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12 CFR Ch. XII (1–1–11 Edition)

AHP direct subsidy, including any interest, repaid to a member or project sponsor under a homeownership set-aside program or the competitive application program, respectively, may be repaid by such parties to the Bank for subsequent disbursement to and re-use by such parties, or retained by such parties for subsequent re-use, as authorized by the Bank, in its discretion, after consultation with its Advisory Council, in its AHP Implementation Plan, provided all of the following requirements are satisfied:

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

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

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

(ii) *No delegation.* A Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibility to adopt any Bank policies on re-use of repaid AHP direct subsidies in the same project pursuant to paragraph (f)(2)(i) of this section.

(g) *Suspension and debarment*—(1) *At a Bank's initiative.* A Bank 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 terms of an approved application for AHP subsidy or the requirements of this part.

(2) *At the FHFA's initiative.* The FHFA may order a Bank to suspend or debar a member, project sponsor, or project owner from participation in the Pro-

gram if such party shows a pattern of noncompliance, or engages in a single instance of flagrant noncompliance, with the terms of an approved application for AHP subsidy or the requirements of this part.

(h) *Transfer of Program administration.* Without limitation on other remedies, the FHFA, 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 FHFA may prescribe.

(i) *FHFA actions under this section.* Except as provided in paragraph (d)(2) of this section, actions taken by the FHFA under this section are reviewable under §907.9 of this chapter.

§ 1291.9 Agreements.

(a) *Agreements between Banks and members.* A Bank shall have in place with each member receiving an AHP subsidized advance or AHP direct subsidy an agreement or agreements containing, at a minimum, the following provisions, where applicable:

(1) *Notification of member.* The member has been notified of the requirements of this part as they may be amended from time to time, and all Bank policies relevant to the member's approved application for AHP subsidy.

(2) *AHP subsidy pass-through.* The member shall pass on the full amount of the AHP subsidy to the project or household, as applicable, for which the subsidy was approved.

(3) *Use of AHP subsidy*—(i) *Use of AHP subsidy by the member.* The member shall use the AHP subsidy in accordance with the terms of the member's approved application for the subsidy and the requirements of this part.

(ii) *Use of AHP subsidy by the project sponsor or owner.* The member shall have in place an agreement with each project sponsor or project owner in which the project sponsor or project owner agrees to use the AHP subsidy in accordance with the terms of the member's approved application for the subsidy and the requirements of this part.

(4) *Repayment of AHP subsidies in case of noncompliance*—(i) *Noncompliance by the member.* The member shall repay

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AHP subsidies to the Bank in accordance with the requirements of § 1291.8(b)(1) of this part.

(ii) *Noncompliance by a project sponsor or owner—(A) Agreement.* The member shall have in place an agreement with each project sponsor or project owner in which the project sponsor or project owner agrees to repay AHP subsidies to the member or the Bank in accordance with the requirements of § 1291.8(b)(2)(i) or (b)(2)(ii) of this part, respectively (as applicable).

(B) *Recovery of AHP subsidies.* The member shall recover from the project sponsor or project owner and repay to the Bank any AHP subsidy in accordance with the requirements of § 1291.8(b)(2)(i) of this part (if applicable).

(5) *Project monitoring—(i) Monitoring by the member.* The member shall comply with the monitoring requirements applicable to it, as established by the Bank in its monitoring policies pursuant to § 1291.7 of this part.

(ii) *Agreement.* The member shall have in place an agreement with each project sponsor and project owner, in which the project sponsor and project owner agree to comply with the monitoring requirements applicable to such parties, as established by the Bank in its monitoring policies pursuant to § 1291.7 of this part.

(6) *Transfer of AHP obligations—(i) To another member.* The member shall make best efforts to transfer its obligations under the approved application for AHP subsidy to another member in the event of its loss of membership in the Bank prior to the Bank's final disbursement of AHP subsidies.

(ii) *To a nonmember.* If, after final disbursement of AHP subsidies to the member, the member undergoes an acquisition or a consolidation resulting in a successor organization that is not a member of the Bank, the nonmember successor organization assumes the member's obligations under its approved application for AHP subsidy, and where the member received an AHP subsidized advance, the nonmember assumes such obligations until prepayment or orderly liquidation by the nonmember of the subsidized advance.

(7) *Retention agreements for owner-occupied units.* The member shall ensure that an AHP-assisted owner-occupied unit is subject to a deed restriction or other legally enforceable retention agreement or 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 or refinancing of the unit prior to the end of the retention period, an amount equal to a pro rata share of the AHP subsidy that financed the purchase, construction, or rehabilitation of the unit, reduced for every year the seller owned the unit, shall be repaid to the Bank from any net gain realized upon the sale or refinancing, unless:

(A) The unit was assisted with a permanent mortgage loan funded by an AHP subsidized advance;

(B) The unit is sold to a very low-, or low- or moderate-income household; or

(C) Following a refinancing, the unit continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism described in this paragraph (a)(7); and

(iii) In the case of a direct subsidy, such repayment of AHP subsidy shall be made:

(A) *To the Bank.* If the Bank has not authorized re-use of the repaid AHP subsidy or has authorized re-use of the repaid subsidy but not retention of such repaid subsidy by the member or project sponsor pursuant to § 1291.8(f)(2) of this part, or has authorized retention and re-use of such repaid subsidy by the member or project sponsor pursuant to such section and the repaid subsidy is not re-used in accordance with the requirements of the Bank and such section; or

(B) *To the member or project sponsor.* To the member or project sponsor for reuse by such member or project sponsor, if the Bank has authorized retention and re-use of such subsidy by the member or project sponsor pursuant to § 1291.8(f)(2); and

(iv) The obligation to repay AHP subsidy to the Bank shall terminate after any foreclosure.

