h. In paragraph (1)(ix) of the definition of *Targeted beneficiaries*, adding the words ''other area that'' between the words ''or'' and ''qualifies'';

i. In the definition of *Targeted income level*, amending the introductory text of paragraph (3) by removing the term ''CICA''; and amending paragraph (4) by removing the words ''CICA advances'' and adding, in their place, the words ''advances or grants'';

j. Removing the definition of *UDA* or *Urban Development Advance*; and

k. In the definition of *UDA program* or *Urban Development Advance program*, removing the terms ''UDA'' and ''Advance'' and adding, in their place, the terms ''UDF'' and ''Funding'', respectively, and removing the words ''a program'' and adding, in their place, the words ''an advance or grant program''.

The additions and revisions read as follows:

§ 952.3 Definitions.

* * * * *

Median income for the area.

(1) * * *

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

* * * * *

(v) The median income for the area obtained from another public entity or a private source and approved by the Board of Directors, at the request of a Bank, for use under the Bank's CICA programs.

(2) * * *

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

(iii) The median income for the area obtained from another public entity or a private source and approved by the Board of Directors, at the request of a Bank, for use under the Bank's CICA programs.

* * * * *

§ 952.5 [Amended]

6. Amend § 952.5 by:

a. In paragraph (a)(3), removing the terms ''RDA'' and ''UDA'' and adding, in their place, the terms ''RDF'' and ''UDF'', respectively;

b. In paragraph (c), removing the word ''advances'' and adding, in its place, the word ''funding'';

c. In the heading of paragraph (d), and in paragraphs (d)(2) and (d)(3), removing the term ''CICA'' wherever it appears; and

d. In paragraphs (d)(5) and (d)(6)(i), removing the words ''CICA advances'' wherever they appear and adding, in their place, the words ''advances made under CICA programs''.

§ 952.7 [Amended]

7. Amend § 952.7 by:

a. In paragraph (a), removing the words ''by a CICA advance'' and adding, in their place, the words ''under a CICA program''; and

b. In paragraph (c), removing the word ''lending'' and adding, in its place, the word ''funding''.

Dated: September 26, 2001.

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

J. Timothy O'Neill,

Chairman.

[FR Doc. 01–24587 Filed 10–2–01; 8:45 am]

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FEDERAL HOUSING FINANCE BOARD

12 CFR Part 951

[No. 2001–18]

RIN 3069–AB04

Affordable Housing Program Amendments

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulation governing the operation of the Affordable Housing Program (AHP) to improve the operation and effectiveness of the AHP. The changes include: increasing the maximum amount of money that may be set aside annually, in the aggregate, under a Federal Home Loan Bank's (Bank) homeownership set-aside programs to the greater of $3.0 million or 25 percent of the Bank's annual required AHP contribution; removing one of the criteria for use of homeownership set-aside funds to pay for counseling costs in order to equalize the criteria with that of the competitive AHP application program; permitting members drawn from community and not-for-profit organizations actively involved in providing or promoting community lending in a Bank's district to serve on the Bank's Advisory Council; making the AHP outlay adjustment requirements applicable to any reduction or increase in the amount of AHP subsidy approved for a project, regardless of whether a direct subsidy writedown is involved; removing the requirement for annual project sponsor certifications on household income eligibility for owner-occupied projects; removing the requirements for project sponsor certifications to the member and member certifications to the Bank on tenant income and rent targeting commitments and project habitability within the first year of completion of a rental project; and allowing projects modifications to be eligible for AHP funds that remain uncommitted or unused by the end of the year.

EFFECTIVE DATE: The final rule shall be effective on November 2, 2001.

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

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

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

Various amendments have been made to the AHP regulation since 1998 in order to clarify AHP requirements and improve the operation and effectiveness of the AHP. Over the course of implementation of the AHP, the Banks and Finance Board staff have identified additional amendments that could improve the operation and effectiveness of the AHP. Accordingly, on May 10, 2001, the Finance Board published a proposed rule requesting comment on these proposed amendments to the AHP regulation. *See* 66 FR 23864 (May 10, 2001). The proposed rule provided for a 30-day comment period, which closed on June 11, 2001.

