It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. Two comments supporting the current suspension and opposing the revised proposed suspension, one comment supporting the revised proposed suspension, and one comment opposing the proposed suspension were received.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1126

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR Part 1126 is amended as follows:

PART 1126—MILK IN THE TEXAS MARKETING AREA

1. The authority citation for 7 CFR part 1126 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 1126.7 [Suspended in part]

2. In § 1126.7(d) introductory text, the words ''during the months of February through July'' and the words ''under paragraph (b) or (c) of this section'' are suspended.

3. In § 1126.7(e) introductory text, the words ''and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c), and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested'' are suspended.

§ 1126.13 [Suspended in part]

4. In § 1126.13(e)(1), the words ''and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant'' are suspended.

5. Section 1126.13(e)(2) is suspended.

6. In § 1126.13(e)(3), the sentence ''The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;'' is suspended.

Dated: July 29, 1997.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 97–20458 Filed 8–1–97; 8:45 am]

BILLING CODE 3410–02–U

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 960

[No. 97–44]

RIN 3069–AA28

Amendment of Affordable Housing Program Regulation

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulation governing the operation of the Affordable Housing Program (AHP or Program). Among the significant changes made by the final 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 final 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: The final rule is effective on January 1, 1998. Compliance with § 960.3(b) shall begin on September 3, 1997.

FOR FURTHER INFORMATION CONTACT: Richard Tucker, Deputy Director, Compliance Assistance Division, (202) 408–2848, or Diane E. Dorius, Associate Director, Program Development Division, (202) 408–2576, Office of Policy; or Sharon B. Like, Senior Attorney-Advisor, (202) 408–2930, or Brandon B. Straus, Senior 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 seven 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, which was published in the **Federal Register**, 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 September 25, 1995, the Finance Board published a final rule amending the AHP regulation to permit the Banks to set aside of portion of their required annual AHP contributions to fund homeownership set-aside programs to provide downpayment and closing cost assistance to low-and moderate-income homebuyers. *See* 60 FR 49327 (Sept. 25, 1995). 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 and 1995 notices of proposed rulemaking, and the additional experience of the Finance Board and the Banks in overseeing and administering the Program, the Finance Board issued a new comprehensive proposal to revise the Program, which was published in the **Federal Register** on November 8, 1996, with a 90-day period for public comment. *See* 61 FR 57799 (Nov. 8, 1996). The Finance Board received over 270 comments on the proposed rule. Commenters included: all of the Banks and their Advisory Councils; Bank members; not-for-profit organizations; trade associations; a member of Congress; a federal agency; state and local government agencies; and others.

II. Analysis of the Final Rule

A. In General

The final rule makes changes to a number of the aspects of the Program that were highlighted in the notice of proposed rulemaking, 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 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 final rule also reorganizes and streamlines the text of the regulation. The structure of the final rule is significantly revised from that of the proposed rule in order to, among other things: (1) separate Program standards from procedures; (2) integrate the provisions governing the Banks' homeownership set-aside programs with corresponding provisions governing the Banks' competitive application programs; (3) clarify the roles of the Banks, members, and other parties involved in the Program; and (4) identify the kinds of agreements that must be in place in order to ensure compliance with Program requirements.

The Finance Board is making these changes in the larger context of devolving to the Banks the authority to make final funding decisions for AHP projects. 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' seven years of experience evaluating and processing AHP applications, the Banks are prepared to take on this new authority. A large majority of comments on the proposed rule supported the transfer of approval authority for AHP applications from the Finance Board to the Banks. The Finance Board will continue to exercise its supervisory oversight role through examinations of each Bank's Program.

B. Effective Dates and Existing AHP-Assisted Projects

1. Dates

In order to provide the Banks sufficient time to prepare to administer the Program under the revised AHP regulation, the provisions of the final rule will become effective on January 1, 1998. However, compliance with § 960.3(b) shall begin on September 3, 1997. As further discussed below, § 960.3(b) requires each Bank to adopt an AHP implementation plan setting forth key policies and procedures governing the Bank's Program.

2. Application of the Final Rule to Existing AHP-Assisted Projects

Section 960.16 of the final rule makes clear that the provisions of the final rule apply to all existing AHP-assisted projects. Existing agreements between Banks, members, sponsors, or owners regarding such parties' AHP obligations may have language that automatically incorporates any changes to the AHP regulation that may be adopted from time to time by the Finance Board. Section 960.16 of the final rule makes clear that where existing agreements do not provide for automatic conformity with AHP regulatory changes, the requirements of section 10(j) of the Act and the provisions of the AHP regulation, as amended, are incorporated into such agreements by operation of law.

The final rule may require Banks, members, sponsors, and owners to change their behavior prospectively to meet new regulatory requirements. However, the changes made by the final rule are not intended to affect the legality of actions taken prior to the effective date of the final rule.

C. Definitions—§ 960.1

Changes to individual definitions in the final rule generally are discussed in later sections of this **SUPPLEMENTARY INFORMATION** section in the context of specific regulatory requirements, with the exception of the following definitions discussed here.

1. ''Subsidized advance'' and ''Subsidy''

The final rule carries forward the provision of the proposed rule defining ''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.'' The proposed rule defined ''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.'' The definition of ''subsidy'' in the final rule makes clear that the amount of the interest rate subsidy in a subsidized advance is determined as of the earlier of the two dates mentioned above.

The notice of proposed rulemaking requested 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, which may eliminate a perceived disincentive to the Banks to make subsidized advances, versus direct subsidies. A number of commenters stated 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, 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. The Finance Board finds merit in these arguments. Therefore, the final rule carries forward the reference to a Bank's

''cost of funds'' in the definition of ''subsidy.''

2. Definitions of ''Median Income for the Area,'' ''Low-and Moderate-Income Household,'' and ''Very Low-Income Household''

a. *Median Income Standards and Family Size-Adjustments.*

(i) Statutory Standards

Under section 10(j)(2)(A) of the Act, members are to use AHP subsidies to finance owner-occupied housing for ''families with incomes at or below 80 percent of the median income for the area.'' *See* 12 U.S.C. 1430(j)(2)(A). Section 10(j)(13)(A) of the Act contains a corresponding definition of ''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).

Under section 10(j)(2)(B) of the Act, members are to use AHP subsidies generally to finance rental housing for ''very low-income households.'' *See id.* § 1430(j)(2)(B). 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 Act does not define ''median income for the area'' or ''area median.'' To date, the Finance Board has interpreted these terms to refer to the measure of median income for an area as determined and published by the Secretary of the Department of Housing and Urban Development (HUD) for approximately 2,700 metropolitan statistical areas (MSAs), counties, and nonmetropolitan statistical areas, including adjustments for various local conditions as well as for family size. *See* 42 U.S.C. 1437a(b)(2); 12 CFR 960.1(h). In practice, this required the use of income limits published by HUD corresponding to 80 percent and 50 percent, respectively, of the median income for a particular area, adjusted for family size.

(ii) Proposed Regulatory Amendments.

On November 5, 1993, the Finance Board published for comment a proposal to amend the AHP regulation 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).

The November 8, 1996 proposed rule continued to require the use of HUD income limits, including adjustments for family size, in determining household eligibility under the Program. The notice of proposed rulemaking requested comments on the definitions in the proposed rule and, alternatively, on allowing: (1) Median income to be established using any reliable source for current area information and to 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 for the project; 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.

(iii) Final Regulatory Standards

While a number of commenters supported using HUD income limits on the ground that they are readily understood and available, there also was significant support for: (1) the use of median income standards, including any family-size adjustments, established using any reliable source for current area income data determined for counties and other applicable state and local subdivisions as well as MSAs; or (2) 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.

While the Finance Board favors some measure of flexibility on the issue of income limits for households participating in AHP-assisted projects, a prerequisite for any income eligibility standard is that it is based on data that are accepted as accurate and reliable and are readily available. The Finance Board wishes to avoid adopting an income eligibility standard that increases the risk of after-the-fact discrepancies between a particular income eligibility standard and the actual incomes of households benefiting from AHP subsidies, which ultimately may lead to repayment of the subsidies.

In light of the support among commenters for the use of measures of median income and family-size adjustments other than those used by HUD in its housing programs, the final rule adds a definition of ''median income for the area,'' and amends the definitions of ''low-or moderate-income household'' and ''very low-income household'' to permit the use of additional median income standards and their corresponding adjustments for family size.

In the case of owner-occupied projects, ''median income for the area'' means: (1) The median income for the area, as published annually by HUD; (2) the applicable median family income, as determined under the mortgage revenue bond program set forth in 26 U.S.C. 143(f) and published by a State agency or instrumentality; (3) the median income for the area, as published by the United States Department of Agriculture (USDA); or (4) the median income for any definable geographic area, as published by a federal, state, or local government entity for purposes of that entity's housing programs, that has been approved by the Board of Directors of the Finance Board for use under the AHP.

The final rule expressly includes reference to the median income published by the USDA in order to make clear that the Finance Board supports the use of the AHP by members in rural areas in order to meet homeownership needs in those areas.

Under the Internal Revenue Code, household eligibility for mortgage financing provided by qualifying mortgage revenue bonds is based on the ''applicable median family income,'' which is the greater of: (1) The area median gross income for the area in which a residence is located; or (2) the statewide median gross income for the State in which the residence is located. *See* 26 U.S.C. 143(f)(4). The ''applicable median family income'' is based on income data published by HUD. *See* Rev. Proc. 97–26, 1997–17 I.R.B 17.

Under the mortgage revenue bond program, the applicable median family income may be adjusted depending on whether the residence being financed is in a targeted versus a non-targeted area and whether the residence is in a high housing cost area. *See* 26 U.S.C. 143(f)(3), (5). Adjustments also are made for family size. *See id.* section 143(f)(6)(A). It should be noted that for purposes of the AHP, the applicable median family income may be adjusted for family size, but shall not be adjusted based on the location of a residence in a targeted area or a high housing cost area, *see id.* section 143(f)(3), (5), because in targeted areas and high housing cost areas, the mortgage revenue bond program does not use the ''applicable median family income'' as the basis for household income eligibility. In targeted areas, ''applicable median family income'' is adjusted by a factor of 120 percent based solely on the location of the residence in a targeted area. *See id.* section 143(f)(3). Consequently, the baseline measure of area median income in targeted areas is 120 percent of the ''applicable median

family income,'' rather than simply the ''applicable median family income.'' As discussed above, the Act requires that the AHP income limit be based on 80 percent of some measure of the ''median income for the area.'' Since the mortgage revenue bond program does not use the ''applicable median family income'' as a measure of median income for targeted areas, use of that program's income limits for targeted areas would not be permissible under the Act.

Similarly, in cases where the income limit under the mortgage revenue bond program is adjusted above the ''applicable median family income'' for high housing cost areas, *see id.* section 143(f)(5), use of the adjusted income limit would not be permissible under the Act. In sum, the Finance Board believes that using the ''applicable median family income,'' as determined under the mortgage revenue bond program for residences in non-targeted areas, is consistent with the requirements of the Act and is a viable alternative to the use of income limits used under HUD's housing programs because it is based on data that are accepted as accurate and reliable and are readily available from state agencies and instrumentalities that publish income limits for purposes of their mortgage revenue bond programs. Accordingly, as applied to the AHP, in the case of a one- or two-person household, the income limit would be 80 percent of the ''applicable median family income,'' and for households with three or more members, the income limit would be 80 percent of 115 percent of the ''applicable median family income.'' *See id.* section 143(f)(1), (6)(A).

Under the final rule, a Bank may request approval of the Board of Directors of the Finance Board to use a measure of median income for AHP-assisted owner-occupied projects other than those used by HUD, the USDA, or a state mortgage revenue bond program. Such requests will receive prompt consideration by the Board of Directors. However, prior to requesting approval of an alternative median income standard, a Bank must amend its AHP implementation plan to permit the use of that standard, conditioned on Board of Directors approval. This is intended to ensure that a Bank receives input from its Advisory Council prior to proposing a new median income standard for use under the AHP.

For purposes of rental projects, the final rule defines ''median income for the area'' as: (1) The median income for the area, as published annually by HUD; or (2) the median income for any definable geographic area, as published by a federal, state, or local government entity for purposes of that entity's housing programs, that has been approved by the Board of Directors of the Finance Board for use under the AHP.

While the Finance Board wishes to provide the opportunity for the use of measures of median income in addition to those used by HUD for rental projects, the Finance Board wishes to address such alternatives on a case-by-case basis. A large majority of rental projects receiving AHP subsidies are otherwise required to use the income limits published by HUD for its housing programs because these projects have received funds from HUD or have been allocated federal Low-Income Housing Tax Credits. Consequently, there appears to be less need for flexibility at this time with regard to income limits for rental projects. Nonetheless, in view of the potential for an increasing flow of funds to rental housing from bonds and other state and local programs, the final rule permits the Banks to seek approval of alternative measures of median income for AHP-assisted rental projects under the same procedures that apply for owner-occupied projects, discussed above.

In cases where a Bank chooses to permit the use of more that one median income standard (and its corresponding family-size adjustments), such standards must be available to all proposed projects in the Bank's District. Accordingly, the definition of ''median income for the area'' expressly states that a Bank may select a median income standard or standards from which all projects may choose for purposes of the AHP. Furthermore, under section 960.3(b)(1)(i) of the final rule, a Bank must set forth in its AHP implementation plan the applicable median income standard or standards, adopted by the Bank consistent with the definition of ''median income for the area.'' Two members of the Board of Directors of the Finance Board have requested that agency staff gather data regarding the impact as of the end of 1998 of the increased flexibility in the area median income standards.

b. *Timing of Household Income Qualification.*

The final rule incorporates in the definitions of ''very low-income household'' and ''low-or moderate-income household'' provisions governing the time at which a household's income should be examined to determine whether it meets the income eligibility requirements for AHP-assisted housing.

The final rule provides that in the case of owner-occupied projects, this determination is to be made at the time the household is qualified by the sponsor (or member, in the case of a homeownership set-aside program) for participation in the project. This is a change from the proposed rule, which required that the determination be made no earlier than the date on which the application for subsidy funding the project is submitted to the Bank for approval. Several commenters requested this change in order to allow project sponsors more flexibility in qualifying households. Commenters identified a number of programs, such as sweat-equity programs, that qualify households prior to the deadline established by the proposed rule. Under the final rule, households may be qualified at any time, but in all cases, sponsors must have adequate documentation to verify income eligibility.

The final rule also revised the provisions of the proposed rule governing the timing of household income qualification for rental projects to take into account situations where there are current occupants in units receiving AHP assistance. The final rule provides that where rental projects involve the purchase or rehabilitation of units with current occupants, the income qualification determination is to be made at the time the purchase or rehabilitation is completed.

3. Definition of ''Affordable''

The final rule provides that ''affordable'' means that the rent charged to a household for a unit that is committed to be affordable in an AHP application does not exceed 30 percent of the income of a household of the maximum income and size expected, under the commitment made in the AHP application, to occupy the unit (assuming occupancy of 1.5 persons per bedroom or 1.0 person per unit without a separate bedroom). This language clarifies that only those units that are committed to be affordable in an AHP application are subject to the 30 percent-of-income limitation. The revised definition also replaces the reference in the proposed rule to a household's ''monthly housing costs'' with a reference to the ''rent'' charged for the unit. This change was made to exclude utility costs from the affordability calculation where these costs are not part of the rent for a unit.

D. Operation of Program and Adoption of AHP Implementation Plan—§ 960.3

1. Program Operation

The proposed rule provided 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 prohibited a Bank from adopting any additional substantive AHP requirements, except as expressly provided in part 960. This was intended to make clear that the AHP regulation is to ''occupy the field'' with regard to substantive requirements governing the Program. The final rule omits this general prohibition and identifies specific areas where the Banks are prohibited from imposing additional substantive Program requirements, namely optional and mandatory eligibility requirements and scoring criteria.

A significant number of commenters objected to the proposed language on the ground that it would reduce the Banks' ability to adopt Program requirements in addition to those in the AHP regulation in order to address what the Banks have characterized as special circumstances in their Districts. While the Finance Board agrees that the Banks should have discretion in making decisions regarding Program implementation in order to meet regional needs, the Finance Board has a legal mandate to exercise independent judgment, in light of the public interest, as to the purpose of the AHP and the standards needed to effect that purpose. The Act makes clear that the authority to adopt regulations governing the AHP rests with the Finance Board. *See* 12 U.S.C. 1430(j) (1) and (9). In order to address concerns about flexibility, the Finance Board has attempted to provide the Banks discretion in those areas of the Program that, over the past seven years, have shown a need for flexibility.

2. Allocation of AHP Contributions

Section 960.3(a) of the final rule consolidates provisions of the proposed rule related to the allocation of a Bank's required annual AHP contribution to its competitive application program and homeownership set-aside program or programs. Section 960.3(a)(1) of the final rule provides that a Bank, after consultation with its Advisory Council, may set aside annually, in the aggregate, up to the greater of $1.5 million or 15 percent of its annual required AHP contribution to provide funds to members participating in the Bank's homeownership set-aside program or programs. This is a change from the proposed rule, which limited homeownership program set-aside amounts to the greater of $1 million or 10 percent of a Bank's required annual AHP contribution. A number of commenters supported an increase in the maximum set-aside amount in light of the high demand for such funds. Moreover, the Finance Board has approved funding as high as $1.5 million for one Bank's set-aside program. The final rule continues to permit a Bank to allocate funds from the subsequent year in instances where demand for funds in the current year exceeds that year's set-aside amount.

Section 960.3(a)(2) of the final rule provides that the portion of a Bank's required annual AHP contribution that is not set aside to fund homeownership set-aside programs shall be provided to members through the Bank's competitive application program.

3. AHP Implementation Plans

The proposed rule required each Bank's board of directors to adopt an AHP implementation plan and any amendments to the plan by December 1 of each year, after providing its Advisory Council a reasonable period of time to review the plan and any amendments and provide its recommendations. Section 960.3(b) of the final rule carries forward this requirement generally, but omits a specific deadline for adoption of the plan. Once a Bank's board of directors has adopted its plan, or any amendments, the Bank must submit the plan or amendments to the Finance Board and the Bank's Advisory Council at least 60 days prior to distributing requests for applications for AHP subsidies for the funding period in which the plan, or amendments, will be effective. A Bank's implementation plan is the vehicle through which the Bank determines the standards for its Program, consistent with the requirements of the final rule. Section 960.3(b)(1) of the final rule identifies Bank procedures and other information that must be included in a Bank's implementation plan. Compliance by the Bank with its implementation plan will provide the basis for Finance Board examination of the Bank's implementation of its Program.

4. Conflicts of Interest Policies

Section 960.3(c) of the final rule consolidates provisions of the proposed rule that required the boards of directors of the Banks to adopt conflicts of interest policies governing Bank directors and employees and Advisory Council members. The proposed rule required each Bank to have a policy providing that a Bank director, officer, or employee or 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.

Section 960.3(c) of the final rule contains two substantive changes to the proposed language. First, the reference to a ''personal interest'' of a party in a project is replaced with a reference to a ''financial interest'' of a party or that party's ''family member.'' A ''family member'' is defined in § 960.1 as any individual related to a person by blood, marriage or adoption. This change is intended to respond to comments requesting clarification of the scope of the intended prohibition in this provision.

Second, the final rule no longer prohibits an interested Advisory Council member from being involved in decisions of the Bank regarding the evaluation, funding, monitoring or any remedial process for a project that is the subject of a pending or approved AHP application. As some commenters pointed out, many Advisory Council members, who by law are drawn from community and not-for-profit organizations, may in many cases be integrally involved in projects that are the subject of pending or approved AHP applications. Consequently, Advisory Council members often must work with the Banks in resolving issues related to the evaluation, funding, monitoring, and compliance of such projects. This is reflected in the revised language of the final rule.

E. Advisory Councils—§ 960.4

Section 960.4 of the final rule carries forward the provisions of the proposed rule governing Advisory Councils, with the following changes. First, § 960.4(d) of the final rule provides that Advisory Council members may be appointed to serve for up to three consecutive three-year terms. The proposed rule permitted a maximum of two consecutive three-year terms. Some commenters suggested that there be no term limit for Advisory Council members in order to 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. The Finance Board believes permitting Advisory Council members to serve for up to nine consecutive years will promote this goal.

Second, the final rule omits the proposed requirement that a Bank allow Advisory Council members to examine AHP applications under the Bank's competitive application program from prior funding periods. Some commenters opposed this provision on the ground that it would provide Advisory Council members who, in

many cases, are associated with organizations that have projects in a Bank's competitive application program, access to information that may give them an unfair competitive advantage. Accordingly, this provision is deleted, but § 960.4(f)(2) of the final rule retains the proposed requirement that a Bank comply with requests from its Advisory Council for summary information regarding AHP applications from prior funding periods. Access to this information will aid Advisory Council members in evaluating how a Bank's scoring guidelines affect the allocation of AHP subsidies among different types of housing projects.

The notice of proposed rulemaking requested comments on the role, selection, and compensation of Advisory Council members. Commenters supported the Advisory Councils' expanded role in providing recommendations on the Banks' AHP implementation plans. Commenters also generally supported expanding the role of Advisory Councils to include providing advice on ways in which the Banks can better carry out their housing finance and community investment mission. Sections 960.3(b)(3) and 960.4(f)(1) of the final rule, respectively, retain these provisions of the proposed rule.

Section 960.4(b) of the final rule carries forward the proposed provision requiring the Banks to appoint Advisory Council members giving consideration to the size of the Banks' District and the diversity of low- and moderate-income housing needs and activities within the District. 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. Accordingly, the proposed rule required the Banks to draw Advisory Council members from a diverse range of organizations, provided that representatives of no one group constitute an undue proportion of the membership of an Advisory Council. Commenters generally supported this provision. Therefore, § 960.4(c) of the final rule carries forward the proposed provision without change.

Section 960.4(g) of the final rule carries forward the proposed requirement, which also is a requirement of the existing regulation, that a Bank 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. In addition, the final rule requires a Bank to pay Advisory Council members' travel expenses, including transportation and subsistence, for each day devoted to attending meetings requested by the Finance Board. The Finance Board believes that meetings with Finance Board representatives provide an important forum for Advisory Council members to communicate their views to the agency. Consequently, where the Finance Board requests such meetings, it is appropriate for the Banks to reimburse the transportation and subsistence expenses of those Advisory Council members who attend.

Several commenters suggested that the Banks be required to pay fees to Advisory Council members for attending such meetings. While this is not required by the final rule, nothing precludes the Banks, in their discretion, from paying such fees.

F. Minimum Eligibility Standards for AHP Projects—§ 960.5

1. In General

As part of the reorganization of the structure of the proposed rule, those provisions of the proposed rule that constitute minimum eligibility standards for AHP projects have been consolidated into a single section in the final rule, as described below.

2. Homeownership Set-Aside Programs

Under the existing regulation, Banks must establish their homeownership set-aside programs in accordance with the specific requirements set forth therein, unless they obtain Finance Board approval to establish ''nonconforming'' programs. *See* 12 CFR 960.5(g). The proposed rule revised the existing regulation to allow the Banks more flexibility in establishing their homeownership set-aside programs, including the program eligibility requirements, without having to obtain prior Finance Board approval.

Section 960.5(a) of the final rule sets forth the minimum eligibility standards for a Bank's homeownership set-aside programs. The final rule carries forward the proposed eligibility standards with the following changes. First, under § 960.5(a)(3), the maximum amount of funds available per household is increased from $5,000 to $10,000. Several commenters suggested this change in order to serve lower income homebuyers in high cost areas.

Second, § 960.5(a)(4) of the final rule includes rehabilitation by current homeowners as an eligible use of homeownership set-aside funds. The language of the proposed rule limited the use of homeownership set-aside funds to home purchases. As indicated in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the Finance Board intended to allow homeownership set-aside funds to be used also for rehabilitation by current homeowners. *See* 61 FR 57799, 57813 (Nov. 8, 1996).

Third, the Finance Board received a number of comments suggesting that homeownership set-aside funds be permitted to be used for homebuyer counseling costs, which was prohibited by the proposed rule. Sections 960.5 (a)(4) and (a)(7) of the final rule permit homeownership set-aside funds to be used to pay for counseling costs where: (i) Such costs are incurred in connection with counseling of homebuyers who actually purchase an AHP-assisted unit; (ii) the cost of the counseling has not been covered by another funding source, including the member; and (iii) the homeownership set-aside funds are used to pay only for the amount of such reasonable and customary costs that exceeds the highest amount the member has spent annually on homebuyer counseling costs within the preceding three years. The Finance Board believes that if homeownership set-aside funds are to be used for counseling costs, they should be used to expand the pool of resources available for counseling, rather than replace existing sources of funding. These provisions are intended to prevent homeownership set-aside funds from being used to pay for counseling that, in the absence of such funds, customarily would be financed by members participating in a homeownership set-aside program.

Fourth, § 960.5(a)(8) of the final rule requires homeownership set-aside funds to be drawn down and used by eligible households within a period of time specified by the Bank in its AHP implementation plan. This parallels a similar requirement for a Bank's competitive application program, as discussed further below, and is currently a requirement in several of the Banks' existing homeownership set-aside programs.

Fifth, the final rule omits the requirement that any program eligibility criteria adopted by a Bank be consistent with the National Homeownership Strategy coordinated by HUD. The minimum eligibility requirements set forth in the final rule ensure that homeownership set-aside funds are provided to households for uses that are consistent with the National Homeownership Strategy. Therefore, the explicit reference to the Strategy is omitted in the final rule.

3. Competitive Application Program

Section 960.5(b) of the final rule sets forth the minimum eligibility standards for a Bank's competitive application program. The final rule carries forward the provisions of the proposed rule, with the following changes regarding project feasibility and need for subsidy, and timing of subsidy use. As discussed below, the final rule also omits the maximum subsidy requirement in the proposed rule, which provided that no AHP-subsidized household in a project could pay less than 20 percent of its gross monthly income toward monthly housing costs (the 20 percent requirement).

a. *Project Feasibility and Need for Subsidy.*

Section 960.5(b)(2) of the final rule consolidates standards regarding project feasibility and need for subsidy that appeared in several different sections of the proposed rule. Many commenters objected to those provisions of the proposed rule requiring the Banks to adopt project cost guidelines and to evaluate the reasonableness of the interest rates and charges involved in financing from funding sources other than members. Commenters stated that such requirements are duplicative of efforts undertaken by members and other funding sources and are unnecessarily burdensome for the Banks.

The proposed rule was intended to codify the current practices of many of the Banks in evaluating project feasibility and need for subsidy. Due to the time constraints of the application process, members often do not provide the level of project review necessary to determine project feasibility and the need for AHP subsidy. Consequently, the Finance Board believes it is in the best interest of the Program for the Banks to have and carry out an independent duty to scrutinize each proposed project to determine whether the requested subsidy is necessary for the financial feasibility of the project, as currently structured. Section 960.3(b)(1)(iii) of the final rule requires the Banks to include in their AHP implementation plans feasibility guidelines for determining whether proposed projects comply with these standards.

The Finance Board is sensitive to the challenge of developing project feasibility guidelines during the transition to operation under the regulatory changes made by this final rule. The Finance Board intends to create a special process under which a Bank may, at its option, obtain prior review and approval by the Finance Board of its initial project feasibility guidelines in order to ensure that they are consistent with the requirements of the final rule.

With regard to a project's estimated sources of funds, § 960.5(b)(2)(i) of the final rule carries forward provisions of the proposed rule and makes clear that such sources must include estimates of the market value of in-kind donations and volunteer professional labor or services committed to the project, but not the value of sweat-equity. This provision is intended to allow sponsors that build housing using donations of labor and material to account for such sources of funds in their development budgets. Sweat-equity is excluded from a project's funding sources in order to avoid requiring the purchaser of a home who provides labor in the construction of the home to pay for the value of his or her own labor.

The proposed rule provided 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. At the time of disbursement, the Bank was required to obtain a current independent appraisal of property sold to a project where a member had a ''direct or indirect interest'' in the property or project. In response to requests from several commenters, the final rule clarifies the proposed language referring to a ''direct or indirect interest'' of a member in the property or project. Section 960.5(b)(2)(ii)(B) of the final rule provides that the purchase price of property or services sold to a project by a member providing AHP subsidy to the project, or, in the case of property, upon which such member holds a mortgage or lien, may not exceed market value as of the date the purchase price for the property or services was agreed upon. In the case of real estate owned property sold to a project by the member, or property sold to the project upon which the member holds a mortgage or lien, the market value of such property is deemed to be the ''as-is'' or ''as-rehabilitated'' value of the property, whichever is appropriate, as reflected in an independent appraisal of the property performed within six months prior to the date the purchase price for the property was agreed upon.

Several commenters suggested that the value of property may be enhanced where the property is proposed to be used for affordable housing receiving subsidized financing. In addition, there may be other factors related to the proposed use of a property for affordable housing that affect the property's valuation. The Finance Board believes that it may be appropriate to take such factors into account in determining the market value of a property. As discussed above, the final rule provides for property to be valued either ''as-is'' or ''as rehabilitated,'' whichever is appropriate under the circumstances. However, the Finance Board believes that any valuation judgments related to a property's use for affordable housing should be reflected in an appraisal of the property. Consequently, to the extent that a property's proposed use for affordable housing affects the property's value, this factor should be reflected in the appraisal of the property in order to be considered in determining the property's market value for purposes of the AHP.

b. *Timing of Subsidy Use.*

The proposed rule provided that a project must be likely to be completed within a reasonable period of time. Section 960.5(b)(3) of the final rule provides that the AHP subsidy must be likely to be drawn down by a project or used by the project to procure other financing commitments within 12 months of the date of approval of the application for subsidy financing the project. This reflects the requirement of the existing regulation and current practice.

c. *Prepayment Fees.*

There may be situations where, due to declining interest rates, it would be advantageous to a project to prepay its loan from a member and refinance the project. However, prepayment of the member's loan may trigger prepayment of the Bank's subsidized advance by the member, a prepayment fee for the member, and, thus, a prepayment fee for the project. It has been suggested that the project be permitted to allocate the remaining AHP subsidy incorporated in the advance to pay for the member's prepayment fee. This, in turn, would permit the member to forego charging the project a prepayment fee, making refinancing less costly.