(8) *Retention agreements for rental projects.* The member shall ensure that

an AHP-assisted rental project is subject to a deed restriction or other legally enforceable retention agreement or mechanism requiring that:

(i) 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 approved AHP application for the duration of the retention period;

(ii) 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;

(iii) In the case of a sale or refinancing of the project prior to the end of the retention period, the full amount of the AHP subsidy received by the owner shall be repaid to the Bank, unless:

(A) The project continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism incorporating the income-eligibility and affordability restrictions committed to in the approved AHP application for the duration of the retention period; or

(B) If authorized by the Bank, in its discretion, the households are relocated, due to the exercise of eminent domain, or for expansion of housing or services, to another property that is made subject to a deed restriction or other legally enforceable retention agreement or mechanism incorporating the income-eligibility and affordability restrictions committed to in the approved AHP application for the remainder of the retention period; and

(iv) The income-eligibility and affordability restrictions applicable to the project shall terminate after any foreclosure.

(9) *Lending of AHP direct subsidies.* If a member or a project sponsor lends AHP direct subsidy to a project, any repayments of principal and payments of interest received by the member or the project sponsor must be paid forthwith to the Bank, unless the direct subsidy is being both lent and re-lent by a revolving loan fund pursuant to § 1291.5(c)(13) of this part.

(10) *Special provisions where members obtain AHP subsidized advances—(i) Repayment schedule.* The term of an AHP subsidized advance shall be no longer

than the term of the member's loan to the project funded by the advance, and at least once in every 12-month period, the member shall be scheduled to make a principal repayment to the Bank equal to the amount scheduled to be repaid to the member on its loan to the project in that period.

(ii) *Prepayment fees.* Upon a prepayment of an AHP subsidized advance, the Bank shall charge a prepayment fee only to the extent the Bank suffers an economic loss from the prepayment.

(iii) *Treatment of loan prepayment by project.* If all or a portion of the loan or loans financed by an AHP subsidized advance are prepaid by the project to the member, the member may, at its option, either:

(A) Repay to the Bank that portion of the advance used to make the loan or loans to the project, and be subject to a fee imposed by the Bank sufficient to compensate the Bank for any economic loss the Bank experiences in re-investing 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 advance; or

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

(b) *Agreements between Banks and project sponsors or owners.* A Bank shall have in place an agreement with each project sponsor or project owner, in which the project sponsor or project owner agrees to repay AHP subsidies directly to the Bank in accordance with the requirements of § 1291.8(b)(2)(ii) of this part (if applicable).

(c) *Application to existing AHP projects and units.* The requirements of section 10(j) of the Act (12 U.S.C. 1430(j)) and the provisions of this part, as amended, are incorporated into all agreements between Banks, members, project sponsors, and project owners receiving AHP subsidies under the competitive application program, and between Banks, members and unit owners under the homeownership set-aside program. To

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the extent the requirements of this part are amended from time to time, such agreements are deemed to incorporate the amendments to conform to any new requirements of this part. No amendment to this part shall affect the legality of actions taken prior to the effective date of such amendment.

§ 1291.10 Conflicts of interest.

(a) *Bank directors and employees.* (1) Each Bank's board of directors shall adopt a written policy providing that if a Bank director or employee, or such person's family member, has a financial interest in, or is a director, officer, or employee of an organization involved in, a project that is the subject of a pending or approved AHP application, the Bank director or employee shall not participate in or attempt to influence decisions by the Bank regarding the evaluation, approval, funding, monitoring, or any remedial process for such project.

(2) If a Bank director or employee, or such person's family member, has a financial interest in, or is a director, officer, or employee of an organization involved in, an AHP project such that he or she is subject to the requirements in paragraph (a)(1) of this section, such person shall not participate in or attempt to influence decisions by the Bank regarding the evaluation, approval, funding, monitoring, or any remedial process for such project.

(b) *Advisory Council members.* (1) Each Bank's board of directors shall adopt a written policy providing that if an Advisory Council member, or such person's family member, has a financial interest in, or is a director, officer, or employee of an organization involved in, a project that is the subject of a pending or approved AHP application, the Advisory Council member shall not participate in or attempt to influence decisions by the Bank regarding the approval for such project.

(2) If an Advisory Council member, or such person's family member, has a financial interest in, or is a director, officer, or employee of an organization involved in, an AHP project such that he or she is subject to the requirements in paragraph (b)(1) of this section, such person shall not participate in or attempt to influence decisions by the

Bank regarding the approval for such project.

(c) *No delegation.* A Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibility to adopt the conflict of interest policies required by this section.

§ 1291.11 Temporary suspension of AHP contributions.

(a) *Request to FHFA.* If a Bank finds that the contributions required pursuant to § 1291.2(a) of this part are contributing to the financial instability of the Bank, the Bank may apply in writing to the FHFA for a temporary suspension of such contributions.

(b) *Director review.* (1) In determining the financial instability of a Bank, the Director shall consider such factors as:

- (i) Severely depressed Bank earnings;
- (ii) A substantial decline in Bank membership capital; and
- (iii) A substantial reduction in Bank advances outstanding.

(2) *Limitations on grounds for suspension.* The Director shall not suspend a Bank's annual AHP contributions if it determines that the Bank's reduction in earnings is due to:

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

[71 FR 59286, Oct. 6, 2006, as amended at 73 FR 61664, Oct. 17, 2008]

§ 1291.12 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 § 1291.2(a) of this part, 90 percent of the unused or uncommitted amount shall be deposited by the Bank in an Affordable Housing Reserve Fund established and administered by the FHFA. 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 shall be deposited in the Affordable Housing Reserve Fund.