The Finance Board received 23 comment letters on the proposed rule. Commenters included: 5 Banks; 3 Bank Advisory Councils; 6 trade associations; and 9 nonprofit housing developers. Comments that raised issues beyond the scope of the proposed rule are not addressed in this final rule, but will be considered by the Finance Board in any future rulemaking under the AHP. The provisions of the proposed rule on

which significant comments were received are discussed below.

II. Analysis of Final Rule

A. Homeownership Set-Aside Programs—§§ 951.3(a)(1), 951.5(a)(7)(iii)

1. Increase in Maximum Allowable Annual Homeownership Set-Aside Amount—§ 951.3(a)(1)

Section 951.3(a)(1) of the existing AHP regulation provides that 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. 12 CFR 951.3(a)(1). 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. *Id.* Section 951.3(a)(1) of the proposed rule would increase the maximum allowable annual homeownership set-aside amount to the greater of $3.0 million or 25 percent of a Bank's annual required AHP contribution. In addition, 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, the proposed rule would allow a Bank to allocate up to the greater of $3.0 million or 25 percent of its annual required AHP contribution for the subsequent year to the current year's homeownership set-aside programs.

As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, AHP homeownership set-aside programs have proven to be an efficient and effective means for the Banks and their members to provide homeownership opportunities for low- and moderate-income households, consistent with the goals of the Bank System and the AHP. Ten Banks currently offer homeownership set-aside programs, eight of which set aside the maximum amount allowable under the current AHP regulation.

Experience with the homeownership set-aside programs over the past two years has shown that the demand for homeownership set-aside funds for low- and moderate-income families is such that an increase in the maximum allowable annual homeownership set-aside amount is warranted. The Banks have demonstrated that there is market demand and member demand for financing for low- and moderate-income homeownership, with most homeownership set-aside programs being oversubscribed within the first three to seven months of the year. In 2000, the Finance Board approved a waiver request from one Bank to increase its maximum allowable homeownership set-aside amount to 25 percent of its total annual AHP contribution. A similar waiver for 2001 was approved for all Banks to implement at their discretion.

The homeownership set-aside programs also are consistent with the cooperative structure of the Bank System, by involving members in financing the mortgages of low- and moderate-income households receiving downpayment assistance with homeownership set-aside funds. The homeownership set-aside programs can provide an important Bank service for members by enabling a greater number of members to become involved in the AHP, by helping members to establish banking relationships with new customers, and by exposing more members to opportunities to help meet low- and moderate-income housing needs in their markets.

The homeownership set-aside programs also are consistent with the goals of the Bank System and the AHP to help finance affordable housing in underserved areas and for underserved households. Homeownership set-aside funds often are the only way to effectively meet scattered-site, affordable housing needs in rural areas or tribal areas, which have difficulty scoring well under the competitive AHP application program and where rental projects are not feasible. In addition, homeownership set-aside funds often are the only way to meet the need for homeownership opportunities for very low-income families, which require larger per-unit subsidies and, therefore, may not score well under the competitive AHP application program. Homeownership set-aside programs also allow a member to use AHP funds to finance housing for individual eligible households on an as-needed basis, even if it is only for one household in the member's market area. These are households that the competitive AHP application program might not otherwise reach.

Most commenters supported the proposed increase in the maximum allowable annual homeownership set-aside amount. Commenters cited: the increasing demand for homeownership funds that, in some cases, has exhausted the Banks' annual set-aside allocation within months; the efficient and effective delivery of subsidy under the set-aside program; greater member achievement of Community Reinvestment Act (CRA) goals; and the positive impacts of homeownership on communities.

One commenter suggested that an increase in homeownership set-aside funds above 15 percent should require written approval of a majority of the Advisory Council membership and not just consultation with the Advisory Council. The Finance Board supports Advisory Council input into the Banks' implementation of the AHP. The Banks' boards of directors, however, have ultimate responsibility for the AHP and, therefore, should make the ultimate decisions on how much AHP funds to allocate to homeownership set-aside programs.

Several commenters opposed the proposed increase in the maximum allowable annual homeownership set-aside amount on the basis that the need for affordable rental housing is rising, especially in certain Bank districts, and an increase in the annual allocation of AHP funds to homeownership set-aside funds could result in less funding of rental housing under the competitive application program. The decision whether or not to establish homeownership set-aside programs is within the discretion of each Bank. Thus, a Bank, in consultation with its Advisory Council, may decide not to establish homeownership set-aside programs if it determines that such programs are inappropriate for its district, or, if a Bank decides to establish such programs, it need not allocate to the programs the maximum amount allowable under the regulation.

Another commenter recommended that, as a way to balance the goals of homeownership and rental funding, the Banks be allowed to increase their homeownership set-aside allocation provided they agree to hold the allocations to their AHP competitive application program to at least the funding levels of 2001. Historically, approximately two-thirds of affordable housing units funded under the AHP competitive application program have been rental units. The commenter's proposal would not ensure that AHP funding for rental projects under the competitive application program would remain at 2001 levels. In addition, the comment presumes that annual AHP contributions will always increase each year, which has not always been the case.

A number of commenters suggested that the regulation include a priority for homeownership projects that remain affordable in perpetuity for future buyers without additional future

subsidies, such as projects involving land trusts. The AHP regulation requires a fixed retention period of five years for homeownership projects, which does not allow for a scoring priority for projects with retention periods longer than five years. *See id.* §§ 951.1, 951.5(b)(7)(i), 951.13(c)(4), 951.13(d)(1). A Bank, under its second district scoring priority, could choose to adopt a scoring priority for homeownership projects that use land trusts, but the retention period would still have to be five years. *See id.* § 951.6(b)(4)(iv)(G).

Accordingly, for the reasons discussed above, the final rule adopts without change the proposed amendment to § 951.3(a)(1) increasing the maximum allowable annual homeownership set-aside amount.

2. CPI Adjustment—§ 951.3(a)(1)

Section 951.3(a)(1) of the proposed rule also provided that, beginning in 2002 and for subsequent years, the maximum homeownership set-aside dollar limits would be adjusted annually by the Finance Board to reflect any percentage increase in the preceding year's Consumer Price Index (CPI) for all urban consumers, as published by the Department of Labor. Each year, as soon as practicable after the publication of the previous year's CPI, the Finance Board would be required to publish notice by **Federal Register**, distribution of a memorandum, or otherwise, of the CPI-adjusted limits on the maximum set-aside dollar amount.

A number of commenters supported the proposed CPI adjustment provision, with one commenter stating that indexing the dollar limit increase to the rate of inflation will help cause the supply of available funds to more closely match the needs of Bank members and customers.

Accordingly, the final rule adopts the proposed CPI adjustment amendment to § 951.3(a)(1) without change.

3. Removal of Criterion for Funding of Counseling Costs—§ 951.5(a)(7)(iii)

Section 951.5(a)(7) of the existing AHP regulation provides that 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. *Id.* § 951.5(a)(7).

By contrast, § 951.5(b)(5) of the existing AHP regulation requires satisfaction of only the first two of the above three criteria in authorizing the use of AHP subsidies to pay for counseling costs under the competitive application program. *Id.* § 951.5(b)(5). As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the criterion in paragraph (a)(7)(iii) was intended to prevent homeownership set-aside funds from being used to pay for counseling costs that, in the absence of such funds, customarily would be funded by members participating in a homeownership set-aside program. In this way, AHP funds would be used to expand the pool of resources available to pay for counseling costs, rather than simply replace existing sources of funding for counseling costs.

The Banks have suggested that the criterion in paragraph (a)(7)(iii) be removed, so that the criteria applicable to the use of AHP funds for counseling costs would be the same under both the homeownership set-aside and competitive application programs. Because the competitive application program does not have a comparable counseling costs criterion, it is possible that AHP subsidies are already being used under that program to pay for counseling costs that the member, project sponsor or another funding source otherwise would have funded. Further, contrary to the intent of the criterion, the criterion may actually be inducing members not to pay for homebuyer counseling costs in order to be eligible for AHP funding of the counseling costs. In addition, the Banks have maintained that it can be difficult to determine the amount that members have spent over a three-year period on counseling costs, especially where the costs are indirect or combined with the costs of other services also provided to the homebuyer. The potential to be cited for noncompliance with the AHP regulation if the accounting for the costs is not accurate could discourage members from paying any counseling costs themselves. Requiring that the Banks monitor these costs, which generally are small in amount, arguably is not an efficient use of the Banks' resources. Homebuyer counseling is vital to ensuring that AHP subsidies are used successfully to provide homeownership opportunities to low- and moderate-income households. The Finance Board believes that the assurance that homebuyers will get such counseling, regardless of how it is funded, outweighs any concerns that AHP subsidies may be funding counseling costs that otherwise would be paid for by the member. For all of these reasons, the proposed rule would remove the homeownership set-aside counseling criterion in § 951.5(a)(7)(iii).

A number of commenters supported the proposed amendment, citing various reasons discussed above. One commenter opposed the proposed change, arguing that it would result in AHP funds being used as a substitute for other funds that were being used in the past for counseling costs, and urged instead that the counseling costs criterion be added to the competitive application program. As discussed above, the Finance Board believes that assuring homebuyers will get such counseling, regardless of how it is funded, outweighs the commenter's concern. Accordingly, the final rule adopts without change the proposed amendment removing § 951.5(a)(7)(iii).

B. Advisory Council Membership—§ 951.4

Section 951.4(f) of the existing AHP regulation uses two terms—''community investment'' and ''community development''—in describing the role of the Advisory Councils in this area. *See id.* § 951.4(f). Specifically, § 951.4(f)(1) provides that representatives of the board of directors of each 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 advice on the low- and moderate-income housing and community investment programs and needs in the Bank's district. *Id.* § 951.4(f)(1). Section 951.4(f)(3) provides that 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. *Id.* § 951.4(f)(3).

The proposed rule would replace the terms ''community investment'' and ''community development,'' wherever they appear in § 951.4, with the term ''community lending,'' which encompasses both terms and is the term used in the Finance Board's recently adopted mission statement for the Banks. See *id.* § 940.2.[1] ''Community

[1] Section 940.2 states:

The mission of the Banks is to provide to their members and [housing] associates financial products and services, including but not limited to

lending'' is defined in part 900 of the Finance Board's existing regulations as ''providing financing for economic development projects for targeted beneficiaries, and, for community financial institutions, purchasing or funding small business loans, small farm loans or small agri-business loans, as defined in § 950.1 of this chapter.'' *Id.* § 900.1. ''Providing financing'' is defined to include various lending activities and purchases of eligible assets. *Id.* § 952.3.

In addition, because the Advisory Councils are required to give advice on community lending, as well as housing finance, matters, the proposed rule would revise § 951.4(a) to provide that members shall be drawn from community and not-for-profit organizations actively involved in providing or promoting low- and moderate-income housing, and community and not-for-profit organizations actively involved in providing or promoting community lending, in the Bank's district. The proposed rule also would revise § 951.4(b) to provide that, in appointing Advisory Council members, a Bank shall give consideration to the diversity of low- and moderate-income housing, as well as community lending, needs and activities within the Bank's district.

A number of commenters supported the proposed changes, on the basis that they would add expertise in community lending to the Advisory Council, thereby enabling the Advisory Council to address broader community needs, consistent with the Bank's housing finance and community lending mission.

One commenter opposed the proposed changes, stating that they would dilute the role of affordable housing practitioners and advocates on the Advisory Councils and potentially diminish the Advisory Councils' focus on housing. Because the regulation requires that the Advisory Council membership include persons drawn from a diverse range of organizations with no undue proportionate membership for any one group, and that the Advisory Council provide advice on both housing finance and community lending, this concern appears to be unwarranted. *See id.* § 951.4(c), (f)(1).

Another commenter interpreted the term ''community lending'' as narrower than the terms ''community investment'' and ''community development,'' limiting the Advisory Council's role to advice on lending. In fact, the definition of ''community lending'' encompasses a wide range of economic development activities beyond just lending. *See id.* §§ 900.1, 952.3.

One commenter recommended that the final rule clarify that private, for-profit providers of affordable housing are eligible to serve on the Advisory Councils. Under the existing AHP regulation, such housing providers are eligible to serve on the Advisory Councils, and the Finance Board has previously provided this clarification to the Banks. Accordingly, the final rule adopts the proposed amendments to § 951.4 without change.

C. AHP Outlay Adjustment—§ 951.8(c)(4)

Section 951.8(c)(3)(ii) of the existing AHP regulation provides that 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. *Id.* § 951.8(c)(3)(ii). 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. *Id.* This section is included under the overall heading for paragraph (c)(3), which addresses changes in the 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. Therefore, the requirements in paragraph (c)(3)(ii) would appear to apply only in cases where a direct subsidy is used to write down prior to closing the principal amount or interest rate on a loan. As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, in practice, the Banks have returned to the AHP fund the amount of any reduction in AHP subsidy approved for a project under the competitive application program, regardless of the reason for the reduction, such as a project modification. The question arose whether the provision in paragraph (c)(3)(ii) regarding the funding of a subsidy increase should apply to an increase in approved AHP subsidy for a project modification that does not involve a direct subsidy writedown of principal or interest. A Bank has indicated that, in its district, demand for increases in approved AHP subsidies for project modifications not involving direct subsidy writedowns is now exceeding the amount of repaid or uncommitted AHP subsidies available to fund such modifications. Therefore, the Bank would like to be able to fund such subsidy increases from the Bank's required AHP contribution for the next year. Accordingly, the proposed rule would make § 951.8(c)(3)(ii) applicable to any reduction or increase in the amount of AHP subsidy approved for a project, regardless of whether a direct subsidy writedown is involved, by taking the paragraph out from under the paragraph (c)(3) heading and redesignating it as § 951.8(c)(4). The Banks, therefore, would be able to fund subsidy increases for project modifications using subsidies drawn first from any currently uncommitted or repaid AHP subsidies, and then from the Bank's required AHP contribution for the next year.

As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, if a Bank is permitted to use uncommitted AHP funds from the following year, before such funds are made available under the competitive application program for that year, there will be fewer AHP funds available for new projects to be approved under the competitive application program for that year. The overall effect on the amount of AHP funds available for the following year, however, is not likely to be significant. Moreover, funding a new project in the next year, as opposed to funding a modification of an existing project from a prior year, would not necessarily result in producing more affordable housing. It would be beneficial to have AHP funding available for modifications of existing projects that are meeting the goals of the AHP. The existing AHP regulation already allows the Banks to commit AHP funds from the following year's homeownership set-aside allocation to fund current year needs under the Banks' homeownership set-aside programs, and the Banks arguably should have similar flexibility in funding subsidy increases for project modifications approved under the competitive application program. Finally, the decision whether to approve an increase in AHP subsidy for a project modification is within the discretion of each Bank. *See id.* § 951.7. If a Bank does not want to fund project modifications with subsidies from the next year's AHP allocation, it can choose to approve the project modifications only if additional repaid or uncommitted funds become available.

A number of commenters supported the proposed change because of the additional flexibility it would provide the Banks to fund subsidy increases for project modifications. One commenter

advances, that assist and enhance such members' and [housing] associates' financing of:

(a) Housing, including single-family and multi-family housing serving consumers at all income levels; and

(b) *Community lending.*

Id. § 940.2 (emphasis added).

stated that the proposed change should not be made until the Finance Board has studied past trends in uncommitted funds and past success rates of new projects and makes projections as to the impact of the proposed change based on those figures. Because the conditions applicable to each project differ significantly, the Finance Board believes that the Banks are the best judges of whether or not to approve subsidy increases for project modifications from the required AHP contribution for the next year.

Several commenters also expressed concern that the proposed change would enable project sponsors to game the scoring system by seeking modifications to their low-income targeting commitments after approval. Because the AHP regulation provides that approved projects seeking additional AHP subsidy must, as modified, continue to score successfully in the funding period in which they were originally approved, gaming of the scoring system should not be a problem. *See id.*

Accordingly, for the reasons discussed above, the final rule adopts the proposed amendment making newly redesignated § 951.8(c)(4) applicable to any reduction or increase in the amount of AHP subsidy approved for a project, regardless of whether a direct subsidy writedown is involved. In addition, in order to more accurately reflect the nature of the adjustments addressed in § 951.8(c)(4), the final rule removes the paragraph heading ''Reconciliation of AHP fund'' and adds, in its place, the revised heading ''AHP outlay adjustment''.

D. Initial Monitoring Requirements—§ 951.10

1. Removal of Requirement for Annual Owner-Occupied Project Sponsor Certifications—§ 951.10(a)(1)(ii)

Section 951.10(a)(1)(ii) of the existing AHP regulation provides that 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. *Id.* § 951.10(a)(1)(ii).

As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the Banks maintain that this project sponsor certification requirement is not necessary because the certification merely reiterates more extensive documentation of income eligibility previously provided by the project sponsor to the Bank and member at the time of each request for disbursement of AHP funds from the Bank. Under the existing AHP regulation, a Bank is required to verify prior to each disbursement of AHP subsidies for an approved project that the project meets the eligibility requirements of § 951.5(b) and all obligations committed to in the approved AHP application. *See id.* §§ 951.5(b), 951.8(c)(2). Because the project sponsor's annual certification is based on the information provided to the Bank at the time of disbursement requests, the certification requirement in § 951.10(a)(1)(ii) does not add any new information or independent verification to the monitoring process. For these reasons, the proposed rule would remove the requirement for annual owner-occupied project sponsor certifications from § 951.10(a)(1)(ii). A number of commenters supported the proposed change on the basis that it would remove redundant monitoring requirements. The proposed rule would retain the requirement in § 951.10(a)(1)(ii) that the project sponsor maintain household income verification documentation available for review by the member or the Bank. A number of commenters supported retention of this requirement.

Accordingly, the final rule adopts without change the proposed amendment to § 951.10(a)(1)(ii) removing the requirement for annual owner-occupied project sponsor certifications.

2. Removal of Requirements for Project Owner Certification to Member and Member Certification to Bank Within the First Year of Rental Project Completion— §§ 951.10(a)(2)(ii), 951.10(b)(2)(ii)

Section 951.10(a)(2)(ii) of the existing AHP regulation provides that within the first year after completion of an AHP-assisted rental project, the project owner must make a certification to the member and the Bank on services and activities commitments, tenant income targeting and rent commitments, and project habitability. *See Id.* § 951.10(a)(2)(ii). Section 951.10(b)(2)(ii) of the existing AHP regulation provides that within the first year after completion of an AHP-assisted rental project, the member must review the project documentation and make a certification to the Bank on tenant income targeting and rent commitments, and project habitability. *See Id.* § 951.10(b)(2)(ii). The Banks maintain that this member certification requirement is essentially redundant with the requirement in § 951.10(a)(2)(ii) that the project owners make a certification to the member and the Bank on the same items. *See Id.* § 951.10(a)(2)(ii).

Because the member is essentially duplicating the certification already made by the project owner to the member and the Bank, it seems reasonable to eliminate the requirements for project owner certification to the member and member certification to the Bank, and simply retain the requirement for project owner certification directly to the Bank. Accordingly, the proposed rule would remove the requirements for project owner certification to the member and member certification to the Bank in §§ 951.10(a)(2)(ii) and 951.10(b)(2)(ii), respectively. A number of commenters supported the proposed changes on the basis that they would remove redundant monitoring requirements.

Accordingly, the final rule adopts the proposed amendments to §§ 951.10(a)(2)(ii) and 951.10(b)(2)(ii) without change.

E. Uncommitted or Unused AHP Funds—§ 951.15(a)(2)

As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, a higher allowable annual homeownership set-aside amount increases the possibility that demand for such funds may not exhaust the available funds by the end of the year. Under section 10(j)(7) of the Bank Act, 90 percent of such uncommitted or unused AHP funds generally would be required to be deposited by the Bank in an Affordable Housing Reserve Fund established and administered by the Finance Board. *See* 12 U.S.C. 1430(j)(7); 12 CFR 951.15(a)(2). No such Reserve Fund has been established to date. In order to minimize the possibility of having to create such a Reserve Fund, the proposed rule would have amended § 951.3(a)(1) to clarify that any homeownership set-aside funds that are not committed or used by the end of the year in which they were set aside shall be committed or used by the end of such year to fund project modifications or the next highest scoring AHP applications in the Bank's final funding period of the year for its competitive application program. A number of commenters generally supported the proposed amendment. Several commenters recommended allowing uncommitted or unused homeownership set-aside funds to be carried over for use in the Bank's

homeownership set-aside programs during the following year.

Because § 951.15(a)(2) of the existing AHP regulation already addresses the treatment of uncommitted or unused AHP funds in general, the final rule amends that section instead of § 951.3(a)(1). *See* 12 CFR 951.15(a)(2). Section 951.15(a)(2) currently provides that any homeownership set-aside or competitive application funds that remain uncommitted or unused 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 applications 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. *See Id.* The insufficient amounts shall be carried over for use or commitment during the following year. *See Id.* Because there also may be uncommitted or unused funds remaining at year-end under the competitive application program, it is reasonable to amend the regulation to provide that approved competitive application projects seeking modifications shall be eligible for such remaining competitive application funds, in addition to being eligible for any remaining homeownership set-aside funds. The final rule adopts this amendment in § 951.15(a)(2)(iii). In addition, while the current regulation does not restrict the carried over amounts to commitment or use in specific AHP programs, the final rule amends the last paragraph of § 951.15(a)(2) to clarify that such carried over amounts may be committed or used in either the Bank's competitive application program or homeownership set-aside programs during the following year.

III. Paperwork Reduction Act

As part of the proposed rulemaking, the Finance Board published a request for comments concerning the proposed revisions to the collection of information in §§ 951.3(a)(1), 951.10(a)(1)(ii), and 951.10(b)(2)(ii) of the proposed rule. *See* 66 FR 23864, 23867. The Finance Board submitted the proposed revisions to the information collection, and accompanying analysis, to the Office of Management and Budget (OMB) for review in accordance with section 3507(d) of the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3507(d). The Finance Board received no comments on the proposed revisions to the information collection. OMB has approved the proposed revisions to the information collection without conditions and assigned control number 3069–0006 with an expiration date of June 30, 2004.

Likely respondents and/or record keepers are Banks, Bank members, project sponsors, and project owners. The Banks will use the information collection to determine whether respondents satisfy statutory and regulatory requirements under the AHP. Responses are mandatory and are required to obtain or retain a benefit. The final rule does not substantively or materially modify the approved information collection. 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 OMB. *See Id.* section 3512(a). The final rule revises the statements in the AHP regulation displaying the OMB control number to reflect the new expiration date. The title, description of need and use, and a description of the information collection requirements in the final rule are discussed in parts I and II of the **SUPPLEMENTARY INFORMATION** section of the final rule.

The following is the estimated annual reporting and recordkeeping hour burden as approved by OMB:

a. *Number of respondents:* 7,720.

b. *Total annual responses:* 10,749. Percentage of these responses collected electronically: 0.

c. *Total annual hours requested:* 65,461.

d. *Current OMB inventory:* 64,274.

3. *Difference:* 1,187.

The following is the estimated annual reporting and recordkeeping cost burden as approved by OMB:

a. *Total annualized capital/startup costs:* 0.

b. *Total annual costs (O&M):* 0.

c. *Total annualized cost requested:* $2,169,795.

d. *Current OMB inventory:* $2,118,170.

e. *Difference:* $51,625.

Comments regarding the collection of information may be submitted in writing to the Federal Housing Finance Board at 1777 F Street, NW., Washington, DC 20006, and to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Federal Housing Finance Board, Washington, DC 20503.

IV. Regulatory Flexibility Act

The final rule applies only to the Banks, which do not come within the meaning of ''small entities,'' as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Thus, in accordance with section 605(b) of the RFA, *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.

List of Subjects in 12 CFR Part 951

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

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

PART 951—AFFORDABLE HOUSING PROGRAM

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

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

2. In part 951, remove the date ''January 31, 2003'' wherever it appears and, in its place, add the date ''June 30, 2004''.

3. Amend § 951.3 by revising paragraph (a)(1) to read as follows:

§ 951.3 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 $3.0 million or 25 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 $3.0 million or 25 percent of its annual required AHP contribution for the subsequent year to the current year's homeownership set-aside programs pursuant to written policies adopted by the Bank's board of directors. Beginning in 2002 and for subsequent years, the maximum dollar limits set forth in this paragraph shall be adjusted annually by the Finance Board to reflect any percentage increase in the preceding year's Consumer Price Index (CPI) for all urban consumers, as published by the Department of Labor. Each year, as soon as practicable after the publication of the previous year's CPI, the Finance Board shall publish notice by **Federal Register**, distribution of a memorandum, or otherwise, of the CPI-adjusted limits on the maximum set-aside dollar amount. 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.

* * * * *

§ 951.4 [Amended]

4. Amend § 951.4 by:

a. In paragraph (a), after the term ''housing'', adding the words '', and community and not-for-profit organizations actively involved in providing or promoting community lending,'';

b. In paragraph (b), after the term ''housing'', adding the term ''and community lending'';

c. In paragraph (f)(1), removing the term ''community investment'' wherever it appears and adding, in its place, the term ''community lending''; and

d. In paragraph (f)(3), removing the term ''community development'' and adding, in its place, the term ''community lending''.

§ 951.5 [Amended]

5. Amend § 951.5 by removing paragraph (a)(7)(iii).

§ 951.8 [Amended]

6. Amend § 951.8(c)(3) by:

a. Removing the heading for paragraph (c)(3)(i);

b. Removing paragraph designation (c)(3)(i); and

c. Redesignating paragraph (c)(3)(ii) as paragraph (c)(4); and removing the paragraph heading ''Reconciliation of AHP fund'' and adding, in its place, the revised heading ''AHP outlay adjustment''.

7. Amend § 951.10 by:

a. Revising paragraph (a)(1)(ii);

b. In paragraph (a)(2)(ii), removing the words ''the member and'' and the words ''the member or'' wherever they appear; and

c. In paragraph (b)(2), removing paragraph (b)(2)(ii), and removing paragraph designation (b)(2)(i).

The revision reads as follows:

§ 951.10 Initial monitoring requirements.

(a) * * *

(1) * * *

(ii) Where AHP subsidies are used to finance the purchase of owner-occupied units, the project sponsor must maintain household income verification documentation available for review by the member or the Bank.

* * * * *

8. Amend § 951.15(a)(2) by:

a. In paragraph (a)(2)(ii), removing the period and adding a semicolon in its place;

b. Adding a paragraph (a)(2)(iii); and

c. Redesignating the last sentence of the section as paragraph (a)(3) and revising it.

The addition and revisions read as follows:

§ 951.15 Affordable Housing Reserve Fund.

(a) * * *

(2) * * *

(iii) Project modifications approved by the Bank pursuant to the requirements of this part.

(3) *Carryover of insufficient amounts.* Such insufficient amounts as described in paragraph (a)(2) of this section shall be carried over for use or commitment in the following year in the Bank's competitive application program or homeownership set-aside programs.

* * * * *

Dated: September 26, 2001.

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

J. Timothy O'Neill,

Chairman.

[FR Doc. 01–24586 Filed 10–2–01; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 35

[Docket No. NE124; Special Conditions No. 35–002–SC]

Special Conditions: Hartzell Propeller Incorporated, Model HC–E5A–2/E8991 Propeller

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: The FAA is issuing special conditions for the Hartzell Propeller Incorporated model HC–E5A–2/E8991 constant speed propeller. This five-bladed propeller has blades constructed of composite materials. This design feature is novel and unusual. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards for propeller blades constructed of composite materials that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is December 1, 2001. Comments must be received on or before November 19, 2001.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules Docket No. NE124, 12 New England Executive Park, Burlington, Massachusetts, 01803–5299. Comments must be marked: Docket No. NE124. Comments may be inspected in the Rules Docket between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jay Turnberg, FAA, Engine and Propeller Standards Staff, Engine and Propeller Directorate, Aircraft Certification Service, ANE–110, 12 New England Executive Park, Burlington, Massachusetts, 01803–5229; telephone: (781) 238–7116; fax: (781) 238–7199; e-mail: *jay.turnberg@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective December 1, 2001; however, the FAA invites interested parties to submit comments on the special conditions. Comments should identify the Rules Docket and special conditions number and be submitted in duplicate to the address specified above. The FAA will consider all comments received by the closing date. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this proposal will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NE124.'' The postcard will be date-stamped and returned to the commenter.

Background

On May 3, 2000, Hartzell Propeller Incorporated applied for an amendment to type certificate (TC) number P20NE to add a new model HC–E5A–2/E8991 propeller. The HC–E5A–2/E8991 propeller, which is a derivative of the HC–E5 propeller currently approved under TC P20NE, has blades constructed of composite material. These special conditions address the following airworthiness issues for the Hartzell Propeller Incorporated model HC–E5A–2/E8991 propeller: