than the post-feasibility period, of a project will not result in the actual purchase, construction, or rehabilitation of housing. Further, since the inception of the Program, demand for AHP subsidies for projects in the post-feasibility stage has significantly exceeded available funds. Thus, if AHP subsidies were to be approved for use during the pre-feasibility period, potentially significant amounts of subsidies that currently go toward completing projects might instead be paying for activities that never result in the financing or production of housing. Proposed § 960.3(c)(1), therefore, prohibits the use of AHP subsidies for pre-development expenses not yet incurred by a proposed project as of the date the AHP application is submitted to the Bank. Nonetheless, projects in the post-feasibility stage may apply for AHP subsidies to reimburse the pre-development expenses they incurred during the pre-feasibility period.

b. Prepayment and cancellation fees. Proposed § 960.3(c)(2) and (3) prohibit the use of AHP subsidies for prepayment and cancellation fees and penalties imposed by a Bank on a member for a subsidized advance or advance commitment that is prepaid or canceled, respectively. The Finance Board believes that funding such fees is an unproductive use of AHP subsidies and does not meet the statutory requirement that AHP subsidies be used to finance housing. See 12 U.S.C. 1430(j)(2).

c. Counseling costs. Counseling can play an important role in the development and success of affordable housing projects. The Finance Board specifically requests comments on whether AHP subsidies should be permitted to pay for counseling costs, generally, and whether they should be used to pay only for counseling for homebuyers, homeowners, or tenants of AHP-assisted units. The Finance Board believes that if AHP subsidies are to be used for counseling, they should be used to expand the pool of resources available for counseling, rather than replace existing sources of funding. The Finance Board wishes to prevent AHP subsidies from being used to pay for counseling that, in the absence of the AHP subsidy, would customarily be financed by another source of funding for a project. Therefore, proposed § 960.3(c)(4) prohibits the use of AHP subsidies for costs incurred in connection with counseling of homebuyers, homeowners, or tenants except for costs of homebuyer counseling where: (1) the counseling is

provided to a household that actually purchases an AHP-assisted unit; and (2) the cost of the counseling has not been covered by another funding source, including the member.

d. Direct subsidy processing fees. Members do not conduct the same level of underwriting and processing when providing direct subsidies to projects as they do when making loans to projects. Therefore, proposed § 960.3(c)(5) prohibits the use of AHP subsidies for processing fees charged by members for providing direct subsidies to AHP-assisted projects. This would not preclude a member from using AHP subsidies to pay for an origination fee in cases where the member receives both a subsidized advance and a direct subsidy, or only a direct subsidy, from a Bank, and in turn makes both a loan and a grant to the project, provided the AHP subsidies are used to pay only for the loan origination fee and not for any fee associated with providing the direct subsidy.

6. Refinancing

Proposed § 960.3(d) provides that AHP subsidies may be used to refinance an existing single-family or multifamily mortgage loan, provided the equity proceeds of the refinancing are used only for the purchase, construction, or rehabilitation of AHP-eligible housing. This provision is intended to prevent the owner of an existing housing project from using AHP subsidies to liquidate the owner's equity stake in the project, for the sole benefit of the owner. Such use of AHP subsidies would be contrary to the Act, because there would be no resulting purchase, construction, or rehabilitation of AHP-eligible housing. See 12 U.S.C. 1430(j)(2).

D. Retention of AHP-Assisted Housing—§ 960.4

Under the existing regulation, there is no specified minimum retention period for AHP-assisted owner-occupied or rental housing. Projects that commit to longer retention periods receive more points in the scoring process. See 12 CFR 960.5(d)(2). Further, the existing regulation does not provide specific requirements governing the kinds of retention mechanisms that are to be used to ensure that AHP-assisted housing continues to meet AHP statutory and regulatory requirements and the obligations committed to in applications for AHP subsidies. The proposed rule establishes minimum threshold retention periods for AHP-assisted housing and clarifies the kinds of retention mechanisms that must be used for such housing.

a. *Owner-occupied units.* The Finance Board believes that the purpose of the language in the Act directing AHP subsidies to be used to "finance homeownership by families with incomes at or below 80 percent of the median income for the area," is to assist low- and moderate-income households in achieving homeownership, and then permitting the households to have rights in a home to the same extent as other homeowners, including the benefit of appreciation of the value of the home. See 12 U.S.C. 1430(j)(2)(A). Unlike the statutory provision governing AHP-assisted rental housing, *see id.* § 1430(j)(2)(B), the provision governing AHP-assisted owner-occupied housing does not mandate continued affordability for subsequent purchasers of owner-occupied units, nor does it impose restrictions on the resale price of such units. Therefore, the retention provisions of the proposed rule do not impose such requirements on owner-occupied units. However, to minimize opportunities for speculation, proposed § 960.4(a) requires each AHP-assisted owner-occupied unit to be subject to a deed restriction, "soft" second mortgage, or other legally enforceable mechanism facilitating recovery of a portion of the AHP subsidy if, prior to the end of the retention period, the owner sells the unit to a household that is not a low- or moderate-income household or refinances the unit and fails to ensure that it continues to be subject to a retention mechanism for the remainder of the retention period. In the latter case, the homeowner is required to repay the full amount of the direct subsidy.

Proposed § 960.1 defines "retention period" as the period during which the sponsor or owner of an AHP-assisted project commits to comply with the requirements of 12 U.S.C. 1430(j), the AHP regulation, and the terms of the approved AHP application. Proposed § 960.1 provides that the minimum retention period for an owner-occupied unit is 5 years, and for a rental unit is 15 years from the date of project completion. Under proposed § 960.8(a)(2)(v)(E), a Bank may establish a scoring priority for applications for projects with retention periods in excess of the required minimums.

Proposed § 960.4(a)(1) provides specifically that an owner-occupied unit financed by a direct subsidy under the Program must be subject to a deed restriction, "soft" second mortgage, or other legally enforceable mechanism requiring that the Bank or its designee is to be given notice of any sale or refinancing of the unit occurring prior to the end of the retention period. In the

case of a sale prior to the end of the retention period, a pro rata share of the direct subsidy, reduced for every year the seller owned the unit, must be repaid to the Bank 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. In the case of a refinancing prior to the end of the retention period, the full amount of the direct subsidy must be repaid to the Bank from any net gain realized upon the refinancing of the unit, unless the unit continues to be subject to a retention mechanism for the remainder of the retention period. This is intended to ensure that the owner of an AHP-assisted unit does not circumvent the retention requirement by refinancing the unit.

Proposed § 960.4(a)(2) provides specifically that an owner-occupied unit financed by a loan from the proceeds of a subsidized advance under the Program must be subject to a deed restriction or other legally enforceable mechanism requiring that the Bank or its designee is to be given notice of any sale or refinancing of the unit occurring prior to the end of the retention period. In the case of a refinancing prior to the end of the retention period, the full amount of the interest rate subsidy received by the owner, based on the pro rata portion of the interest rate subsidy imputed to the subsidized advance during the period the owner occupied the unit prior to refinancing, must be repaid to the Bank from any net gain realized upon the refinancing, unless the unit continues to be subject to a retention mechanism for the remainder of the retention period.

Where a member uses the proceeds of a subsidized advance to make loans financing owner-occupied units, the Bank must require the member to agree in writing that if such loans are prepaid by the borrower, the member may, at its option, either: (1) repay to the Bank that portion of the subsidized advance used to make the loan to the borrower, and be subject to a fee imposed by the Bank sufficient to compensate the Bank for any loss the Bank experiences in reinvesting the repaid amount at a rate of return below the cost of funds originally used by the Bank to calculate the interest rate subsidy incorporated in the subsidized advance; or (2) continue to maintain the subsidized advance outstanding, subject to the Bank resetting the interest rate on that portion of the subsidized advance used to make the loan to the borrower to a rate equal to the cost of funds originally used by the Bank to calculate the interest rate subsidy incorporated in the subsidized advance.

The Finance Board specifically requests comments on whether repayment of AHP subsidy should be triggered in all cases of refinancing by the owner prior to the end of the retention period, not just in cases where the owner fails to ensure that the unit continues to be subject to a retention mechanism after the refinancing. Refinancing may allow the owner of an AHP-assisted unit, in effect, to take the subsidy out of the unit prior to the end of the 5-year retention period, which, arguably, is a windfall to the owner. However, homeowners, generally, can take advantage of lower interest rates by refinancing their homes, and households that purchase AHP-assisted homes should not be denied this opportunity. As long as the owner of an AHP-assisted home ensures that after the refinancing, the home continues to be subject to the AHP retention requirement, the goal of the Program is met.

b. *Rental projects.* The Act provides that AHP-assisted rental housing must be occupied by and affordable for very low-income households "for the remaining useful life of such housing or the mortgage term." *See id.* § 1430(j)(2). The Finance Board believes that the statutory requirement that AHP-assisted rental housing be affordable for the "mortgage term" should not be interpreted to refer to the term of the mortgage loan actually financing a particular housing project, because this would encourage owners to obtain the shortest term financing available in order to limit the time that units must remain affordable. The Finance Board believes that 15 years reflects a reasonable period of time for the imposition of affordability requirements on AHP-financed rental units and is within a reasonable range of the average mortgage terms for affordable rental housing. Project sponsors continue to have the option of maintaining the affordability of units in the project for the remaining useful life of the housing, *see id.* § 1430(j)(2), but the regulatory minimum under the proposed rule is 15 years.

Proposed § 960.4(b)(1) provides that a rental project financed with a direct subsidy must be subject to a deed restriction or other legally enforceable mechanism requiring that the project's rental units, or applicable portion thereof, must remain occupied by and affordable for households with incomes at or below the levels committed to be served in the AHP application for the duration of the retention period, and the Bank or its designee is to be given notice of any sale or refinancing of the project occurring prior to the end of the

retention period. In the case of a sale prior to the end of the retention period, an amount equal to the entire amount of any direct subsidy received must be repaid to the Bank, unless the subsequent owner agrees in writing to comply with the income-eligibility and affordability restrictions committed to in the AHP application. In the case of a refinancing prior to the end of the retention period, an amount equal to the entire amount of any direct subsidy received must be repaid to the Bank, unless the project continues to be subject to a deed restriction or other legally enforceable mechanism requiring the project's rental units, or applicable portion thereof, to remain occupied by and affordable for households with incomes at or below the levels committed to be served in the AHP application for the duration of the retention period.

Proposed § 960.4(b)(2) provides that a rental project financed with a subsidized advance must be subject to a deed restriction or other legally enforceable mechanism requiring that the project's rental units, or applicable portion thereof, must remain occupied by and affordable for households with incomes at or below the levels committed to be served in the AHP application for the duration of the retention period, and the Bank or its designee is to be given notice of any sale or refinancing of the project occurring prior to the end of the retention period. In the case of a sale prior to the end of the retention period, the full amount of the interest rate subsidy received by the seller, based on the pro rata portion of the interest rate subsidy imputed to the subsidized advance during the period the seller owned the project prior to the sale, must be repaid to the Bank, unless the subsequent owner agrees in writing to comply with the income-eligibility and affordability restrictions committed to in the AHP application. In the case of a refinancing prior to the end of the retention period, the full amount of the interest rate subsidy received by the owner, based on the pro rata portion of the interest rate subsidy imputed to the subsidized advance during the period the owner owned the project prior to refinancing, must be repaid to the Bank, unless the project continues to be subject to a deed restriction or other legally enforceable mechanism requiring the project's rental units, or applicable portion thereof, to remain occupied by and affordable for households with incomes at or below the levels committed to be served in the AHP application for the duration of the retention period.

Where a member uses the proceeds of a subsidized advance to make loans financing a rental project, the Bank must require the member to agree in writing that if such loans are prepaid by the borrower, the member may, at its option, either: (1) repay to the Bank that portion of the subsidized advance used to make the loan to the borrower, and be subject to a fee imposed by the Bank sufficient to compensate the Bank for any loss the Bank experiences in reinvesting the repaid amount at a rate of return below the cost of funds originally used by the Bank to calculate the interest rate subsidy incorporated in the subsidized advance; or (2) continue to maintain the subsidized advance outstanding, subject to the Bank resetting the interest rate on that portion of the subsidized advance used to make the loan to the borrower to a rate equal to the cost of funds originally used by the Bank to calculate the interest rate subsidy incorporated in the subsidized advance.

The Finance Board specifically requests comments on whether an owner of an AHP-assisted rental project should be required to repay the entire amount of the AHP subsidy, versus a pro rata share, where the project is sold prior to the end of the retention period and the subsequent owner fails to agree in writing to comply with the income-eligibility and affordability restrictions committed to in the AHP application. This requirement arguably serves to discourage the conversion of AHP-assisted rental projects into projects that charge market rents, prior to the end of the retention period.

E. Timing of Household Income Qualification—§ 960.5

Proposed § 960.5 adds new provisions intended to clarify the time at which a household's income should be examined to determine whether it meets the income eligibility requirements for AHP-assisted housing.

1. Owner-Occupied Projects

Proposed § 960.5(a) provides that in order to qualify as a very low- or a low- or moderate-income household for purposes of an AHP-assisted owner-occupied project, a household must have an income at or below the level committed to in the AHP application at the time the household is qualified by the sponsor for participation in the project, but no earlier than the date on which the AHP application was submitted to the Bank for approval.

2. Rental Projects

Proposed § 960.5(b) provides that in order to qualify as a very low- or a low-

or moderate-income household for purposes of an AHP-assisted rental project, a household must have an income at or below the level committed to in the AHP application for a particular unit upon initial occupancy only. The household may continue to occupy such designated unit even if its income subsequently increases above the income-eligibility requirement for that unit. The unit may continue to count toward meeting the targeted income-eligibility requirement, provided the rent charged remains affordable, as defined in proposed § 960.1, for the targeted household.

F. Funding Periods—§ 960.6

1. Definition of Member

Proposed § 960.1 revises the definition of "member" in the existing AHP regulation, *see* 12 CFR 960.1(i), to conform the definition to that used in the Finance Board's regulation on membership. *See id.* § 933.1(s).

2. District-Wide Competitions

Proposed § 960.6(a) continues the existing requirement that each Bank: (1) administer a District-wide competition for its AHP subsidies; (2) announce the application due dates by December 1 of the preceding year; and (3) offer comparable amounts of AHP subsidies in each funding period. *See id.* § 960.4(a). Proposed § 960.6(a) revises the existing regulation by permitting the Banks to accept applications from members for AHP funding during a specified number of funding periods each year, as determined by the Bank, instead of only twice a year as required under the existing regulation. *See id.* The Finance Board specifically requests comments on whether the Banks should be permitted to accept AHP applications on a rolling basis, and, if so, how applications would be scored under such a process.

3. Funding Availability; Notification to Members

Proposed § 960.6(b) requires each Bank to notify its members and other interested parties of: (1) the approximate amount of annual AHP subsidies available for the Bank's District; and (2) the approximate amount of AHP subsidies to be offered in each funding period. *See id.* § 960.4(b).

Proposed § 960.6(b) also adds three new Bank notification requirements. Each Bank must notify its members and other interested parties of: (1) the applicability of any District threshold requirements established pursuant to proposed § 960.7(b); (2) the scoring guidelines contained in the Bank's AHP

implementation plan; and (3) the application due dates. The term "interested parties" in proposed § 960.6(b) is meant to refer to those parties that have expressed an interest to the Bank in receiving information about AHP funding periods.

G. Application Requirements—§ 960.7

Proposed § 960.7(a) consolidates, streamlines, and revises the AHP application requirements in §§ 960.4(c) and 960.5(a)(1) and (2) of the existing regulation. See 12 CFR 960.4(c), 960.5(a)(1), (2).

1. Mandatory Requirements

Under proposed §§ 960.7(a)(1) through (3), each Bank must require members to include in their AHP applications: (1) a concise description of the proposed project; (2) the estimated amount of AHP subsidy required for the proposed project; and (3) a disclosure of the member's direct or indirect interest, if any, in the property or proposed project. These requirements generally reiterate application requirements in the existing regulation. See *id.* § 960.4(c) (1), (5), (6). However, proposed § 960.7(a)(2) adds a new requirement that in the case of an application for a subsidized advance, the member shall include in its application the interest rate on the member's loan to the proposed project, and, for purposes of scoring the application, the Bank shall estimate the subsidy required for the proposed project based on the Bank's cost of funds as of the date on which all AHP applications are due for the funding period in which the application is submitted. This is intended to address the fact that the actual amount of AHP subsidy that will be incorporated in the subsidized advance for which the member is applying will not be determined until after the member submits its application to the Bank. Therefore, in order to treat all members applying for subsidized advances in a given funding period on an equal basis, the proposed rule requires that the estimate of the subsidy in a subsidized advance be based on the Bank's cost of funds as of the date on which all AHP applications are due for the funding period in which the application is submitted.

Proposed § 960.7(a)(4) requires that AHP applications include an explanation of how the proposed project will comply with the eligible costs provision of proposed § 960.3(b). In order to meet this requirement, applications should include an explanation of how the AHP subsidy will be used. The proposed requirement is consistent with the existing

application requirements for eligible uses of AHP subsidies. See *id.* §§ 960.4(c)(1), 960.5(a)(1).

Proposed § 960.7(a)(5) requires that AHP applications include an explanation of how the proposed project will comply with the retention requirements of proposed § 960.4. In order to meet this requirement, applications should include an explanation of what legal agreements, deed restrictions, or other legally enforceable mechanisms are or will be in place to ensure retention of the project in accordance with the requirements of proposed § 960.4. This is consistent with the requirement in the existing regulation that the Bank consider the extent to which the project facilitates the maximum retention of such housing as evidenced through the existence of long-term guarantees, covenants, and similar techniques. See *id.* § 960.5(d)(2).

Proposed § 960.7(a)(6) requires that AHP applications include an explanation of how the proposed project is financially viable and likely to be completed within a reasonable period of time, and why the requested AHP subsidy is needed. In evaluating the application for compliance with this requirement, a Bank must analyze all project sources and uses of funds (including the value of any donated land, materials, and professional labor), multi-year operating pro formas for rental projects, sale prices for owner-occupied units, and local market conditions and review the reasonableness of information relating to available sources and uses of funding and financing capacity, such as operating pro formas, to verify the proposed project's need for AHP subsidy.

This provision amends the feasibility requirement in the existing regulation by specifying the types of information that must be included in the project feasibility analysis and by adding an explicit requirement that the Banks analyze a proposed project's need for the requested AHP subsidy. See *id.* §§ 960.4(c)(3), 960.5(a)(2)(ii). This change would make clear that the Banks, in addition to reviewing the reasonableness of project costs, must review the reasonableness of operating pro formas for the proposed project to ensure that representations regarding the financing capacity of the project (such as debt servicing capacity and equity market value), and the consequent need for AHP subsidy, are reasonable.

