

Dated: April 21, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

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FEDERAL HOUSING FINANCE BOARD

12 CFR Part 960

[No. 99-25]

RIN 3069-AA-73

Amendment of Affordable Housing Program Regulation

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is adopting as final, with several changes, the Interim Final Rule which amended its regulation governing the operation of the Affordable Housing Program (AHP or Program) to make certain technical revisions clarifying Program requirements and improving the operation of the AHP.

EFFECTIVE DATE: The final rule shall be effective on June 1, 1999.

FOR FURTHER INFORMATION CONTACT: Richard Tucker, Deputy Director, (202) 408-2848, or Janet M. Fronckowiak, Associate Director, (202) 408-2575, Program Assistance Division, 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, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Regulatory Background

On August 4, 1997, the Finance Board published a final rule adopting comprehensive revisions to the AHP regulation, see 12 CFR part 960, which, among other changes, authorized the 12 Federal Home Loan Banks (Banks), rather than the Finance Board, to approve applications for AHP subsidies beginning January 1, 1998. See 62 FR 41812 (Aug. 4, 1997) (1997 AHP Regulation). On May 20, 1998, the Finance Board published an Interim Final Rule amending the 1997 AHP Regulation to make certain technical revisions clarifying Program requirements and improving the operation of the AHP. See 63 FR 27668 (May 20, 1998). The Interim Final Rule provided for a 60-day comment period.

The Finance Board received nine comment letters on the Interim Final

Rule. Commenters included: three Banks, two Bank Advisory Councils, one Bank member, and one financial institutions trade association. Because the purpose of the Interim Final Rule was to make certain technical clarifying revisions, comments that raised issues beyond the scope of the Interim Final Rule changes are not addressed in this final rule, but will be considered by the Finance Board in any future rulemaking under the AHP. The provisions of the Interim Final Rule on which significant comments were received are discussed below.

II. Analysis of Final Rule

A. Minimum Credit Product Usage Limit—§§ 960.5(b)(10)(i)(C), (ii)

Section 960.5(b)(10)(i)(C) of the 1997 AHP Regulation authorized a Bank, in its discretion, after consultation with its Advisory Council, to establish a requirement that a member submitting an AHP application have made use of “a credit product” offered by the Bank, other than AHP or Community Investment Program (CIP) credit products, within the previous 12 months (single credit product usage limit). One of the arguments the Finance Board considered in determining to allow imposition of such a limit was that AHP subsidies are derived from a Bank’s earnings and, therefore, fairness suggests that availability of subsidies may be linked to the extent to which a member contributes to the Bank’s earnings through the single purchase of a Bank credit product. The Finance Board determined, after weighing the arguments, that giving the Banks the discretion, after consultation with their Advisory Councils, to adopt a single credit product usage limit would enable the Banks to be most responsive to the needs and views in their Districts. However, in the course of the Banks’ implementation of this change under the AHP, the Banks indicated to the Finance Board that a member’s single use of a Bank credit product does not make a meaningful contribution to Bank earnings, from which AHP subsidies are derived. The Banks argued instead for authority to adopt a credit product usage limit based on the member’s use of a *minimum amount* of a Bank’s credit product. The Banks also proposed that the required level of credit product usage be linked to a member’s asset size.

In response to these arguments, the Interim Final Rule revised § 960.5(b)(10)(i)(C) to permit a Bank, after consultation with its Advisory Council, to establish a requirement that a member submitting an AHP application must have made use of a

minimum amount of a credit product offered by the Bank, other than AHP or CIP credit products, within the previous 12 months, provided that such a minimum threshold for credit product usage established by a Bank shall not exceed 1.5 percent of the member’s total assets, and all members shall have access to some amount of AHP subsidy, as determined by the Bank, regardless of whether they meet the Bank’s minimum threshold for credit product usage (minimum credit product usage limit).

Two commenters opposed this change, for some of the same reasons evaluated and discussed by the Finance Board in the 1997 AHP rulemaking. See 61 FR 57799, 57808-09 (Nov. 8, 1996); 62 FR 41812, 41819 (August 4, 1997); see also, 60 FR 55487, 55490-91 (Nov. 1, 1995). The commenters have not presented new arguments that were not considered by the Finance Board in the 1997 AHP rulemaking. The Finance Board continues to believe that the Banks should have the discretion, after consultation with their Advisory Councils, to adopt a minimum credit product usage limit as appropriate based on the needs and views in the Bank’s District. Accordingly, the minimum credit product usage limit provision contained in the Interim Final Rule is adopted without change in the final rule.