The proposed rule prohibited the use of AHP subsidies for such prepayment fees on the ground 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. Clearly, however, where a project agrees to continue to comply with the terms of the application for the AHP subsidy after using the subsidy to pay for a prepayment fee, the purpose of the Program is met and the project is able to obtain a stronger financial position. Consequently, § 960.5(b)(4)(i) of the final rule permits the use of AHP subsidies to pay for prepayment fees

imposed by a Bank on a member for a prepayment of a subsidized advance, if, subsequent to such prepayment, the project will continue to comply with the terms of the application for the subsidy, as approved by the Bank, and the requirements of the AHP regulation for the duration of the original retention period, and any unused subsidy is returned to the Bank and made available for other AHP projects.

d. *Counseling Costs.*

The notice of proposed rulemaking requested comments on whether AHP subsidies should be permitted to be used to pay for counseling costs generally, and whether AHP subsidies should be used to pay only for counseling for homebuyers, homeowners, or tenants of AHP-assisted units. Section 960.5(b)(5) of the final rule, which carries forward the proposed provision, permits AHP subsidies to be used to pay for costs incurred in connection with counseling of homebuyers as long as: (1) The counseling is provided to a household who actually purchases an AHP-assisted unit; and (2) the cost of the counseling has not been covered by another funding source, including the member. While many commenters supported the proposed provision, there was no consensus among commenters on this issue. The Finance Board believes that if AHP subsidies are to be used for counseling costs, 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.

e. *Refinancing.*

Section 960.5(b)(6) of the final rule carries forward the proposed requirement that if a project uses AHP subsidies to refinance an existing single-family or multifamily mortgage loan, the equity proceeds of the refinancing must be used only for the purchase, construction, or rehabilitation of AHP-eligible housing. Several commenters suggested that the final rule should permit the use of AHP subsidies to refinance existing projects in cases where no equity is taken out of the project and the refinancing results in a lower debt service cost for the project. 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).

f. *Project Sponsor Qualifications.*

Section 960.5(b)(8) of the final rule provides that a project's sponsor must be qualified and able to perform its responsibilities as committed to in the AHP application. Section 960.1 of the final rule carries forward the definition of ''sponsor'' in the proposed rule and, in response to comments, clarifies that in the case of rental projects, ''sponsor'' includes an organization whose ownership of a project is in the form of a partnership interest.

g. *Use of AHP Subsidies for Loan Guarantees.*

Several commenters suggested that the final rule permit the use of AHP subsidies for loan guarantees or other financial mechanisms to make affordable housing feasible. Although the Finance Board did not request comments on this issue and has not authorized the use of AHP subsidies for loan guarantees in the final rule, the Finance Board does find these comments of interest and will review how such guarantees might work under the AHP.

h. *Pre-Development Expenses.*

The final rule omits the language in the proposed rule expressly prohibiting the use of AHP subsidies for pre-development expenses. The proposed rule prohibited 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. This language was intended to make clear that a Bank could not provide AHP subsidies for the sole purpose of determining the feasibility of housing.

The final rule omits this language because the requirement in § 960.5(b)(2) that projects be feasible in order to receive AHP subsidy effectively incorporates this prohibition. Proposed projects that meet the requirements of a Bank's feasibility guidelines may include pre-development expenses as project costs in their AHP applications.

Several commenters supported the use of AHP subsidies for the sole purpose of determining the feasibility of housing. The Finance Board believes that this use of funds will not result in the actual purchase, construction, or rehabilitation of housing, as required by the statute. Further, since the inception of the Program, demand for AHP subsidies for feasible projects has significantly exceeded available funds. Thus, if AHP subsidies were to be approved for the sole purpose of determining the feasibility of housing, 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.

i. *District Eligibility Requirements.*

Section 960.5(b)(10) of the final rule carries forward the provisions in the proposed rule governing District eligibility requirements, which were referred to as ''District threshold requirements'' in the proposed rule. The notice of proposed rulemaking included an extensive discussion of the salient arguments in favor of and against the proposed District eligibility requirements. *See* 61 FR 57799, 57807–57809 (Nov. 8, 1996). The comments received by the Finance Board on these provisions either supported or objected to the proposal on many of the grounds discussed in the notice of proposed rulemaking. There was no consensus on two of the three optional District eligibility requirements. Although there was more prevalent opposition to the third requirement—that the member have used a Bank credit product in the past 12 months—the Finance Board feels that members and sponsors will have some influence on an individual Bank's decision regarding this option. Consequently, the Finance Board is finalizing the District eligibility provisions, as proposed, which provide the Banks with discretion to determine whether to adopt these eligibility requirements.

j. *The 20 percent Requirement.*

The final rule omits the provision in the proposed rule known as ''the 20 percent requirement,'' which provided that households who own or rent AHP-assisted units shall pay no less than 20 percent of their gross monthly income towards monthly housing costs. The proposed rule carried forward provisions of the existing regulation and added some exceptions to the 20 percent requirement. Commenters generally supported the additional exceptions in the proposed rule and suggested the adoption of several other exceptions. The 20 percent requirement was intended to 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).

In light of the fact that most projects come within the exceptions to the 20 percent requirement, the Finance Board believes that the 20 percent requirement no longer is an effective means of implementing the statutory maximum subsidy limitation. Further, the requirements in the final rule regarding project feasibility and need for subsidy are intended to implement this statutory requirement.

G. Procedure for Approval of Applications for Funding—§ 960.6

As part of the reorganization of the structure of the proposed rule, the final

rule consolidates and streamlines the proposed provisions governing funding periods, application requirements, and scoring and approvals of applications under a Bank's competitive application program. The final rule also integrates and streamlines provisions in the proposed rule governing funding under a Bank's homeownership set-aside programs.

1. Program Administration

Section 960.6(b)(1) of the final rule carries forward the proposed provisions permitting a Bank to accept applications for funding under its competitive application program during a specified number of funding periods each year, as determined by the Bank. The notice of proposed rulemaking requested 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. Of those commenters who addressed this issue, the majority opposed the acceptance of applications on a rolling basis. The Finance Board believes that a competitive process has worked well and has decided to maintain the AHP as a competitive program. Further, those commenters who supported funding on a rolling basis offered no way to score applications fairly under such a process.

The final rule omits the proposed provision requiring a Bank to notify members and other interested parties of: the amount of subsidy offered annually and in each funding period; District eligibility requirements; scoring guidelines; and application due dates. The final rule also omits the provisions of the proposed rule specifying the information required to be included in AHP applications. These changes are consistent with the Finance Board's intent to streamline the AHP regulation and to devolve to the Banks those aspects of the Program involving day-to-day administration. Accordingly, § 960.6(b)(2) of the final rule provides that a Bank shall require applicants for AHP subsidies under the Bank's competitive application program to submit information sufficient for the Bank to determine that a proposed AHP project meets applicable eligibility requirements and to evaluate the application pursuant to the regulatory scoring criteria.

2. Acceptance of Applications from Nonmembers

Sections 960.6(a) and (b)(1) of the final rule add provisions authorizing a Bank, in its discretion, to accept applications for funding under both its homeownership set-aside programs and its competitive application program from institutions with pending applications for membership in the Bank. This is intended to give the Banks greater flexibility in accommodating new members that desire to participate in the AHP before the membership application process has been completed. As discussed further below, an institution must be a member prior to actually receiving AHP subsidies.

3. Scoring of Applications

a. *In General.*

The notice of proposed rulemaking requested comments on all aspects of the proposed scoring provisions and on ways in which the scoring system could 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. A number of commenters generally supported the scoring provisions as proposed and suggested limited changes. Some commenters suggested that the Finance Board permit the Banks, in consultation with their Advisory Councils, to establish their own scoring systems. Other commenters recommended that the scoring system be simplified, and that the Banks be given greater flexibility in adopting scoring criteria and allocating points among the criteria. Commenters stated that such changes would improve the Program's operating efficiency and enable the Banks to tailor their scoring systems to the needs of their Districts.

While the existing scoring process generally has worked well over the past seven years of the Program's operation and is familiar to Program users, the Finance Board agrees with commenters that a simpler and more flexible scoring system should improve operating efficiency and enhance the responsiveness of the Program to local District needs. Accordingly, § 960.6(b)(4) of the final rule revises the scoring system in the proposed rule to incorporate greater simplicity and flexibility, as discussed below.

b. *Revised Scoring System.*

(i) *Elimination of Two-Tiered Priority Scoring Process.*

The proposed rule established six priority categories, and required the Banks to allocate 60 of a total 100 points among those categories, with at least 8 points allocated to each category. In addition, the proposed rule established 4 scoring objectives categories, and required the Banks to allocate the remaining 40 points among these categories, with the targeting objective category receiving at least 8 points. Applications meeting at least two of the six priorities were considered priority applications and, as a group, were to be scored before applications meeting fewer than two of the priorities. Priority applications then were to be scored against each other based on the extent to which they met the priorities and the scoring objectives.

The final rule eliminates this two-tiered system of scoring priority applications before non-priority applications. Instead, § 960.6(b)(4) of the final rule establishes nine scoring criteria categories, and requires a Bank to score all applications for projects meeting the minimum eligibility requirements according to the nine criteria. Section 960.6(b)(4)(ii) requires a Bank to allocate 100 points among the nine scoring criteria, which incorporate the scoring priorities and objectives of the proposed rule with revisions as discussed below. At least 5 points must be allocated to each scoring criterion except for targeting, which must be allocated at least 20 points. Section 960.6(b)(4)(i) provides that a Bank shall not adopt additional scoring criteria or point allocations, except as specifically authorized under paragraph (b)(4).

(ii) *Designation of Variable-and Fixed-Point Criteria.*

The proposed rule designated each proposed priority category as either a fixed-point or a variable-point criterion. Fixed-point criteria are those which cannot be satisfied in varying degrees and are either satisfied, or not. Variable-point criteria are those where there are varying degrees to which an application can satisfy the criterion. Section 960.6(b)(4)(iii) of the final rule requires each Bank to make the designation of criteria as either fixed or variable. The targeting criterion and the subsidy-per-unit criterion must be designated as variable-point criteria. When determining the extent to which competing projects satisfy a variable-point criterion, a Bank must award points to projects in a uniform and consistent manner. The nine scoring criteria are discussed below.

(iii) Donated Government-Owned or Other Properties Criterion.

Section 960.6(b)(4)(iv)(A) of the final rule revises the scoring criterion in the proposed rule for projects using government-owned property to provide scoring credit for projects using a significant proportion of units or land donated or conveyed for a nominal price by the federal government or any agency or instrumentality thereof, or by any other party. The expansion of this criterion to include units or land owned by other parties responds to a number of commenters who pointed out that the stock of available federal government

properties continues to decrease. The criterion also has been revised to encourage the donation of property for AHP projects, which should reduce the costs of financing such housing

(iv) Not-For-Profit Organization or Government Entity Sponsor Criterion.

Section 960.6(b)(4)(iv)(B) of the final rule revises the scoring criterion in the proposed rule for projects sponsored by a not-for-profit organization or government entity by expanding the list of government entities to include Native American Tribes, Alaskan Native Villages, and the government entity for Native Hawaiian Home Lands, which are comparable to state or local government entities.

(v) Targeting Criterion.

Section 960.6(b)(4)(ii) of the final rule revises the proposed rule by increasing the required minimum allocation of points for the targeting scoring criterion from 8 to 20. This change is intended to promote the funding of projects that commit to the targeting objective, which the Finance Board views is an important goal of the Program.

Section 960.6(b)(4)(iv)(C)(*1*) of the final rule carries forward the proposed requirement that an application for a rental project shall be awarded the maximum number of points available under the targeting criterion 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 median income for the area. The final rule clarifies that applications for projects with less than 60 percent of the units reserved for occupancy by households with incomes at or below 50 percent of the median income for the area shall be awarded points on a declining scale based on the percentage of units in a project that are reserved for households with incomes at or below 50 percent of the median income for the area, and on the percentage of the remaining units reserved for households with incomes at or below 80 percent of the median income for the area.

The purpose of this targeting provision is to reduce the emphasis in the existing regulation on funding projects that are occupied solely by very low-income households. There was support among commenters for this goal, although commenters had different views as to whether 60 percent is the appropriate ceiling for mixed-income targeting. Several commenters opposed reducing the current bias against mixed-income housing in the AHP scoring system. The Finance Board believes that mixed-income housing projects should be competitive under the Program. Mixed-income housing promotes economic integration, which supports the long-term financial feasibility of a project and the empowerment of lower income residents.

The notice of proposed rulemaking requested comments on ways in which the targeting criterion could be structured so that it is more closely compatible with the monitoring requirements for AHP projects. Several commenters supported coordinating the targeting criterion with project monitoring requirements, and suggested that points under the targeting criterion should be awarded to projects based on targeting commitments made to funding sources other than the Banks. Section 960.6(b)(4)(iv)(C)(*1*) of the final rule adopts this approach as an option for the Banks in structuring their Programs. The final rule provides that in order to facilitate reliance on monitoring by a federal, state, or local government entity providing funds or allocating federal Low-Income Housing Tax Credits to a proposed project, a Bank, in its discretion, may score each project according to the targeting commitments made by the project to such entity, and the Bank shall include such scoring practice in its AHP implementation plan.

Section 960.6(b)(4)(iv)(C)(*3*) of the final rule provides that a Bank, in its discretion, may score owner-occupied projects and rental projects separately under the targeting criterion. This is a change from the proposed rule, which required separate scoring. The purpose of allowing separate scoring is to offset what may be an inherent bias in the targeting criterion in favor of rental projects, which, in general, have more units targeted to very-low income households than do owner-occupied projects. The final rule permits the Banks to determine whether separate scoring is appropriate for the targeting criterion.

(vi) Community Development Criterion and Empowerment Criterion.

Section 960.6(b)(4)(iv)(E) of the final rule eliminates the proposed mandatory community development scoring criterion and replaces it with a mandatory scoring criterion for projects promoting empowerment. The proposed rule had a more limited version of the empowerment criterion as an optional District priority. Under § 960.6(b)(4)(iv)(F)(*2*) of the final rule, the community development criterion is now an optional District priority. Several commenters suggested that the community development criterion is inherently biased against rural projects and, therefore, should not be a mandatory criterion in a Bank's scoring system. Commenters also favored a mandatory criterion for empowerment, consistent with the existing regulation. The Finance Board agrees that promoting empowerment is a valuable aspect of projects and should be maintained as a mandatory criterion.