The requirement that the project is likely to be completed within a reasonable period of time replaces the

requirement in § 960.5(a)(2)(iv) of the existing regulation that projects be evaluated for their ability to begin using AHP subsidies within 12 months of approval. See *id.* § 960.5(a)(2)(iv).

Proposed § 960.7(a)(7) requires that AHP applications include an explanation of the project sponsor's qualifications and ability to perform its responsibilities as committed to in the AHP application. This provision is consistent with the sponsor qualification requirement in the existing regulation. See *id.* § 960.4(c)(4). Proposed § 960.1 defines a "sponsor" as a not-for-profit or for-profit organization or public entity that is: (1) An owner of a rental project; or (2) integrally involved in an owner-occupied project, such as by exercising control over the planning, development or management of such project, or by qualifying borrowers and providing or arranging financing for the owners of the units. This definition revises the definition in the existing regulation to clarify the different roles of sponsors in rental as opposed to owner-occupied projects.

Proposed § 960.7(a)(8) requires that AHP applications include a statement that the project sponsor and owner will comply with any applicable fair housing law requirements, and an explanation of how the project sponsor and owner intend to affirmatively market the proposed project and otherwise comply with such requirements. This provision is consistent with the fair housing requirements in the existing regulation. See *id.* §§ 960.4(c)(2), 960.5(a)(2)(i).

The proposed rule does not include the existing regulatory requirement that AHP applications be evaluated to ensure the member's ability to qualify for a subsidized advance. See *id.* § 960.5(a)(2)(iii). Since a Bank is always required to determine a member's creditworthiness before providing funds to the member, see 12 CFR part 935, it is not necessary to repeat this requirement in the AHP regulation.

Proposed § 960.7(a)(9)(i) requires that AHP applications include a statement that the proposed project will satisfy the maximum subsidy requirement, *i.e.*, that no subsidized household in the proposed project shall pay less than 20 percent of such household's gross monthly income toward monthly housing costs, as defined in proposed § 960.1 (the 20 percent requirement), unless an exception applies. This provision carries forward, in revised form, the provisions of § 960.9 of the existing regulation, which were issued by the Finance Board as an interim rule. See *id.* § 960.9. The maximum subsidy provisions implement the maximum subsidy limitation requirement

contained in section 10(j)(9)(F) of the Act. See 12 U.S.C. 1430(j)(9)(F).

Proposed § 960.7(a)(9)(ii)(A) provides that the 20 percent requirement shall not apply where an AHP-assisted rental project also receives funds from a federal or state rental housing program that requires qualifying households to pay as rent a certain percentage of their monthly income or a designated amount, and the households in the project meet such requirements. This provision is consistent with the similar exception in the existing regulation. See 12 CFR 960.9(b)(1).

Proposed § 960.7(a)(9)(ii)(B) also provides that the 20 percent requirement shall not apply where the total amount of the AHP subsidies provided to the project to finance rehabilitation of housing units owned by very low-income households is \$10,000 or less per household, and for housing units owned by low- or moderate-income households, \$5,000 or less per such household. This provision is a change from the existing regulation which permits an exception to the 20 percent requirement for rehabilitation only of units owned by very low-income households. See *id.* § 960.9(b)(2).

Proposed § 960.7(a)(9)(ii)(C) further provides that the 20 percent requirement shall not apply where the total amount of AHP subsidies provided to the project to finance the purchase of housing units is \$5,000 or less per household. This is a change from the existing regulation, which permits an exception to the 20 percent requirement for purchase of units only by households that are above the threshold income level for very low-income households and at or below the income level to qualify as low- or moderate-income households. See *id.* § 960.9(b)(3).

In addition, proposed § 960.7(a)(9)(ii)(D) provides that the 20 percent requirement shall not apply where AHP subsidies are used to assist a household participating in a self-help, sweat equity or similar housing program that requires the household to contribute its skilled or unskilled labor valued at a minimum of \$2,000 per household, working cooperatively with others, to construct or rehabilitate housing which the household or other program participants are purchasing or already own and occupy, and that involves supervision of the work performed by skilled builders or rehabilitators. This provision is consistent with the similar exception in the existing regulation. See *id.* § 960.9(b)(4).

Proposed § 960.7(a)(9)(ii) also deletes the annual Consumer Price Index

adjustments required in the existing regulation, in order to simplify implementation of the exceptions. See *id.* § 960.9(b)(2), (3), (4).

Proposed § 960.7(a)(10) requires that AHP applications include an explanation of how the proposed project meets any applicable District threshold requirements adopted by the Bank pursuant to proposed § 960.7(b), discussed further below.

Proposed § 960.7(a)(11) requires that AHP applications include an explanation of how the proposed project meets the priorities and objectives identified in proposed § 960.8(a). This provision carries forward the similar provision in the existing regulation. See *id.* § 960.4(c)(1).

Proposed § 960.7(a)(12) requires that AHP applications include a certification from the member, project sponsor, and project owner committing to comply with the requirements of 12 U.S.C. 1430(j), part 960, and all obligations committed to in the AHP application. This provision incorporates the certification requirements in §§ 960.4(c)(8) and (9) of the existing regulation into a general requirement for certification of compliance with all applicable AHP requirements and commitments, and requires sponsors and owners, as well as members, to make such certification. See 12 CFR 960.4(c)(8), (9).

Proposed § 960.7(a)(13) requires that AHP applications include such other information as the Bank may reasonably require in order to verify compliance of the AHP applications with the requirements of part 960. This provision carries forward the comparable provision in the existing regulation, but establishes a standard for when the Banks may require other additional information not identified in proposed § 960.7(a). See *id.* § 960.4(c)(10).

The proposed rule eliminates the requirement in existing § 960.4(c)(7), see *id.* § 960.4(c)(7), that a member must explain in its application how it will monitor the proposed project, because, as discussed further below, the proposed rule establishes specific monitoring requirements for all members. See proposed § 960.13.

The proposed rule also eliminates the requirement in existing § 960.4(c)(8) that a member must explain how any excess AHP subsidy will be recaptured. See 12 CFR 960.4(c)(8). As discussed further below, the proposed rule establishes specific requirements for all members governing the recapture of AHP subsidies as well as other remedies for noncompliance. See proposed § 960.14.

2. District Threshold Requirements

As discussed in part I of the **SUPPLEMENTARY INFORMATION**, the Finance Board published a Subsidy Limits Proposal on November 1, 1995, see 60 FR 55487 (Nov. 1, 1995), and received 25 comment letters. Commenters included ten Banks, four Bank Advisory Councils, five Bank members, three trade associations, one private housing developer, one not-for-profit sponsor, and one housing authority sponsor. A majority of the commenters supported the Subsidy Limits Proposal. Three commenters opposed member subsidy limits, four commenters opposed project application subsidy limits, and four commenters opposed project unit subsidy limits.

As discussed below, § 960.7(b) of the proposed rule incorporates the Finance Board's Subsidy Limits Proposal, taking into account public comments received. Specifically, the proposed rule permits the Banks, in their discretion, to establish certain application threshold requirements in addition to those expressly set forth in § 960.7(a).

a. *Member, project, and unit subsidy limits.* Proposed § 960.7(b)(1) provides that a Bank's board of directors, after consultation with its Advisory Council, may establish limits on the maximum amount of AHP subsidy available per member per year; or per member, per project, or per project unit in a single funding period, provided that such subsidy limits must apply equally to all members. See 12 U.S.C. 1427(j).

Member subsidy limits may prevent a small number of members, especially larger members with competitive advantages, from receiving all of the AHP subsidy available in a given funding period. This would encourage participation by a greater number of members in the Program. The benefits of the Program may be distributed across a wider geographic area and among a broader variety of projects.

There may be an effect on the AHP regulatory program goal of promoting competition if highly competitive projects have difficulty finding available members that have not exceeded their limits to submit AHP applications for them. However, the Finance Board believes that sufficient numbers of members should be available to accommodate all AHP applications. Any noncompetitive effect likely would be minimal in comparison to the benefit of greater member participation in the Program. Several Banks already unilaterally have adopted member subsidy limits.

Project application and project unit subsidy limits may prevent a small number of projects from receiving all or most of the available AHP subsidies in a given funding period. This would encourage funding of a greater number of AHP projects. Funding more projects may serve housing needs in more areas of the Bank's District, and promote greater participation by members, especially small members that cannot handle large projects, in the Program. Such limits would not prevent competitive projects from being funded. Those projects merely would be funded at lower levels, with the gaps in funding made up from other funding sources, thereby enabling the funding of additional AHP projects.

There may be an effect on the AHP regulatory program goal of promoting competition if otherwise highly competitive projects that need a large amount of subsidy, such as some rural or homeownership projects, have difficulty finding other available sources of funding, and therefore, remain financially unfeasible. There also could be an impact on the AHP statutory and regulatory program goal of promoting funding of units for very low-income households, which often need larger subsidies to make the projects financially feasible. See 12 U.S.C. 1430(j)(2)(B); 12 CFR 960.5(d)(1). However, the Finance Board believes that any noncompetitive effect or impact on very low-income targeting may be outweighed by the benefit of funding a greater number of AHP projects, and the ability to receive additional scoring points under the AHP regulatory scoring criterion for very low-income targeting. Project unit subsidy limits also conform with the goal of the effectiveness scoring criterion in the existing regulation and proposed rule to encourage lower levels of AHP subsidy per unit by giving additional scoring points for projects with lower ratios. See 12 CFR 960.5(d)(3); proposed § 960.8(a)(3)(ii). Several Banks already unilaterally have adopted project application and project unit subsidy limits.

Limits on the amount of direct subsidy per project may promote greater member involvement in the Program by encouraging more members to borrow AHP subsidized advances and, in turn, lend their own funds to project borrowers. This would build greater member affordable housing lending capacity and expertise. If members' own funds were at risk as a result of such limits, members may have greater incentive to underwrite and monitor projects for financial feasibility and AHP compliance, respectively. Direct subsidies, which, in some cases, are

passed on by members to borrowers without members putting any of their own funds at risk, do not promote these goals. Several Banks already unilaterally have adopted project direct subsidy limits.

The proposed rule provides that establishment of member, project, or unit subsidy limits would be optional with the Banks. The Banks would be required to consult with their Advisory Councils in establishing such limits, since Advisory Council members typically have affordable housing expertise that may be very useful to the Banks in determining the affordable housing needs of the District and how any subsidy limit would promote those needs. Thus, if a Bank determines that imposition of particular subsidy limits will have specific negative impacts on members or projects (e.g., as described by some commenters in their comments on the Subsidy Limits Proposal) that outweigh the benefits to the Program, the Bank can choose not to adopt such limits. The proposed rule, thus, provides flexibility to the Banks, which best understand their markets, including the availability of other subsidy sources and affordability levels, to respond to individual District needs.

b. *Sponsor subsidy limits.* In the Subsidy Limits Proposal, the Finance Board requested comments on whether the Banks should be permitted to establish maximum subsidy limits per project sponsor. See 60 FR 55489.

One commenter supported such authority. Sponsor subsidy limits might encourage greater participation by sponsors in the Program, increase the affordable housing development capacity of more sponsors, and encourage the creation of more sponsors. Such limits might be especially beneficial where one large or particularly active sponsor in a District is winning a large portion of the Bank's AHP subsidies. However, the Finance Board believes that the competitive and market aspects of the Program will preclude any one sponsor from dominating the AHP funding process. Accordingly, the proposed rule does not authorize the Banks to establish a limit on the maximum amount of AHP subsidy that may be requested per project sponsor.

c. *Subsidy limits based on member capital stock investment.* Several commenters proposed that the Banks be permitted to establish subsidy limits based on the level of a member's capital stock investment in the Bank. Members are required by the Act to maintain a specified amount of Bank capital stock to support their advance borrowings. See 12 U.S.C. 1426(b)(2), 1430(e)(1). The

argument was made that encouraging member advance borrowings and the corresponding investment in Bank capital stock would further the goal of increasing Bank earnings and, therefore, the AHP fund, which is derived from Bank earnings. However, such limits may not enlarge the AHP fund by increasing member borrowing because small member institutions, by virtue of their limited asset size, would be incapable of increasing or unwilling to increase their borrowings (due to the increased cost of borrowing resulting from investing in additional Bank stock) just to receive "preferred treatment" under such a subsidy limits policy. Accordingly, the proposed rule does not authorize the Banks to establish subsidy limits based on members' levels of capital stock investment in the Bank.

d. *Limitation on access to AHP subsidies based on member's use of Bank credit products.* Proposed § 960.7(b)(3) authorizes a Bank to require that members submitting AHP applications have made use of a credit product offered by the Bank within the previous 12 months, other than AHP or Community Investment Program (CIP) (see 12 U.S.C. 1430(i)) credit products, provided that the requirement is applied equally to all members.

In the Subsidy Limits Proposal, the Finance Board specifically requested comments on whether the Banks should be permitted to establish AHP subsidy limits based on the level of a member's regular advance borrowings from a Bank. See 60 FR 55490–91. One Bank already unilaterally has adopted such a policy. Ten commenters supported such authority, while five commenters opposed it. One reason expressed for imposing such limits was that they would encourage broader participation by members in the Program, thereby giving sponsors more options for financing AHP projects, and providing experience and education to more members that could help them develop additional capacity to engage in affordable housing lending. However, such limits may not achieve this goal if members with high levels of borrowing who already participate in the Program are allowed to apply for and win the additional AHP subsidies no longer available to those members subject to the limits. Uniform limits on the amount of AHP subsidy for which each member may apply may have a greater likelihood of increasing member participation in the Program.

It also was argued that credit-based subsidy limits may increase the pool of available AHP funds by encouraging greater borrowing from the Bank and, therefore, increasing Bank earnings,

from which AHP funds are derived. The argument also was made that members that contribute to Bank earnings by borrowing should have greater access than non-borrowing members to AHP subsidies derived from such earnings.

The Act does not restrict availability of AHP subsidies to "borrowing" members. Nor does it specify any correlation between the member's contribution to Bank earnings and its access to AHP subsidies. Bank earnings are affected by economic factors other than the amount of outstanding advances of members participating in the Program. Thus, even non-borrowing members contribute to Bank earnings and, therefore, to the AHP fund. The limits also may not enlarge the AHP fund by increasing member borrowing because, as discussed above, small member institutions, by virtue of their limited asset size, would be incapable of increasing or unwilling to increase their borrowings (due to the increased cost of borrowing resulting from investing in additional Bank stock) just to receive "preferred treatment" under an AHP subsidy limits policy.

Instead, proposed § 960.7(b)(3) authorizes a Bank to require that members submitting AHP applications have made use of a Bank credit product within the previous 12 months, other than AHP or CIP credit products, provided that the requirement is applied equally to all members. The Finance Board believes that there is some merit in tying access to AHP subsidies to a member's contribution to the Bank's housing finance mission through its use of one or more of the Bank's regular credit products. This type of limitation would not discriminate against a member based on its asset size, as all members would have the capability to borrow some amount from the Bank.

e. Subsidy limits based on the level of a member's mortgage-related assets. The Finance Board requested comments in the Subsidy Limits Proposal on whether the Banks should be permitted to establish AHP subsidy limits based on the level of a member's mortgage-related assets. See 60 FR 55490–91. Seven commenters supported such authority, while six commenters opposed it.

Commenters argued that such subsidy limits may encourage members to increase their mortgage-related lending, consistent with the provisions of the Act that impose less burdensome advances and stock requirements on institutions that devote a greater percentage of their assets to housing finance (qualified thrift lenders). See 12 U.S.C. 1430(e)(1), (2); 12 CFR 935.13. However, the Finance Board believes that such limits would defeat this goal since members,

especially commercial banks, with lower levels of mortgage-related assets would have limited access to AHP subsidies which they could use for such housing finance purposes. Accordingly, the proposed rule does not authorize the Banks to establish AHP subsidy limits based on the level of a member's mortgage-related assets.

f. Limiting or prohibiting AHP applications for out-of-District projects. Proposed § 960.7(b)(2) authorizes the Banks, at their option, to establish a threshold requirement prohibiting applications for AHP subsidies for projects located outside the Bank's District. Proposed § 960.8(a)(2)(v)(M) also authorizes the Banks to adopt as an optional Bank District scoring priority a priority for projects located within the Bank's District.

In the Subsidy Limits Proposal, the Finance Board specifically requested comments on whether the Banks should be permitted to limit or prohibit members from submitting AHP applications for projects located outside of the Bank's District. See 60 FR 55489. Several Banks already unilaterally have adopted a prohibition or a scoring priority for projects located within a Bank's District. Seven commenters supported allowing the Banks to adopt a limit or prohibition, four commenters opposed a limit or prohibition, and three commenters supported limits only. Two commenters supported allowing the Banks to adopt a District scoring priority for projects located within the District, while one commenter opposed such a priority.

The Finance Board believes that the Banks should have authority to prohibit AHP applications for out-of-District projects, or to give scoring priority to applications for in-District projects, because a few large multistate members could win AHP subsidies for out-of-District projects, thereby resulting in less AHP subsidies available for use by other members and sponsors within the District. A prohibition or priority would help ensure that a Bank can adequately serve the affordable housing needs within its District. A priority would not preclude members from competing for AHP subsidies for out-of-District projects, but would require that they score highly on other scoring factors in order to qualify for AHP funding. Sponsors of out-of-District projects would not be precluded from participating in the Program, as they could apply for AHP subsidies through a member of another Bank. In addition, it may be more difficult and costly for a Bank to monitor projects located outside the District for compliance with AHP requirements.

A prohibition or priority could limit or prevent access to AHP subsidies by members' out-of-District branches, which would deny that member the opportunity to take advantage, on behalf of a customer, of a source of funds it was, in part, responsible for generating. However, since adopting a prohibition or priority would be optional with the Bank, the Bank, in consultation with its Advisory Council, would determine whether the advantages outweigh any disadvantages. The proposed rule provides flexibility to the Banks to determine whether to adopt a prohibition or priority in response to their individual District needs.

g. Member financial involvement as a threshold requirement or scoring criterion. Proposed § 960.8(a)(2)(v)(D) provides that a Bank may adopt a District scoring priority for projects involving member financial participation (excluding the pass-through of AHP subsidy), such as providing market rate or concessionary financing, fee waivers, or donations.

In the Subsidy Limits Proposal, the Finance Board specifically requested comments on whether the Banks should have authority to require certain types of member financial involvement in a project as a threshold requirement that a project must satisfy in order to be considered for scoring and approval for AHP funding, or whether such member financial involvement should be included as a scoring criterion. See 60 FR 55490. Six commenters supported a threshold requirement, while nine commenters supported a scoring criterion.

The Finance Board believes that where a member's own funds and contributions are at risk in a project, the member has a greater incentive to underwrite the project for financial feasibility and monitor the project for AHP compliance. Greater member involvement in projects builds member affordable housing lending capacity and expertise. However, the Finance Board does not believe member financial involvement should be a threshold requirement because some projects may not require or be able to sustain additional debt related to member financial involvement, but still may contribute toward the objectives of the Program, particularly by those members that are not large enough to finance a project loan, waive fees or donate funds. In addition, such a threshold requirement could discourage member participation in the Program. Accordingly, the proposed rule permits a Bank to adopt member financial involvement in the project as a scoring priority, as further discussed below.

H. Application Scoring and Approvals—§ 960.8

1. In General

Proposed § 960.8 carries forward the existing regulatory framework governing the scoring of AHP applications, with revisions based on a new allocation of points among revised scoring categories, and additional discretion provided to the Banks, as further discussed below. The Finance Board specifically requests comments on the proposed scoring provisions. In particular, comments are requested on ways in which the scoring system can be simplified, such as by creating discrete scoring categories containing criteria required by the Act, criteria established by the Finance Board, and criteria established by the Banks.

Proposed § 960.8(a)(1) provides that a Bank shall score only those applications meeting the application requirements of proposed § 960.7. Applications shall be scored based on the extent to which they meet the scoring priorities and objectives set forth in proposed § 960.8. The Banks are required to adopt written guidelines implementing these scoring requirements.

The total possible score an AHP application may receive is 100 points. In determining the number of points to award an application for any given scoring category, the Bank shall evaluate applications relative to each other.

2. Revised Scoring Priorities Categories

Applications that meet the application requirements of proposed § 960.7 are scored according to the priorities in proposed § 960.8(a)(2). Proposed § 960.8(a)(2) makes the following changes to the existing regulatory provisions governing scoring priorities. The Finance Board's existing regulation contains seven priority categories: homeownership projects; rental projects; projects using federal government properties; projects with a not-for-profit or state or local agency sponsor; projects promoting empowerment; homeless permanent housing projects; and projects meeting a Bank District priority. See 12 CFR 960.5(b). Under the existing regulation, applications meeting at least three of the seven priorities are scored and ranked, as a group, before applications meeting fewer than three of the priorities. See *id.* § 960.5(a)(3).

Proposed § 960.8(a)(2) contains only six priority categories. The total points available for the priority categories are increased from 25 to 60, with the Bank required to allocate the 60 points among the six priority categories as discussed below. The priority categories are either

fixed-point priorities or variable-point priorities. Variable-point priorities, which are listed in paragraphs (a)(2)(i) through (iv), and (v)(A) through (E), are those where there are varying degrees to which an application can satisfy the priority. Each variable-point priority category must be allocated at least 8 points. The number of points that may be awarded to an application for meeting a variable-point priority will vary, depending on the extent to which the application satisfies the priority, compared to the other applications being scored. The application(s) best achieving each variable-point priority shall receive the maximum point score available for that priority category, with the remaining applications scored on a declining scale. An application receiving at least half of the points allocated to a variable-point priority category shall be considered to have met that priority.

Fixed-point priority categories, which are listed in paragraphs (a)(2)(v)(F) through (M), are those which an application must meet in order to receive the allocated points. Each fixed-point priority category must be allocated 8 points. An application meeting a fixed-point priority shall be awarded 8 points.

The priority selected by a Bank under paragraph (a)(2)(vi) may be either a variable-point or fixed-point priority, and points must be allocated and awarded accordingly.

Applications meeting at least two of the six priorities shall be considered priority applications, and, as a group, shall be scored before applications meeting fewer than two of the priorities.

Priority applications shall be scored against each other, based on the extent to which they meet the priorities and the scoring objectives contained in paragraph (a)(3).

As under the existing regulation, the remaining applications are scored only if there are insufficient priority applications to exhaust the total AHP subsidy amount available for the funding period. See *id.* § 960.5(a)(3).

Proposed § 960.8(a)(2) eliminates the existing priority categories for homeownership and rental projects because a project must be either a rental or homeownership project in order to qualify for AHP funding.

Proposed § 960.8(a)(2)(i) revises the existing priority category for projects involving federal government properties by including properties owned or held by state and local governments, agencies, or instrumentalities thereof, and by requiring that at least 20 percent of the units in such projects meet this

requirement. See *id.* § 960.5(b)(3); 12 U.S.C. 1430(j)(3)(B). State and local government properties are included under this priority category because the stock of available federal government properties is decreasing. The 20 percent of units requirement is intended to ensure that a reasonable number of units in a project previously were government owned in order for an AHP application to receive credit under this priority category.

Proposed § 960.8(a)(2)(ii) retains the priority category for projects sponsored by not-for-profit organizations, or state or local government entities in the existing regulation. See 12 CFR 960.5(b)(4); 12 U.S.C. 1430(j)(3)(C).

The existing priority category for projects that empower the poor is subsumed under proposed § 960.7(a)(2)(v)(B), as further discussed below. See 12 CFR 960.5(b)(5).

Proposed § 960.8(a)(2)(iii) revises the existing homeless housing priority category to provide that in order to meet this priority, projects financing permanent or transitional housing for the homeless must reserve at least 20 percent of their units for occupancy by homeless households. See *id.* § 960.5(b)(6). Proposed § 960.1 defines "permanent or transitional housing" as housing with six-month minimum occupancy, but excluding overnight shelters.

Proposed § 960.8(a)(2)(iv) adds a new priority category for projects meeting housing needs documented as part of a community revitalization or economic development strategy approved by a unit of state or local government.

Proposed § 960.8(a)(2)(v) retains the existing Bank District priority category but requires the Bank to select the priority, as recommended by the Bank's Advisory Council, for each funding period, from the specific priorities listed in paragraphs (a)(2)(v)(A) through (M) in the proposed rule, most of which are derived from priorities Banks have chosen in the past. The priority category in paragraph (a)(2)(v)(B) replaces the priority category in § 960.5(b)(5) of the existing regulation for projects empowering the poor with a priority for housing incorporating the following elements of empowerment: programs offering employment, education, training, homeownership counseling, or daycare services that assist AHP-eligible residents to move toward better economic opportunities. See *id.* § 960.5(b)(5).

As discussed above, among the priority categories that a Bank may select are priorities for: projects involving member financial participation; projects with retention

periods in excess of 5 and 15 years for owner-occupied and rental projects, respectively; and projects located within the Bank's District. See proposed § 960.7(a)(2)(v) (B), (E), (M).

Proposed § 960.8(a)(2)(vi) adds a new Bank District priority category under which a Bank may adopt a priority for projects meeting a housing need in the Bank's District, as defined and recommended by the Bank's Advisory Council. The priority may be chosen from the list of priorities in proposed paragraph (a)(2)(v), provided the priority is different from the Bank District priority adopted under that paragraph.

The Finance Board specifically requests comments on whether a seventh priority category should be added for projects involving member financing (excluding the pass-through of AHP subsidies). Proposed § 960.8(a)(2)(v)(D) permits the Banks to adopt member financial involvement as a Bank District priority. Although members have played a critical role in the Program, their participation has not generally involved lending their own funds. Where a member lends its own funds to a project, it is more likely to underwrite the project for financial feasibility and monitor the project for AHP compliance. Greater member financial involvement in projects also builds member affordable housing lending capacity and expertise. Adding a permanent seventh priority for applications submitted by members that will have a financial stake in the AHP project may serve to encourage more of such activity. The Finance Board also requests comments on whether a member should be deemed to meet such a priority for member financial involvement based on the member's record of affordable housing lending activities apart from its lending under the Program.

3. Revised Scoring Objectives

The Finance Board's existing regulation contains the following six scoring "objectives" categories: targeting; long-term retention; effectiveness (subsidy per unit); community involvement; community stability; and innovation. See 12 CFR 960.5(d), (e). Proposed § 960.8(a)(3) eliminates the need for long-term retention as a scoring objective because proposed § 960.1 establishes minimum retention periods of 5 and 15 years as threshold requirements for owner-occupied and rental projects, respectively.

Proposed § 960.8(a)(3) also eliminates the innovation objective category. See 12 CFR 960.5(e)(3). The Finance Board

believes that innovation is an important part of producing affordable housing in many cases, but is not an objective in itself. In some cases, reliance on well-established approaches may better serve a project, and the project should not be penalized for this. Further, innovation is a highly subjective element that is difficult to assess consistently among projects.

Proposed § 960.8(a)(3) also makes the following revisions to the remaining four objectives categories. The total points available for the objectives categories are reduced from 75 to 40, with a Bank required to allocate the 40 points among the four objectives categories, provided that the targeting objective category is allocated no less than 8 points. The application(s) best achieving each objective shall receive the maximum point score available for that objective category, with the remaining applications scored on a declining scale.

Under the targeting objective category in the existing regulation, applications for projects serving the greatest number of very low-income households are awarded the most points. See *id.* § 960.5(d)(1). Applications targeting 100 percent of the units in a project to very low-income households generally receive the most points. The Finance Board believes that this scoring practice creates an inappropriate bias against mixed-income rental projects. Under the Act, a minimum of 20 percent of the units in an AHP rental project must be occupied by, and affordable for, very low-income households. See 12 U.S.C. 1430(j)(2)(B). In order to reduce the emphasis on funding projects that are occupied solely by very low-income households, proposed § 960.8(a)(3)(i) provides that applications for rental projects shall be awarded the maximum number of points available for the targeting objective category if at least 60 percent of the units in a project are reserved for occupancy by households with incomes at or below 50 percent of the area median income.

The Finance Board specifically requests comments on ways in which the targeting objective may be structured so that it is more closely compatible with the monitoring requirements for AHP projects, discussed below under proposed § 960.13.

Proposed § 960.8(a)(3)(ii) clarifies the subsidy-per-unit objective (effectiveness) category in the existing regulation. See 12 CFR 960.5(d)(3). The proposed rule provides that applications are awarded points based on the extent to which a project proposes to use the least amount of AHP subsidy per AHP-targeted unit. The Finance Board wishes

to clarify that in calculating subsidy per unit, only AHP-targeted units should be counted. Further, this scoring criterion may not include a "leveraging" criterion whereby the application is scored based on the percentage of the project's total development cost that is to be financed with the AHP subsidy. The subsidy-per-unit objective, in effect, favors projects with a shallower subsidy. Under the proposed scoring system, a Bank may de-emphasize this effect and promote deeper subsidies per unit by allocating as few as one point to this objective. The Finance Board specifically requests comments on whether this gives the Banks adequate flexibility in applying the subsidy-per-unit objective in their Districts.

Proposed § 960.8(a)(3) (i) and (ii) provide that applications for owner-occupied projects and rental projects must be scored separately for purposes of the targeting and subsidy-per-unit objectives, because these two objectives inherently favor rental projects, which, in general, have more units targeted to lower income households and lower amounts of subsidy per unit than do owner-occupied projects.

Proposed § 960.8(a)(3) (iii) and (iv) clarify the community involvement and community stability objectives in the existing regulation, respectively, by adding examples of activities satisfying the objectives. See *id.* § 960.5(e) (1), (2).

4. Application Approvals

Proposed § 960.8(b) provides that the board of directors of each Bank (without delegation to Bank officers or other Bank employees) shall approve promptly the AHP applications in descending order starting with the highest scoring application until the total funding amount for the particular funding period, except for any amount insufficient to fund the next highest scoring application, has been allocated. The board also must approve the next four highest scoring applications as alternates and, within one year of approval by the Bank, may fund such alternates if any previously committed AHP subsidies become available.

I. Disbursement of AHP Subsidies—§ 960.9

1. Failure to Use AHP Subsidies Within Reasonable Period of Time

Proposed § 960.9(a) adds a new provision requiring a Bank to determine whether a member or project sponsor draws down and begins using AHP subsidies for an approved project within a reasonable period of time after application approval. If a member or project sponsor fails to draw down and

begin using AHP subsidies within a reasonable period of time, the Bank shall cancel its approval of the project's application, and those subsidies approved for the project shall be made available for other AHP-eligible projects.

2. Compliance Upon Disbursement of AHP Subsidies

Proposed § 960.9(b) adds provisions codifying the Banks' duty to verify that the member and project sponsor are in compliance with AHP statutory requirements, regulatory requirements, and the obligations committed to in the approved application, prior to initial disbursement of AHP subsidies by the Bank for an approved project, and prior to each disbursement thereafter. The Bank is required to obtain, and maintain in its project file, documents sufficient to demonstrate such compliance prior to making such disbursement, including, but not limited to, an independent, current (6 months or less) appraisal (or recertification of a prior independent appraisal, if appropriate) provided by the member indicating the fair market value of the property or project if the member has a direct or indirect interest in such property or project.

3. Changes in Approved AHP Subsidy Amount Where a Direct Subsidy is Used For a Principal or Interest Rate Write-Down

Proposed § 960.9(c) adds a new provision addressing changes in a project's approved AHP subsidy amount where the Banks provide direct subsidies to write down the principal amount or the interest rates on loans provided by members to projects. The proposed rule provides that if a member is approved to receive a direct subsidy to write down the principal amount or the interest rate on a loan to a project and the amount of subsidy required to maintain the debt service cost required by the project varies from the amount of subsidy initially approved by the Bank due to a change in interest rates between the time of approval and the time the lender commits to the interest rate to finance the project, the Bank shall modify the subsidy amount accordingly. For example, if, in the interim period, interest rates rise, thereby requiring more direct subsidy for the lender to write down its loan to the project (keeping the loan's interest rate constant), the Bank must increase the amount of direct subsidy for the project accordingly.

Under proposed § 960.9(c)(2), the amount of such increase shall be drawn first from any uncommitted or recaptured AHP subsidies for the current year and then from the Bank's

required AHP contribution for the next year.

Proposed § 960.9(c) transfers the interest rate risk associated with the lag time between AHP application approval and funding from the AHP projects to the AHP fund in cases where direct subsidies are used for interest rate write-downs. The practical effect of this is to guarantee AHP-assisted financing at a specific interest rate in such cases. The Finance Board believes this is necessary to help ensure that changes in lenders' market interest rates do not render approved AHP projects financially infeasible at the time they are ready for funding.

4. Banks' Responsibility to Ensure Proper Use of AHP Subsidies

a. *In general.* Proposed § 960.9(d)(1) carries forward the existing regulatory requirements reiterating the statutory requirements that each Bank shall ensure that: (1) AHP subsidies provided by the Bank to members are passed on to the ultimate borrower; and (2) the preponderance of AHP subsidies provided by the Bank ultimately is received by very low- and low- or moderate-income households. See 12 CFR 960.3(d); 12 U.S.C. 1430(j)(9) (D), (E).

b. *Fairness in transactions.* Proposed § 960.9(d)(2) adds a new requirement that each Bank shall ensure that the terms of any member's participation in a transaction benefiting from an AHP subsidy are fair to the Program. This provision is intended to highlight the public purpose of the Program—providing housing to benefit low- and moderate-income households—and to put the Banks and members on notice that they should view all transactions involving the Program in light of this purpose.

c. *Market interest rate and charges.* Proposed § 960.9(d)(3) requires each Bank to ensure, with respect to any loan financing an AHP project, that the rate of interest, fees, points, and any other charges by the lender shall not exceed a reasonable market rate of interest, fees, points, and charges for a loan of similar maturity, terms, and risk. This provision is intended to prevent a lender from recouping part of the direct subsidy provided to the project by coupling the direct subsidy with an above-market rate loan to the project. Accordingly, § 960.9(c) of the existing regulation, which provides that "a member receiving a subsidized advance shall extend credit to qualified borrowers at a rate of interest discounted at least to the same extent as the subsidy granted to the member by the Bank," is eliminated. See 12 CFR 960.9(c).

d. *Lending direct subsidies.* For various tax reasons, sponsors prefer to structure projects involving federal Low-Income Housing Tax Credits so that AHP direct subsidies are loaned to the project, with principal and interest payments deferred until the end of the loan term. This use of direct subsidies raises the question whether the direct subsidies, which are grants, are being passed on to the ultimate recipients, as required under section 10(j)(9)(E) of the Act, since they ultimately may be repaid by the recipients. See 12 U.S.C. 1430(j)(9)(E).

Proposed § 960.9(d)(4) is intended to accommodate the needs of sponsors and the statutory requirement governing the pass-through of AHP subsidies. It provides that a member or a sponsor may lend a direct subsidy in connection with an AHP rental project involving federal Low-Income Housing Tax Credits, provided that all payments by the borrower are deferred until the end of the loan term and no interest is charged. Upon repayment of the loan, the entire amount of the direct subsidy must be repaid to the Bank.

e. *Matched repayment schedules.* Proposed § 960.9(d)(5) requires the term of a subsidized advance to be no longer than the term of the member's loan to the AHP project funded by the advance, and the scheduled principal repayments for the subsidized advance to be reasonably related to the scheduled principal repayments for the member's loan to the AHP project, such that at least once in every 12-month period, the member must pay to the Bank the principal repayments received by the member on its loan to the project. This new requirement is intended to ensure that the repayment schedules of subsidized advances and the loans that they fund are closely matched, because the closer the match, the more efficient the use of the AHP subsidy. Furthermore, without a close match, a portion of the interest rate subsidy, in effect, is retained by the member each time the project makes a scheduled repayment of principal. For example, if the member's loan to the project is fully amortizing with level periodic payments over the term of the loan, less subsidy is needed for a subsidized advance that is also fully amortizing with level periodic payments over the term of the advance, than for a subsidized advance with the same term as the member's loan, but with all principal payments due at maturity (a bullet advance). If a member makes a non-amortizing loan to a project, the member typically would match its loan structure by borrowing a non-amortizing, or bullet, advance.

Since a member's loan typically involves an interest rate mark-up to cover the member's cost and profit, it is not possible to match perfectly the scheduled principal repayments of a member's equal-payment amortizing loan to the AHP project with the scheduled principal repayments of the equal-payment amortizing advance with a similar term. However, the Finance Board will consider such repayments to be reasonably related if both the member's loan and the subsidized advance are fully amortized with level periodic payments over the term of the loan, and the member makes principal repayments on the advance no less frequently than once in every 12-month period. As a practical matter, requiring the member to make principal repayments to the Bank at least annually will avoid requiring the establishment of complicated systems to account for monthly principal repayments.

Proposed § 960.9(e) adds a new provision requiring a Bank to provide in its advances agreement with each member receiving a subsidized advance that upon prepayment of a subsidized advance, the Bank shall charge a prepayment fee only to the extent the Bank suffers an economic loss from the prepayment.

J. Modifications of Approved AHP Applications—§ 960.10

The Finance Board's existing regulation does not directly address project modifications after approval. Under Decision Memorandum 94-DM-27, dated July 22, 1994, the Banks, subject to certain standards, have authority to approve modifications to previously approved AHP applications, except for modifications involving increases in the amount of AHP subsidy approved for a project. Proposed § 960.10 establishes a procedure and standards under which a member may request approval by the Bank of a modification prior to completion of the project. The proposed procedures and standards largely codify the Finance Board's current procedure and standards for approving modifications, except that changes to a project after completion, full occupancy, and closing of permanent financing no longer will be considered modifications.