The Interim Final Rule also clarified in § 960.5(b)(10)(ii) that “[a]ny limit on the amount of AHP subsidy available per member must result in equal amounts of AHP subsidy available to all members.” This requirement is intended to ensure that such limits are not structured or applied in a discriminatory manner. A commenter pointed out that, under a technical reading of this language, a Bank would have to make an equal amount of AHP subsidy available to all members, regardless of whether the member meets the minimum threshold requirement for credit product usage. This was not the intent of the amended language in § 960.5(b)(10)(ii). Accordingly, the language has been clarified in the final rule to provide that any limit on the amount of AHP subsidy available per member must result in equal amounts of AHP subsidy available to all members receiving subsidy pursuant to such limit.

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

1. Scoring Criterion for Use of Donated Government-Owned or Other Properties—§ 960.6(b)(4)(iv)(A)

Under § 960.6(b)(4)(iv)(A) of the Interim Final Rule, an application may

receive scoring points if it involves 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. The Interim Final Rule added language to § 960.6(b)(4)(iv)(A) clarifying that a "nominal price" is a small, negligible amount, most often one dollar, and may be accompanied by modest expenses related to the conveyance of the property.

A commenter objected to the definition of "nominal price," stating that it should be defined as up to 10 percent of the fair market value of the units or land. By defining "nominal price" as "most often one dollar," the Interim Final Rule left some discretion to the Banks to determine, on a case-by-case basis, whether a price higher than one dollar may qualify as nominal. The Finance Board continues to believe that this case-specific approach is preferable to establishing a general standard in the regulation that would apply to all transactions anywhere in the country, regardless of possible variances in what may be considered nominal from region to region and transaction to transaction. Accordingly, the comment is not adopted in the final rule.

Another commenter stated that the term "modest expenses" should be defined. Again, the Finance Board believes that a case-specific approach is more appropriate than establishing a national standard for the definition of "modest expenses." Accordingly, the final rule does not define the term, leaving it to the discretion of each Bank to determine what are modest conveyance expenses for particular transactions in its District.

2. Scoring Criterion for Housing for Homeless Households— § 960.6(b)(4)(iv)(D)

Under § 960.6(b)(4)(iv)(D) of the Interim Final Rule, an application may receive scoring points if it involves "[t]he creation of rental housing reserving at least 20 percent of the units for homeless households, or the creation of transitional housing for homeless households permitting a minimum of six months occupancy." See 12 CFR 960.6(b)(4)(iv)(D). The Interim Final Rule omitted the express exclusion of overnight shelters contained in the 1997 AHP Regulation, because it is clear that overnight shelters do not come within the category of housing permitting a minimum of six months occupancy. The Interim Final Rule also clarified that "rental projects," as defined in § 960.1, include overnight shelters. The intention was to make clear that while

overnight shelters are eligible for AHP funding, they may not receive scoring points under § 960.6(b)(4)(iv)(D). However, by defining "rental projects" to include overnight shelters, the Interim Final Rule unintentionally made overnight shelters eligible for such scoring points under the first clause dealing with rental projects. Accordingly, the final rule revises the first clause in § 960.6(b)(4)(iv)(D) to expressly exclude overnight shelters for homeless households.

3. Scoring Criterion for Economic Diversity—§ 960.6(b)(4)(iv)(F)(8)

The Interim Final Rule revised the second alternative requirement in § 960.6(b)(4)(iv)(F)(8) to provide that applications may receive scoring points for "Economic Diversity" if they involve the creation of housing that provides very low- or low- or moderate-income households with housing opportunities in neighborhoods or cities where the median income *exceeds* the median income for the larger surrounding area—such as the city, county, or Primary Metropolitan Statistical Area—in which the neighborhood or city is located. The general intent of this requirement is to promote housing opportunities for very low- and low- or moderate-income households in areas that are wealthier relative to the surrounding areas to avoid isolation of such households.

A commenter suggested allowing scoring points to be awarded under this criterion for housing in areas where the median income *equals* or *exceeds* the median income for the larger surrounding area. The Finance Board believes that this change would meet the general intent of the requirement and, therefore, has revised the language in the final rule accordingly.

C. Modifications of Applications After Project Completion—§ 960.9

The Interim Final Rule amended § 960.9 of the AHP regulation to clarify the types of changes to an approved AHP project after project completion that would justify a modification to the terms of the approved AHP application. See *id.* § 960.9. The amendment inadvertently omitted the language limiting such modifications to changes "other than an increase in the amount of subsidy approved for the project." This limiting language has been restored in the final rule.

III. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this final rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Moreover, 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. See *id.* section 601(6).

IV. Paperwork Reduction Act

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

List of Subjects in 12 CFR Part 960

Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements. Accordingly, the Interim Final Rule amending 12 CFR part 960, published at 63 FR 27668 (May 20, 1998), is adopted as final with the following changes:

PART 960—AFFORDABLE HOUSING PROGRAM

1. The authority citation for part 960 continues to read as follows:

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

2. Section 960.5 is amended by revising paragraph (b)(10)(ii) to read as follows:

§ 960.5 Minimum eligibility standards for AHP projects.

* * * * *

(b) * * *

(10) *District eligibility requirements.*

(ii) Any limit on the amount of AHP subsidy available per member must result in equal amounts of AHP subsidy available to all members receiving subsidy pursuant to such limit.

3. Section 960.6 is amended by revising paragraphs (b)(4)(iv)(D) and (b)(4)(iv)(F)(8) to read as follows:

§ 960.6 Procedure for approval of applications for funding.

* * * * *

(b) * * *

(4) * * *

(iv) * * *

(D) *Housing for homeless households.*

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

* * * * *

(F) * * *

(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 neighborhoods or cities where the median income equals or exceeds the median income for the larger surrounding area—such as the city, county, or Primary Metropolitan Statistical Area—in which the neighborhood or city is located;

* * * * *

4. Section 960.9 is amended by revising the introductory text to read as follows:

§ 960.9 Modifications of applications after project completion.

Modification procedure. If, after final disbursement of funds to a project from all funding sources, there is or will be a change in the project that would change the score that the project application received in the funding period in which it was originally scored and approved, had the changed facts been operative at that time, a Bank, in its discretion, may approve in writing a modification to the terms of the approved application, other than an increase in the amount of subsidy approved for the project, provided that:

* * * * *

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

Dated: April 13, 1999.

Bruce A. Morrison,
Chairman.

[FR Doc. 99-10160 Filed 4-28-99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-SW-49-AD; Amendment 39-11153; AD 99-09-20]

RIN 2120-AA64

Airworthiness Directives; Bell Helicopter Textron Canada (BHTC) Model 222, 222B, and 222U Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to BHTC Model 222, 222B, and 222U helicopters. This action requires initial and repetitive visual inspections and verification of the torque of the bolts on the main rotor hub. This amendment is prompted by a report of fatigue cracks around the bolt holes of the main rotor pitch horn (pitch horn) and a cracked main rotor flapping

bearing assembly (flapping bearing assembly) on a BHTC Model 222 helicopter. This condition, if not corrected, could result in fretting-induced fatigue cracking of the flapping bearing assembly and around the bolt holes of the pitch horn, loss of the rotor system, and subsequent loss of control of the helicopter.

DATES: Effective May 14, 1999.

Comments for inclusion in the Rules Docket must be received on or before June 28, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98-SW-49-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Harry Edmiston, Aerospace Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222-5158, fax (817) 222-5783.

SUPPLEMENTARY INFORMATION: Transport Canada, which is the airworthiness authority for Canada, has notified the FAA that an unsafe condition may exist on BHTC Model 222, 222B, and 222U helicopters. Transport Canada advises that fatigue cracks at the bolt holes of the pitch horn and in the flapping bearing assembly can lead to loss of control of the helicopter.

BHTC issued Alert Service Bulletin Nos. 222-98-81 and 222U-98-52, both dated April 23, 1998 (ASB), which specify inspecting the main rotor hub in the areas between the pitch horn and main rotor grip tangs (grip tangs) and between the flapping bearing assembly and the main rotor yoke assembly for fretting. The ASB's also specify torque verification procedures for the main rotor grip retaining bolts and the flapping bearing assembly. Transport Canada classified these ASB's as mandatory and issued Transport Canada AD CF-98-16, dated July 15, 1998, in order to assure the continued airworthiness of these helicopters in Canada.

These helicopter models are manufactured in Canada and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary

for products of these type designs that are certificated for operation in the United States.

The FAA estimates that 88 helicopters will be affected by this proposed AD, that it will take approximately 1 work hour to accomplish the inspection and retorquing of bolts, if necessary, and that the average labor rate is \$60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$15,840 per year, assuming three inspections and retorquing per year and assuming that no parts will need to be replaced.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTC Model 222, 222B, and 222U helicopters of the same type design registered in the United States, this AD is being issued to prevent fretting induced fatigue cracking of the flapping bearing assembly and around the bolt holes of the pitch horn, loss of the rotor system, and subsequent loss of control of the helicopter. This AD requires recurring inspections of the main rotor hub in the areas between the pitch horn and grip tangs and between the flapping bearing assembly and the main rotor yoke assembly for fretting. If fretting is found on any part, replacing that part with an airworthy part is required. This AD also requires verifying the torque on the main rotor grip retaining bolts and the flapping bearing assembly retaining bolts. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, a visual inspection of the main rotor hub between the pitch horn and grip tangs and the flapping bearing assembly and the main rotor yoke assembly for fretting is required. A torque check of the main rotor grip retaining bolts and the flapping bearing assembly retaining bolts is also required. These actions are required within 10 hours TIS and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are