(vii) First and Second District Priorities.

Section 960.6(b)(4)(iv)(F) of the final rule carries forward the provision of the proposed rule requiring a Bank to select a District priority, as recommended by the Bank's Advisory Council and set forth in the Bank's AHP implementation plan, from a set of criteria listed in the AHP regulation. A number of commenters suggested that the Banks should be allowed to select criteria in addition to those listed in the proposed rule. Section 960.6(b)(4)(iv)(G) of the final rule provides for this by permitting a Bank to adopt a second District priority for projects meeting a housing need in the Bank's District, as defined and recommended by the Bank's Advisory Council and set forth in the Bank's AHP implementation plan. Further, under the Act, the Finance Board has a statutory mandate to promulgate regulations that specify priorities for the use of AHP subsidies. *See* 12 U.S.C. 1430(j)(9)(B). Consequently, the Finance Board may not, consistent with the statute, allow the Banks to have total discretion to determine priorities under the Program. Nonetheless, the Finance Board believes that the final rule provides the Banks with a large measure of discretion in this area by providing a relatively wide range of choices for the Banks' two District priorities. In addition, the final rule revises the proposed rule by allowing a Bank to adopt multiple criteria under its first District priority, as long as the total points available for meeting the criteria do not exceed the total points allocated to the priority. The final rule makes clear that a Bank's second District priority need not be chosen from the list of permissible criteria for the Bank's first District priority.

The final rule omits from the list of optional District priorities in § 960.6(b)(4)(iv)(F) the priority for projects with retention periods in excess of the minimum retention period required under the project eligibility standards in § 960.5(b)(7) of the final rule. Awarding points to projects for committing to retention periods longer than the minimum would require that such projects be monitored in excess of the minimum required retention period. In light of changes in the monitoring requirements, which are discussed further below, that are intended to permit the Banks to rely on monitoring

by other parties for most rental projects, the priority for projects with longer retention periods is no longer feasible.

Section 960.6(b)(4)(iv)(F)(*4*) of the final rule carries forward the proposed optional District 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 notice of proposed rulemaking, the Finance Board requested comments on whether this should be a mandatory scoring criterion or a project eligibility standard, and on whether a member should be deemed to meet such a scoring criterion based on the member's record of affordable housing lending activities apart from its lending under the Program.

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.

A number of commenters objected to making member financial participation a project eligibility standard or a mandatory scoring criterion because some projects may not require or be able to sustain additional debt. Requiring projects to have loans from a member may create a bias against projects serving lower income households, which often cannot support debt service because rents are too low. Further, smaller members, which may not have the capacity to finance a project loan, waive fees or donate funds, may be effectively precluded from participating in the Program. The Finance Board believes these arguments have merit. However, the Banks should be permitted to determine whether promoting some measure of member financial participation through the scoring system is appropriate in the Bank's District. Consequently, the final rule retains member financial participation as an optional District priority.

Commenters stated that favoring projects based on a member's record of affordable housing lending activities apart from its lending under the Program is inappropriate because the member's lending record is not directly relevant to the evaluation of a particular application for AHP subsidy, and a fair evaluation of a member's affordable housing record would be difficult to accomplish. The Finance Board agrees that this would present practical difficulties in Program administration and, therefore, has not included this criterion in the final rule.

(viii) Community Involvement Criterion.

Section 960.6(b)(4)(iv)(F)(*10*) of the final rule revises the proposed rule by removing community involvement as a mandatory scoring criterion and including it as an optional District priority in lieu of the proposed sweat-equity priority, which is incorporated in this priority. The final rule also deletes the proposed language allowing a Bank to give scoring credit under this criterion to projects receiving commitments of funds from local sources. This change was made because the criterion is intended to promote in-kind donations to projects.

(ix) Subsidy-Per-Unit Criterion.

Section 960.6(b)(4)(iv)(H) of the final rule carries forward the provisions in the proposed rule governing the subsidy-per-unit criterion, with the exception that a Bank, in its discretion, may determine whether owner-occupied projects and rental projects should be scored separately under this criterion. There may be an inherent bias in the subsidy-per-unit criterion in favor of rental projects, which, in general, have lower amounts of subsidy per unit than do owner-occupied projects. Therefore, as under the targeting criterion, the final rule permits the Banks to determine whether separate scoring is appropriate for this criterion.

The subsidy-per-unit criterion, in effect, favors projects with a shallower subsidy. A Bank may de-emphasize this effect and promote deeper subsidies per unit by allocating as few as five points to this criterion. The notice of proposed rulemaking requested comments on whether this gives the Banks adequate flexibility in applying the subsidy-per-unit criterion in their Districts. A number of commenters supported allowing the Banks to determine the number of points to allocate to the subsidy-per-unit criterion.

H. Modifications of Applications Prior to Project Completion—§ 960.7

Section 960.7 of the final rule incorporates several revisions to provisions in the proposed rule governing modifications of AHP applications under a Bank's competitive application program prior to project completion. First, the definition of ''project modification'' in the proposed rule is incorporated into the terms of § 960.7, and clarified to refer to modifications occurring prior to final disbursement of funds to the project from all funding sources.

Second, the final rule omits the provisions of the proposed rule specifying the information required to be included in requests for modifications. This change is consistent with the Finance Board's intent to streamline the AHP regulation and to devolve to the Banks those aspects of the Program involving day-to-day administration.

Third, § 960.7(a)(3) of the final rule revises the modification standards in the proposed rule by making all proposed modifications subject to a ''good cause'' requirement and permitting the Banks to determine whether a ''good cause'' showing has been made in individual cases. The proposed rule required the Banks to approve modifications not involving subsidy increases as long as a project continued to meet eligibility requirements and to score high enough to have been approved in the funding period in which it was originally scored and approved by the Bank. The purpose of this change is to give the Banks flexibility to determine on a case-by-case basis whether changes from a project's original AHP commitments are justified.

Fourth, the final rule omits the provision in the proposed rule prohibiting a Bank's board of directors from delegating to Bank officers or other Bank employees the authority to approve requests for modifications not involving a subsidy increase. A number of commenters supported this change, which conforms the final rule to the Banks' current practices.

Section 960.7(a)(2) of the final rule carries forward the requirement that, in order to receive a pre-completion modification, a project must continue to score high enough to have been approved in the funding period in which it was originally scored and approved by the Bank. The Finance Board wishes to make clear that where modifications are requested for applications that were scored and approved for funding prior to January 1, 1998, the application shall be rescored according to the scoring requirements in effect for the funding period in which the application was approved.

I. Procedure for Funding—§ 960.8

Section 960.8 of the final rule incorporates several substantive revisions to provisions in the proposed rule governing disbursement of AHP subsidies under a new section entitled ''Procedure for Funding.''

First, in light of the new provisions in § 960.6 permitting a Bank to accept AHP

applications from institutions with pending applications for membership, § 960.8(a)(1) of the final rule makes explicit that a Bank may disburse AHP subsidies only to institutions that are members of the Bank at the time they request a draw-down of subsidy. Section 960.8(a)(2) also provides that if an institution with an approved application for AHP subsidy fails to obtain or loses its membership in the Bank, the Bank may disburse subsidies to a member of such Bank to which the institution has transferred its obligations under the approved application, or the Bank may disburse subsidies through another Bank to a member of that Bank that has assumed the institution's obligations under the approved application.

Second, the provisions in the proposed rule governing disbursement of homeownership set-aside funds are consolidated into § 960.8(b), and a new provision is added in § 960.8(b)(1) requiring a Bank to cancel an application for homeownership set-aside funds and make the funds available for other applicants or for other AHP-eligible projects if the funds are not drawn down and used by eligible households within the period of time specified by the Bank in its AHP implementation plan. This is consistent with current Bank practices and parallels the requirement for the Banks' competitive application programs. A new provision also is added in § 960.8(b)(2)(iii), which states that, prior to disbursement of homeownership set-aside funds for counseling purposes, a Bank must require the member to certify that: (i) The funds will be used for counseling of homebuyers who actually purchase an AHP-assisted unit; (ii) The cost of the counseling has not been covered by another funding source, including the member; and iii) the funds will be used to pay for only the amount of such reasonable and customary costs that exceeds the highest amount the member has spent annually on homebuyer counseling costs within the preceding three years.

Third, the final rule omits the requirement in the proposed rule that a Bank obtain, and maintain in its project file, documents sufficient to demonstrate compliance with AHP requirements prior to making disbursements of AHP subsidy, including an independent, current appraisal 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. This change is consistent with the Finance Board's intent to streamline the AHP regulation. The Banks are in the best position to determine what kinds of documents must be maintained for purposes of the Bank's own recordkeeping and in order to support Bank decisions in the context of examinations by the Finance Board. The issue related to the use of AHP subsidies in projects involving real estate owned property provided by a member is specifically addressed in § 960.5(b)(2)(ii) of the final rule, which is discussed above.

Fourth, § 960.8(c)(3) of the final rule revises the provisions in the proposed rule governing changes in a project's approved AHP subsidy amount where a Bank provides a direct subsidy to write down the principal amount prior to closing or the interest rate on a loan provided by a member to a project. The final rule permits Banks not to increase the subsidy amount where market interest rates rise between the time the subsidy initially is approved by the Bank and the time the lender commits to the interest rate to finance the project. Several Banks objected to the proposed provision, which made such a subsidy increase mandatory, on the ground that subsidy increases should be subject to a process of negotiation between Banks, members, and projects in order to ensure that such increases are justified. By making such subsidy increases optional, the final rule is consistent with the current practices of some of the Banks.

Fifth, the final rule omits the language in the proposed rule requiring the Banks to ensure that AHP subsidies are passed on to the ultimate borrower, and that the preponderance of AHP subsidies is ultimately received by very low-and low-or moderate-income households. These requirements, including the provisions for matched repayment schedules for Bank subsidized advances and member loans, are implemented through § 960.13 of the final rule governing agreements between Banks and members.

Sixth, the final rule omits the requirement in the proposed rule that each Bank must ensure that the terms of any member's participation in a transaction benefiting from an AHP subsidy are fair to the Program. Commenters objected to this requirement on the grounds that it is too vague and will discourage member participation in the Program. Commenters also suggested this requirement is duplicative of other Program requirements intended to ensure that AHP subsidies are properly used.

Seventh, § 960.5(b)(2)(iii) of the final rule incorporates the provision in the proposed rule requiring each Bank to ensure that the rate of interest, points, fees and any other charges for all loans financing an AHP project do not exceed a market rate of interest, points, fees, and other charges for loans of similar maturity, terms, and risk. The final rule also requires a Bank to determine that AHP subsidy is necessary for the financial feasibility of a project, as currently structured.

Eighth, the provisions in the proposed rule governing the lending of direct subsidies, matched repayment schedules, and prepayment fees charged by the Banks are implemented in a revised form through § 960.13 of the final rule governing agreements between Banks and members.

In the case of the matched repayment schedule requirement, § 960.13(c)(1) of the final rule provides that the term of a 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. This is a change from the proposed rule, which required the principal repayments received by the member to be paid over to the Bank. According to commenters, the language in the proposed rule was too restrictive, because it referred to the actual principal repayments received by members and omitted mention of a member's independent obligation to repay an advance, without regard to the amount of principal repayments received by the member. Consequently, the language of the final rule is revised to clarify that the scheduled, rather than the actual, principal repayments must be equal, in a 12-month period.

J. Modifications of Applications After Project Completion—§ 960.9

Section 960.9 of the final rule adds a new provision permitting members to obtain modifications to approved AHP applications under a Bank's competitive application program after a project has been completed, as long as the modification does not require an increase in the amount of AHP subsidy provided to the project. In order for a project to obtain additional AHP subsidy after completion, such subsidy must be approved pursuant to a Bank's competitive application program. Under the proposed rule, modifications were available only prior to project completion.

Section 960.9 of the final rule provides that after final disbursement of funds to a project from all funding sources, a Bank, in its discretion, may

approve in writing a modification to the terms of an approved application for subsidy funding the project, other than an increase in the amount of subsidy, if there is or will be a change in the project that materially affects the facts under which the application was originally scored and approved under the Bank's competitive application program, provided that: (1) The project is in financial distress or is at substantial risk of falling into such distress; (2) the project sponsor or owner has made best efforts to avoid noncompliance with the terms of the application for subsidy and AHP requirements; (3) the project, incorporating any material changes, would meet Program eligibility requirements; and (4) the application, as reflective of such changes, continues to score high enough to have been approved in the funding period in which it was originally scored and approved by the Bank. The Finance Board wishes to make clear that where modifications are requested for applications that were scored and approved for funding prior to January 1, 1998, the application shall be rescored according to the scoring requirements in effect for the funding period in which the application was approved.

Section 960.9 is added in response to comments from the Banks requesting that the final rule include an alternative to addressing compliance issues through the AHP remedial process. *See also* § 960.12. Members, project sponsors, and project owners should use the modification process, where possible, as a means of addressing existing or potential AHP compliance issues on their own initiative rather than waiting for such issues to be brought to light and addressed through the remedial process.

K. Monitoring Requirements—§ 960.10 and § 960.11

1. In General

Section 10(j)(9)(C) of the Act requires the Finance Board to issue regulations ensuring ''that advances made under [the] 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 AHP regulation requires each Bank to monitor member and project compliance with AHP requirements, but does not establish specific 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 seven 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. In the notice of proposed rulemaking, the Finance Board proposed 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 reporting and certification requirement for members under the existing regulation. The Finance Board's proposal was 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 funding such projects; and (3) the Banks should be permitted to rely, to the extent feasible, on monitoring by other funding sources.

A number of commenters stated that the various monitoring requirements in the proposed rule should be omitted or that the Banks should be permitted to develop their own monitoring procedures. As discussed above, the lack of clear and consistent standards may actually contribute to a more burdensome monitoring scheme, and the Finance Board intends to prevent this by setting standards in the regulation. In addition, the Finance Board believes that the final rule provides the Banks with additional flexibility by permitting them to rely on long-term monitoring by other entities for a majority of AHP-assisted rental projects.

2. Restructuring of the Monitoring Provisions

The final rule separates the section of the proposed rule governing monitoring into two sections governing initial monitoring requirements and long-term monitoring requirements, respectively. In addition, provisions on monitoring standards have been separated from provisions requiring that parties' obligations to comply with monitoring standards be implemented by specific agreements. The provisions related to monitoring agreements are incorporated in § 960.13(b)(4) of the final rule.

3. Initial Monitoring Requirements

As discussed above, the proposed provisions governing project monitoring were based, in part, on the principle that 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. Commenters generally supported this approach. Section 960.10 of the final rule carries forward the proposed provisions governing monitoring in the initial stages of project development, with the following substantive changes.

First, § 960.10(a)(2)(ii)(C) of the final rule clarifies that documentation maintained by rental project owners must include documentation of project habitability to support the owner's habitability certification to the Bank and the member. In response to requests for clarification from commenters, § 960.1 of the final rule makes clear that ''habitable'' means suitable for occupancy, taking into account local health, safety, and building codes. This definition is consistent with that used for purposes of monitoring projects receiving federal Low-Income Housing Tax Credits.

Second, §§ 960.10(c)(1)(ii) and (c)(2)(ii) of the final rule provide that for owner-occupied and rental projects, respectively, a Bank must review project documentation at project completion to determine that a project's actual costs were reasonable and customary in accordance with the Bank's project feasibility guidelines, and that the subsidies provided to the project were necessary for the financial feasibility of the project, as currently structured. This is consistent with the current practice of many of the Banks, which conduct closing audits for projects. Several commenters objected to this provision on the ground that it may discourage the use of AHP subsidies as ''first-in'' money for a project. The concern is that subsequent funders may be hesitant to commit funds to a project if AHP subsidies received by the project are subject to repayment in cases where a review of the project at completion reveals excess costs, and thus oversubsidization.

The Finance Board believes that requiring projects receiving AHP subsidies to demonstrate that their costs are customary and reasonable is essential to ensuring that such subsidies are used in accordance with a project's application for funding and the requirements of the AHP regulation. The

use of AHP subsidies as ''first-in'' money can be analogized to an equity investment. While an equity investor assumes some risk by providing ''first-in'' money, no equity holder would allow use of its investment in a project for excessive costs. Similarly, under the final rule, AHP subsidies that serve as ''first-in'' money will remain in a project as long as the costs incurred by the project are reasonable and customary. Therefore, while the final rule in no way is intended to prevent AHP subsidies from being used as ''first-in'' money, the final rule provides for safeguards against misuse of such subsidies, consistent with the requirements of other funding sources.

Third, § 960.10(d) of the final rule makes clear that for purposes of determining compliance with the targeting commitments in an AHP application, such commitments shall be considered to adjust annually according to the current median income data.

4. Long-Term Monitoring Requirements

Section 960.11 of the final rule governing long-term monitoring requirements after project completion applies solely to rental projects, because owner-occupied projects are not subject to ongoing household income requirements, and transfers of ownership are monitored through deed restrictions. Of the 3,704 existing AHP-assisted projects, 1,752 are owner-occupied projects. Therefore, almost half of all existing AHP-assisted projects are subject to deed restrictions in lieu of long-term monitoring. In addition, §§ 960.11 (a)(1) and (a)(2) of the final rule make the changes discussed below to the proposed provisions governing the long-term monitoring requirements for rental projects to allow greater reliance on monitoring by third parties.

a. *Reliance on Monitoring by a Federal, State or Local Government Entity.*

The proposed rule provided that for projects receiving $500,000 or less of AHP subsidies, a Bank could rely on monitoring by a housing credit agency providing federal Low-Income Housing Tax Credits 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.

The notice of proposed rulemaking requested comments on whether the proposed provisions permitting the Banks to rely on monitoring by other parties could be expanded to include government entities other than housing credit agencies. Comments also were requested on ways in which the targeting scoring objective in the proposed rule could be modified, or whether it should be eliminated, so that the income targeting and rent requirements for AHP projects would be compatible with those required and monitored by other government housing entities.

Commenters identified several other entities that undertake monitoring for program standards that are similar, and in some cases identical, to those under the AHP. However, it was not apparent from the comments that there are any government entities that monitor for compliance with requirements identical to those under the AHP on a consistent basis.

A number of commenters suggested that the Banks should be permitted to rely on monitoring by other entities that provide funding to a project even if the targeting, rent, and retention commitments monitored by the other entity do not match those made by the project under the AHP. However, the integrity of the Program's competitive application process depends upon projects being held to the commitments that they make in order to receive AHP subsidies. Further, project sponsors or owners may have a reduced incentive to comply with these commitments over the long term where they have the knowledge that they will not be monitored according to those commitments.

The final rule attempts to resolve the conflict discussed above by permitting the Banks to evaluate projects under the AHP scoring process according to the targeting commitments made by a project to a government entity providing funds to the project. As discussed previously, § 960.6(b)(4)(iv)(C)(*1*) of the final rule provides that in order to facilitate reliance on monitoring by a federal, state, or local government entity providing funds or allocating federal Low-Income Housing Tax Credits to a project, a Bank, in its discretion, may score each project according to the targeting commitments made by the project to such entity.

In accordance with this change, § 960.11(a)(1) of the final rule expands the extent to which a Bank may rely on post-completion monitoring by government entities providing funds to a project. The final rule provides that for those projects that receive funds from, or are allocated federal Low-Income Housing Tax Credits by, a federal, state, or local government entity, a Bank may rely on the monitoring by such entity after project completion if: (1) The income targeting requirements, the rent requirements, and the retention period monitored by such entity for purposes of its own program are the same as, or more restrictive than, those committed to in the AHP application; (2) the entity 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 entity or where the project is not habitable; and (3) the entity has demonstrated and continues to demonstrate to the Bank its ability to carry out monitoring under its own program, and the Bank does not have information that such monitoring is not occurring or is inadequate.

This is a change from the proposed rule which, as discussed above, limited reliance on third-party monitoring to monitoring conducted by housing credit agencies. In addition, the proposed rule limited such reliance to projects receiving $500,000 or less in AHP subsidies. The final rule also omits the requirements in the proposed rule that 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.

b. *Reliance on Monitoring of AHP Application Commitments By a Contractor.*

Section 960.11(a)(2) of the final rule also adds a new monitoring option for the Banks that is intended to expand the ability of the Banks to rely on post-completion monitoring by government entities providing funds to a project, where the government entity has different income targeting, rent, and retention requirements from those committed to by the project under the AHP.

Section 960.11(a)(2) provides that, for those projects that receive funds from, or are allocated federal Low-Income Housing Tax Credits by, a federal, state, or local government entity that monitors for income targeting requirements, rent requirements, or retention periods

under its own program that are less restrictive than those committed to in the project's AHP application, a Bank, in its discretion, may rely on the monitoring by such entity if: (1) The entity agrees to monitor the income targeting requirements, the rent requirements, and the retention period committed to in the AHP application; (2) the entity agrees to inform the Bank of instances where tenant rents or incomes are found to be in noncompliance with the requirements committed to in the AHP application or where the project is not habitable; and (3) the entity has demonstrated and continues to demonstrate to the Bank its ability to carry out such monitoring, and the Bank does not have information that such monitoring is not occurring or is inadequate.

c. *Long-Term Monitoring Requirements Where Reliance on Government Entities Or Contractors Is Not Permitted.*

Under the final rule, where a Bank is not permitted to rely on post-completion monitoring by a federal, state, or local government entity, the Bank, members, and project owners must monitor projects in accordance with the requirements of § 960.11(a)(3) of the final rule. Section 960.11(a)(3) carries forward provisions in the proposed rule, and makes the following changes in order to reduce monitoring costs for Banks, members, and project owners. First, the final rule omits the requirement that a project owner annually must provide a list of tenant rents and incomes to the Bank.

Second, the final rule omits the provision in the proposed rule requiring the owner of a rental project to certify to the member and the Bank that the 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. The final rule also eliminates the requirement that the Bank investigate complaints about the project. These changes have been made in response to several comments objecting to the above provisions on the ground that they place the Banks in the middle of landlord-tenant disputes, which is not an appropriate role for the Banks.

Third, under § 960.11(a)(3)(ii) of the final rule, for rental projects receiving $500,000 or less in AHP subsidy from a member, the member must perform exterior visual inspections of projects and certify to the Bank at least once every three, rather than two, years that the project appears to be suitable for occupancy.

Fourth, under § 960.11(a)(3)(*iii*)(B)(*3*) of the final rule, for rental projects receiving over $500,000 in AHP subsidy, a Bank must perform an on-site review of project documentation for a sample of the project's units at least once every two years, rather than annually, to verify compliance with the rent and income targeting commitments made in the AHP application and project habitability.

Section 960.11(a)(3)(iv) of the final rule makes clear that a Bank, in its discretion, may hire consultants or outside contractors to perform the Bank's ongoing long-term monitoring activities as the Bank's agents, for example, if the Bank determines that this is more cost-effective than having its own employees administer the Bank's monitoring responsibilities.

d. *Annual Adjustment of Targeting Commitments.*

As under the provisions governing initial monitoring requirements, § 960.11(b) of the final rule makes clear that for purposes of determining compliance with the targeting commitments in an AHP application, such commitments shall be considered to adjust annually according to the current median income data.

L. Remedial Actions for Noncompliance—§ 960.12

1. In General

Section 960.12 of the final rule revises the structure of the proposed rule governing remedies for noncompliance with AHP requirements by separating provisions on compliance standards from provisions requiring that compliance standards be implemented by specific agreements. The proposed provisions on compliance standards governing Banks, members and project sponsors and owners are retained and clarified in § 960.12, while provisions related to compliance agreements are incorporated in § 960.13 of the final rule.

2. Project Foreclosure

A number of commenters requested clarification on the liability of members and project owners where a project goes into foreclosure prior to the end of the retention period. Section 960.12 of the final rule makes a party's liability for repayment of AHP subsidies contingent upon that party's action or omission resulting in noncompliance with AHP requirements. Therefore, if, due to circumstances that are not the result of an action or omission of the member and project sponsor or owner, a project goes into foreclosure prior to the end of the project's retention period, the sponsor or owner is not liable for repayment of subsidies, and the member is required to recover and repay to the Bank only that amount that the member can recover through reasonable collection efforts, by exercising its legal rights against the project.

3. Degree of Culpability

Commenters also suggested that a project sponsor's or owner's liability to repay AHP subsidies should apply to cases of fraud or gross mismanagement but not simple negligence. The Finance Board believes that determinations as to degrees of culpability are best made on a case-by-case basis. This is reflected in § 960.12(c)(2) of the final rule, which permits Banks and members to settle claims for noncompliance taking into account factors such as the degree of culpability of the parties involved.

4. Provision for Members, Sponsors, and Owners to be Parties to Enforcement Proceedings

Section 960.12(d) of the final rule adds a new provision permitting a Bank, in its AHP implementation plan, to provide for a member, project sponsor, or project owner to enter into a written agreement with a Bank under which such member, sponsor, or owner consents to be a party to any enforcement proceeding initiated by the Finance Board regarding the repayment of AHP subsidies received by such member, sponsor, or owner, or the suspension or debarment of such parties, provided that the member, sponsor, or owner has agreed to be bound by the Finance Board's final determination in the enforcement proceeding. Under such an agreement, a member, sponsor, or owner who consents to be subject to a final determination of the Finance Board will have the same rights and remedies as a Bank in seeking review of such a determination.

5. Suspension and Debarment

Section 960.12(f)(2) of the final rule revises the provision in the proposed rule governing suspension and debarment of members and project sponsors and owners from participation in the Program by clarifying that suspension or debarment by the Finance Board is implemented through an order upon a Bank.

6. Procedure for Finance Board Action

Section 960.12(h) of the final rule clarifies that, except in cases where a Bank is seeking prior Finance Board review of a settlement agreement with a member, any actions taken by the Finance Board pursuant to section

960.12 shall be subject to the Finance Board's Procedures for Review of Disputed Supervisory Determinations. Copies of these procedures are available from the Finance Board upon request.

M. Agreements—§ 960.13

1. In General

As discussed previously, § 960.13 of the final rule generally describes the kinds of agreements Banks must have in place with members in order to implement the various standards set forth in the final rule, including standards governing monitoring, retention, and repayment of subsidies. This section also describes special provisions that must be in place where members receive subsidized advances and direct subsidies, respectively. The final rule is not intended to prescribe the form of agreements between Banks and members or whether such agreements consist of one agreement or several separate agreements. Nor is a Bank precluded from making entities in addition to members, such as project sponsors or owners, parties to such agreements.

2. Retention Agreements

Sections 960.13(c) (4) and (5) and (d) (1) and (2) of the final rule incorporate and carry forward the provisions of the proposed rule governing retention of owner-occupied and rental projects. Section 960.1 of the final rule carries forward the provisions of the proposed rule defining the retention period as five years from closing for an AHP-assisted owner-occupied unit, and 15 years from the date of project completion for an AHP-assisted rental project. A number of commenters supported these retention periods. Some commenters supported other retention periods ranging from 3 to 25 years in the case of owner-occupied units, and 5 to 30 years in the case of rental projects. In light of the significant support for the proposed retention periods, the final rule retains the proposed retention periods.

The notice of proposed rulemaking requested comments on whether repayment of AHP subsidy should be required in all cases of refinancing by the homeowner prior to the end of the retention period of an AHP-assisted unit, rather than just in cases where the homeowner 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 five-year retention period, which may be perceived as a windfall to the owner. However, homeowners, generally, can take advantage of lower interest rates by refinancing their unit, and households that purchase AHP-assisted units should not be denied this opportunity. As long as the owner of an AHP-assisted unit ensures that after the refinancing, the unit continues to be subject to the initial AHP retention requirement, the goal of the Program is met.

Several commenters supported permitting refinancing without penalty, while others suggested various permutations of repayment requirements in this situation. The Finance Board continues to believe that households that have AHP-assisted units should be allowed to benefit from appreciation in the value of their homes, through refinancing or otherwise, to the same extent as other homeowners, as long as AHP retention requirements are satisfied. Therefore, § 960.13(d)(1)(iii) of the final rule carries forward the proposed provision on this issue, but makes this provision parallel with § 960.13(d)(1)(ii), which provides for pro rata repayment of the AHP subsidy upon sale of an AHP-assisted unit, unless the unit continues to be subject to the initial AHP retention requirement.

The notice of proposed rulemaking also requested comments on whether an owner of an AHP-assisted rental project should be required to repay the entire amount of 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 may serve to discourage the conversion of AHP-assisted rental projects into projects that charge market rents, prior to the end of the retention period. Several commenters supported requiring full repayment of subsidy where an AHP-assisted rental project is converted to market-rate housing. Despite good arguments on both sides of the issue, the Finance Board, as a matter of policy, has decided to retain this requirement in the final rule as a disincentive for project conversion prior to the end of the retention period. Therefore, §§ 960.13 (c)(5)(iii) and (d)(2)(iii) of the final rule carry forward the proposed provisions on this issue.

3. Termination of Income-Eligibility and Affordability Restrictions Upon Foreclosure

Sections 960.13 (c)(5)(iv) and (d)(2)(iv) of the final rule add a requirement that Banks include in their agreements with members a provision that the income-eligibility and affordability restrictions applicable to an AHP-assisted rental project may terminate upon foreclosure or upon transfer in lieu of foreclosure. This change was made in response to requests from commenters for clarification on this issue.