Proposed § 960.1 defines a "project modification" as any change in the project prior to the project's completion, full occupancy and closing of permanent financing, that materially affects the facts under which the project's AHP application was originally scored under proposed § 960.8 and approved.

K. Avoidance of Actual or Apparent Conflicts of Interest—§ 960.11

Proposed § 960.11 adds a new requirement that the board of directors of each Bank, without delegation to Bank officers or other Bank employees, must adopt a written policy preventing a Bank director, officer, employee, or contractor who has a personal interest in, or who is a director, officer or employee of an organization involved in a project that is the subject of a pending or approved AHP application, from participating in or attempting to influence the evaluation, approval, funding, monitoring, or any remedial process for such project under the Program.

L. Homeownership Assistance Programs—§ 960.12

Proposed § 960.12 revises the homeownership set-aside provisions of § 960.5(g) of the existing regulation to allow the Banks more flexibility in establishing AHP-funded programs targeted specifically to promote homeownership. See 12 CFR 960.5(g). Existing § 960.5(g)(1) of the AHP regulation allows the Banks to establish such homeownership assistance programs based on a matched savings model, in which a Bank provides its members with matching funds for first-time homebuyers who are saving to pay for a downpayment and closing costs on the purchase of a home. See *id.* § 960.5(g)(1). Under the existing regulation, Banks must establish their programs in accordance with the specific requirements set forth in § 960.5(g)(1), unless they obtain Finance Board approval to establish "nonconforming" programs. See *id.* § 960.5(g)(2).

In the seven months following the establishment of the homeownership set-aside provisions of § 960.5(g), five Banks requested and were granted Finance Board approval to establish nonconforming homeownership set-asides that vary from the matched savings model to some degree. For instance, some Banks do not have a matched savings requirement and do not require participating households to qualify as first-time homebuyers. Some Banks give priority to certain categories of households, such as those with incomes below specified levels or households located in rural areas.

The purpose of proposed § 960.12 is to revise the homeownership set-aside requirements in order to encompass the variations adopted by the Banks in their "nonconforming" set-asides and to allow the Banks flexibility to adopt new variations, within the general

framework of § 960.12, without having to obtain prior Finance Board approval. Among the changes made by proposed § 960.12 is elimination of the requirement that participating households be first-time homebuyers. See *id.* § 960.5(g)(1). Under proposed § 960.12(b), Banks may now provide funds under their programs for rehabilitation by current homeowners, as well as for home purchases. The proposed rule clarifies that, notwithstanding proposed § 960.3(c)(4), which permits AHP subsidies to be used for homebuyer counseling costs under certain limited circumstances, homeownership assistance program funds may not be used for homebuyer or homeowner counseling costs. In addition, the proposed rule eliminates the existing requirement that participating households provide matching funds through dedicated savings accounts with members. See 12 CFR 960.5(g)(1)(iii)(B). Under proposed § 960.12(d)(2), Banks are free to establish their own fair and reasonable procedures and criteria for allocating funds under their programs. The proposed rule also no longer gives a Bank the option to extend the retention period for homes financed under the program beyond 5 years. See 12 CFR § 960.5(g)(1)(xi). Instead, proposed § 960.12(f) provides that such homes are subject to the same 5-year retention period as owner-occupied units financed through the Banks' District-wide AHP competitions. See proposed § 960.3(b)(1)(i).

M. Monitoring Requirements—§ 960.13

1. In General

Section 10(j)(9)(C) of the Act requires the Finance Board to issue regulations ensuring "that advances made under this program will be used only to assist projects for which adequate long-term monitoring is available to guarantee that affordability standards and other requirements of [section 10(j) of the Act] are satisfied." See 12 U.S.C. 1430(j)(9)(C).

The existing regulation requires each Bank to monitor member and project compliance with the AHP requirements, but does not establish procedures, standards or documentation to assist the Banks in meeting that requirement. See 12 CFR 960.7 (b), (c). Sections 960.6 (b) and (c) of the existing regulation require members to file annual reports and certifications on the use of AHP subsidies. See *id.* § 960.6 (b), (c).

In the absence of specific regulatory guidance, over the six years that the Program has been in operation, the Banks have attempted to comply with

their monitoring obligations by developing their own individual approaches to monitoring. This practice has led to uncertainty about the sufficiency of any one monitoring procedure. In addition, some members consider the certification and reporting requirements of the existing regulation to be too burdensome. As discussed below, the Finance Board is proposing to establish clear, uniform monitoring procedures and standards that take into account the costs of monitoring relative to the benefits, and reduce the overall monitoring burden, including eliminating the annual certification requirement for members under the existing regulation. The Finance Board's proposal is based on the principles that: (1) monitoring a project closely in its initial stages of development will ensure that less monitoring is necessary in the project's later stages of operation; (2) the degree of monitoring of AHP-assisted projects should be directly related to the amount of AHP subsidy invested in such projects; and (3) the Banks should be permitted to rely, to the extent feasible, on monitoring by housing credit agencies.

2. AHP Monitoring Agreements Between Members and Project Sponsors and Owners

Under proposed § 960.13(a), a Bank must require each member receiving an AHP subsidy to have in place an AHP monitoring agreement with each project sponsor—in the case of owner-occupied projects—or project owner—in the case of rental projects—under which the project sponsor or owner agrees to monitor the AHP project as discussed below.

a. *Owner-occupied projects.* Under proposed § 960.13(a)(1), during the period of construction or rehabilitation of an owner-occupied project, the project sponsor must report to the member semiannually on whether reasonable progress is being made towards completion. Until all approved AHP subsidies are provided to eligible households in a project, the project sponsor must certify annually to the member and the Bank that the AHP subsidies have been used according to the commitments made in the AHP application, and such certifications shall be supported by household income verification documentation maintained by the project sponsor and available for review by the member or the Bank.

b. *Rental projects.* Under proposed § 960.13(a)(2), during the period of construction or rehabilitation of a rental project, the project owner must report to the member semiannually on whether reasonable progress is being made

towards completion. Within the first year after project completion, the project owner must certify to the member and the Bank that the services and activities committed to in the AHP application have been provided in connection with the project. Within the first year after project completion to the end of the project's retention period, the project owner annually must provide a list of tenant rents and incomes to the Bank and certify that: (1) the tenant rents and incomes are accurate and in compliance with the rent and income targeting commitments made in the AHP application; (2) the project is habitable; and (3) the project owner regularly informs households applying for and occupying AHP-assisted units of the address of the Bank that provided the AHP subsidy to finance the project. A project owner must maintain tenant income verification documentation, available for review by the member or the Bank, to support such certifications.

3. AHP Monitoring Agreements Between Banks and Members

Under proposed § 960.13(b), a Bank must have in place an AHP monitoring agreement with each member receiving an AHP subsidy, under which the member agrees to monitor the AHP project as discussed below.

a. *Owner-occupied projects.* Under § 960.13(b)(1), during the period of construction or rehabilitation of an owner-occupied project, the member must take the steps necessary to determine whether reasonable progress is being made towards completion and report to the Bank semiannually on the status of the project. Within one year after disbursement to a project of all approved AHP subsidies, the member must review the project documentation and certify to the Bank that: (1) the AHP subsidies have been used according to the commitments made in the AHP application; and (2) the AHP-assisted units are subject to deed restrictions, "soft" second mortgages, or other legally enforceable mechanisms pursuant to the requirements of proposed § 960.4(a).

b. *Rental projects.* Under proposed § 960.13(b)(2), during the period of construction or rehabilitation of a rental project, the member must take the steps necessary to determine whether reasonable progress is being made towards completion and report to the Bank semiannually on the status of the project. Within the first year after project completion, the member must review the project documentation and certify to the Bank that: (1) the project is habitable; (2) the project meets its low- and moderate-income targeting commitments; and (3) the rents charged

for income-targeted units do not exceed the maximum levels committed to in the AHP application. For projects receiving \$500,000 or less in AHP subsidy, during the period from the second year after project completion to the end of the retention period, the member must certify to the Bank biennially that, based on an exterior visual inspection, the project continues to be occupied and appears habitable.

4. Monitoring Requirements for Banks

a. *Owner-occupied projects.* Proposed § 960.13(c)(1) provides that each Bank must establish a monitoring procedure that provides reasonable assurances that, based on a review of the documentation for a sample of projects and units within one year of receiving the certification from a member described in proposed § 960.13(b)(1)(ii): (1) the incomes of the households that own the AHP-assisted units did not exceed the levels committed to in the AHP application at the time the households qualified for the AHP subsidy; (2) the AHP subsidies were used for eligible purposes; and (3) the AHP-assisted units are subject to deed restrictions, "soft" second mortgages, or other legally enforceable mechanisms pursuant to the requirements of proposed § 960.4(a)(1).

b. *Rental projects.* Proposed § 960.13(c)(2) provides that each Bank must establish a monitoring procedure providing reasonable assurances that: (1) within the first year after completion of an AHP-assisted rental project, the services and activities committed to in the AHP application have been provided; and (2) during the period from the second year after project completion to the end of the retention period: (i) the project is habitable; (ii) the project meets its low- and moderate-income targeting commitments; and (iii) the rents charged for income-targeted units do not exceed the maximum levels committed to in the AHP application.

A Bank must use the following monitoring procedure, depending on the amount of AHP subsidy received by a project. For all projects, the Bank shall make reasonable efforts to investigate any complaints received about a specific project. For projects receiving \$50,001 to \$250,000 of AHP subsidies, the Bank must review tenant rent and income documentation, including tenant income verification documents, for a sample of the project's units at least once every six years, to verify compliance with the rent and income targeting commitments in the AHP application. Currently, approximately 330 projects have received between \$0 and \$50,000 of AHP subsidy, and

approximately 1,000 projects have received between \$50,001 and \$250,000 of AHP subsidy. For projects receiving \$250,001 to \$500,000 of AHP subsidies, the Bank must review tenant rent and income documentation, including tenant income verification documents, for a sample of the project's units at least once every four years, to verify compliance with the rent and income targeting commitments in the AHP application. Currently, approximately 200 projects have received between \$250,001 to \$500,000 of AHP subsidies. For projects receiving over \$500,000 of AHP subsidies, the Bank must perform an annual on-site inspection of the project, including review of tenant rent and income verification documentation, for a sample of the project's units, to verify compliance with the rent and income targeting commitments in the AHP application. Currently, only 60 projects have received over \$500,000 of AHP subsidy.

A Bank may use a reasonable sampling plan to select the projects monitored each year and to review the documentation supporting the certifications made by members and project sponsors and owners.

5. Monitoring by a Housing Credit Agency

In order to take advantage of opportunities to reduce the costs of monitoring where there are multiple funders of AHP-assisted projects, the Finance Board is proposing to permit the Banks to rely on monitoring by state or local housing agencies that have provided federal Low-Income Housing Tax Credits to an AHP project. Under 26 CFR 1.42-5, housing credit agencies administering such Tax Credits must establish a procedure for monitoring for compliance with the applicable provisions of the Internal Revenue Code governing use of federal Low-Income Housing Tax Credits. See 26 U.S.C. 42; 26 CFR 1.42-5. The Finance Board believes that where a housing credit agency undertakes such monitoring, it would be unnecessarily duplicative for the Banks to undertake independent monitoring if the income targeting

requirements, the rent requirements, and the retention period requirements being monitored by the housing credit agency are the same as, or more restrictive than, those committed to for purposes of the Program.

Therefore, proposed § 960.13(c)(iv) provides that for projects receiving \$500,000 or less of AHP subsidies, a Bank may rely on monitoring by a housing credit agency that also has provided funds to the project if: (1) the income targeting requirements, the rent requirements, and the retention period monitored by the housing credit agency are the same as, or more restrictive than, those committed to in the AHP application; (2) the housing credit agency agrees to inform the Bank of instances where tenant rents or incomes are found to be in noncompliance with the rent and income targeting requirements being monitored by the housing credit agency or where the project is not in a habitable condition; (3) the Bank does not have information that monitoring by such housing credit agency is not occurring or is inadequate; and (4) the Bank makes reasonable efforts to investigate any complaints received about the project. In projects involving more than \$500,000 in AHP subsidies, the Finance Board believes that monitoring should remain the responsibility of the Bank, rather than a third party, in light of the substantial amount of the AHP subsidy.

In cases where a Bank relies on a housing credit agency to monitor a project, the project owner annually must provide a list of tenant rents and incomes to the Bank and certify that they are accurate and in compliance with the rent and income targeting commitments made in the AHP application.

The Finance Board specifically requests comments on whether there are any other state or local government entities, in addition to housing credit agencies, that monitor rental projects for compliance with requirements comparable to AHP requirements. In order to be able to rely on the monitoring of another government housing program that also has funded

an AHP project, that program's income targeting, rent, and retention requirements must be the same as, or more restrictive than, those committed to by the project for purposes of the AHP. The Act requires that AHP subsidies be used to finance homeownership by low- or moderate-income households, or finance rental housing where at least 20 percent of the units are occupied by and affordable for very low-income households. See 12 U.S.C. 1430(j)(2). On their face, these statutory minimum income targeting and rent requirements are consistent with the requirements of certain other government housing programs that also fund AHP projects, such as the federal Low-Income Housing Tax Credit, HOME, and Section 8 programs. However, the targeting scoring criterion in the existing and proposed AHP regulation appears to encourage projects to target greater numbers of very low-income households in order to receive higher scores and AHP funding. See 12 CFR 960.5(d)(1); proposed § 960.8(a)(3)(i). Most AHP projects have AHP income targeting and rent commitments that are more restrictive than those required and monitored by other government housing programs also funding the project, thereby preventing reliance on such third parties for monitoring of AHP compliance.

Under the Act, the Finance Board's AHP regulation must "coordinate activities under [the Program] with other Federal or federally-subsidized affordable housing activities to the maximum extent possible." See 12 U.S.C. 1430(j)(9)(G). The Finance Board specifically requests comments on ways in which the targeting scoring objective in the proposed rule may be modified, or whether it should be eliminated, so that the income targeting and rent requirements for AHP projects will be compatible with those required and monitored by other government housing entities.

The following table summarizes the proposed monitoring framework discussed above for AHP-assisted rental projects:

RENTAL PROJECT MONITORING REQUIREMENTS

	Projects for which there is no qualifying 3rd party monitoring	Projects monitored by a qualifying 3rd party monitor	All projects receiving over \$500,000 of AHP subsidy
Project Construction or Rehabilitation.	—Member and owner submit semi-annual progress reports for each project.		
Within First Year After Project Completion	—Owner certifies project habitability, provision of services promised in AHP application, compliance of project rents and tenant incomes —Member certifies compliance of project rents and tenant incomes		

RENTAL PROJECT MONITORING REQUIREMENTS—Continued

	Projects for which there is no qualifying 3rd party monitoring	Projects monitored by a qualifying 3rd party monitor	All projects receiving over \$500,000 of AHP subsidy
	—Bank monitors compliance with provision of services promised in AHP application, and compliance of project rents and tenant incomes		
2nd Year After Project Completion to the End of the Retention Period	—Bank responds to any complaints about projects —Owner certifies annually to project habitability, accuracy of tenant rents and incomes, and that tenants of, and applicants for, project units are notified of the Bank's address.		
	Member visually inspects exterior of project every 2 years		
	\$AHP Subsidy in Project		
	\$0–\$50,000	\$50,001–\$250,000	\$250,001–\$500,000
	No Bank review	Bank reviews tenant incomes and rents every 6 years.	Bank reviews tenant incomes and rents every 4 years.
		3rd party reports to Bank on any failure to meet rent and income requirements and on habitability.	Bank performs annual on-site inspection of project, and reviews tenant rents and incomes

The Finance Board specifically requests comments on the proposed monitoring requirements.

N. Corrective and Remedial Actions for Noncompliance—§ 960.14

Section 10(j) of the Act is silent on what specific corrective and remedial actions should be imposed when there is noncompliance with the requirements of the Program. See 12 U.S.C. 1430(j). The existing regulation provides that, where funds provided under the Program will not be or are no longer being used for their approved purposes, the amount of committed but unused subsidy or improperly used subsidy shall be recovered and made available by the Bank for future AHP projects. See 12 CFR 960.8(a). The existing regulation requires the Bank, in recapturing such funds, to take any or all of the following actions, without limitation on other remedies, in its discretion: (1) reprice the advance at the interest rate charged to members on non-subsidized advances of comparable type and maturity at the time of the original advance; (2) call the advance; (3) assess a prepayment fee; or (4) require the member to reimburse the Bank for the amount of the unused or improperly used subsidy on the advance or other assistance. See *id.* § 960.8(b). In addition, some Banks have adopted procedures that require a direct subsidy to be converted to an advance if the project is found to be in noncompliance with the requirements of the AHP regulation.

A number of concerns have been raised about the recapture provisions of the existing regulation. Given the range of potential circumstances of noncompliance, limiting the universe of

remedies to *one*—recapture—is by necessity assuring that the remedy will be too harsh in some cases, and too liberal in others. For instance, it may not always be equitable to require the member to reimburse the Bank when the project sponsor is in noncompliance with AHP requirements. Requiring recapture of the AHP subsidy could in some situations result in the member having to foreclose against a property in order to recover the funds to repay an advance to the Bank, thereby eliminating affordable housing units even when only a few of the units in the project may be out of compliance with AHP requirements. In short, it has become clear through the operation of the Program that recapture will not be the appropriate remedial action in all circumstances. Other less severe remedial actions may be more appropriate depending on the nature of the noncompliance that has occurred. In addition, the remedial actions should be directed only at the parties that are in noncompliance. Accordingly, the proposed rule contains a wider range of remedies and tailors the remedial actions required to the nature of the noncompliance and the party committing the noncompliance, as discussed further below.

1. Noncompliance by Project Sponsors and Project Owners

Proposed § 960.14(a) provides that a Bank shall require a member receiving an AHP subsidy to have in place a recapture agreement with each sponsor of an owner-occupied project and each owner of a rental project, under which the sponsor or owner agrees: (1) to ensure that the AHP subsidy is used in

compliance with the requirements of 12 U.S.C. 1430(j), part 960, and the obligations committed to in the AHP application; (2) to make reasonable efforts to cure any noncompliance, pursuant to a compliance plan approved by the Bank; and (3) to repay the amount of any misused AHP subsidy (plus interest, if appropriate) resulting from the sponsor's or owner's noncompliance, if the noncompliance is not cured within a reasonable period of time.

2. Noncompliance by Members

Proposed § 960.14(b) requires a Bank to have in place a recapture agreement with each member receiving an AHP subsidy under which the member agrees: (1) to ensure that the AHP subsidy is used in compliance with the requirements of 12 U.S.C. 1430(j), part 960, and the obligations committed to, and to be performed, by the member in its AHP application; (2) to make reasonable efforts to cure any noncompliance by the member; (3) to repay the amount of any misused AHP subsidy (plus interest, if appropriate) resulting from the member's noncompliance, if the noncompliance is not cured within a reasonable period of time; (4) to recover any misused AHP subsidy from a project sponsor or owner under the terms of the member's recapture agreement with the project sponsor or owner, provided that the member shall not be liable to the Bank for failure to return amounts that cannot be recovered from the project sponsor or owner despite reasonable collection efforts by the member; and (5) to return any misused subsidy recovered by the

member from a project sponsor or owner to the Bank.

3. Noncompliance by Banks

Proposed § 960.14(c)(1) provides that the Finance Board, upon determining that a misuse of AHP subsidy, or the failure to recover misused AHP subsidy, is attributable to the action or inaction of a Bank, may order the Bank to reimburse its AHP fund in an amount equal to the misused subsidy, plus interest, if appropriate.

Proposed § 960.14(c)(2) is intended to eliminate uncertainty about the sufficiency of a Bank's recovery of misused subsidies in cases of noncompliance by members or project sponsors or owners, including cases where misuse results from "acts of God" or from personal or financial hardship. If a Bank enters into a settlement agreement or other arrangement with a member resulting in the return of a sum that is less than the full amount of any misused AHP subsidy, the Finance Board may, in its sole discretion, require the Bank to reimburse its AHP fund in an amount equal to the difference between the full amount of the misused subsidy and the sum actually recovered by the Bank, plus interest, if appropriate, unless: (1) the Bank has sufficient documentation showing that the sum agreed to be repaid under any settlement agreement or other arrangement is reasonably justified, based on the facts and circumstances of the noncompliance (including the degree of culpability of the noncomplying parties and the extent of the Bank's recovery efforts); or (2) the Bank obtains a determination from the Finance Board that the sum agreed to be repaid under any settlement agreement or other arrangement is reasonably justified, based on the facts and circumstances of the noncompliance (including the degree of culpability of the noncomplying parties and the extent of the Bank's recovery efforts). The latter provision would avoid a later determination by the Finance Board that such recovery was legally insufficient.

Proposed § 960.14(d) provides that AHP subsidies recovered by a Bank under this section shall be made available for other AHP projects. This is a change from the requirement of § 960.8(a) of the existing regulation that recaptured subsidies must be made available for future AHP projects. See 12 CFR 960.8(a). The change is intended to make clear that recovered subsidies may be made available for alternate projects previously approved by a Bank pursuant to proposed § 960.8(b), as well as other AHP projects.

Proposed § 960.14(e) provides that a Bank or the Finance Board, after notice and opportunity for a hearing, may suspend or debar a member, project sponsor, or project owner from participation in the Program if such party shows a pattern of noncompliance, or engages in a single instance of flagrant noncompliance, with the requirements of 12 U.S.C. 1430(j), part 960, or the obligations committed to in AHP applications. Under the existing regulation, each AHP application must include a general statement of the project sponsor's qualifications. See 12 CFR 960.4(c)(4). However, the existing regulation does not expressly require those members, project sponsors, and project owners that previously have received AHP subsidies to be in compliance with AHP requirements in order to receive additional AHP subsidies. Proposed § 960.8(e) expressly allows the Banks and the Finance Board to use their experience with a member's or project sponsor's or owner's compliance with AHP requirements on an ongoing basis to bar those participants with a pattern of noncompliance, or who have committed a single instance of flagrant noncompliance, from future participation in the Program.

Under proposed § 960.14(f), without limitation on other remedies, the Finance Board, upon determining that a Bank has engaged in mismanagement of its Program, may designate another Bank to administer all or a portion of the first Bank's annual AHP contribution, for the benefit of the first Bank's members, under such terms and conditions as the Finance Board may prescribe. The Finance Board has broad powers under the Act to issue remedial orders directing a Bank to take action in response to a situation that the Finance Board considers mismanagement of the Bank's Program. See 12 U.S.C. 1422b(a)(1). Proposed § 960.14(f) describes one of several actions the Finance Board could take in response to a Bank's mismanagement of its Program, depending on the relevant facts and circumstances.

O. Required Annual AHP Contributions—§ 960.15

Proposed § 960.15 revises § 960.10 of the existing regulation, which provides for the Banks' annual contributions to their Program, to delete obsolete language regarding required contributions for 1990 through 1994. See 12 CFR 960.10. Proposed § 960.1 revises the definition of the term "net earnings of a Bank" in the existing regulation, to conform it to the

definition of that term in the Act. See 12 U.S.C. 1430(j)(8); 12 CFR 960.1(j).

P. Temporary Suspension of AHP Contributions—§ 960.16

Proposed § 960.16 sets forth the provisions governing temporary suspensions by Banks of their required annual AHP contributions. A number of revisions have been made to the provisions in the existing regulation in order to more accurately track the language in section 10(j)(6) of the Act and to provide greater clarity. See 12 U.S.C. 1430(j)(6); 12 CFR 960.11.

1. Application for Temporary Suspension

Proposed § 960.16(a)(1) provides that if a Bank finds that the contributions required pursuant to proposed § 960.15 are contributing to the financial instability of the Bank, the Bank shall notify the Finance Board promptly, and may apply in writing to the Finance Board for a temporary suspension of such contributions.

Proposed § 960.16(a)(2) provides that a Bank's application for a temporary suspension of contributions shall include: (1) the period of time for which the Bank seeks a suspension; (2) the grounds for a suspension; (3) a plan for returning the Bank to a financially stable position; and (4) the Bank's annual financial report for the preceding year, if available, and the Bank's most recent quarterly and monthly financial statements and any other financial data the Bank wishes the Finance Board to consider.

The requirement in proposed § 960.16(a)(2)(ii) to include the grounds for a suspension is not explicitly required in the existing regulation. See 12 CFR 960.11(a).

The provision in proposed § 960.16(a)(2)(iv) that a Bank may include any other financial data it wishes the Finance Board to consider is not required in the existing regulation.

2. Finance Board Review of Application for Temporary Suspension

a. *Grounds for approval of application.* Proposed § 960.16(b)(1) provides that, in determining the financial instability of a Bank, the Finance Board shall consider such factors as: (1) whether the Bank's earnings are severely depressed; (2) whether there has been a substantial decline in the Bank's membership capital; and (3) whether there has been a substantial reduction in the Bank's advances outstanding.

b. *Limitations on grounds for approval of application.* Proposed § 960.16(b)(2) provides that the Finance

Board shall disapprove an application for a temporary suspension if it determines that the Bank's reduction in earnings is a result of: (1) a change in the terms of advances to members which is not justified by market conditions; (2) inordinate operating and administrative expenses; or (3) mismanagement.

The "reduction in earnings" language replaces the term "financial instability" used in the existing regulation, because the former is the term used in the Act. See 12 U.S.C. 1430(j)(6); 12 CFR 960.11(c).

In addition, the requirement in § 960.11(c)(5) of the existing regulation that the Finance Board shall disapprove an application if for any other reason the temporary suspension is not warranted, is deleted in the proposed rule because it is not required by the Act. See 12 U.S.C. 1430(j)(6); 12 CFR 960.11(c)(5).

3. Finance Board Decision

Proposed § 960.16(c) provides that the Finance Board's decision shall be in writing and shall be accompanied by specific findings and reasons for its action. If the Finance Board approves a Bank's application for a temporary suspension, the Finance Board's written decision shall specify the period of time such suspension shall remain in effect. The proposed rule removes the 30-day requirement for Finance Board action in the existing regulation, which is not required by the Act. See 12 U.S.C. 1430(j)(6)(C); 12 CFR 960.11(d).

4. Monitoring

Proposed § 960.16(d) provides that during the term of a temporary suspension approved by the Finance Board, the affected Bank shall provide to the Finance Board such financial reports as the Finance Board shall require to monitor the financial condition of the Bank.

5. Termination of Suspension

Proposed § 960.16(e) provides that if, prior to the conclusion of the temporary suspension period, the Finance Board determines that the Bank has returned to a position of financial stability, the Finance Board may, upon written notice to the Bank, terminate the temporary suspension.

6. Application for Extension of Temporary Suspension Period

Proposed § 960.16(f) provides that if a Bank's board of directors determines that the Bank has not returned to, or is not likely to return to, a position of financial stability at the conclusion of the temporary suspension period, the Bank may apply in writing for an

extension of the temporary suspension period, stating the grounds for such extension. The proposed rule removes the 30-day requirement for Finance Board action in the existing regulation, which is not required by the Act. See 12 U.S.C. 1430(j)(6); 12 CFR 960.11(f).

The proposed rule deletes the provisions in the existing regulation on Finance Board notice to Congress, which are governed by the Act and need not be included in the regulation. See 12 U.S.C. 1430(j)(6)(F); 12 CFR 960.11(f), (g).

Q. Affordable Housing Reserve Fund—§ 960.17

Consistent with the existing regulation and the Act, proposed § 960.17(a) provides that if a Bank fails to use or commit the full amount of its required annual contribution to the Program, 90 percent of the amount that has not been used or committed in that year shall be deposited by the Bank in an Affordable Housing Reserve Fund established and administered by the Finance Board. See 12 U.S.C. 1430(j)(7); 12 CFR 960.12(a). The remaining 10 percent of the unused and uncommitted amount retained by the Bank should be fully used or committed by the Bank during the following year, and any remaining portion must be deposited in the Affordable Housing Reserve Fund. See *id.* Approval of AHP applications sufficient to exhaust the amount a Bank is required to contribute pursuant to proposed § 960.15 shall constitute use or commitment of funds.

Proposed § 960.17(b) provides that by January 15 of each year, each Bank shall provide to the Finance Board a statement indicating the amount of unused and uncommitted funds from the prior year, if any, which will be deposited in the Affordable Housing Reserve Fund.

Proposed § 960.17(c) provides that by January 31 of each year, the Finance Board will notify the Banks of the total amount of funds, if any, available in the Affordable Housing Reserve Fund.

Section 960.12(d) of the existing regulation governing how funds in an Affordable Housing Reserve Fund would be made available to the Banks, is deleted in the proposed rule. See 12 CFR 960.12(d). The Act states that such provisions would be determined pursuant to regulations issued by the Finance Board. See 12 U.S.C. 1430(j)(7). Since there currently are no such funds and it is not anticipated that there will be any such funds in the near future, it is not necessary at this time to include provisions in the proposed rule dealing with this issue. The Finance Board can issue regulations on this issue at a

future date if such eventuality should arise.

R. Advisory Councils—§ 960.18

Proposed § 960.18 implements section 10(j)(11) of the Act governing the appointment and operations of Bank Advisory Councils. See 12 U.S.C. 1430(j)(11). Proposed § 960.18(a) requires each Bank to appoint an Advisory Council of 7 to 15 persons, who reside in the Bank's District and are drawn from community and not-for-profit organizations actively involved in providing or promoting low- and moderate-income housing in the District.

Proposed § 960.18(b) continues the existing regulatory requirement that each Bank shall solicit nominations for membership on the Advisory Council from community and not-for-profit organizations pursuant to a nomination process that is as broad and as participatory as possible, allowing sufficient lead time for responses. See 12 CFR 960.14(d). The Bank shall appoint Advisory Council members giving consideration to the size of the District and the diversity of low- and moderate-income housing needs and activities within the District. See *id.* § 960.14(b).

Under § 960.14(c) of the existing regulation, state and local housing officials are considered to qualify as persons drawn from "community and nonprofit organizations," and, therefore, are permitted to serve on Advisory Councils, provided such officials do not constitute an "undue proportion" of any Advisory Council's membership. See *id.* § 960.14(c). Proposed § 960.14(c) broadens the "undue proportion requirement" to apply to all groups represented on an Advisory Council and adds an affirmative requirement that the membership of Advisory Councils include persons drawn from a diverse range of organizations. While the Finance Board does not believe that there should be absolute limits on the membership of any one group on the Advisory Councils, the Finance Board wishes to ensure a diversity of viewpoints so that no one group consistently has a dominant voice on an Advisory Council. In appointing Advisory Council members, the Banks are to draw from a diverse range of organizations, provided that representatives of no one group shall constitute an undue proportion of the membership of an Advisory Council.

Proposed § 960.18(d) provides that Advisory Council members shall serve for terms of three years, and such terms shall be staggered to provide continuity

in experience and service to the Advisory Council. This is a change from the two-year terms required under the existing regulation. *See id.* § 960.14(f). The Finance Board believes that extending Advisory Council members' terms by a year will allow the Banks to benefit from the experience and familiarity with the Program that Advisory Council members develop the longer they serve on an Advisory Council.

Proposed § 960.18(d) also provides that an Advisory Council member may not serve for more than two consecutive terms. This provision is intended to ensure that the membership of the Advisory Councils reflects the diverse and changing viewpoints of private sector community and not-for-profit organizations on the housing and community development programs and needs of the Bank Districts.

Proposed § 960.18(e) provides that each Advisory Council may elect from among its members a chairperson, a vice chairperson, and any other officers the Advisory Council deems appropriate. The Finance Board believes that allowing the Advisory Council members to elect their own officers, rather than having their officers appointed by each Bank, will enhance each Advisory Council's ability to assess independently the Bank's low- and moderate-income housing and community development activity.

Proposed § 960.18(f)(1) carries forward the requirement in the existing regulation that representatives of the board of directors of the Bank shall meet with the Advisory Council at least quarterly to obtain the Advisory Council's advice on the low- and moderate-income housing programs and needs in the Bank's District, and expands the Advisory Council's role to include providing advice on ways in which the Bank can better carry out its housing finance mission, including the utilization of AHP subsidies, Bank advances, and other Bank credit products for community development programs and needs. The Finance Board expects that the Advisory Councils will assume a central role in advising the Banks on carrying out their overall housing finance mission, in addition to their specific focus on affordable housing and community development. Further, nothing in the proposed rule precludes Advisory Councils from meeting with representatives of the board of directors of the Bank more frequently than quarterly.

Proposed § 960.14(f)(2) adds a new requirement that a Bank shall comply with requests from the Advisory Council for summary information

regarding AHP applications from prior funding periods. Upon the request of the Advisory Council, the Bank shall allow Advisory Council members to examine, on the Bank's premises, any AHP applications from prior funding periods. The Finance Board believes that this will aid the Advisory Council members in evaluating how the AHP application scoring guidelines adopted by the Bank affect the allocation of AHP subsidies among different types of housing projects. Due to cost considerations, the Banks are not required to distribute copies of the applications to the Advisory Councils, but may do so, at their discretion. In making AHP applications available for inspection, the Banks are subject to any confidentiality requirements of other laws that may apply. The Banks should take adequate precautions to maintain confidentiality and avoid conflicts of interest. Such precautions may include redacting portions of the AHP applications, as well as requiring Advisory Council members to agree not to disclose information from AHP applications.

Proposed § 960.14(f)(3) carries forward the annual reporting requirement in § 960.14(j) of the existing regulation, *see id.* § 960.14(j), but moves back the date of submission to the Finance Board from January 31 to March 1, and requires that the Advisory Council's report include an analysis of the community development activity of its Bank, in addition to its low- and moderate-income housing activity. The change in the reporting date is intended to give the Advisory Councils sufficient time after the end of the year to compile and evaluate year-end data in order to prepare their reports to the Finance Board.

Proposed § 960.18(g) continues the existing regulatory requirement that the Bank shall pay Advisory Council members travel expenses, including transportation and subsistence, for each day devoted to attending meetings with representatives of the board of directors of the Bank. Nothing in the proposed rule precludes the Banks from paying fees to Advisory Council members for attending meetings with representatives of the Banks' boards of directors. The Banks may do so at their discretion. Advisory Council members often are employed by organizations that make a financial sacrifice to lend housing and community development expertise to a Bank. Therefore, individual Banks should consider payment of fees to Advisory Council members.

Proposed § 960.18(h) adds a new requirement that an Advisory Council member who has a personal interest in,

or who is a director, officer or employee of an organization involved in a project that is the subject of a pending or approved AHP application, may not participate in or attempt to influence the evaluation, approval, funding, monitoring, or any remedial process for such project under the Program. Each Bank's board of directors shall adopt a written policy applicable to the Bank's Advisory Council members to prevent actual or apparent conflicts of interest under the Program.

The Finance Board specifically requests comments on the role, selection, compensation, and all other aspects of Advisory Councils.

III. Regulatory Flexibility Act

The proposed 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). Therefore, in accordance with section 605(b) of the RFA, *see id.* section 605(b), the Finance Board hereby certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

The current information collection has been approved by the Office of Management and Budget (OMB) and assigned OMB control number 3096-0006. The Finance Board has submitted to OMB for its approval an analysis of the proposed changes to the collection of information resulting from the proposed rule. The collection of information, as proposed to be revised, is described more fully in part II of the **SUPPLEMENTARY INFORMATION**. The information collection is necessary to enable the Banks and, where appropriate, the Finance Board, to determine: (1) whether AHP applications satisfy the statutory and regulatory requirements for the award of AHP subsidies; and (2) whether the use of AHP subsidies awarded to members is consistent with applicable requirements. *See* 12 U.S.C. 1430(j).

Likely respondents and/or recordkeepers will be financial institutions that are members of a Bank, housing developers, and owners of multifamily housing projects. Respondents are required to meet the collection and recordkeeping requirements in order to obtain and retain a benefit. Confidentiality of information obtained from respondents pursuant to this proposed revision of the currently approved information collection will be maintained by the Finance Board as required by applicable

statute, regulation, and agency policy. Potential respondents are not required to respond to the collection of information unless the regulation collecting the information displays a currently valid control number assigned by the OMB. See 44 U.S.C. 3512(a).

The estimated annual reporting and recordkeeping hour burden is:

- a. Number of respondents—7462
- b. Total annual responses—9949
- Percentage of these responses collected electronically—0%
- c. Total annual hours requested—64,274
- d. Current OMB inventory—33,067
- e. Difference—31,207

The estimated annual reporting and recordkeeping cost burden is:

- a. Total annualized capital/startup costs—0
- b. Total annual costs (O&M)—0
- c. Total annualized cost requested—\$2,117,450.00
- d. Current OMB inventory—0
- e. Difference—\$2,117,450.00

The current OMB inventory for the estimated annual reporting and recordkeeping hour burden is based on the information collection contained in the proposed amendments to the AHP regulation that were issued by the Finance Board on January 10, 1994, but were never finalized. See 59 FR 1323 (Jan. 10, 1994). Comments concerning the accuracy of the burden estimates and suggestions for reducing the burden may be submitted to the Finance Board in writing at the address listed above.

The collections of information have been submitted to OMB for review in accordance with section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). Comments regarding the proposed collections of information may be submitted in writing to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Federal Housing Finance Board, Washington, DC 20503, by February 6, 1996.

List of Subjects in 12 CFR Part 960

Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements. Accordingly, the Finance Board hereby proposes to revise title 12, chapter IX, part 960, *Code of Federal Regulations*, to read as follows:

PART 960—AFFORDABLE HOUSING PROGRAM

Sec.

- 960.1 Definitions.
- 960.2 Operation of Program and adoption of AHP implementation plan.
- 960.3 Eligible costs.
- 960.4 Retention of AHP-assisted housing.
- 960.5 Timing of household income qualification.

- 960.6 Funding periods.
- 960.7 Application requirements.
- 960.8 Application scoring and approvals.
- 960.9 Disbursement of AHP subsidies.
- 960.10 Modifications of approved AHP applications.
- 960.11 Avoidance of actual or apparent conflicts of interest.
- 960.12 Homeownership assistance programs.
- 960.13 Monitoring requirements.
- 960.14 Corrective and remedial actions for noncompliance.
- 960.15 Required annual AHP contributions.
- 960.16 Temporary suspension of AHP contributions.
- 960.17 Affordable Housing Reserve Fund.
- 960.18 Advisory Councils.

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

§ 960.1 Definitions.

As used in this part:

Act means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 et seq.).

Advance means a loan to a member from a Bank that is:

- (1) Provided pursuant to a written agreement;
- (2) Supported by a note or other written evidence of the borrower's obligation; and
- (3) Fully secured by collateral in accordance with the Act and part 935 of this chapter.

Affordable means, for purposes of an AHP-assisted rental unit, that the monthly housing costs charged to a household for such unit not exceed 30 percent of the income of a household of the maximum income and size expected, under the commitment made in the approved AHP application, to occupy the unit (assuming occupancy of 1.5 persons per bedroom or 1.0 person per unit without a separate bedroom).

AHP or Program means the Affordable Housing Program established pursuant to 12 U.S.C. 1430(j) and this part.

Area has the same meaning as that used by the Department of Housing and Urban Development for purposes of determining its annually published area median income limits.

Bank means a Federal Home Loan Bank established under the authority of the Act.

CIP means a Bank's Community Investment Program established under section 10(i) of the Act (12 U.S.C. 1430(i)).

Cost of funds means, for purposes of a subsidized advance, the estimated cost of issuing Bank System consolidated obligations with maturities comparable to that of the subsidized advance.

Direct subsidy means an AHP subsidy in the form of a direct cash payment.

Finance Board means the agency established as the Federal Housing Finance Board.

Homeless means an individual, other than an individual imprisoned or otherwise detained pursuant to state or federal law, who:

- (1) Lacks a fixed, regular, and adequate nighttime residence; or
- (2) Has a primary nighttime residence that is:

- (i) 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);

- (ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

- (iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

Housing credit agency means a state or local government agency authorized to allocate federal Low-Income Housing Tax Credits under 26 U.S.C. 42.

Low-or moderate-income household means a household which has an income of 80 percent or less of the median income for the area, adjusted for family size, as published annually by the U.S. Department of Housing and Urban Development.

Low-or moderate-income neighborhood means any neighborhood in which 51 percent or more of the households are low-or moderate-income households.

Member means an institution that has been approved for membership in a Bank and has purchased capital stock in the Bank in accordance with §§ 933.20 and 933.24 of this chapter.

Monthly housing costs means:

- (1) For households in AHP-assisted owner-occupied units, mortgage principal and interest payments, real property taxes, homeowners' insurance, a reasonable estimate of utility costs excluding telephone service, and for households in AHP-assisted condominium, cooperative, mutual housing or other housing projects involving common ownership, those portions of any regular operating assessment or fee allocated for principal and interest payments, taxes, insurance and a reasonable estimate of utilities attributable to the household's share of the common area and/or the individual unit; and

- (2) For households in AHP-assisted rental units, rent payments, and where they are not already included in rent payments, a reasonable estimate of utility costs, excluding telephone service.

Net earnings of a Bank means the net earnings of a Bank for a calendar year after deducting the Bank's pro rata share

of the annual contribution to the Resolution Funding Corporation required under sections 21A or 21B of the Act (12 U.S.C. 1441a, 1441b), and before declaring any dividend under section 16 of the Act (12 U.S.C. 1436).

Owner-occupied project means a project involving the purchase, construction, or rehabilitation of owner-occupied housing.

Permanent or transitional housing means housing with six-month minimum occupancy, but excluding overnight shelters.

Pre-development expenses means expenses for the purpose of determining the feasibility of a proposed project.

Project modification means any change in the project prior to the project's completion, full occupancy and closing of permanent financing, that materially affects the facts under which the project's AHP application was originally scored under § 960.8 and approved.

Rental project means a project involving the purchase, construction, or rehabilitation of rental housing.

Retention period means the period during which the sponsor or owner of an AHP-assisted project commits to comply with the requirements of 12 U.S.C. 1430(j), this part, and the terms of the approved AHP application. The minimum retention period for an owner-occupied unit is 5 years, and for a rental unit is 15 years from the date of project completion.

Sponsor means a not-for-profit or for-profit organization or public entity that is:

- (1) An owner of a rental project; or
- (2) Integrally involved in an owner-occupied project, such as by exercising control over the planning, development, or management of the project, or by qualifying borrowers and providing or arranging financing for the owners of the housing units.

State means a state of the United States, the District of Columbia, Guam, Puerto Rico, or the U.S. Virgin Islands.

Subsidized advance means an advance to a member at an interest rate reduced below the Bank's cost of funds, by use of a subsidy.

Subsidy means:

- (1) A direct subsidy, provided that if a direct subsidy is used to write down the interest rate on a loan extended by a member, sponsor, or other party to a project, the subsidy shall equal the net present value of the interest foregone from making the loan below the lender's market interest rate (calculated as of the date the AHP application is submitted to the Bank, and subject to adjustment under § 960.9(c)(1)); or

- (2) The net present value of the interest revenue foregone from making a subsidized advance at a rate below the Bank's cost of funds, determined as of the date of disbursement of the subsidized advance or the date prior to disbursement on which the Bank first manages the funding to support the subsidized advance through its asset/liability management system, or otherwise.

Very low-income household means a household which has an income of 50 percent or less of the median income for the area, adjusted for family size, as published annually by the U.S. Department of Housing and Urban Development.

§ 960.2 Operation of Program and adoption of AHP implementation plan.

(a) **Policy of the Finance Board.** It is the policy of the Finance Board and the Banks to promote decent and safe affordable housing and to address critical affordable housing needs through use of subsidized advances and direct subsidies.

(b) **Program operation.** Each Bank's Program shall be governed solely by the requirements set forth in 12 U.S.C. 1430(j) and this part. A Bank shall not adopt any additional substantive AHP requirements, except as expressly provided in this part.

(c) **AHP implementation plan.**—(1) **Adoption of plan.** Consistent with the requirements of this part, each Bank's board of directors by December 1 each year shall adopt a written AHP implementation plan for the subsequent year, and any subsequent amendments thereto, which shall set forth:

- (i) The Bank's project cost guidelines, adopted pursuant to § 960.3(b);
- (ii) The Bank's schedule for AHP funding periods, adopted pursuant to § 960.6(a);
- (iii) Any District threshold requirement, adopted by the Bank pursuant to § 960.7(b);
- (iv) The Bank's AHP scoring guidelines, adopted by the Bank pursuant to § 960.8(a);
- (v) The Bank's procedures for verifying a project's use of AHP subsidies within a reasonable period of time pursuant to § 960.9(a);
- (vi) The Bank's procedures for verifying compliance upon disbursement of AHP subsidies pursuant to § 960.9(b);
- (vii) The requirements for any homeownership assistance program adopted by the Bank pursuant to § 960.12; and
- (viii) The Bank's policies and procedures for carrying out the Bank's monitoring obligations under § 960.13.

(2) **No delegation.** A Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibility for adopting the AHP implementation plan, or any subsequent amendments thereto.

(3) **Advisory Council review.** Prior to adoption of the Bank's AHP implementation plan, and any subsequent amendments thereto, the Bank shall provide its Advisory Council a reasonable period of time to review the plan and any subsequent amendments, and the Advisory Council shall provide its recommendations to the Bank's board of directors.

(4) **Public Access.** A Bank's AHP implementation plan, and any amendments, shall be made available to members of the public, upon request.

(d) **Reporting.** Each Bank shall provide reports and documentation concerning the Program as the Finance Board may request from time to time. The Bank shall provide promptly copies of its AHP implementation plan and any subsequent amendments to the Finance Board and the Bank's Advisory Council.

§ 960.3 Eligible costs.

(a) **Owner-occupied and rental housing.** AHP subsidies may be used to finance:

- (1) The purchase, construction, or rehabilitation of owner-occupied housing by or for very low- or low- or moderate-income households; and
- (2) The purchase, construction, or rehabilitation of rental projects where at least 20 percent of the units in the project are occupied by and affordable for very low-income households.

(b) **Eligible costs.** AHP subsidies may be used to pay only for the customary and standard costs typically incurred, at fair market prices, to purchase, construct, or rehabilitate housing meeting the requirements of paragraph (a) of this section. A Bank shall evaluate the reasonableness of project costs, based upon project cost guidelines adopted by the Bank.

(c) **Ineligible costs.** AHP subsidies may not be used to pay for:

- (1) Pre-development expenses not yet incurred by the proposed project as of the date the AHP application is submitted to the Bank;
- (2) Prepayment fees and penalties imposed by a Bank on a member for a subsidized advance that is prepaid;
- (3) Cancellation fees and penalties imposed by a Bank on a member for a subsidized advance commitment that is canceled;
- (4) Costs incurred in connection with counseling of homebuyers, homeowners, or tenants, except for costs of homebuyer counseling where:

(i) The counseling is provided to a household that actually purchases an AHP-assisted unit; and

(ii) The cost of the counseling has not been covered by another funding source, including the member; or

(5) Processing fees charged by members for providing direct subsidies to AHP-assisted housing projects.

(d) *Refinancing.* AHP subsidies may be used to refinance an existing single-family or multifamily mortgage loan, provided the equity proceeds of the refinancing are used only for the purchase, construction, or rehabilitation of AHP-eligible housing.

§ 960.4 Retention of AHP-assisted housing.

(a) *Owner-occupied units.*—(1) *Unit assisted by direct subsidy.* An owner-occupied unit financed by a direct subsidy under the Program must be subject to a deed restriction, “soft” second mortgage, or other legally enforceable mechanism requiring that:

(i) The Bank or its designee is to be given notice of any sale or refinancing of the unit occurring prior to the end of the retention period;

(ii) In the case of a sale prior to the end of the retention period, an amount equal to a pro rata share of the direct subsidy, reduced for every year the seller owned the unit, shall be repaid to the Bank 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; and

(iii) In the case of a refinancing prior to the end of the retention period, the full amount of the direct subsidy shall be repaid to the Bank from any net gain realized upon the refinancing of the unit, unless the unit continues to be subject to a deed restriction, “soft” second mortgage, or other legally enforceable mechanism described in this paragraph (a)(1).

(2) *Unit assisted by a subsidized advance.* (i) An owner-occupied unit financed by a loan from the proceeds of a subsidized advance under the Program must be subject to a deed restriction or other legally enforceable mechanism requiring that:

(A) The Bank or its designee is to be given notice of any sale or refinancing of the unit occurring prior to the end of the retention period; and

(B) In the case of a refinancing prior to the end of the retention period, the full amount of the interest rate subsidy received by the owner, based on the pro rata portion of the interest rate subsidy imputed to the subsidized advance during the period the owner occupied the unit prior to refinancing, shall be

repaid to the Bank from any net gain realized upon the refinancing, unless the unit continues to be subject to a deed restriction, “soft” second mortgage, or other legally enforceable mechanism described in this paragraph (a)(2).

(ii) Where a member uses the proceeds of a subsidized advance to make loans financing owner-occupied units, the Bank must require the member to agree in writing that if such loans are prepaid by the borrower, the member may, at its option, either:

(A) Repay to the Bank that portion of the subsidized advance used to make the loan to the borrower, and be subject to a fee imposed by the Bank sufficient to compensate the Bank for any loss the Bank experiences in reinvesting the repaid amount at a rate of return below the cost of funds originally used by the Bank to calculate the interest rate subsidy incorporated in the subsidized advance; or

(B) Continue to maintain the subsidized advance outstanding, subject to the Bank resetting the interest rate on that portion of the subsidized advance used to make the loan to the borrower to a rate equal to the cost of funds originally used by the Bank to calculate the interest rate subsidy incorporated in the subsidized advance.

(b) *Rental projects.*—(1) *Project assisted by direct subsidy.* (i) A rental project financed with a direct subsidy must be subject to a deed restriction or other legally enforceable mechanism requiring that:

(A) The project’s rental units, or applicable portion thereof, must remain occupied by and affordable for households with incomes at or below the levels committed to be served in the AHP application for the duration of the retention period;

(B) The Bank or its designee is to be given notice of the sale or refinancing of the project occurring prior to the end of the retention period;

(C) In the case of a sale prior to the end of the retention period, an amount equal to the entire amount of any direct subsidy received must be repaid to the Bank, unless the subsequent owner agrees in writing to comply with the income-eligibility and affordability restrictions committed to in the AHP application; and

(D) In the case of a refinancing prior to the end of the retention period, an amount equal to the entire amount of any direct subsidy received must be repaid to the Bank, unless the project continues to be subject to a deed restriction or other legally enforceable mechanism requiring the project’s rental units, or applicable portion thereof, to

remain occupied by and affordable for households with incomes at or below the levels committed to be served in the AHP application for the duration of the retention period.

(2) *Project assisted by a subsidized advance.* (i) A rental project financed with a subsidized advance must be subject to a deed restriction or other legally enforceable mechanism requiring that:

(A) The project’s rental units, or applicable portion thereof, must remain occupied by and affordable for households with incomes at or below the levels committed to be served in the AHP application for the duration of the retention period;

(B) The Bank or its designee is to be given notice of the sale or refinancing of the project occurring prior to the end of the retention period;

(C) In the case of a sale prior to the end of the retention period, the full amount of the interest rate subsidy received by the seller, based on the pro rata portion of the interest rate subsidy imputed to the subsidized advance during the period the seller owned the project prior to the sale, shall be repaid to the Bank, unless the subsequent owner agrees in writing to comply with the income-eligibility and affordability restrictions committed to in the AHP application; and

(D) In the case of a refinancing prior to the end of the retention period, the full amount of the interest rate subsidy received by the owner, based on the pro rata portion of the interest rate subsidy imputed to the subsidized advance during the period the owner owned the project prior to the refinancing, shall be repaid to the Bank, unless the project continues to be subject to a deed restriction or other legally enforceable mechanism requiring the project’s rental units, or applicable portion thereof, to remain occupied by and affordable for households with incomes at or below the levels committed to be served in the AHP application for the duration of the retention period.

(ii) Where a member uses the proceeds of a subsidized advance to make loans financing a rental project, the Bank must require the member to agree in writing that if such loans are prepaid by the borrower, the member may, at its option, either:

(A) Repay to the Bank that portion of the subsidized advance used to make the loan to the borrower, and be subject to a fee imposed by the Bank sufficient to compensate the Bank for any loss the Bank experiences in reinvesting the repaid amount at a rate of return below the cost of funds originally used by the Bank to calculate the interest rate

subsidy incorporated in the subsidized advance; or

(B) Continue to maintain the subsidized advance outstanding, subject to the Bank resetting the interest rate on that portion of the subsidized advance used to make the loan to the borrower to a rate equal to the cost of funds originally used by the Bank to calculate the interest rate subsidy incorporated in the subsidized advance.

(c) *Use of recovered subsidies.* AHP subsidies recovered by a Bank pursuant to this section shall be made available for other AHP projects.

§ 960.5 Timing of household income qualification.

(a) *Owner-occupied projects.* In order to qualify as a very low- or a low- or moderate-income household for purposes of an AHP-assisted owner-occupied project, a household must have an income at or below the level committed to in the AHP application at the time the household is qualified by the sponsor for participation in the project, but no earlier than the date on which the AHP application was submitted to the Bank for approval.

(b) *Rental projects.* In order to qualify as a very low- or a low- or moderate-income household for purposes of an AHP-assisted rental project, a household must have an income at or below the level committed to in the AHP application for a particular unit upon initial occupancy only. The household may continue to occupy such designated unit even if its income subsequently increases above the income-eligibility requirement for that unit. The unit may continue to count toward meeting the targeted income-eligibility requirement, provided the rent charged remains affordable, as defined in § 960.1, for the targeted household.

§ 960.6 Funding periods.

(a) *District-wide competition.* Except as provided in § 960.12, each Bank shall administer a District-wide competition for its AHP subsidies. Banks may accept applications from members for funding during a specified number of funding periods each year, as determined by the Bank, and shall announce the application due dates for such periods no later than December 1 of the preceding year. The amount of subsidies offered in each funding period shall be comparable.

(b) *Funding availability; notification to members.* Each Bank shall notify its members and other interested parties of:

(1) The approximate amount of annual AHP subsidies available for the Bank's District;

(2) The approximate amount of AHP subsidies to be offered in each funding period;

(3) The applicability of any District threshold requirements established pursuant to § 960.7(b);

(4) The scoring guidelines contained in the Bank's AHP implementation plan; and

(5) The application due dates.

§ 960.7 Application requirements.

(a) *Mandatory requirements.* Each Bank shall require members to include in their AHP applications:

(1) *Description of project.* A concise description of the proposed project;

(2) *Amount of AHP subsidy.* The estimated amount of AHP subsidy required for the proposed project. In the case of an application for a subsidized advance, the member shall include in its application the interest rate on the member's loan to the proposed project, and, for purposes of scoring the application, the Bank shall estimate the subsidy required for the proposed project based on the Bank's cost of funds as of the date on which all AHP applications are due for the funding period in which the application is submitted;

(3) *Member interest in property or project.* A disclosure of the member's direct or indirect interest, if any, in the property or proposed project;

(4) *Eligible costs.* An explanation of how the proposed project will comply with the eligible costs provision of § 960.3(b);

(5) *Retention requirements.* An explanation of how the proposed project will comply with the retention requirements of § 960.4;

(6) *Project feasibility and need for subsidy.* An explanation of how the proposed project is financially viable and likely to be completed within a reasonable period of time; and why the requested AHP subsidy is needed, based on:

(i) The Bank's analysis of all project sources and uses of funds (including the value of any donated land, materials, and professional labor), multi-year operating pro formas for rental projects, sale prices for owner-occupied units, and local market conditions; and

(ii) A review of the reasonableness of information relating to available sources and uses of funding and financing capacity, such as operating pro formas, to verify the proposed project's need for AHP subsidy;

(7) *Project sponsor qualifications.* An explanation of the project sponsor's qualifications and ability to perform its responsibilities as committed to in the AHP application;

(8) *Fair housing law requirements.* A statement that the project sponsor and owner will comply with any applicable fair housing law requirements, and an explanation of how the project sponsor and owner intend to affirmatively market the proposed project and otherwise comply with such requirements;

(9) *Maximum subsidy requirement.* (i) A statement that, except as otherwise provided in paragraph (a)(9)(ii) of this section, no subsidized household in the proposed project shall pay less than 20 percent of such household's gross monthly income toward monthly housing costs, as defined in § 960.1.

(ii) *Exceptions.* The requirement in paragraph (a)(9)(i) of this section shall not apply where:

(A) An AHP-assisted rental project also receives funds from a federal or state rental housing program that requires qualifying households to pay as rent a certain percentage of their monthly income or a designated amount, and the households in the project meet such requirements;

(B) The total amount of the AHP subsidies provided to the project to finance rehabilitation of housing units owned by very low-income households is \$10,000 or less per such household and for housing units owned by low- or moderate-income households is \$5,000 or less per such household;

(C) The total amount of the AHP subsidies provided to the project to finance the purchase of housing units is \$5,000 or less per household; or

(D) AHP subsidies are used to assist a household participating in a self-help, sweat equity or similar housing program that requires the household to contribute its skilled or unskilled labor valued at a minimum of \$2,000 per household, working cooperatively with others, to construct or rehabilitate housing which the household or other program participants are purchasing or already own and occupy, and that involves supervision of the work performed by skilled builders or rehabilitators;

(10) *District threshold requirements.* An explanation of how the proposed project meets any applicable District threshold requirements adopted by the Bank pursuant to paragraph (b) of this section;

(11) *Scoring requirements.* An explanation of how the proposed project meets the priorities and objectives identified in § 960.8(a);

(12) *Certification.* A certification from the member, project sponsor, and project owner committing to comply with all requirements of 12 U.S.C. 1430(j), this part, and all obligations

committed to in the AHP application; and

(13) *Other information.* Such other information as the Bank may reasonably require in order to verify compliance of the AHP applications with the requirements of this part.

(b) *District threshold requirements.* A Bank's board of directors, after consultation with its Advisory Council, may establish one or more of the following additional threshold requirements for AHP applications, provided that any such additional threshold requirements must apply equally to all members:

(1) A maximum amount of AHP subsidy available per member each year; or per member, per project, or per project unit in a single funding round;

(2) An exclusion of applications for funding for projects located outside the Bank's District; or

(3) A requirement that the member submitting the application has made use of a credit product offered by the Bank within the previous 12 months, other than AHP or CIP credit products.

§ 960.8 Application scoring and approvals.

(a) *Application scoring.*—(1) *General.*

A Bank shall score only those applications meeting the application requirements of § 960.7. Applications shall be scored based on the extent to which they meet the scoring priorities and objectives set forth in this section. A Bank shall adopt written guidelines implementing the scoring requirements of this section. The total possible score an AHP application may receive is 100 points. In determining the number of points to award an application for any given scoring category, the Bank shall evaluate applications relative to each other.

(2) *Priority applications—60 points.* A Bank shall allocate 60 points among the six priority categories identified in this paragraph (a)(2). The priority categories are either fixed-point priorities or variable-point priorities. Variable-point priorities, which are listed in paragraphs (a)(2)(i) through (iv) and (a)(2)(v)(A) through (E) of this section, are those where there are varying degrees to which an application can satisfy the priority. Each variable-point priority category must be allocated at least 8 points. The number of points that may be awarded to an application for meeting a variable-point priority will vary, depending on the extent to which the application satisfies the priority, compared to the other applications being scored. The application(s) best achieving each variable-point priority shall receive the maximum point score available for that priority category, with

the remaining applications scored on a declining scale. An application receiving at least half of the points allocated to a variable-point priority category shall be considered to have met that priority. Fixed-point priority categories, which are listed in paragraphs (a)(2)(v)(F) through (M) of this section, are those an application must meet in order to receive the allocated points. Each fixed-point priority category must be allocated 8 points. An application meeting a fixed-point priority shall be awarded 8 points. The priority selected by a Bank under paragraph (a)(2)(vi) of this section may be either a variable-point or fixed-point priority, depending on the nature of the priority. Applications meeting at least two of the six priorities shall be considered priority applications, and, as a group, shall be scored before applications meeting fewer than two of the priorities. Priority applications shall be scored against each other, based on the extent to which they meet the priorities of this paragraph (a)(2) and the scoring objectives contained in paragraph (a)(3) of this section. The remaining applications shall be scored only if there are insufficient priority applications to exhaust the AHP subsidy amount available for the funding period. The six priority categories are as follows:

(i) *Government-owned properties (variable point).* Projects financing the purchase or rehabilitation of housing, at least 20 percent of the units of which are owned or held by federal, state, or local governments or any agency or instrumentality thereof;

(ii) *Not-for-profit or state or local government sponsored projects (variable point).* Projects financing the purchase, construction, or rehabilitation of housing, the sponsor of which is a not-for-profit organization, a state or political subdivision of a state, a local housing authority, or a state housing agency;

(iii) *Permanent or transitional housing for the homeless (variable point).* Projects financing permanent or transitional housing for the homeless by reserving at least 20 percent of units for occupancy by homeless households;

(iv) *Community development (variable point).* Projects meeting housing needs documented as part of a community revitalization or economic development strategy approved by a unit of state or local government;

(v) *District priority.* Projects meeting one of the following criteria, as recommended by the Bank's Advisory Council and adopted by the Bank's board of directors for a particular funding period:

(A) *Variable point.* Projects in which at least 20 percent of the units are reserved for occupancy by households who have special needs, such as the elderly, mentally or physically disabled persons, persons recovering from physical abuse or alcohol or drug abuse, or persons with AIDS;

(B) *Variable point.* Projects providing housing in combination with a program offering employment, education, training, homeownership counseling, or daycare services that assist AHP-eligible residents to move toward better economic opportunities;

(C) *Variable point.* Projects financing housing for first-time homebuyers;

(D) *Variable point.* Projects involving member financial participation (excluding the pass-through of AHP subsidy), such as providing market rate or concessionary financing, fee waivers, or donations;

(E) *Variable point.* Projects with retention periods in excess of 5 and 15 years for owner-occupied and rental housing, respectively;

(F) *Fixed point.* Projects financing housing located in federally declared disaster areas;

(G) *Fixed point.* Projects financing housing located in rural areas;

(H) *Fixed point.* Projects financing urban in-fill and/or urban rehabilitation housing;

(I) *Fixed point.* Projects that are part of a strategy to end isolation of very low-income households by providing economic diversity through mixed-income housing in low- or moderate-income neighborhoods, or providing very low- or low- or moderate-income households with housing opportunities in areas where the median household income exceeds 80 percent of the area median income;

(J) *Fixed point.* Projects financing housing as part of a remedy undertaken by a jurisdiction adjudicated by a federal, state, or local court to be in violation of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), the Fair Housing Act (42 U.S.C. 3601 et seq.), or any other federal state, or local fair housing law, or as part of a settlement of such claims;

(K) *Fixed point.* Projects involving sweat-equity and/or self-help housing;

(L) *Fixed point.* Projects involving financing by a consortium of at least two financial institutions; or

(M) *Fixed point.* Projects located within the Bank's District; and

(vi) *District priority—defined housing need in the District.* Projects meeting a housing need in the Bank's District, as defined and recommended by the Bank's Advisory Council and adopted by the Bank's board of directors for a

particular funding period. The Bank may use one of the criteria listed in paragraph (a)(2)(v) of this section, provided it is different from the District priority adopted by the Bank under paragraph (a)(2)(v) of this section.

(3) *Objectives—40 points.* A Bank shall allocate 40 points among the four objectives categories identified in this paragraph (a)(3), provided that no less than 8 points are allocated to the targeting objective category. The application(s) best achieving each objective shall receive the maximum point score available for that objective category, with the remaining applications scored on a declining scale. The four objectives categories are as follows:

(i) *Targeting.* A Bank shall award points to applications based on the extent to which units in a project are to be sold initially to, or rehabilitated by, households with incomes at or below 80 percent of the area median income, in the case of owner-occupied housing projects, or occupied by and affordable for households with incomes at or below 50 percent of the area median income, in the case of rental housing projects. More points shall be awarded to applications for projects with greater numbers of units targeted to households with lower income levels. An application for a rental housing project shall be awarded the maximum number of points available under this scoring category if 60 percent or more of the units in the project are reserved for occupancy by households with incomes at or below 50 percent of the area median income. For purposes of this scoring category, applications for owner-occupied projects and rental projects shall be scored separately;

(ii) *AHP subsidy per unit.* A Bank shall award points to applications based on the extent to which a project proposes to use the least amount of AHP subsidy per AHP-targeted unit. For purposes of this scoring category, applications for owner-occupied projects and rental projects shall be scored separately;

(iii) *Community involvement.* A Bank shall award points to applications based on the extent to which there is demonstrated support for the project by local community organizations and individuals other than as project sponsors, such as through the commitment by such organizations and individuals of funds, goods and services, and volunteer labor; and

(iv) *Community stability.* A Bank shall award points to applications based on the extent to which a project maximizes community stability, such as by: Revitalizing vacant or abandoned

properties; being integrally part of a neighborhood stabilization plan; and not displacing low- or moderate-income households, or if such displacement will occur, indicating how such households will be assisted to minimize the impact of such displacement.

(b) *Application approvals.—(1) Approval by Bank's board.* The board of directors of each Bank shall approve promptly the AHP applications in descending order starting with the highest scoring application until the total funding amount for the particular funding period, except for any amount insufficient to fund the next highest scoring application, has been allocated. The board of directors also shall approve the next four highest scoring applications as alternates and, within one year of approval, may fund such alternates if any previously committed AHP subsidies become available.

(2) *No delegation.* A Bank's board of directors may not delegate to Bank officers or other Bank employees the responsibility to approve or disapprove AHP applications.

§ 960.9 Disbursement of AHP subsidies.

(a) *Failure to use AHP subsidies within reasonable period of time.* A Bank shall determine whether a member or project sponsor draws down and begins using AHP subsidies for an approved project within a reasonable period of time after application approval. If a member or project sponsor fails to draw down and begin using AHP subsidies within a reasonable period of time, the Bank shall cancel its approval of the application, and those subsidies approved for the project shall be made available for other AHP-eligible projects.

(b) *Compliance upon disbursement of AHP subsidies.* The Bank shall verify prior to initial disbursement of AHP subsidies by the Bank for an approved project, and prior to each disbursement thereafter, that the member and project sponsor are in compliance with all applicable requirements of 12 U.S.C. 1430(j), this part, and all obligations committed to in the approved application. The Bank shall obtain, and maintain in its project file, documents sufficient to demonstrate such compliance prior to making such disbursement, including, but not limited to, an independent, current (6 months or less) appraisal (or recertification of a prior independent appraisal, if appropriate) provided by the member indicating the fair market value of the property or project if the member has a direct or indirect interest in such property or project.

(c) *Changes in approved AHP subsidy amount where a direct subsidy is used*

for a principal or interest rate write-down.—(1) Change in subsidy amount. If a member is approved to receive a direct subsidy to write down the principal amount or the interest rate on a loan to a project and the amount of subsidy required to maintain the debt service cost required by the project varies from the amount of subsidy initially approved by the Bank due to a change in interest rates between the time of approval and the time the lender commits to the interest rate to finance the project, the Bank shall modify the subsidy amount accordingly.

(2) *Reconciliation of AHP fund.* If a Bank increases the amount of AHP subsidy approved for a project, the amount of such increase shall be drawn first from any uncommitted or recaptured AHP subsidies for the current year and then from the Bank's required AHP contribution for the next year. If a Bank reduces the amount of AHP subsidy approved for a project, the amount of such reduction shall be returned to the Bank's AHP fund.

(d) *Bank's responsibility to ensure proper use of AHP subsidies.—(1) In general.* Each Bank shall ensure that the AHP subsidies provided by the Bank to members are passed on to the ultimate borrower, and that the preponderance of AHP subsidies provided by the Bank is ultimately received by very low- and low- or moderate-income households.

(2) *Fairness in transactions.* Each Bank shall ensure that the terms of any member's participation in a transaction benefiting from an AHP subsidy are fair to the Program.

(3) *Market interest rate and charges.* Each Bank shall ensure that, with respect to any loan financing an AHP project, the rate of interest, fees, points, and any other charges by the lender shall not exceed a reasonable market rate of interest, fees, points, and charges for a loan of similar maturity, terms, and risk.

(4) *Lending direct subsidies.* A member or a project sponsor may lend a direct subsidy in connection with an AHP rental project involving federal Low-Income Housing Tax Credits, provided that all payments by the borrower are deferred until the end of the loan term and no interest is charged. Upon repayment of the loan, the entire amount of the direct subsidy must be repaid to the Bank.

(5) *Matched repayment schedules.* The term of a subsidized advance shall be no longer than the term of the member's loan to the AHP project funded by the advance, and the scheduled principal repayments for the subsidized advance shall be reasonably related to the scheduled principal

repayments for the member's loan to the AHP project, such that at least once in every 12-month period, the member must pay to the Bank the principal repayments received by the member on its loan to the project.

(e) *Prepayment fees charged by the Banks.* A Bank shall provide in its advances agreement with each member receiving a subsidized advance that upon prepayment of a subsidized advance, the Bank shall charge a prepayment fee only to the extent the Bank suffers an economic loss from the prepayment.

§ 960.10 Modifications of approved AHP applications.

(a) *Modification request.* A member seeking a modification of its approved AHP application due to a project modification, as defined in § 960.1, must submit a request for such modification in writing to the Bank for review and approval. A modification request must include, at a minimum:

(1) A description of any changes in the terms of the approved application;

(2) The reason for the proposed modification;

(3) In cases of requests for additional AHP subsidies, revised financial statements, sources and uses of funds, development budgets, and, in the case of rental housing projects, operating pro formas; and

(4) Any other information that the Bank determines is necessary to take action on the proposed modification.

(b) *Approval of modification request.*

(1) In the case of a modification request other than for an increase in AHP subsidy, the Bank's board of directors shall approve such request, in writing, if the project:

(i) Continues to meet all of the requirements of 12 U.S.C. 1430(j) and this part; and

(ii) Continues to score high enough, as proposed to be modified, to have been approved in its original application funding period.

(2) In the case of a modification request for an increase in AHP subsidy, the Bank's board of directors may, in its discretion, approve such request, in writing, if the project satisfies the requirements of paragraph (b)(1)(i) and (ii) of this section.

(c) *No delegation.* A Bank's board of directors may not delegate to Bank officers or other Bank employees the responsibility to take action on AHP modification requests.

§ 960.11 Avoidance of actual or apparent conflicts of interest.

(a) *In general.* A Bank director, officer, employee, or contractor who has a

personal interest in, or who is a director, officer or employee of an organization involved in a project that is the subject of a pending or approved AHP application, may not participate in or attempt to influence the evaluation, approval, funding, monitoring, or any remedial process for such project under the Program.

(b) *Adoption of written policy.* Each Bank's board of directors shall adopt a written policy applicable to the Bank's directors, officers, employees, and contractors to prevent actual or apparent conflicts of interest under the Program.

(c) *No delegation.* A Bank's board of directors may not delegate to Bank officers or other Bank employees the responsibility to adopt such policy.

§ 960.12 Homeownership assistance programs.

(a) A Bank, after consultation with its Advisory Council, may set aside annually up to the greater of \$1 million or 10 percent of its annual required AHP contribution to fund a homeownership assistance program, pursuant to the requirements of this section. Homeownership assistance programs established by a Bank under this section shall be considered priority projects under section 10(j)(3) of the Act (12 U.S.C. 1430(j)(3)).

(b) *Use of program funds.* Pursuant to written policies established by each Bank, a Bank may provide homeownership assistance program funds to members as grants to be used to provide downpayment, closing cost, or rehabilitation assistance to participating households in connection with a household's purchase of a one-to-four family property (including a condominium or cooperative housing unit) to be used as the household's primary residence. Notwithstanding § 960.3(c)(4), homeownership assistance program funds shall not be used for homebuyer or homeowner counseling costs. A Bank may administer its homeownership assistance program through independent not-for-profit organizations with a demonstrated ability to administer program funds effectively and impartially.

(c) *Household eligibility criteria.* In order to be eligible to receive homeownership assistance program funds from a member participant, a household must:

(1) Be a low- or moderate-income household, as defined in § 960.1, at the time the household is approved for participation in the program;

(2) In the case of home purchase, complete a homebuyer counseling program provided by the member or another organization that is based on

those offered by or in conjunction with a not-for-profit housing agency or other organization recognized as experienced in homebuyer counseling; and

(3) Meet such other eligibility criteria as may be established by the Bank, in its discretion, such as a matching funds or matched savings requirement on the part of the household, provided that such criteria are consistent with, and in furtherance of, the requirements and goals of the Program and the National Homeownership Strategy coordinated by the Department of Housing and Urban Development.

(d) *Notification of availability and allocation of program funds to member participants.* (1) A Bank shall notify its members of the amount of funds available under its homeownership assistance program within a reasonable period of time prior to the date that applications for such funds are due from members.

(2) A Bank may allocate homeownership assistance program funds among its members on a first-come-first-served basis, or pursuant to such other fair and reasonable procedures and criteria established by the Bank and disclosed to members, including but not limited to:

(i) Priorities for specific kinds of housing, such as housing for first-time homebuyers or housing in rural areas;

(ii) Maximum amounts of homeownership assistance program funds available to each member participant; and

(iii) Maximum amounts of homeownership assistance program funds available to each participating household.

(3) The maximum amount of homeownership assistance program funds allocated per participating household shall not exceed \$5,000.

(4) In cases where the amount of homeownership assistance program funds applied for by members in a given year exceeds the amount of set-aside funds available for that year, a Bank may:

(i) Make available up to an additional \$1 million from the next year's set-aside of funds for the homeownership assistance program;

(ii) Allocate funds among member participants by a random selection process;

(iii) Reduce each member participant's allocation of funds and the maximum amount of funds available to each participating household, based on fair and reasonable criteria established by the Bank and disclosed to member participants; or

(iv) Establish a waiting list by which member participants would be allocated

funds on a household-by-household basis, as funds become available.

(5) After determining the allocation of homeownership assistance program funds among member participants, the Bank shall notify each member participant of the amount of its allocation.

(e) *Disbursement of funds to member participants.* Prior to disbursement of funds by the Bank to a member participant, the Bank shall require the member to certify that:

(1) The funds received from the Bank will be provided to a participating household meeting the eligibility requirements of paragraph (c) of this section; and

(2) If the member is providing mortgage financing to the participating household, the member has provided financial or other incentives in connection with such mortgage financing, and the interest rate, fees, points, and any other charges by the member do not exceed a reasonable market interest rate, fees, points, and charges for a loan of similar maturity, terms, and risk.

(f) *Retention requirements.* A home purchased or rehabilitated using homeownership assistance program funds is subject to the retention requirements of § 960.4(a)(1).

(g) *Use of recaptured funds.* Recaptured homeownership assistance program funds shall be returned to the Bank to be made available to other participating households under its homeownership assistance program or to other AHP projects.

§ 960.13 Monitoring requirements.

(a) *AHP monitoring agreements between members and project sponsors and owners.* A Bank shall require a member to have in place an AHP monitoring agreement with each project sponsor or owner, as applicable, under which the project sponsor or owner agrees to monitor the AHP project according to the following requirements:

(1) *Owner-occupied projects.* (i) During the period of construction or rehabilitation of an owner-occupied project, the project sponsor must report to the member semiannually on whether reasonable progress is being made towards completion; and

(ii) Until all approved AHP subsidies are provided to eligible households in a project, the project sponsor must certify annually to the member and the Bank that the AHP subsidies have been used according to the commitments made in the AHP application, and such certifications shall be supported by household income verification documentation maintained by the

project sponsor and available for review by the member or the Bank; and

(2) *Rental projects.* (i) During the period of construction or rehabilitation of a rental project, the project owner must report to the member semiannually on whether reasonable progress is being made towards completion;

(ii) Within the first year after project completion, the project owner must certify to the member and the Bank that the services and activities committed to in the AHP application have been provided in connection with the project;

(iii) Within the first year after project completion to the end of the project's retention period, the project owner annually must provide a list of tenant rents and incomes to the Bank and certify that:

(A) The tenant rents and incomes are accurate and in compliance with the rent and income targeting commitments made in the AHP application;

(B) The project is habitable; and

(C) The project owner regularly informs households applying for and occupying AHP-assisted units of the address of the Bank that provided the AHP subsidy to finance the project; and

(iv) A project owner must maintain tenant income verification documentation, available for review by the member or the Bank, to support such certifications.

(b) *AHP monitoring agreements between Banks and members.* A Bank shall have in place an AHP monitoring agreement with each member receiving an AHP subsidy, under which the member agrees to monitor the AHP project according to the following requirements:

(1) *Owner-occupied projects.* (i) During the period of construction or rehabilitation of an owner-occupied project, the member must take the steps necessary to determine whether reasonable progress is being made towards completion and must report to the Bank semiannually on the status of the project; and

(ii) Within one year after disbursement to a project of all approved AHP subsidies, the member must review the project documentation and certify to the Bank that:

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

(B) The AHP-assisted units are subject to deed restrictions, "soft" second mortgages, or other legally enforceable mechanisms pursuant to the requirements of § 960.4(a); and

(2) *Rental projects.* (i) During the period of construction or rehabilitation of a rental project, the member must

take the steps necessary to determine whether reasonable progress is being made towards completion and must report to the Bank semiannually on the status of the project;

(ii) Within the first year after project completion, the member must review the project documentation and certify to the Bank that:

(A) The project is habitable;

(B) The project meets its low- and moderate-income targeting commitments; and

(C) The rents charged for income-targeted units do not exceed the maximum levels committed to in the AHP application; and

(iii) For projects receiving \$500,000 or less in AHP subsidy, during the period from the second year after project completion to the end of the retention period, the member must certify to the Bank biennially that, based on an exterior visual inspection, the project continues to be occupied and appears habitable.

(c) *Monitoring requirements for Banks.*—(1) *Owner-occupied projects.* Each Bank must take the steps necessary to determine that, based on a review of the documentation for a sample of projects and units within one year of receiving the certification described in paragraph (b)(1)(ii) of this section:

(i) The incomes of the households that own the AHP-assisted units did not exceed the levels committed to in the AHP application at the time the households qualified for the AHP subsidy;

(ii) The AHP subsidies were used for eligible purposes; and

(iii) The AHP-assisted units are subject to deed restrictions, "soft" second mortgages, or other legally enforceable mechanisms pursuant to the requirements of § 960.4(a)(1).

(2) *Rental projects.*—(i) *In general.* Each Bank must take the steps necessary to determine that:

(A) Within the first year after completion of an AHP-assisted rental project, the services and activities committed to in the AHP application have been provided; and

(B) During the period from the second year after project completion to the end of the retention period:

(1) The project is habitable;

(2) The project meets its low- and moderate-income targeting commitments; and

(3) The rents charged for income-targeted units do not exceed the maximum levels committed to in the AHP application.

(ii) *Monitoring schedule.* A Bank's monitoring procedure shall include the following elements:

(A) *All projects.* For all projects, the Bank shall make reasonable efforts to investigate any complaints received about a specific project;

(B) *\$50,001 to \$250,000.* For projects receiving \$50,001 to \$250,000 of AHP subsidies, the Bank must review tenant rent and income documentation, including tenant income verification documents, for a sample of the project's units at least once every six years, to verify compliance with the rent and income targeting commitments in the AHP application;

(C) *\$250,001 to \$500,000.* For projects receiving \$250,001 to \$500,000 of AHP subsidies, the Bank must review tenant rent and income documentation, including tenant income verification documents, for a sample of the project's units at least once every four years, to verify compliance with the rent and income targeting commitments in the AHP application; and

(D) *Over \$500,000.* For projects receiving over \$500,000 of AHP subsidies, the Bank must perform an annual on-site inspection of the project, including review of tenant rent and income verification documentation, for a sample of the project's units, to verify compliance with the rent and income targeting commitments in the AHP application.

(iii) *Sampling plan.* A Bank may use a reasonable sampling plan to select the projects monitored each year and to review the documentation supporting the certifications made by members and project sponsors and owners.

(iv) *Monitoring by a housing credit agency—for projects receiving \$500,000 or less of AHP subsidy.* (A) *In general.* For projects receiving \$500,000 or less of AHP subsidies, a Bank may rely on monitoring by a housing credit agency that also has provided funds to the project if:

(1) The income targeting requirements, the rent requirements, and the retention period monitored by the housing credit agency are the same as, or more restrictive than, those committed to in the AHP application;

(2) The housing credit agency agrees to inform the Bank of instances where tenant rents or incomes are found to be in noncompliance with the requirements being monitored by the housing credit agency or where the project is not in a habitable condition;

(3) The Bank does not have information that monitoring by such housing credit agency is not occurring or is inadequate; and

(4) The Bank makes reasonable efforts to investigate any complaints received about the project.

(B) *Annual certification requirement for project owner.* In cases where a Bank relies on a housing credit agency to monitor a project, the project owner annually must provide a list of tenant rents and incomes to the Bank and certify that they are accurate and in compliance with the rent and income targeting commitments made in the AHP application.

§ 960.14 Corrective and remedial actions for noncompliance.

(a) *Noncompliance by project sponsors and owners.* A Bank shall require a member receiving an AHP subsidy to have in place a recapture agreement with each sponsor of an owner-occupied project and each owner of a rental project, under which the sponsor or owner agrees:

(1) To ensure that the AHP subsidy is used in compliance with the requirements of 12 U.S.C. 1430(j), this part, and the obligations committed to in the AHP application;

(2) To make reasonable efforts to cure any noncompliance, pursuant to a compliance plan approved by the Bank; and

(3) To repay the amount of any misused AHP subsidy (plus interest, if appropriate) resulting from the sponsor's or owner's noncompliance, if the noncompliance is not cured within a reasonable period of time.

(b) *Noncompliance by members.* A Bank shall have in place with each member receiving an AHP subsidy a recapture agreement under which the member agrees:

(1) To ensure that the AHP subsidy is used in compliance with the requirements of 12 U.S.C. 1430(j), this part, and the obligations committed to, and to be performed, by the member in its AHP application;

(2) To make reasonable efforts to cure any noncompliance by the member;

(3) To repay the amount of any misused AHP subsidy (plus interest, if appropriate) resulting from the member's noncompliance, if the noncompliance is not cured within a reasonable period of time;

(4) To recover any misused AHP subsidy from a project sponsor or owner under the terms of the member's recapture agreement with the project sponsor or owner, provided that the member shall not be liable to the Bank for failure to return amounts that cannot be recovered from the project sponsor or owner despite reasonable collection efforts by the member; and

(5) To return any misused subsidy recovered by the member from a project sponsor or owner to the Bank.

(c) *Noncompliance by Banks—(1) In general.* The Finance Board, upon determining that the misuse of AHP subsidy, or the failure to recover misused AHP subsidy, is attributable to the action or inaction of a Bank, may order the Bank to reimburse its AHP fund in an amount equal to the misused subsidy, plus interest, if appropriate.

(2) *Adequacy of settlements.* If, in a case of noncompliance by a member or a project sponsor or owner, a Bank enters into a settlement agreement or other arrangement with a member resulting in the return of a sum that is less than the full amount of any misused AHP subsidy, the Finance Board may, in its sole discretion, require the Bank to reimburse its AHP fund in an amount equal to the difference between the full amount of the misused subsidy and the sum actually recovered by the Bank, plus interest, if appropriate, unless:

(i) The Bank has sufficient documentation showing that the sum agreed to be repaid under any settlement agreement or other arrangement is reasonably justified, based on the facts and circumstances of the noncompliance (including the degree of culpability of the noncomplying parties and the extent of the Bank's recovery efforts); or

(ii) The Bank obtains a determination from the Finance Board that the sum agreed to be repaid under any settlement agreement or other arrangement is reasonably justified, based on the facts and circumstances of the noncompliance (including the degree of culpability of the noncomplying parties and the extent of the Bank's recovery efforts).

(d) *Use of recovered subsidies.* AHP subsidies recovered by a Bank pursuant to this section shall be made available for other AHP projects.

(e) *Suspension and debarment.* A Bank or the Finance Board, after notice and opportunity for a hearing, may suspend or debar a member, project sponsor, or owner from participation in the Program if such party shows a pattern of noncompliance, or engages in a single instance of flagrant noncompliance, with the requirements of 12 U.S.C. 1430(j), this part, or the obligations committed to in AHP applications.

(f) *Transfer of Program administration.* Without limitation on other remedies, the Finance Board, upon determining that a Bank has engaged in mismanagement of its Program, may designate another Bank to administer all or a portion of the first Bank's annual AHP contribution, for the benefit of the first Bank's members,

under such terms and conditions as the Finance Board may prescribe.

§ 960.15 Required annual AHP contributions.

Each Bank shall contribute annually to its Program the greater of:

- (a) 10 percent of the Bank's net earnings for the previous year; or
- (b) That Bank's pro rata share of an aggregate of \$100 million to be contributed in total by the Banks, such proration being made on the basis of the net earnings of the Banks for the previous year.

§ 960.16 Temporary suspension of AHP contributions.

(a) *Application for temporary suspension*—(1) *Notification to Finance Board.* If a Bank finds that the contributions required pursuant to § 960.15 are contributing to the financial instability of the Bank, the Bank shall notify the Finance Board promptly, and may apply in writing to the Finance Board for a temporary suspension of such contributions.

(2) *Contents.* A Bank's application for a temporary suspension of contributions shall include:

- (i) The period of time for which the Bank seeks a suspension;
- (ii) The grounds for a suspension;
- (iii) A plan for returning the Bank to a financially stable position; and
- (iv) The Bank's annual financial report for the preceding year, if available, and the Bank's most recent quarterly and monthly financial statements and any other financial data the Bank wishes the Finance Board to consider.

(b) *Finance Board review of application for temporary suspension*—(1) *Determination of financial instability.* In determining the financial instability of a Bank, the Finance Board shall consider such factors as:

- (i) Whether the Bank's earnings are severely depressed;
- (ii) Whether there has been a substantial decline in the Bank's membership capital; and
- (iii) Whether there has been a substantial reduction in the Bank's advances outstanding.

(2) *Limitations on grounds for suspension.* The Finance Board shall disapprove an application for a temporary suspension if it determines that the Bank's reduction in earnings is a result of:

- (i) A change in the terms of advances to members which is not justified by market conditions;
- (ii) Inordinate operating and administrative expenses; or
- (iii) Mismanagement.

(c) *Finance Board decision.* The Finance Board's decision shall be in writing and shall be accompanied by specific findings and reasons for its action. If the Finance Board approves a Bank's application for a temporary suspension, the Finance Board's written decision shall specify the period of time such suspension shall remain in effect.

(d) *Monitoring.* During the term of a temporary suspension approved by the Finance Board, the affected Bank shall provide to the Finance Board such financial reports as the Finance Board shall require to monitor the financial condition of the Bank.

(e) *Termination of suspension.* If, prior to the conclusion of the temporary suspension period, the Finance Board determines that the Bank has returned to a position of financial stability, the Finance Board may, upon written notice to the Bank, terminate the temporary suspension.

(f) *Application for extension of temporary suspension period.* If a Bank's board of directors determines that the Bank has not returned to, or is not likely to return to, a position of financial stability at the conclusion of the temporary suspension period, the Bank may apply in writing for an extension of the temporary suspension period, stating the grounds for such extension.

§ 960.17 Affordable Housing Reserve Fund.

(a) *Deposits.* If a Bank fails to use or commit the full amount it is required to contribute to the Program in any year pursuant to § 960.15, 90 percent of the amount that has not been used or committed in that year shall be deposited by the Bank in an Affordable Housing Reserve Fund established and administered by the Finance Board. The remaining 10 percent of the unused and uncommitted amount retained by the Bank should be fully used or committed by the Bank during the following year, and any remaining portion must be deposited in the Affordable Housing Reserve Fund. Approval of AHP applications sufficient to exhaust the amount a Bank is required to contribute pursuant to § 960.15 shall constitute use or commitment of funds.

(b) *Annual statement.* By January 15 of each year, each Bank shall provide to the Finance Board a statement indicating the amount of unused and uncommitted funds from the prior year, if any, which will be deposited in the Affordable Housing Reserve Fund.

(c) *Annual notification.* By January 31 of each year, the Finance Board shall notify the Banks of the total amount of

funds, if any, available in the Affordable Housing Reserve Fund.

§ 960.18 Advisory Councils.

(a) *In general.* Each Bank shall appoint an Advisory Council of 7 to 15 persons, who reside in the Bank's District and are drawn from community and not-for-profit organizations actively involved in providing or promoting low- and moderate-income housing in the District.

(b) *Nominations and appointments.* Each Bank shall solicit nominations for membership on the Advisory Council from community and not-for-profit organizations pursuant to a nomination process that is as broad and as participatory as possible, allowing sufficient lead time for responses. The Bank shall appoint Advisory Council members giving consideration to the size of the District and the diversity of low- and moderate-income housing needs and activities within the District.

(c) *Diversity of membership.* In appointing its Advisory Council, a Bank shall ensure that the membership includes persons drawn from a diverse range of organizations, provided that representatives of no one group shall constitute an undue proportion of the membership of the Advisory Council.

(d) *Terms of Advisory Council members.* The Bank shall appoint Advisory Council members to serve for no more than two consecutive terms of three years each, and such terms shall be staggered to provide continuity in experience and service to the Advisory Council.

(e) *Election of officers.* Each Advisory Council may elect from among its members a chairperson, a vice chairperson, and any other officers the Advisory Council deems appropriate.

(f) *Duties.*—(1) *Meetings with the Banks.* Representatives of the board of directors of the Bank shall meet with the Advisory Council at least quarterly to obtain the Advisory Council's advice on ways in which the Bank can better carry out its housing finance mission, including, but not limited to, advice on the low- and moderate-income housing and community development programs and needs in the Bank's District, and on the utilization of AHP subsidies, Bank advances, and other Bank credit products for these purposes.

(2) *Review of prior AHP applications.* The Bank shall comply with requests from the Advisory Council for summary information regarding AHP applications from prior funding periods. Upon the request of the Advisory Council, the Bank shall allow Advisory Council members to examine, on the Bank's

premises, any AHP applications from prior funding periods.

(3) *Annual report to the Finance Board.* Each Advisory Council shall submit to the Finance Board annually by March 1 its analysis of the low- and moderate-income housing and community development activity of the Bank by which it is appointed.

(g) *Expenses.* The Bank shall pay Advisory Council members travel expenses, including transportation and subsistence, for each day devoted to attending meetings with representatives of the board of directors of the Bank.

(h) *Avoidance of actual or apparent conflicts of interest.*—(1) *In general.* An Advisory Council member who has a personal interest in, or who is a director, officer or employee of an organization involved in a project that is the subject of a pending or approved AHP application, may not participate in or attempt to influence the evaluation, approval, funding, monitoring, or any remedial process for such project under the Program.

(2) *Adoption of written policy.* Each Bank's board of directors shall adopt a written policy applicable to the Bank's Advisory Council members to prevent actual or apparent conflicts of interest under the Program.

(3) *No delegation.* A Bank's board of directors may not delegate to Bank officers or other Bank employees the responsibility to adopt such policy.

Dated: October 9, 1996.

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

Bruce A. Morrison,
Chairman.

[FR Doc. 96-28319 Filed 11-7-96; 8:45 am]

BILLING CODE 6725-01-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95-NM-160-AD]

RIN 2120-AA64

Airworthiness Directives; Jetstream BAe Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Jetstream BAe Model ATP airplanes, that would have required repetitive inspections to

detect damage of the antenna mounting reinforcing plates and surrounding fuselage skin. If any damage was detected, the proposed AD would have also required replacement of the reinforcing plate with a new reinforcing plate and/or repair of the surrounding fuselage skin, which would have terminated the repetitive inspection requirements. That proposal was prompted by reports of corrosion found at the antenna reinforcing plates, which was caused by ingress of water at the plates. This action revises the proposed rule by expanding the inspection area. The actions specified by this proposed AD are intended to prevent such corrosion, which could result in reduced structural integrity of the fuselage pressure vessel.

DATES: Comments must be received by December 2, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-160-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041-6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2141; fax (206) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic,

environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95-NM-160-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-160-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Jetstream BAe Model ATP airplanes, was published as a notice of proposed rulemaking (NPRM) in the Federal Register on March 8, 1996 (61 FR 9371). That NPRM would have required repetitive detailed external visual inspections to detect damage (i.e., corrosion, cracks, pillowing, and rivet pulling) of the antenna mounting reinforcing plates and surrounding fuselage skin. For cases where any damage was detected during the inspection, the NPRM would have required replacement of the reinforcing plate with a new reinforcing plate and/or repair of the surrounding fuselage skin; this replacement/repair would have constituted terminating action for the repetitive inspection requirements. That NPRM was prompted by reports of corrosion found at the antenna reinforcing plates, which was caused by the ingress of water at the plates. That condition, if not corrected, could result in reduced structural integrity of the fuselage pressure vessel.

Actions Since Issuance of Previous Proposal

Since the issuance of that NPRM, Jetstream has issued Service Bulletin ATP-53-31, Revision 1, dated December 5, 1995. (The original issue of the service bulletin, dated July 1, 1995, was cited in the NPRM as the appropriate source of service