4. Lending of 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. 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 may be repaid by the recipients. *See* 12 U.S.C. 1430(j)(9)(E).

The proposed rule reflected an attempt to accommodate the needs of sponsors and the statutory requirement governing the pass-through of AHP subsidies. It provided that a member or a sponsor may lend a direct subsidy in connection with an AHP-assisted 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 had to be repaid to the Bank.

Commenters stated that the proposed provisions did not adequately reflect the way that rental project financing is structured in all cases. For instance, members or sponsors may charge interest on direct subsidies lent to projects and may not require deferral of repayments. Section 960.13(d)(3) of the final rule is intended to broaden the language of the provisions of the proposed rule in order to make the final rule compatible with these financing structures. It provides that if a member or a project sponsor lends a 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. The final rule also no longer limits lending of direct subsidies solely to situations involving projects receiving federal Low-Income Housing Tax Credits. This requirement is to be implemented through inclusion in agreements between Banks, members, and project sponsors.

5. Transfer of AHP Obligations Where a Member Loses Its Membership In the Bank

Section 960.13(b)(5) of the final rule provides that the member must 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.

Under § 960.13(c)(6), 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 upon prepayment or orderly liquidation by the nonmember of the subsidized advance. Under § 960.13(d)(4), 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.

III. Regulatory Flexibility Act

The final rule applies only to the Banks, which do not come within the meaning of ''small entities,'' as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, *see id.* section 605(b), the Finance Board hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

As part of the notice of proposed rulemaking, the Finance Board published a request for comments concerning proposed changes to the collection of information in the existing AHP regulation, *see* 61 FR 57799, 57819–57820 (Nov. 8, 1996), which previously was approved by the Office of Management and Budget (OMB) and assigned OMB control number 3096–0006. The revised collection of information was submitted to OMB for review in accordance with section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). The Finance Board also submitted to OMB for its approval an analysis of the proposed changes to the collection of information resulting from the proposed rule. The Finance Board received one comment on the proposed changes. The commenter suggested that the reporting and recordkeeping burden of the information collection may be understated on the grounds that it is not based on current hour and cost estimates and does not take into account the monitoring requirements in the proposed rule. The Finance Board based the hour and cost burden estimates for the information collection on current information available at the time the estimates were made. Further, the Finance Board's analysis of the information collection on file at OMB specifically sets forth hour and cost burden estimates for those aspects of the information collection related to monitoring. The Finance Board continues to believe that the burden estimates are accurate.

OMB has assigned a control number 3096–0006 and approved the revised information collection without conditions with an expiration date of December 31, 1999. 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).

Although the final rule does not substantively or materially modify the approved information collection, it provides additional options in complying with long-term monitoring requirements, which may, in some cases, reduce the reporting and recordkeeping burden on respondents.

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.

Comments concerning the information collection may be submitted to the Finance Board in writing at the address listed above and to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Federal Housing Finance Board, Washington, DC 20503.

List of Subjects in 12 CFR Part 960

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

Accordingly, the Finance Board hereby revises part 960 of chapter IX, title 12, *Code of Federal Regulations* to read as follows.

PART 960—AFFORDABLE HOUSING PROGRAM

Sec.
960.1 Definitions.
960.2 Required annual AHP contributions.
960.3 Operation of Program and adoption of AHP implementation plan.
960.4 Advisory Councils.
960.5 Minimum eligibility standards for AHP projects.
960.6 Procedure for approval of applications for funding.
960.7 Modifications of applications prior to project completion.
960.8 Procedure for funding.
960.9 Modifications of applications after project completion.
960.10 Initial monitoring requirements.
960.11 Long-term monitoring requirements.
960.12 Remedial actions for noncompliance.
960.13 Agreements.
960.14 Temporary suspension of AHP contributions.
960.15 Affordable Housing Reserve Fund.
960.16 Application to existing AHP projects.

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 member's obligation; and

(3) Fully secured by collateral in accordance with the Act and part 935 of this chapter.

Affordable means that the rent charged to a household for a unit that is committed to be affordable in an AHP application does not exceed 30 percent of the income of a household of the maximum income and size expected, under the commitment made in the 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.

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

Board of Directors means the Board of Directors of the Finance Board.

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, but does not include homeownership set-aside funds.

Family member means any individual related to a person by blood, marriage or adoption.

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

Habitable means suitable for occupancy, taking into account local health, safety, and building codes.

Homeless household means a household made up of one or more individuals, other than individuals imprisoned or otherwise detained pursuant to state or federal law, who:

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

(2) Have a primary nighttime residence that is:

(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.

Homeownership set-aside funds means funds provided to a member by a Bank pursuant to a Bank's homeownership set-aside program.

HUD means the Department of Housing and Urban Development.

Low-or moderate-income household. (1) *Owner-occupied projects.* For purposes of an owner-occupied project, *low-or moderate-income household* means a household which, at the time it is qualified by the sponsor for participation in the project, has an income of 80 percent or less of the median income for the area.

(2) *Rental projects.* (i) *In general.* For purposes of a rental project, *low-or moderate-income household* means a household which, upon initial occupancy of a rental unit, has an income at or below 80 percent of the median income for the area.

(ii) *Housing with current occupants.* In the case of projects involving the purchase or rehabilitation of rental housing with current occupants, *low-or moderate-income household* means an occupying household which, at the time the purchase or rehabilitation is completed, has an income at or below 80 percent of the median income for the area.

(3) *Family-size adjustment.* The income limit for *low-or moderate-income households* may be adjusted for family size in accordance with the methodology of the applicable median income standard.

Low-or moderate-income neighborhood means any neighborhood in which 51 percent or more of the households have incomes at or below 80 percent of the median income for the area.

Median income for the area. (1) *Owner-occupied projects.* A Bank shall identify in its AHP implementation plan one or more of the following median income standards from which all owner-occupied projects may choose for purposes of the AHP:

(i) The median income for the area, as published annually by HUD;

(ii) The applicable median family income, as determined under 26 U.S.C. 143(f) (Mortgage Revenue Bonds) and published by a State agency or instrumentality;

(iii) The median income for the area, as published by the United States Department of Agriculture; or

(iv) The median income for any definable geographic area, as published by a federal, state, or local government entity for purposes of that entity's housing programs, and approved by the Board of Directors, at the request of a Bank, for use under the AHP.

(2) *Rental projects.* A Bank shall identify in its AHP implementation plan one or more of the following median income standards from which all rental projects may choose for purposes of the AHP:

(i) The median income for the area, as published annually by HUD; or

(ii) The median income for any definable geographic area, as published by a federal, state, or local government entity for purposes of that entity's housing programs, and approved by the Board of Directors, at the request of a Bank, for use under the AHP.

(3) *Procedure for approval.* Prior to requesting approval by the Board of Directors of a median income standard, a Bank shall amend its AHP implementation plan to permit the use of such standard, conditioned on Board of Directors approval. Requests for approval of median income standards shall receive prompt consideration by the Board of Directors.

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.

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, including condominiums and cooperative housing, by or for very low-or low-or moderate-income households.

Owner-occupied unit means a unit in an owner-occupied project.

Rental project means a project involving the purchase, construction, or rehabilitation of rental housing, including transitional housing for homeless households and mutual housing, where at least 20 percent of the units in the project are occupied by and affordable for very low-income households.

Retention period means:

(1) 5 years from closing for an AHP-assisted owner-occupied unit; and

(2) 15 years from the date of project completion for a rental project.

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

(1) Has an ownership interest (including any partnership interest) in a rental project; or

(2) Is 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 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 § 960.8(c)(3));

(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 earlier 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; or

(3) Homeownership set-aside funds.

Very low-income household. (1) *Owner-occupied projects.* For purposes of an owner-occupied project, *very low-income household* means a household which, at the time it is qualified by the sponsor for participation in the project, has an income at or below 50 percent of the median income for the area.

(2) *Rental projects.* (i) *In general.* For purposes of a rental project, very low-income household means a household which, upon initial occupancy of a rental unit, has an income at or below 50 percent of the median income for the area.

(ii) *Housing with current occupants.* In the case of projects involving the purchase or rehabilitation of rental housing with current occupants, *very low-income household* means an occupying household which, at the time the purchase or rehabilitation is completed, has an income at or below 50 percent of the median income for the area.

(3) *Family-size adjustment.* The income limit for *very low-income households* may be adjusted for family size in accordance with the methodology of the applicable median income standard.

§ 960.2 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.

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

(a) *Allocation of AHP contributions.* (1) *Homeownership set-aside programs.* Each Bank, after consultation with its Advisory Council, may set aside annually, in the aggregate, up to the greater of $1.5 million or 15 percent of its annual required AHP contribution to provide funds to members participating in the Bank's homeownership set-aside programs, pursuant to the requirements of this part. In cases where the amount of homeownership set-aside funds applied for by members in a given year exceeds the amount available for that year, a Bank may allocate up to the greater of $1.5 million or 15 percent of its annual required AHP contribution for the subsequent year to the current year's homeownership set-aside programs. A Bank may establish one or more homeownership set-aside programs pursuant to written policies adopted by the Bank's board of directors. A Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibility for adopting such policies.

(2) *Competitive application program.* That portion of a Bank's required annual AHP contribution that is not set aside to fund homeownership set-aside programs shall be provided to members through a competitive application program, pursuant to the requirements of this part.

(b) *AHP implementation plan.* (1) *Adoption of plan.* Each Bank's board of directors shall adopt a written AHP implementation plan which shall set forth:

(i) The applicable median income standard or standards, adopted by the Bank consistent with the definition of *median income for the area* in § 960.1;

(ii) The requirements for any homeownership set-aside programs adopted by the Bank pursuant to paragraph (a)(1) of this section;

(iii) The Bank's project feasibility guidelines, adopted consistent with § 960.5(b)(2);

(iv) The Bank's schedule for AHP funding periods;

(v) Any additional District eligibility requirement, adopted by the Bank pursuant to § 960.5(b)(10);

(vi) The Bank's scoring guidelines, adopted by the Bank consistent with § 960.6(b)(4);

(vii) The Bank's time limits on use of AHP subsidies and procedures for verifying compliance upon disbursement of AHP subsidies pursuant to § 960.8; and

(viii) The Bank's procedures for carrying out its monitoring obligations under §§ 960.10(c) and 960.11.

(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 an opportunity to review the plan and any subsequent amendments, and the Advisory Council shall provide its recommendations to the Bank's board of directors.

(4) *Submission of plan to the Finance Board.* A Bank shall submit its initial AHP implementation plan, and any amendments, to the Finance Board and the Bank's Advisory Council at least 60 days prior to distributing requests for applications for AHP subsidies for the funding period in which the plan, or amendments, will be effective.

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

(c) *Conflicts of interest*—(1) *Bank directors and employees.* 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) *Advisory Council members.* 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.

(3) *No delegation.* A Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibility to adopt conflicts of interest policies.

(d) *Reporting.* Each Bank shall provide such reports and documentation concerning its Program as the Finance Board may request from time to time.

§ 960.4 Advisory Councils.

(a) *In general.* Each Bank's board of directors shall appoint an Advisory Council of from 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 time for responses. The Bank's board of directors shall appoint Advisory Council members giving consideration to the size of the Bank's

District and the diversity of low- and moderate-income housing needs and activities within the District.

(c) *Diversity of membership.* In appointing the Advisory Council, a Bank's board of directors 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's board of directors shall appoint Advisory Council members to serve for no more than three 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 and community investment mission, including, but not limited to, advice on the low- and moderate-income housing and community investment programs and needs in the Bank's District, and on the use of AHP subsidies, Bank advances, and other Bank credit products for these purposes.

(2) *Summary of AHP applications.* The Bank shall comply with requests from the Advisory Council for summary information regarding 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 and meetings requested by the Finance Board.

§ 960.5 Minimum eligibility standards for AHP projects.

(a) *Homeownership set-aside programs.* A Bank's homeownership set-aside programs must meet the following requirements:

(1) Homeownership set-aside funds must be provided to members pursuant to allocation criteria established by the Bank;

(2) Members must provide homeownership set-aside funds only to households that:

(i) Are low-or moderate-income households, as defined in § 960.1;

(ii) Complete a homebuyer or homeowner counseling program provided by, or based on one provided by, an organization recognized as experienced in homebuyer or homeowner counseling, respectively; and

(iii) Meet such other eligibility criteria that may be established by the Bank, such as a matching funds requirement or criteria that give priority for the purchase or rehabilitation of housing in particular areas or as part of a disaster relief effort;

(3) Members must provide homeownership set-aside funds to households as a grant, in an amount up to a maximum of $10,000 per household, as established by the Bank, which limit shall apply to all households;

(4) Households must use homeownership set-aside funds to pay for downpayment, closing cost, counseling, or rehabilitation assistance in connection with the household's purchase or rehabilitation of an owner-occupied housing unit, including a condominium or cooperative housing unit, to be used as the household's primary residence;

(5) A housing unit purchased or rehabilitated using homeownership set-aside funds must be subject to a retention agreement described in § 960.13(d)(1);

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

(7) Homeownership set-aside funds may be used to pay for counseling costs only where:

(i) Such costs are incurred in connection with counseling of homebuyers who actually purchase an AHP-assisted unit;

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

(iii) The homeownership set-aside funds are used to pay only for the amount of such reasonable and customary costs that exceeds the highest amount the member has spent annually on homebuyer counseling costs within the preceding three years; and

(8) Homeownership set-aside funds must be drawn down and used by eligible households within the period of time specified by the Bank in its AHP implementation plan.

(b) *Competitive application program.* Projects receiving AHP subsidies pursuant to a Bank's competitive application program must meet the eligibility requirements of this paragraph (b).

(1) *Owner-occupied or rental housing.* A project must be either an owner-occupied project or a rental project, as defined, respectively, in § 960.1.

(2) *Project feasibility and need for subsidy*—(i) *Sources and uses of funds.* The project's estimated uses of funds must equal its estimated sources of funds, as reflected in the project's development budget. A project's sources of funds must include:

(A) Estimates of funds the project sponsor intends to obtain from other sources but which have not yet been committed to the project; and

(B) Estimates of the market value of in-kind donations and volunteer professional labor or services committed to the project, but not the value of sweat-equity.

(ii) *Project costs*—(A) *In general.* Project costs, as reflected in the project's development budget, must be reasonable and customary, in accordance with the Bank's project feasibility guidelines, in light of:

(*1*) Industry standards for the location of the project; and

(*2*) The long-term financial needs of the project.

(B) *Cost of property and services provided by a member.* The purchase price of property or services, as reflected in the project's development budget, sold to the project by a member providing AHP subsidy to the project, or, in the case of property, upon which such member holds a mortgage or lien, may not exceed the market value of such property or services as of the date the purchase price for the property or services was agreed upon. In the case of real estate owned property sold to a project by a member providing AHP subsidy to a project, or property sold to the project upon which the member holds a mortgage or lien, the market value of such property is deemed to be the ''as-is'' or ''as-rehabilitated'' value of the property, whichever is appropriate, as reflected in an independent appraisal of the property performed within six months prior to the date the purchase price for the property was agreed upon.

(iii) *Operational feasibility and need for subsidy.* The project must be

operationally feasible, in accordance with the Bank's project feasibility guidelines, based on relevant factors including, but not limited to, applicable financial ratios, geographic location of the project, needs of tenants, and other non-financial project characteristics. The requested AHP subsidy must be necessary for the financial feasibility of the project, as currently structured, and the rate of interest, points, fees, and any other charges for all loans financing the project must not exceed a market rate of interest, points, fees, and other charges for loans of similar maturity, terms, and risk.

(3) *Timing of subsidy use.* The AHP subsidy must be likely to be drawn down by the project or used by the project to procure other financing commitments within 12 months of the date of approval of the application for subsidy funding the project.

(4) *Prepayment, cancellation, and processing fees.* The project must not use AHP subsidies to pay for:

(i) Prepayment fees imposed by a Bank on a member for a subsidized advance that is prepaid, unless, subsequent to such prepayment, the project will continue to comply with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part for the duration of the original retention period, and any unused subsidy is returned to the Bank and made available for other AHP projects;

(ii) Cancellation fees and penalties imposed by a Bank on a member for a subsidized advance commitment that is canceled; or

(iii) Processing fees charged by members for providing direct subsidies to a project.

(5) *Counseling costs.* AHP subsidies may be used to pay for counseling costs only where:

(i) Such costs are incurred in connection with counseling of homebuyers who actually purchase an AHP-assisted unit; and

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

(6) *Refinancing.* If the project uses AHP subsidies to refinance an existing single-family or multifamily mortgage loan, the equity proceeds of the refinancing must be used only for the purchase, construction, or rehabilitation of housing units meeting the eligibility requirements of this paragraph (b).

(7) *Retention*—(i) *Owner-occupied projects.* The project's AHP-assisted units are or are committed to be subject to a retention agreement described in § 960.13 (c)(4) or (d)(1).

(ii) *Rental projects.* AHP-assisted rental projects are or are committed to be subject to a retention agreement described in § 960.13 (c)(5) or (d)(2).

(8) *Project sponsor qualifications.* A project's sponsor must be qualified and able to perform its responsibilities as committed to in the application for subsidy funding the project.

(9) *Fair housing.* The project, as proposed, must comply with any applicable fair housing law requirements and demonstrate how the project will be affirmatively marketed.

(10) *District eligibility requirements.* (i) A project receiving AHP subsidies may be required by a Bank to meet one or more of the following additional eligibility requirements adopted by a Bank's board of directors, after consultation with its Advisory Council:

(A) A requirement that the amount of subsidy requested for the project does not exceed limits established by the Bank as to the maximum amount of AHP subsidy available per member each year; or per member, per project, or per project unit in a single funding period;

(B) A requirement that the project is located in the Bank's District; or

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

(ii) District eligibility requirements must apply equally to all members.

§ 960.6 Procedure for approval of applications for funding.

(a) *Homeownership set-aside programs.* A Bank shall accept applications for homeownership set-aside funds from members and may, in its discretion, accept applications from institutions with pending applications for membership in the Bank. The Bank shall approve applications in accordance with the Bank's criteria governing the allocation of funds.

(b) *Competitive application program*—(1) *Funding periods; amounts available.* A Bank shall accept applications for funding under its competitive application program from members and may, in its discretion, accept applications from institutions with pending applications for membership in the Bank. A Bank may accept applications for funding during a specified number of funding periods each year, as determined by the Bank. The amount of subsidies offered in each funding period shall be comparable.

(2) *Submission of applications.* A Bank shall require applicants for AHP subsidies to submit information sufficient for the Bank to:

(i) Determine that the proposed AHP project meets the eligibility requirements of § 960.5(b); and

(ii) Evaluate the application pursuant to the scoring criteria in paragraph (b)(4) of this section.

(3) *Review of applications for project eligibility.* A Bank shall review applications to determine that the proposed AHP project meets the eligibility requirements of § 960.5(b).

(4) *Scoring of applications*—(i) *In general.* A Bank shall score only those applications meeting the eligibility requirements of § 960.5(b). A Bank shall not adopt additional scoring criteria or point allocations, except as specifically authorized under this paragraph (b)(4). A Bank shall adopt written guidelines implementing the scoring requirements of this paragraph (b)(4).

(ii) *Point allocations.* A Bank shall allocate 100 points among the nine scoring criteria identified in paragraph (b)(4)(iv) of this section. The scoring criterion identified in paragraph (b)(4)(iv)(C) of this section shall be allocated at least 20 points. The remaining scoring criteria shall be allocated at least five points each.

(iii) *Satisfaction of scoring criteria.* A Bank shall designate each scoring criterion as either a fixed-point or a variable-point criterion. Variable-point criteria are those where there are varying degrees to which an application can satisfy the criteria. The number of points that may be awarded to an application for meeting a variable-point criterion will vary, depending on the extent to which the application satisfies the criterion, compared to the other applications being scored. A Bank shall designate the scoring criteria identified in paragraphs (b)(4)(iv) (C) and (H) of this section as variable-point criteria. The application(s) best achieving each variable-point criterion shall receive the maximum point score available for that criterion, with the remaining applications scored on a declining scale. Fixed-point criteria are those which cannot be satisfied in varying degrees and are either satisfied, or not. An application meeting a fixed-point criterion shall be awarded the total number of points allocated to that criterion.

(iv) *Scoring criteria.* An application for a proposed project may receive points based on satisfaction of the nine scoring criteria set forth in this paragraph (b)(4)(iv).

(A) *Use of donated government-owned or other properties.* The creation of housing using a significant proportion of units or land donated or conveyed for a nominal price by the federal government or any agency or

instrumentality thereof, or by any other party.

(B) *Sponsorship by a not-for-profit organization or government entity.* Project sponsorship by a not-for-profit organization, a state or political subdivision of a state, a state housing agency, a local housing authority, a Native American Tribe, an Alaskan Native Village, or the government entity for Native Hawaiian Home Lands.

(C) *Targeting.* The extent to which a project creates housing for very low- and low- or moderate-income households.

(*1*) *Rental projects.* An application for a rental project shall be awarded the maximum number of points available under this scoring criterion 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 median income for the area. Applications for projects with less than 60 percent of the units reserved for occupancy by households with incomes at or below 50 percent of the median income for the area shall be awarded points on a declining scale based on the percentage of units in a project that are reserved for households with incomes at or below 50 percent of the median income for the area, and on the percentage of the remaining units reserved for households with incomes at or below 80 percent of the median income for the area. In order to facilitate reliance on monitoring by a federal, state, or local government entity providing funds or allocating federal Low-Income Housing Tax Credits to a proposed project, a Bank, in its discretion, may score each project according to the targeting commitments made by the project to such entity, and the Bank shall include such scoring practice in its AHP implementation plan.

(*2*) *Owner-occupied projects.* Applications for owner-occupied projects shall be awarded points based on the percentage of units in the project to be provided to households with incomes at or below 80 percent of the median income for the area. Points shall be awarded on a declining scale, with projects having the highest percentage of units targeted to households with the lowest percentage of median income for the area awarded the highest number of points.

(*3*) *Separate scoring.* For purposes of this scoring criterion, applications for owner-occupied projects and rental projects may be scored separately.

(D) *Housing for homeless households.* The creation of transitional housing, excluding overnight shelters, for homeless households permitting a minimum of six months occupancy, or the creation of rental housing reserving at least 20 percent of the units for homeless households.

(E) *Promotion of empowerment.* The provision of housing in combination with a program offering: employment; education; training; homebuyer, homeownership or tenant counseling; daycare services; resident involvement in decisionmaking affecting the creation or operation of the project; or other services that assist residents to move toward better economic opportunities, such as welfare to work initiatives.

(F) *First District priority.* The satisfaction of one of the following criteria, or one of a number of the following criteria, as recommended by the Bank's Advisory Council and adopted by the Bank's board of directors and set forth in the Bank's AHP implementation plan, as long as the total points available for meeting the criterion or criteria adopted under this category do not exceed the total points allocated to this category:

(*1*) *Special needs.* The creation of housing in which at least 20 percent of the units are reserved for occupancy by households with 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;

(*2*) *Community development.* The creation of housing meeting housing needs documented as part of a community revitalization or economic development strategy approved by a unit of a state or local government;

(*3*) *First-time homebuyers.* The financing of housing for first-time homebuyers;

(*4*) *Member financial participation.* Member financial participation (excluding the pass-through of AHP subsidy) in the project, such as providing market rate or concessionary financing, fee waivers, or donations;

(*5*) *Disaster areas.* The financing of housing located in federally declared disaster areas;

(*6*) *Rural.* The financing of housing located in rural areas;

(*7*) *Urban.* The financing of urban in-fill or urban rehabilitation housing;

(*8*) *Economic diversity.* The creation of housing that is 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 median income for the area;

(*9*) *Fair housing remedy.* The financing of 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;

(*10*) *Community involvement.* Demonstrated support for the project by local government, community organizations, or individuals other than as project sponsors through the commitment by such entities or individuals of donated goods and services, or volunteer labor;

(*11*) *Lender consortia.* The involvement of financing by a consortium of at least two financial institutions; or

(*12*) *In-District projects.* The creation of housing located in the Bank's District.

(G) *Second District priority—defined housing need in the District.* The satisfaction of 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 and set forth in the Bank's AHP implementation plan. The Bank may, but is not required to, use one of the criteria listed in paragraph (b)(4)(iv)(F) of this section, provided it is different from the criterion or criteria adopted by the Bank under paragraph (b)(4)(iv)(F) of this section.

(H) *AHP subsidy per unit.* The extent to which a project proposes to use the least amount of AHP subsidy per AHP-targeted unit. In the case of an application for a project financed by a subsidized advance, the total amount of AHP subsidy used by the project shall be estimated based on the Bank's cost of funds as of the date on which all applications are due for the funding period in which the application is submitted. For purposes of this scoring criterion, applications for owner-occupied projects and rental projects may be scored separately.

(I) *Community stability.* The promotion of community stability, such as by rehabilitating vacant or abandoned properties, being an integral part of a neighborhood stabilization plan approved by a unit of state or local government, and not displacing low- or moderate-income households, or if such displacement will occur, assuring that such households will be assisted to minimize the impact of such displacement.

(5) *Approval of applications*—(i) *Approval by Bank's board.* The board of directors of each Bank shall approve 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 at least 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.

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

§ 960.7 Modifications of applications prior to project completion.

(a) *Modification procedure*. Prior to final disbursement of funds to a project from all funding sources, a Bank, in its discretion, may approve in writing a modification to the terms of an approved application for subsidy funding the project if there is or will be a change in the project that materially affects the facts under which the application was originally scored and approved under the Bank's competitive application program, provided that:

(1) The project, incorporating any such changes, would meet the eligibility requirements of § 960.5(b);

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

(3) There is good cause for the modification.

(b) *Modifications involving a subsidy increase*. Modifications involving an increase in AHP subsidy shall be approved or disapproved by a Bank's board of directors. The authority to approve or disapprove such requests shall not be delegated to Bank officers or other Bank employees.

§ 960.8. Procedure for funding.

(a) *Disbursement of subsidies to members*. (1) A Bank may disburse AHP subsidies only to institutions that are members of the Bank at the time they request a draw-down of subsidy.

(2) If an institution with an approved application for AHP subsidy fails to obtain or loses its membership in a Bank, the Bank may disburse subsidies to a member of such Bank to which the institution has transferred its obligations under the approved application, or the Bank may disburse subsidies through another Bank to a member of that Bank that has assumed the institution's obligations under the approved application.

(b) *Homeownership set-aside programs*—(1) *Time limit on use of subsidies*. If homeownership set-aside funds are not drawn down and used by eligible households within the period of time specified by the Bank in its AHP implementation plan, the Bank shall cancel the application for funds and make the funds available for other applicants for homeownership set-aside funds or for other AHP-eligible projects.

(2) *Member certification upon disbursement*. Prior to disbursement of homeownership set-aside funds by a Bank to a member, the Bank shall require the member to certify that:

(i) The funds received from the Bank will be provided to a household meeting the eligibility requirements of § 960.5(a)(2);

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

(iii) Funds received from the Bank for homebuyer counseling costs will be provided according to the requirements of § 960.5(a)(7).

(c) *Competitive application program*—(1) *Time limit on use of subsidies*. If AHP subsidies approved for a project under a Bank's competitive application program are not drawn down and used by the project within the period of time specified by the Bank in its AHP implementation plan, the Bank shall cancel its approval of the application for the subsidies and make the subsidies available for other AHP-eligible projects.

(2) *Compliance upon disbursement of subsidies*. A Bank shall verify prior to its initial disbursement of subsidies for an approved project, and prior to each disbursement thereafter, that the project meets the eligibility requirements of § 960.5(b) and all obligations committed to in the approved application.

(3) *Changes in approved AHP subsidy amount where a direct subsidy is used to write down prior to closing the principal amount or interest rate on a loan*.—(i) *Change in subsidy amount*. If a member is approved to receive a direct subsidy to write down prior to closing 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 for the loan decreases from the amount of subsidy initially approved by the Bank due to a decrease in market interest rates between the time of approval and the time the lender commits to the interest rate to finance the project, the Bank shall reduce the subsidy amount accordingly. If market interest rates rise between the time of approval and the time the lender commits to the interest rate to finance the project, the Bank may, in its discretion, increase the subsidy amount accordingly.

(ii) *Reconciliation of AHP fund*. 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. If a Bank increases the amount of AHP subsidy approved for a project, the amount of such increase shall be drawn first from any currently uncommitted or repaid AHP subsidies and then from the Bank's required AHP contribution for the next year.

§ 960.9 Modifications of applications after project completion.

Modification procedure. After final disbursement of funds to a project from all funding sources, a Bank, in its discretion, may approve in writing a modification to the terms of an approved application for subsidy funding the project, other than an increase in the amount of subsidy approved for the project, if there is or will be a change in the project that materially affects the facts under which the application was originally scored and approved under the Bank's competitive application program, provided that:

(a) The project is in financial distress, or is at substantial risk of falling into such distress;

(b) The project sponsor or owner has made best efforts to avoid noncompliance with the terms of the application for subsidy and the requirements of this part;

(c) The project, incorporating any material changes, would meet the eligibility requirements of § 960.5(b); and

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

§ 960.10 Initial monitoring requirements.

(a) *Requirements for project sponsors and owners*—(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 of the project.

(ii) Where AHP subsidies are used to finance the purchase of owner-occupied units, the project sponsor must certify annually to the member and the Bank, until all approved AHP subsidies are provided to eligible households in the project, that those households receiving AHP subsidies during the year were eligible households, 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.

(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 of the project.

(ii) Within the first year after project completion, the project owner must:

(A) 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;

(B) Provide a list of actual tenant rents and incomes to the member and 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; and

(*2*) The project is habitable; and

(C) Maintain documentation regarding tenant rents and incomes and project habitability available for review by the member or the Bank, to support such certifications.

(b) *Requirements for members*—(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 of the project and must report to the Bank semiannually on the status of the project.

(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 or other legally enforceable retention agreements or mechanisms meeting the requirements of § 960.13(c)(4) or (d)(1);

(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 of the project 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 income targeting commitments; and

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

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

(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 were qualified by the sponsor to participate in the project;

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

(iii) The AHP-assisted units are subject to deed restrictions or other legally enforceable retention agreements or mechanisms meeting the requirements of § 960.13(c)(4) or (d)(1).

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

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

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

(d) *Annual adjustment of targeting commitments.* For purposes of determining compliance with the targeting commitments in an AHP application, such commitments shall be considered to adjust annually according to the current applicable median income data. A rental unit may continue to count toward meeting the targeting commitment of an approved AHP application as long as the rent charged remains affordable, as defined in § 960.1, for the household occupying the unit.

§ 960.11 Long-term monitoring requirements.

(a) *Rental projects.* For purposes of monitoring a rental project, Banks, members, and project owners shall carry out their long-term monitoring obligations pursuant to one of the three methods set forth in this paragraph (a).

(1) *Reliance on monitoring by a federal, state or local government entity.* For those projects that receive funds from, or are allocated federal Low-Income Housing Tax Credits by, a federal, state, or local government entity, a Bank may rely on the monitoring by such entity if:

(i) The income targeting requirements, the rent requirements, and the retention period monitored by such entity for purposes of its own program are the same as, or more restrictive than, those committed to in the AHP application;

(ii) The entity 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 entity or where the project is not habitable; and

(iii) The entity has demonstrated and continues to demonstrate to the Bank its ability to carry out monitoring under its own program, and the Bank does not have information that such monitoring is not occurring or is inadequate.

(2) *Reliance on monitoring of AHP application commitments by a contractor.* For those projects that receive funds from, or are allocated federal Low-Income Housing Tax Credits by, a federal, state, or local government entity that monitors for income targeting requirements, rent requirements, or retention periods under its own program that are less restrictive than those committed to in the project's AHP application, a Bank, in its discretion, may rely on the monitoring by such entity if:

(i) The entity agrees to monitor the income targeting requirements, the rent requirements, and the retention period committed to in the AHP application;

(ii) The entity agrees to inform the Bank of instances where tenant rents or incomes are found to be in noncompliance with the requirements committed to in the AHP application or where the project is not habitable; and

(iii) The entity has demonstrated and continues to demonstrate to the Bank its ability to carry out such monitoring, and the Bank does not have information that

such monitoring is not occurring or is inadequate.

(3) *Long-term monitoring by the Banks, members, and project owners.* In cases where a Bank does not rely on monitoring by a federal, state, or local government entity pursuant to paragraphs (a)(1) or (a)(2) of this section, the Bank, members, and project owners shall monitor rental projects according to the requirements in this paragraph (a)(3).

(i) *Requirements for project owners.* In the second year after completion of a rental project and annually thereafter until the end of the project's retention period, the project owner must:

(A) Certify to the Bank that:

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

(*2*) The project is habitable; and

(B) Maintain documentation regarding tenant rents and incomes and project habitability available for review by the Bank, to support such certifications.

(ii) *Requirements for members.* For rental projects receiving $500,000 or less in AHP subsidy from a member, during the period from the second year after project completion to the end of the project's retention period, the member must certify to the Bank at least once every three years, based on an exterior visual inspection, that the project appears to be suitable for occupancy.

(iii) *Requirements for Banks*—(A) *Certifications received by the Bank.* Each Bank shall review certifications provided by project owners and members regarding tenant rents and incomes and project habitability.

(B) *Review of project documentation.* Each Bank shall review documentation maintained by the project owner regarding tenant rents and incomes and project habitability to verify compliance with the rent and income targeting commitments in the AHP application and project habitability, according to the following schedule:

(*1*) *$50,001 to $250,000.* For projects receiving $50,001 to $250,000 of AHP subsidies, the Bank must review project documentation for a sample of the project's units at least once every six years;

(*2*) *$250,001 to $500,000.* For projects receiving $250,001 to $500,000 of AHP subsidies, the Bank must review project documentation for a sample of the project's units at least once every four years; and

(*3*) *Over $500,000.* For projects receiving over $500,000 of AHP subsidies, the Bank must perform an on-site review of project documentation for a sample of the project's units at least once every two years.

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

(iv) *Monitoring by a contractor.* A Bank, in its discretion, may contract with a third party to carry out the Bank's monitoring obligations set forth in paragraph (a)(3)(iii) of this section.

(b) *Annual adjustment of targeting commitments.* For purposes of determining compliance with the targeting commitments in an AHP application, such commitments shall be considered to adjust annually according to the current applicable median income data. A rental unit may continue to count toward meeting the targeting commitment of an approved AHP application as long as the rent charged remains affordable, as defined in § 960.1, for the household occupying the unit.

§ 960.12 Remedial actions for noncompliance.

(a) *Repayment of subsidies by members*—(1) *Noncompliance by member.* A member shall repay to the Bank the amount of any subsidies (plus interest, if appropriate) that, as a result of the member's actions or omissions, is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part, unless:

(i) The member cures the noncompliance within a reasonable period of time; or

(ii) The circumstances of noncompliance are eliminated through a modification of the terms of the application for the subsidy pursuant to §§ 960.7 or 960.9.

(2) *Noncompliance by project sponsors or owners*—(i) *Duty to recover subsidies.* A member shall recover from the sponsor of an owner-occupied project or the owner of a rental project and repay to the Bank the amount of any subsidies (plus interest, if appropriate) that, as a result of the sponsor's or owner's actions or omissions, is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part, unless:

(A) The sponsor or owner cures the noncompliance within a reasonable period of time; or

(B) The circumstances of noncompliance are eliminated through a modification of the terms of the application for the subsidy pursuant to §§ 960.7 or 960.9.

(ii) *Limitation on duty to recover subsidies.* The member shall not be liable to the Bank for the return of amounts that cannot be recovered from the project sponsor or owner through reasonable collection efforts by the member.

(b) *Repayment of subsidies by project sponsors or owners.* A sponsor of an owner-occupied project and the owner of a rental project shall repay to the member the amount of any subsidies (plus interest, if appropriate) that, as a result of the sponsor's or owner's actions or omissions, is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part, unless:

(1) The sponsor or owner cures the noncompliance within a reasonable period of time; or

(2) The circumstances of noncompliance are eliminated through a modification of the terms of the application for the subsidy pursuant to §§ 960.7 or 960.9.

(c) *Requirements for Banks*—(1) *Duty to recover subsidies.* A Bank shall recover from a member:

(i) The amount of any subsidies (plus interest, if appropriate) that, as a result of the member's actions or omissions, is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part; and

(ii) The amount of any subsidies recovered by a member from the sponsor of an owner-occupied project or the owner of a rental project pursuant to the requirements of paragraph (a)(2) of this section.

(2) *Settlements.* A Bank may enter into an agreement or other arrangement with a member for the purpose of settling claims against the member for repayment of subsidies. If a Bank enters into a settlement that results in the return of a sum that is less than the full amount of any AHP subsidy that is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part, the Bank may be required by the Finance Board to reimburse its AHP fund in the amount of any shortfall under paragraph (c)(3) of this section, unless:

(i) The Bank has sufficient documentation showing that the sum agreed to be repaid under the settlement 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 Board of Directors that the sum agreed to be repaid under the settlement 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).

(3) *Reimbursement of AHP fund.* The Finance Board may order a Bank to reimburse its AHP fund in an appropriate amount upon determining that:

(i) As a result of the Bank's actions or omissions, AHP subsidy is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part; or

(ii) The Bank has failed to recover AHP subsidy from a member pursuant to the requirements of paragraph (c)(1) of this section, and has not shown such failure is reasonably justified, considering factors such as the extent of the Bank's recovery efforts.

(d) *Parties to enforcement proceedings.* A Bank, in its AHP implementation plan, may provide for a member, project sponsor, or project owner to enter into a written agreement with a Bank under which such member, sponsor, or owner consents to be a party to any enforcement proceeding initiated by the Finance Board regarding the repayment of AHP subsidies received by such member, sponsor, or owner, or the suspension or debarment of such parties, provided that the member, sponsor, or owner has agreed to be bound by the Finance Board's final determination in the enforcement proceeding.

(e) *Use of repaid subsidies.* Amounts repaid to a Bank pursuant to this section shall be made available for other AHP-eligible projects.

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

(2) *At the Finance Board's initiative.* The Finance Board may order a Bank to 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 terms of an application for AHP subsidy or the requirements of this part.

(g) *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.

(h) *Finance Board actions under this section.* Except as provided in paragraph (c)(2)(ii) of this section, actions taken by the Finance Board pursuant to this section shall be subject to the Finance Board's Procedures for Review of Disputed Supervisory Determinations.

§ 960.13 Agreements.

(a) *Agreements between Banks and members.* A Bank shall have in place with each member receiving a subsidized advance or direct subsidy an agreement or agreements containing the provisions set forth in this section.

(b) *General provisions*—(1) *Subsidy pass-through.* The member shall pass on the full amount of the AHP subsidy to the project, or household in the case of homeownership set-aside funds, for which the subsidy was approved.

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

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

(3) *Repayment of subsidies in case of noncompliance*—(i) *Noncompliance by the member.* The member shall repay subsidies to the Bank in accordance with the requirements of § 960.12(a)(1).

(ii) *Noncompliance by a project sponsor or owner*—(A) *Agreement.* The member shall have in place an agreement with the sponsor of an owner-occupied project and each owner of a rental project in which the sponsor or owner agrees to repay AHP subsidies in accordance with the requirements of § 960.12(b).

(B) *Recovery of subsidies.* The member shall recover from the project sponsor or owner and repay to the Bank any subsidy in accordance with the requirements of § 960.12(a)(2).

(4) *Project monitoring*—(i) *Monitoring by the member.* The member shall comply with the monitoring requirements of §§ 960.10(b) and 960.11(a)(3)(ii).

(ii) *Monitoring by the project sponsor.* The member shall have in place an agreement with the sponsor of an owner-occupied project in which the sponsor agrees to comply with the monitoring requirements of § 960.10(a)(1).

(iii) *Monitoring by the project owner.* The member shall have in place an agreement with the owner of a rental project in which the owner agrees to comply with the monitoring requirements of §§ 960.10(a)(2) and 960.11(a)(3)(i).

(5) *Transfer of AHP obligations to another member.* The member will 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.

(c) *Special provisions where members obtain subsidized advances*—(1) *Repayment schedule.* The term of the 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.

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

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

(i) 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 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 advance; or

(ii) 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.

(4) *Retention agreements for owner-occupied units.* The member shall ensure that an owner-occupied unit financed by a loan from the proceeds of a subsidized advance 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; and

(ii) 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 or other legally enforceable retention agreement or mechanism described in this paragraph (c)(4).

(5) *Retention agreements for rental projects.* The member shall ensure that a rental project financed by a loan from the proceeds of a subsidized advance 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 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 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 sale or refinancing, shall be repaid to the Bank, unless 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 AHP application for the duration of the retention period; and

(iv) The income-eligibility and affordability restrictions applicable to the project may terminate upon foreclosure or upon transfer in lieu of foreclosure.

(6) *Transfer of AHP obligations 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 upon prepayment or orderly liquidation by the nonmember of the subsidized advance.

(d) *Special provisions where members obtain direct subsidies*—(1) *Retention agreements for owner-occupied units.* The member shall ensure that an owner-occupied unit financed by the proceeds of a direct subsidy 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 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, an amount equal to a pro rata share of the direct subsidy, reduced for every year the occupying household has owned the unit, 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 or other legally enforceable retention agreement or mechanism described in this paragraph (d)(1).

(2) *Retention agreements for rental projects.* The member shall ensure that a rental project financed by the proceeds of a direct subsidy 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 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, an amount equal to the full amount of the direct subsidy shall be repaid to the Bank, unless 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 AHP application for the duration of the retention period; and

(iv) The income-eligibility and affordability restrictions applicable to the project may terminate upon foreclosure or upon transfer in lieu of foreclosure.

(3) *Lending of direct subsidies.* If a member or a project sponsor lends a 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.

(4) *Transfer of AHP obligations 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.

§ 960.14 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 § 960.2 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) *Board of Directors review of application for temporary suspension*—(1) *Determination of financial instability.* In determining the financial instability of a Bank, the Board of Directors 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 Board of Directors 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) *Board of Directors decision*. The Board of Directors' decision shall be in writing and shall be accompanied by specific findings and reasons for its action. If the Board of Directors approves a Bank's application for a temporary suspension, the Board of Directors' 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 Board of Directors, the affected Bank shall provide to the Board of Directors such financial reports as the Board of Directors 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 Board of Directors determines that the Bank has returned to a position of financial stability, the Board of Directors 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.

§ 960.15 Affordable Housing Reserve Fund.

(a) *Reserve Fund*—(1) *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 § 960.2, 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 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.

(2) *Use or commitment of funds*. Approval of applications for AHP subsidies sufficient to exhaust the amount a Bank is required to contribute pursuant to § 960.2 shall constitute use or commitment of funds. Amounts remaining unused or uncommitted at year-end are deemed to be used or committed if, in combination with AHP subsidies that have been returned to the Bank or de-committed from canceled projects, they are insufficient to fund:

(i) The next highest scoring AHP application in the Bank's final funding period of the year for its competitive application program; or

(ii) Pending applications for funds under the Bank's homeownership set-aside programs.

Such insufficient amounts shall be carried over for use or commitment during the following year.

(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.

§ 960.16 Application to existing AHP projects.

The requirements of section 10(j) of the Act and the provisions of this part, as amended, are incorporated into all agreements between Banks, members, sponsors, or owners receiving AHP subsidies. To 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.

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

Dated: June 25, 1997.

Bruce A. Morrison,

Chairman.

[FR Doc. 97–20046 Filed 8–1–97; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–149–AD; Amendment 39–10100; AD 97–16–08]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes. This action requires a one-time inspection to detect fatigue cracking of the hinges of the cargo doors, and repair, if necessary. This amendment is prompted by reports indicating that, during inspections of the cargo door area, fatigue cracking of hinges of the cargo doors was detected. The actions specified by the proposed AD are intended to detect and correct such cracking, which could result in structural failure of the cargo doors, and consequent rapid decompression of the airplane and possible separation of the cargo doors from the airplane during flight.

DATES: Effective August 19, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 19, 1997.

Comments for inclusion in the rules docket must be received on or before October 3, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–149–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton,