

concludes that, because of unusual considerations, or for other good cause, it should not take action.

(f) * * *

(52) Under the provisions of section 5(d)(3)(E) of the Federal Deposit Insurance Act (12 U.S.C. 1815(d)(3)(E)), to approve requests by a bank holding company to engage in any transaction described in subparagraph (A) of section 5(d)(3) of that Act.

By order of the Board of Governors of the Federal Reserve System, February 22, 1991.

William W. Wiles,
Secretary of the Board.

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FEDERAL HOUSING FINANCE BOARD

12 CFR Part 960

[No. FHFB 91-58] [91-59]

Affordable Housing Program

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board ("Finance Board") is adopting final regulations governing the operation of the Affordable Housing Program ("Program" or "AHP") by the Federal Home Loan Banks ("Banks" or "District Banks"). This final rule modifies the interim regulations published by the Finance Board and effective on March 2, 1990 (55 FR 7479). The Program is authorized by section 721 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101-73, 103 Stat. 183, 423-426 ("FIRREA"), and requires the Banks to assist their members in financing affordable housing for very low-, low-, and moderate-income households. The final rule reflects public comments received in response to the request for public comment issued with the interim regulations and the experience with the Program during its first year of operation.

EFFECTIVE DATE: March 1, 1991.

FOR FURTHER INFORMATION CONTACT: Richard Tucker, Deputy Director, Housing Finance Directorate, (202) 408-2848, or Stephen D. Johnson, Attorney Advisor, Housing Finance Directorate, (202) 408-2847, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. General

FIRREA added section 10(j) to the Federal Home Loan Bank Act of 1932, 12 U.S.C.A. 1430(j) ("FHLB Act"), which provides that, pursuant to regulations promulgated by the Finance Board, each Bank must 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, very low-, low-, and moderate-income, owner-occupied and affordable rental housing.

FIRREA specifies the annual dollar contribution of each Bank to be the greater of 5 percent of the previous year's net income or a *pro rata* share of \$50 million, increasing to the greater of 10 percent of the previous year's net income or a *pro rata* share of \$100 million in 1995. Following the expressed intent of the statute, the AHP was established as a series of Programs—one for each of the twelve Banks with District-wide competitions.

B. AHP in 1990

In 1990, the Banks committed \$80.1 million in subsidies to 383 projects from the 895 applications received. Over half of the subsidized units are for very low-income households, and 65 percent of the approved units are rental. The AHP funds are leveraged by a wide array of other public and private funds, and the AHP subsidy represents only 6.8 percent of the development cost of the projects.

C. Comments Received

The Finance Board received a total of 95 comment letters from Federal Home Loan Bank System members (13), Federal Home Loan Banks (11), Federal Home Loan Bank Advisory Councils (9), community groups (11), nonprofit developers (19), private developers (3), trade associations (6), state and local government agencies (20), Congress (1), foundations (1), and commercial banks (1).

Comments focused on the issues of final decision making (71), application timing and processing (36), frequency of AHP offerings (39), maximum subsidy rule (41), scoring system (35), priorities (17), advisory councils (24), urban versus rural projects (20), geographic set asides (9), AHP Reserve Fund (16), and monitoring and reporting (18). In practical terms, the first four categories are slightly different aspects of the same general issue: the AHP funding process, but they are separated for analytical purposes.

1. Decision Making

Three quarters of the comments submitted in response to the interim final rule addressed the issue of Finance

Board centralized decision making. The interim regulations vested final approval authority for projects recommended by the Banks with the Finance Board. Almost all of these commenters supported transferring the authority to make final decisions on applications for funding to the District Banks, opining that the Banks are best able to determine what District and local priorities should be met and to expedite funding. The comments supporting District Bank final funding decisions generally included recommendations for Finance Board monitoring and overall control. Private-sector commenters, community groups, nonprofit developers, and others were close to unanimous in opposing centralized funding decisions, but some recommended that the Finance Board retain a veto authority. While recognizing the special requirements of the AHP, many commenters urged that the Program more closely resemble other District Bank advance programs where the funding decisions are made at the Bank and the funds are made available within a matter of days.

In light of the favorable experience with the 1990 Program, the Finance Board believes that it should retain final decision making, for the reasons indicated below. The Finance Board feels that many of the concerns expressed in the comments received in March of 1990 have been addressed by the expeditious handling of the two 1990 funding rounds. All of the deadlines imposed on the Federal Home Loan Banks and the Finance Board were met without exception despite the receipt of nearly 900 applications. In addition, the Finance Board believes that changes in the application submission periods and the number of funding rounds will ameliorate most of the timing problems alleged in the comment letters. Finally, the Finance Board believes that centralized decision making ensures that the Program is administered in a consistent manner and continues to meet the national priorities established by FIRREA.

2. Timing and Availability

One third of the commenters addressed the 120-day application-processing period. Most commenters said that the four-month application process established by the interim regulations reduced the effectiveness of the Program. In addition, a number of commenters stated that the timetable for the AHP application process may not correspond to the timetables of other housing programs that provide subsidized

assistance. The comments concerning the "cumbersome" and extended application process came from the full range of commenters. In the vast majority of letters, these comments were linked with the suggestion of eliminating the Finance Board role in the final funding decision.

Forty percent of the commenters said that making funds available only once or twice per year was unworkable. The commenters were concerned that this provision precludes individual Banks from adjusting the availability of AHP funds to serve particular needs of their Districts, either by offering AHP funds more frequently or by offering them on an alternate schedule.

The Finance Board agrees that coordination with other housing programs and close linking of funding cycles to project cycles are critical elements for the continued success of the AHP. The final regulations eliminate the concept of an application period. The final regulations provide that the District Bank will evaluate all pending applications as a group twice each year on two of four quarterly dates, i.e., the District Banks will have the option of choosing the two offering dates that best meet the needs of their districts. For those years after 1991, each Bank will be required to publish its offering schedule late in the preceding year. The year 1991 will be a transition year with three available application deadline dates: April 15, July 15, and October 15. After 1991, the uniform dates will be January 15, April 15, July 15, and October 15. If one of these dates falls on a holiday or weekend, the deadline date will be the next working day. The final regulations also shorten the period for District Bank review to 30 days. These changes will result in a shortening of the current four-month process to two months.

3. Maximum Subsidy

FIRREA requires the Finance Board to set a limitation on the subsidy to any one project. The interim regulations limited the subsidy on any single project to that amount necessary to reduce the target household's housing expenses to not less than 28 percent of gross monthly income. This issue is important because it serves as the primary basis for qualification in the Program.

In drafting the interim regulations, 28 percent was selected, because it is a widely accepted "front ratio" in the mortgage qualification process. Many of the households targeted by the Program currently spend in excess of half their income on housing. Therefore, 28 percent was considered a significant reduction in housing expenditures, while still representing a fair and substantial

portion of income being spent for housing.

Over forty percent of the commenters, especially the nonprofit developers and community organizations, called for a change in the maximum subsidy rule. Many commenters said this requirement was too rigid and would hamper the Program's effectiveness in serving the needs of very low-income households. Several community organizations recommended that the Finance Board delete the 28-percent requirement for rental projects. They also recommended that the requirement be waived in situations where this requirement would conflict with the requirements of other government-sponsored housing programs. A few commenters recommended denominating the maximum allowable subsidy in terms of an interest-rate reduction, but the majority of commenters urged a lower (or no) requirement.

The Finance Board has adopted the suggestion of many commenters to lower the proportion of gross monthly income that must be spent on housing to 20 percent. Additionally, since many of the first-round applications were for direct subsidies rather than subsidized advances, an income limitation rather than an interest-rate limitation continues to make the most sense.

Due to the limited amount of subsidy available, the success of the Program depends in great measure on its ability to combine with other sources of funding including other subsidized funds. In section 102 of the Department of Housing and Urban Development Reform Act of 1989, Public Law 101-235 ("HUD Reform Act"), Congress addressed the potential for abuse in the layering of HUD subsidies if this practice of combining subsidies is not monitored and controlled. Under the HUD reform Act, the Secretary of HUD is required to certify that the amount of HUD assistance provided to certain activities does not exceed the amount necessary to make the activity feasible. HUD is developing rules and procedures to implement those legislative requirements.

The Finance Board is equally concerned that AHP subsidies only be used for critical housing finance needs and that the Program not be abused. The Finance Board believes that the design of the Program, the fact that subsidies are provided through independently regulated financial institutions, the Program's detailed monitoring and reporting requirements, effective provisions for recapture of subsidy funds in the event of non-compliance, an emphasis on community-based nonprofit organizations as project sponsors, and

the small dollar size of the Program should serve to prevent such abuses. The Finance Board will continue to carefully monitor the Program with this important policy goal in mind. The Finance Board intends to utilize HUD's experience and expertise in the development and implementation of rules and procedures designed to prevent excessive subsidy layering, and will create additional safeguards in the form of a subsidy layering model specifically designed for the nature of the AHP program, as necessary.

4. Priorities and Scoring System

The interim regulations stated seven AHP priorities of which three were required to be met in order to be considered for AHP funding:

(1) Projects that finance the purchase, construction, and/or rehabilitation of owner-occupied homes for very low-, low-, and moderate-income households in that priority order; or

(2) Projects that finance the purchase, construction, and/or rehabilitation of rental housing, at least 20 percent of the units of which will be occupied by and affordable for very low-income households for the remaining useful life of such housing or the mortgage term; or

(3) Projects that finance the purchase and/or rehabilitation of housing owned or held by the United States Government or any agency or instrumentality of the United States including those held by the U.S. Department of Housing and Urban Development, the Resolution Trust Corporation, Farmers Home Administration, Veterans Administration, Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation; or

(4) Projects that finance the purchase, construction, and/or rehabilitation of housing, which is sponsored by any nonprofit organization, any state or political subdivision of any state, any local housing authority, or state housing agency; or

(5) Projects that empower the poor through resident management, urban homesteading and similar programs; or

(6) Projects that promote fair housing; or

(7) Projects that provide permanent housing for the homeless.

Almost two-fifths of the commenters addressed the priorities and the scoring system. Several commenters alleged that projects with both owner and rental units were given an unfair advantage, because they automatically met two priorities.

While the interim regulations encouraged the District Banks to be

"innovative" in project financing, the priority weighting given to projects addressing multiple national priorities could preclude viable projects that better respond to a particular District's needs. For example, numerous commenters and the District Banks stated that the interim scoring system places rural projects at a competitive disadvantage to urban projects, because applications for projects in rural areas are more likely to be from smaller institutions, and less likely to have nonprofit sponsors, urban homesteading, or large inventories of government-owned properties.

The scoring scheme in the interim regulations may also have an implicit bias in favor of rental housing. First, the scoring scheme awarded points for income targeting, and very low-income households are more likely to rent than they are to own. Second, nonprofit involvement, also awarded points, is more common with rental housing than it is with owner-occupied housing. Third, rental housing is likely to score well on effectiveness, because multifamily rental housing is typically less expensive to build and uses less land than detached houses.

The final regulations make several substantive and technical changes to the priorities and scoring system to address these concerns.

5. District Bank Advisory Councils

A quarter of the comment letters addressed the limited role of the Advisory Councils in the interim regulations. They argued that since the interim regulations placed the responsibility for final project approval with the Finance Board, the Advisory Councils were ignored and their only remaining role was one of an annual report writer. The commenters said that these provisions are contrary to the intent of FIRREA.

The final regulations create a District Bank priority developed by the Advisory Council on an annual basis, adopted by the Bank's Board of Directors, and approved by the Finance Board. This will enhance the role of the Councils in making the Program more responsive to local housing finance needs.

D. Analysis of the Final Regulations

1. Establishment of the Program

The board of directors of each Federal Home Loan Bank must adopt an implementing plan for the Program established by FIRREA and these regulations. The final regulations require the Banks to submit their plan to the Finance Board annually. This plan must include the Bank's overall strategy for

the Program and the staffing, monitoring, education, and promotion planned for the Program. The plan must also address the technical issues of (1) controlling arbitrage associated with AHP funds, and (2) dealing with the relationship between interest-rate changes and subsidy calculations.

Under the Program, it is the responsibility of the Banks and their members to meet the civil rights requirements of the Fair Housing Act, 42 U.S.C. 3601-19, and other applicable civil rights laws and regulations. The Fair Housing Act prohibits discrimination in the sale, rental, or financing of housing based on race, color, religion, sex, national origin, handicap, and familial status; and prohibits discrimination in residential real estate-related transactions, which include the making or purchasing of loans or providing other financial assistance, and the selling, brokering, or appraising of residential real property.

Further, section 808(d) of the Fair Housing Act requires that federal agencies that administer housing programs do so in a manner that affirmatively furthers the goal of fair housing. To meet that objective, AHP applicants should carry out their advertising activities so as to assure that potential buyers or tenants from all racial and ethnic groups in the housing market area know about the availability of the housing. Special emphasis should be given to persons and/or organizations who might not otherwise learn about the availability of the housing without such outreach efforts, particularly members of minority groups and protected classes. Advertising and media selected for such groups should be oriented to the targeted audience. Special emphasis should be placed on minority newspapers, minority-oriented radio and television stations, and other organizations, such as fair housing groups and community groups, with significant contact with the targeted groups.

Accordingly, the final regulations raise the goal of fair housing from one of seven priorities to an absolute threshold that must be met by all applicants.

2. Use of Subsidized Advances and Direct Subsidies

As provided by FIRREA, the final regulations require the Banks to subsidize the interest rates on advances to members engaged in lending for long-term, low- and moderate-income, owner-occupied and rental housing. Additionally, since the Finance Board believes the Banks should maximize the resources provided under the Program through the innovative use of Program

subsidies, the final regulations continue to permit the use of direct subsidies and other types of subsidized assistance.

The final regulations define the term "subsidy" as the direct cash payments under the Program or the net present value of the foregone interest revenues to the Bank resulting from making funds available under the Program at rates below the cost of funds. This funding mechanism is in accordance with generally accepted accounting principles. Calculation of the subsidy commitment in present-value terms ensures that adequate funding will be available in future years.

The Finance Board expects that, with the exception of interest rates, the terms and conditions of the advances offered by the Banks to members as part of the Program will conform to the Banks' standard collateral requirements and tests of creditworthiness. The Finance Board also expects that the members, in making loans under the Program, will apply prudent underwriting standards. Members are required to maintain safe and sound lending practices consistent with the requirements of their primary regulator to ensure that Program loans are within acceptable risk levels.

The final regulations prescribe two broad purposes for AHP subsidies: (1) To finance the purchase, construction, and/or rehabilitation of owner-occupied housing for very low-, low-, and moderate-income households; and (2) to finance the purchase, construction, and/or rehabilitation of rental housing, at least 20 percent of the units of which will be occupied by and affordable for very low-income households for the remaining useful life of such housing or the mortgage term.

The Finance Board recognizes that counseling and related community services can play a vital role in the development and success of affordable housing programs. However, given the limited amount of AHP subsidy available and the clear Congressional mandate to use these funds to provide programs to finance housing, the Finance Board believes that AHP funds should not be used to pay or defray indirect or third party costs not standard for housing finance transactions. The Finance Board believes this policy best reflects Congressional intent in establishing the AHP and maximizes the use of AHP resources.

While the Finance Board encourages financing arrangements that may be used for leveraging the funds to be allocated under the Program, it realizes that some of these innovative concepts and financing arrangements may not be familiar to some members. Because of

the Finance Board's concern for safety and soundness and prudent lending, institutions not familiar with these financing techniques are encouraged to consider participating in such efforts with experienced lenders. The final regulations continue to require that members "maintain safe and sound lending practices, consistent with the requirements of their primary regulator, and designed to return a profit."

3. Application for Funding

AHP funds will be made available in two offerings each year on quarterly dates selected by each Bank. Each Bank is to notify its members of the amount of annual Program funds available for the District, the date of fund rounds, and the approximate amount to be offered each funding period. Applications must be received by the Banks by the 15th day of the quarter (January, April, July, October) in which funds are available. For 1991, however, because of the late publication of these final regulations, only three offering dates will be made available. Applications for 1991 AHP funding must be received by April 15th, July 15th, and October 15th depending on the two dates selected by the Banks.

The Banks will evaluate and score eligible applications. Those applications receiving the highest ratings will be forwarded by the Bank to the Finance Board not later than 30 days after the application deadline. The Finance Board will announce final funding decisions within 30 days thereafter.

To ensure that Program subsidies are allocated for the priority uses intended and the specific households targeted, the final regulations require that a member's application for a subsidized advance, direct subsidy, or other assistance include a description of the project and its conformity with Program objectives. The application must also include: A description of the feasibility of the project, including local market conditions; a statement of its compliance with fair housing laws; the qualifications and role of the sponsor; the subsidy requested; a disclosure of any applicant's interest in the property or project; and certifications that the project will not receive a subsidy in excess of that allowed by the FHLB Act or the regulations and that the subsidy will only be used for authorized purposes. The application must also include a description of the long-term monitoring techniques that will be used by the member to ensure the appropriate use of Program funds and the recapture provisions for any unused or improperly used subsidy.

4. Project Scoring and Funding

The Program will operate through a nationally administered series of District-wide competitions. Each Bank will evaluate applications on the basis of a number of criteria or objectives that are included in the final regulations. These objectives reflect the broad goals of reaching the targeted households, providing maximum assistance per subsidy dollar, and encouraging innovation, community involvement, and community stability.

The final regulations have four threshold tests—two of which are new. The new tests that all projects must meet are compliance with fair housing laws and the ability of the project to begin using Bank assistance within twelve months of approval. The other two threshold tests are project feasibility and creditworthiness of the member. Only projects that meet all four threshold tests are eligible for further consideration.

Priorities. Projects satisfying all four threshold tests and meeting at least three of the following objectives shall have priority for funding:

(1) Projects the principal purpose of which is to finance the purchase, construction, and/or rehabilitation of owner-occupied housing for very low-, low-, and moderate-income households in that priority order; or

(2) Projects the principal purpose of which is to finance the purchase, construction, and/or rehabilitation of rental housing, at least twenty percent (20%) of the units of which will be occupied by and affordable for very low-income households for the remaining useful life of such housing or the mortgage term; or

(3) Projects that finance the purchase and/or rehabilitation of housing owned or held by the United States Government or any agency or instrumentality of the United States, for example, Department of Housing and Urban Development, Resolution Trust Corporation, Farmers Home Administration, Veterans Administration, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation; or

(4) Projects that finance the purchase, construction, and/or rehabilitation of housing, which is sponsored by any nonprofit organization, a state or political subdivision of any state, a local housing authority, or a state housing agency; or

(5) Projects that empower the urban or rural poor through resident management, homesteading, self-help housing, or similar programs that meet critical urban or rural housing needs; or

(6) Projects that provide permanent housing for the homeless; or

(7) Projects that meet a Bank objective recommended by the Bank's Advisory Council, adopted by the Bank's board of directors, and approved by the Finance Board.

The final regulations make a minor change in the first two priorities by adding language about the "principal purpose" of the project. This change corrects an unintended feature of the interim regulations that allowed projects with both owner-occupied and rental units to automatically meet two priorities. The final regulations also raise fair housing from a priority to a threshold test, and include a new District Bank priority.

Each Bank will first separate the submitted projects into two groups: (1) Those that meet at least three of the priorities identified in the final regulations, and (2) those that meet fewer than three of the priorities. Projects in the first group will be rated before projects in the second group. Second-group projects will only be rated and forwarded to the Finance Board if there are insufficient applications in the first group. Projects not forwarded to the Finance Board should be considered for assistance under the Community Investment Program or other programs.

To ensure that the projects funded conform to Program objectives, the Banks will evaluate all projects using the 100-point scoring system described in the final regulations. The Banks will rank order the applications within each of the groups identified above based on the sum of the point totals for the applications.

The scoring system divides the Program objectives into three groups. The total possible score a project may receive is 100 points. The first, and most important, objective is the consistency of the project with the priorities identified in the final regulations. Projects may receive up to 25 points for this objective, with a project's actual point total reflecting its consistency with, or potential for achievement of, the priorities.

The second group of objectives includes: (1) The extent to which the project targets households below the statutory maximums, especially very low-income households; (2) the potential for long-term retention of owner-occupied and rental housing affordable for very low-, low-, and moderate-income households; and (3) the effective use of Program dollars, *i.e.*, the amount of AHP subsidy per unit and the extent to which the project is able to draw upon other sources of funds and

programs designed to benefit targeted households. The Bank may award each project up to 15 points per objective in this group.

The third group of objectives includes:

- (1) The extent to which the project actively involves nonprofit or community organizations, other than application sponsors; (2) the extent to which the project maximizes community stability and minimizes the displacement of very low-, low-, and moderate-income households; and (3) the use of innovative and experimental nonfinancial and financial approaches toward providing affordable housing for very low-, low-, and moderate-income households. The Bank may award a project up to 10 points for each objective in this group.

After the Bank has evaluated applications from members, the Bank will forward to the Finance Board for final funding consideration those applications receiving the highest overall rankings. To ensure an adequate pool of projects for Finance Board consideration, the final regulations require each Bank to forward to the Finance Board applications from the highest ranking projects sufficient to exhaust the funds being made available by the Bank for that funding round plus the next four highest-ranking projects. The final regulations provide, however, that if in the Finance Board's opinion there is an insufficient number of applications from any Bank, it may request that the Bank submit additional eligible applications to the Finance Board for review.

The final regulations also require the Bank to submit a summary of each project forwarded to the Finance Board. The summary shall include a brief description of the project, the amount of subsidy recommended by the Bank, a description of how the member and Bank will monitor the project, a description of the provisions for recapture of the subsidy, and the reason for the points awarded for each of the enumerated objectives.

The Finance Board will review the applications submitted by each Bank to ensure national consistency with the Program's stated priorities, objectives, and regulations. Based on this review and the rankings submitted by the Banks, the Finance Board will make final funding decisions.

5. Reporting

Members that receive Program subsidies will be required to file periodic reports with the Bank until the subsidy has been fully used or repaid by the member. The reports shall, at a minimum, describe the manner in which

the member has used the proceeds of the subsidy and contain a certification that the subsidy has been passed through to the borrower by the member and continues to be used for the approved purposes.

6. Monitoring

A variety of safeguards have been built into the Program to monitor project performance and ensure adherence to Program regulations and guidelines. These monitoring elements are designed to prevent Program misuse and ineffective use of Program funds.

Active monitoring by the member and its board of directors is required. The member must include in each AHP application an explanation of how the member intends to monitor the use of any subsidy or other assistance provided by the Bank, including copies of any agreements entered into for this purpose. Each Bank must monitor, audit, and review its Program and member Program projects to ensure full compliance.

At a minimum, the Banks shall audit the following Program elements: Subsidy calculations, pricing, development, promotion, marketing, and compliance. In addition, member project development, subsidy delivery, loan pricing (including mark-up, fees, and terms), community involvement, and oversight will be monitored. The Finance Board has the responsibility and authority to monitor, audit, and review Bank and member compliance using all the resources at its disposal. Techniques for monitoring by the Banks and Finance Board may include audits of applications and supporting documentation, loan-record analysis, specialized reporting and data gathering, and site inspections.

Monitoring AHP advances and assistance for single-family homeownership will in all instances require compliance with a one-time initial income eligibility requirement to ensure that only the targeted households are the recipients of the subsidies. In certain cases, such as community land trusts and limited-equity housing cooperatives, where long-term retention of income eligibility requirements and use restrictions are present, longer-term monitoring will be necessary, particularly at the time of sale or transfer of the housing unit.

Monitoring multifamily rental projects will require long-term tracking (both of use and income levels) to ensure that Program subsidy benefits remain available to very low-, low-, and moderate-income households. Most local, state, and federally funded housing programs are targeted to very

low-, low-, and moderate-income households, and income eligibility is set and maintained for a designated period. Where Program subsidies are used in tandem with such programs, the income level recertification process required by the other program (usually annual) will normally satisfy the income eligibility monitoring requirements of the Program. Where other local, state, and federal officials perform field visits, loan and lease reviews, and other inspections, additional information will be available to assist the Finance Board and the Banks in these monitoring efforts.

7. Recapture

If at any time the proceeds of a subsidized advance will not be or cease to be used for authorized uses and eligible projects, the member who received such an advance must immediately notify the Bank that granted the advance. The member must immediately cease to provide additional subsidized funds to the project. Upon receipt of such notice, the Bank shall recover the unused or improperly used portion of the subsidized advance, and in doing so, may exercise a number of options, including: Repricing the advance to the interest rate applicable at the time the advance was made on non-subsidized advances of comparable type and maturity; requiring the member to reimburse the Bank for the amount of the unused or improperly used subsidy on the advance; assessing a prepayment fee; or calling such advance. Under all circumstances, any subsidy committed but no longer used for an eligible project will become available to the Bank for future projects.

To prevent potential windfall profits on the premature sale of rental housing that has been subsidized using AHP funds, members must agree to either provide the Banks with evidence that the sales contract includes a provision that the rental housing will continue to be used for its original purpose, or to reimburse the Bank an amount equal to the *pro rata* subsidy value considered to have been realized by the seller as profit, based upon the amount of the subsidy and the remaining term of the project as originally proposed.

8. Maximum Subsidy

The final regulations set the maximum subsidized assistance at the amount needed to reduce the monthly housing cost (excluding utilities) for households in the targeted income group to 20 percent of gross monthly income. In situations where other forms of subsidized assistance are being used with the AHP, particular care should be

taken to ensure that the total amount of subsidies provided does not exceed this amount.

If the subsidized assistance is in the form of an advance, the final regulations also specify that the loan to the borrower shall be subsidized at least to the same extent as the advance is subsidized; the borrower must receive the full benefit of the subsidy.

The Finance Board does not expect 20 percent to become the norm for all AHP projects. Indeed, this maximum subsidy should be reserved for selected very low-income units. Deeper subsidies, as represented by lower proportions of a household's income spent on housing, will increase the AHP subsidy per unit, reduce the effectiveness of the subsidy, and potentially result in fewer units.

The maximum subsidy rule applies only to (1) the initial purchase of an owner-occupied unit, (2) the initial financing of a rental project, and (3) a rental project as units become vacant and are re-rented. In this third case, the practical application means that vacant units must be rented to households of the income levels specified in these regulations so that the income limitation for the targeted unit continues to be met.

9. Contributions to Program

The final regulations set forth the funding requirements for the Program. Provided in FIRREA, the Banks are required to contribute a percentage of their preceding year's net income to the Program. Beginning in 1990, this amount was five percent of the preceding year's net income, increasing to six percent in 1994, and to 10 percent annually in years thereafter. The final regulations also set forth minimum annual total amounts that must be contributed by the Bank System as a whole, as required in FIRREA. From 1990 through 1993, at least \$50 million must be contributed annually to the Program by the Banks. This amount will increase to \$75 million in 1994, and to \$100 million annually thereafter.

To the extent that the percentage of income-based annual contributions of the Banks does not meet these minima, additional contributions shall be made *pro rata* by each Bank based on its previous year's net income such that the minimum dollar requirement shall be met. Each Bank's *pro rata* share of such additional contributions will be determined by dividing the Bank's net income for the relevant period by the total Bank System net income for the same period and then multiplying the percentage derived by the amount of the Bank System shortfall.

The regulations provide that, for purposes of calculating the annual

amount of contributions, the Banks' annual net income is reduced by the contribution to the Resolution Funding Corporation.

10. Temporary Suspension of Contributions

Consistent with section 721 of FIRREA, the Finance Board is providing a procedure for the temporary suspension of contributions in extraordinary circumstances. If a Bank believes that a temporary suspension is appropriate, the Bank must immediately notify the Finance Board and make written application for relief. The application should be accompanied by the Bank's preceding year's annual report and its most recent quarterly and monthly financial statements. Banks that apply for a temporary suspension may also submit additional information not provided for in these regulations to support their case for suspension.

The final regulations specify factors the Finance Board will consider in determining whether to approve an application for temporary suspension, including, any decline in the Bank's quarterly or annual net income, paid-in membership capital, and level of advances, and projections for these trends to continue. The Finance Board will also consider other financial conditions that may contribute to the Bank's financial instability and financial data the Bank submits in support of its application.

The Finance Board will disapprove a temporary suspension application if the Bank's financial instability results from a change in the terms of advances (other than subsidized advances) not justified by market conditions, inordinate operating and administrative expenses, nonstandard banking practices or mismanagement, or if for any other reason a temporary suspension is not warranted.

The Finance Board will act on written applications for temporary suspension within 30 days of receipt, but the temporary suspension shall not take effect until the time period expires for a joint resolution of Congress disapproving the temporary suspension. The Finance Board decisions shall be accompanied by specific findings and reasons for the action.

All temporary suspensions will be granted for a specified time period. The Committee on Banking, Finance and Urban Affairs of the U.S. House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the U.S. Senate and each Bank shall receive written notice of any temporary suspension.

During a temporary suspension, the subject Bank shall provide the Finance Board with any and all financial reports the Finance Board may require. The Finance Board may determine at any time during the suspension that the Bank has returned to a position of financial stability, and the Finance Board may terminate the temporary suspension upon written notice to the Bank. A Bank may apply in writing for an extension of a temporary suspension, and the Finance Board shall act on the request within 30 days of receipt. The Finance Board will determine the effective date, issue written notice, and notify Congress and the Banks of extensions in a fashion similar to that for original temporary suspensions.

The Finance Board will send notice of suspensions to the Committees at least 60 days prior to the effective date of a suspension, and at least 30 days prior to the effective date of an extension. The temporary suspensions granted by the Finance Board will become effective on their prescribed dates, unless a joint resolution of Congress disapproving the temporary suspension is enacted prior to the effective date.

11. Reserve Fund

If a Bank fails to use or commit the amount it is required to contribute to the Program in a given year, 90 percent of the unused or uncommitted amount in that year shall be paid over to the Affordable Housing Reserve Fund at the end of the year. The 10 percent of the unused or uncommitted amount retained by the Bank should be fully used or committed by that Bank during the following year, and any remaining portion must be deposited in the Reserve Fund.

The Reserve Fund will be administered by the Finance Board. Any Bank may apply to the Finance Board to use any available Reserve Funds, but only after all of its current annual allocation to the Program has been used or committed.

12. Coordination

The final regulations require the Finance Board and the Banks to coordinate Program activities, to the maximum extent possible, with other government agencies and with appropriate nonprofit organizations involved in affordable housing activities.

13. Advisory Councils

FIRREA requires the establishment of Program Advisory Councils by each Bank pursuant to regulations promulgated by the Finance Board. In

recognition of the economic and geographic differences among the Bank Districts, the Finance Board provides in these final regulations that each Bank has the discretion to determine the size and member composition of its Advisory Council. Each Bank shall give consideration to the size and diversity of its District and the very low-, low-, and moderate-income housing needs of its District. The final regulations provide that the composition of each Bank's Advisory Council must reflect the very low-, low-, and moderate-income housing activities and needs within the District, as well as the full range of the community and nonprofit organizations concerns.

FIRREA provides flexibility in the selection of Council members in each District. At the same time, experience and commitment to providing and/or promoting very low-, low-, and moderate-income housing should be the most important factors in choosing members. The Finance Board recognizes that state and local housing agencies represent a significant resource, based on their extensive experience in affordable housing, that may be included in the Advisory Councils. However, in an effort to encourage broad representation, state and local agency officials should not constitute an undue proportion of the Council membership.

The nomination and selection process in the final regulations is aimed at encouraging broad local participation in the process. Each Bank shall actively solicit nominations from as many community and nonprofit organizations as can be identified. In order to defray the expense of participating in the Advisory Councils, members will be compensated by the Banks for travel expenses and paid a subsistence allowance.

The final regulations require that Council members serve staggered two-year terms. In so directing, the Finance Board seeks to provide continuity in experience and service to the Advisory Council, as well as to provide frequent opportunities for new groups and individuals to serve on the Councils.

Each Council shall designate one of its members or a member of the Bank's staff to act as Secretary of the Advisory Council. The Secretary shall record and maintain minutes of the meetings of the Council. Minutes of each meeting shall contain, among other things, a record of the persons present, a description of the matters discussed, and the Secretary's recommendations made. The Secretary's reports will be the initial basis for the annual Council reports to each Bank and the Finance Board.

The final regulations require that each Bank submit annually to the Finance Board, for review and approval, a detailed plan for the operation of its Advisory Council. The final regulations also require each Advisory Council to submit to the Finance Board an annual report analyzing the low-income housing activity of the Bank.

E. Regulatory Flexibility Act

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Finance Board is providing the following regulatory flexibility analysis.

1. Need for and Objectives of the Rules

As explained in the SUPPLEMENTARY INFORMATION, these Finance Board regulations are mandatory under FIRREA.

2. Issues Raised by Commenters and Agency Assessment and Response

These issues are discussed in the SUPPLEMENTARY INFORMATION.

3. Significant Alternatives Minimizing Small-Entity Impact and Response

No new requirements are being added by the amendments. These are no alternatives that would be less burdensome in meeting the objectives discussed in the SUPPLEMENTARY INFORMATION.

List of Subjects in 12 CFR Part 960

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

Accordingly, the Finance Board hereby amends chapter IX, title 12, Code of Federal Regulations, by revising subchapter E, consisting of part 960, to read as follows:

Subchapter E—Affordable Housing

PART 960—AFFORDABLE HOUSING PROGRAM

- | | |
|--------|--|
| Sec. | Definitions. |
| 960.1 | Establishment of program. |
| 960.2 | Use of subsidized advances and direct subsidies. |
| 960.3 | Applications for funding. |
| 960.4 | Project scoring and funding. |
| 960.5 | Reporting requirements. |
| 960.6 | Monitoring. |
| 960.7 | Recapture. |
| 960.8 | Maximum subsidy. |
| 960.9 | Annual contributions. |
| 960.10 | Temporary suspension of contributions. |
| 960.11 | Affordable Housing Reserve Fund. |
| 960.12 | Coordination. |
| 960.13 | Advisory Councils. |
| 960.14 | |

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 10, 47 Stat. 731, as amended (12 U.S.C. 1430); sec. 21B, as

added by sec. 511, 103 Stat. 394 (12 U.S.C. 1441b).

§ 960.1 Definitions.

(a) *Advances* means extensions of credit by Banks to members under the provisions of 12 CFR part 935 and this part 960.

(b) *Affordable for very-low income households* means the monthly housing expense charged to tenants for rental units made available for occupancy by very low-income households shall not exceed 30 percent of the income of a very low-income household, adjusted for family size.

(c) *Area* means a metropolitan statistical area, a county, or a nonmetropolitan area, as established by the U.S. Office of Management and Budget.

(d) *Bank(s)* means a Federal Home Loan Bank established under the authority of the Federal Home Loan Bank Act.

(e) *Board* means the Federal Housing Finance Board or an official duly authorized to act on its behalf.

(f) *Cost of funds* means the estimated cost of issuing Bank System consolidated obligations with maturities comparable to those of the subsidized advances, as published from time to time by the Federal Home Loan Bank System's Office of Finance.

(g) *Low- and moderate-income households* means households for which the aggregate income is 80 percent or less of the area median income.

(h) *Median income* means the median family income for an area as determined and published by the U.S. Department of Housing and Urban Development.

(i) *Member* means an institution admitted to membership in a Federal Home Loan Bank.

(j) *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.

(k) *Program* means the Affordable Housing Program established by this part.

(l) *Rural* means any open country, or any place, town, village, or city which is not part of or associated with an urban area and which has a population not in excess of 2,500 inhabitants, or has a population in excess of 2,500 but not in excess of 10,000 if it is rural in character, or has a population in excess of 10,000 but not in excess of 20,000 and is not contained within a standard metropolitan statistical area, and has a serious lack of mortgage credit for lower and moderate-income families, as determined by the Secretary of

Agriculture and the Secretary of Housing and Urban Development. Any area classified as rural prior to October 1, 1990, and determined not to be rural as a result of data received from or after the 1990 decennial census shall continue to be so classified until the receipt of data from the decennial census in the year 2000, if such area has a population in excess of 20,000 but not in excess of 25,000 is rural in character, and has a serious lack of mortgage credit for lower and moderate-income families.

(m) *Sponsor* means a nonprofit or for-profit organization or public entity that is integrally involved in a project, such as exercising control over the planning, development, and/or management of a project.

(n) *Subsidy* means the direct cash payments under the Program or the net present-value of the foregone interest revenues to the Bank from making funds available under the Program at rates below the cost of funds.

(o) *Very low-income households* means households for which the aggregate income is fifty percent (50%) or less of the area median income.

§ 960.2 Establishment of program.

(a) It is the policy of the Board and the Banks to promote decent and safe affordable housing and to address critical affordable housing needs through the use of subsidized advances, direct subsidies, and other assistance to members.

(b) Each Bank's board of directors shall adopt an annual implementation plan consistent with Federal Home Loan Bank Act, 12 U.S.C.A. 1430(j) ("the Act"), and this part to provide subsidized advances, direct subsidies, or other assistance to members engaged in long-term lending that provides owner-occupied and rental housing affordable to very low-, low-, and moderate-income households. A copy of the Bank's plan shall be submitted to the Board annually.

(c) The Program will be carried out in accordance with the requirements of the Fair Housing Act, 42 U.S.C. 3601-19, and other applicable civil rights laws and regulations.

§ 960.3 Use of subsidized advances and direct subsidies.

(a) *General.* (1) Funds under each Bank's Program shall be used to provide subsidized assistance to members engaged in lending for activities eligible to receive subsidized assistance pursuant to the provisions of section 10(j) of the Act and this part. Subsidized advances made under the Program shall be consistent with the provisions of the Act and the regulations applicable to

advances in general contained in 12 CFR part 935, except to the extent modified by this part. Direct subsidies and other assistance provided to members shall comply with the provisions of this part.

(2) In making extensions of credit under the Program, members shall use prudent, flexible, and innovative underwriting standards. Members shall maintain safe and sound lending practices, consistent with the requirements of their primary regulator, and designed to return a profit, but members will be encouraged and assisted in funding qualified projects that do not meet customary underwriting criteria or existing secondary mortgage market requirements or for which no secondary market exists. The Board and the Banks shall encourage and assist the development of new secondary markets for projects funded by the Program.

(b) *Authorized uses.* All members receiving subsidized advances, direct subsidies, and other assistance from a Bank shall use the proceeds of such subsidies and the benefits of such assistance to:

(1) Finance the purchase, construction, and/or rehabilitation of owner-occupied housing for very low-, low-, and moderate-income households; or

(2) Finance the purchase, construction, and/or rehabilitation of rental housing, at least twenty percent (20%) of the units of which will be occupied by and affordable for very low-income households for the remaining useful life of such housing or the mortgage term.

(c) Program funds may only be used for direct costs required to produce and/or finance affordable housing units.

(d) Each Bank shall ensure that the preponderance of assistance provided by the Bank is ultimately received by very low-, low-, and moderate-income households.

§ 960.4 Applications for funding.

(a) The Program is based on District-wide competitions administered by the Board. Banks may accept applications for funding during two of four quarterly application periods each year, as announced by the Banks no later than December 1 of the preceding year. Applications must be received by the 15th day of each quarter (January, April, July, October), or the next subsequent business day if the 15th falls on a weekend or holiday. For 1991, Banks may accept applications for funding on two of three dates, which dates are April 15th, July 15th, and October 15th.

(b) Each Bank shall notify its members of the approximate amount of annual program funds available for the District, and the approximate amount to be

offered in each funding period. The amount of funds made available in each offering should be comparable.

(c) Each member shall include in its application for a subsidized advance, direct subsidy, or other assistance:

(1) A concise description of the purpose for the request, its relationship to the Program's priorities identified in § 960.5(b), and its consistency with the criteria identified in §§ 960.5(c), 960.5(d) and 960.5(e);

(2) A statement of how the project complies with fair housing laws and regulations;

(3) A description of the feasibility of the project, including the local market conditions justifying the project;

(4) The qualifications and role of the sponsor;

(5) The subsidy requested;

(6) A disclosure of any applicant's interest, direct or indirect, in the property or project;

(7) An explanation of how the member intends to monitor the use of any subsidy or other assistance provided by the Bank, including an explanation of how the structure of the project ensures that a preponderance of the subsidy is ultimately received by the targeted groups;

(8) A certification signed by member's managing officer that the subsidy received by the project will not exceed the maximum allowable under the Program and an explanation of how any excess subsidy will be recaptured;

(9) A certification signed by the member's managing officer that the subsidy or other assistance shall only be for authorized uses; and

(10) Such other information as the Bank or Board may require.

§ 960.5 Project scoring and funding.

(a) *General.* (1) Each Bank will evaluate all applications received from its members that satisfy the use provisions identified in § 960.3(b).

(2) Projects should first be evaluated for:

(i) Compliance with fair housing laws and regulations;

(ii) Feasibility of the project;

(iii) The ability of the member to qualify for an advance to fund the project; and

(iv) The ability of the project to begin using Bank assistance within twelve months.

(3) Projects meeting all four of the requirements of § 960.5(a)(2) that also meet at least three of the priorities identified in paragraph (b) of this section shall be grouped and rated before projects that meet fewer than three of the priorities. Each Bank will

then rank the projects within the first group (i.e., those meeting at least three priorities) based on the criteria contained in paragraphs (c), (d), and (e) of this section. Projects in the second group will be rated only if there are insufficient applications in the first group.

(4) The total possible score a project may receive is 100 points. The maximum numerical score that a Bank may assign any project meeting the criterion identified in paragraph (c) of this section is 25 points; in paragraph (d) of this section, 15 points per criterion; and in paragraph (e) of this section, 10 points per criterion. In determining the number of points to award a project for any given criterion, the Bank should evaluate each proposed project relative to the other proposals received by the Bank. The project(s) best achieving each criterion shall receive the maximum point score available for that criterion, with the remaining projects scored on a declining scale.

(b) *Priorities.* Projects meeting at least three of the following objectives shall have priority for funding:

(1) Projects the principal purpose of which is to finance the purchase, construction, and/or rehabilitation of owner-occupied homes for very low-, low-, and moderate-income households in that priority order; or

(2) Projects the principal purpose of which is to finance the purchase, construction, and/or rehabilitation of rental housing, at least twenty percent (20%) of the units of which will be occupied by and affordable for very low-income households for the remaining useful life of such housing or the mortgage term; or

(3) Projects that finance the purchase and/or rehabilitation of housing owned or held by the United States Government or any agency or instrumentality of the United States, for example, the U.S. Department of Housing and Urban Development, Resolution Trust Corporation, Farmers Home Administration, Veterans Administration, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation; or

(4) Projects that finance the purchase, construction, and/or rehabilitation of housing, which are sponsored by a nonprofit organization, a state or political subdivision of a state, a local housing authority, or a state housing agency; or

(5) Projects that empower the urban or rural poor through resident management, homesteading, self-help housing, or similar programs that meet critical urban or rural housing needs; or

(6) Projects that provide permanent housing for the homeless; or

(7) Projects that meet a Bank objective recommended by the Bank's Advisory Council, adopted by the Bank's board of directors, and approved by the Board.

(c) *25 Point Category—Consistency with Priorities.* To ensure consistency with the priorities identified in paragraph (b) of this section, the project(s) that achieves the greatest number of priorities or achieves more than one goal in a clearly superior manner shall be awarded 25 points, and the remaining projects shall be scored on a declining scale.

(d) *15 Point Categories.*—In each of the following three categories, 15 points shall be awarded to the project(s) that best achieves the objective and the remaining projects shall be scored on a declining scale:

(1) *Targeting.* To encourage the flow of Program resources to households with incomes below the statutory maximums, the Bank shall consider the extent to which the project targets households below the statutory maximums. The most points shall be awarded to projects serving the greatest percentage of very low-income households.

(2) *Long-term Retention.* To promote the continued availability of housing affordable for very low-, low- and moderate-income households, the Bank shall consider the extent to which the project facilitates the maximum retention of such housing as evidenced through the existence of long-term guarantees, covenants, land trusts, and similar techniques. The Bank shall evaluate the type of housing and the type of assurances and the percentage of units and years for which these assurances are given.

(3) *Effectiveness.* To ensure that the Program resources help the greatest number of households, the Bank shall consider how effectively the project uses the Program subsidy dollars. Within this context, effectiveness should be measured by the amount of Program subsidy dollars per subsidized unit.

(e) *10 Point Categories.*—In each of the following three categories, 10 points shall be awarded to the project(s) that best achieves the objective and the remaining projects shall be scored on a declining scale:

(1) *Community Involvement.* The Bank shall consider the extent to which a project involves demonstrated support by community organizations, other than as project sponsors, the community interests served by the project, and the extent to which the support is local in nature.

(2) *Community Stability.* The Bank shall evaluate the extent to which a

project maximizes community stability and minimizes the displacement of very low-, low-, and moderate-income households and the extent to which the project serves existing very low-, low-, and moderate-income members of the community.

(3) *Innovation.* The Bank shall consider the extent to which the project involves a particularly new or unusual approach for meeting housing needs in the area being served. The Bank shall consider both nonfinancial and financial innovation in providing affordable housing.

(f) *Application Processing.* (1) No later than 30 days after each offering deadline, the Bank shall forward to the Board for final funding consideration applications from those projects receiving the highest overall rankings. To ensure an adequate pool of projects for Board consideration, each Bank shall forward to the Board the highest ranking projects sufficient to exhaust the funds being made available by the Bank for that funding round plus the next four highest-ranking projects. If in the Board's opinion there is an insufficient number of applications from any Bank, the Board may request that the Bank submit to the Board for review additional eligible applications.

(2) The Bank shall also submit a summary of each project forwarded to the Board. The summary shall:

- (i) Briefly describe the project;
- (ii) Indicate the amount of subsidy recommended by the Bank;
- (iii) Describe how the member and the Bank will monitor the project;
- (iv) Describe the provisions for recapture of the subsidy; and
- (v) State the reason for the points awarded for each of the enumerated objectives.

(3) The Board will review the applications submitted from each Bank to ensure consistency with the Program's priorities, objectives, and regulations. Based on this review and the rankings submitted by the Banks, the Board will make a final funding decision and notify the Banks within 30 days.

§ 960.6 Reporting requirements.

(a) Each Bank shall provide reports and documentation concerning the Program as the Board may from time to time request.

(b) To meet Board requests for reports and documentation, at least annually each Bank shall require members that receive a subsidy to file periodic reports supported by appropriate documentation, with such Bank continuing until the subsidy has been fully used or repaid by the member.

Reports shall, at a minimum, state the manner in which the member has used the proceeds of the subsidy.

Each Bank shall require the boards of directors of members receiving subsidies to certify that the subsidy has been passed through to the borrower and continues to be used for the approved purposes.

§ 960.7 Monitoring.

(a) The Board shall have the responsibility and authority to monitor, audit, and review Bank and member compliance with the Program requirements of the Federal Home Loan Bank Act, this part, and other applicable laws and regulations. The Board shall, in its discretion, use all necessary resources, including Office of Inspector General and Office of General Counsel personnel, Program support staff, and specialized contractors to carry out this responsibility.

(b) Each Bank shall monitor, audit, and review its Program and member Program projects and lending to assure full compliance with the requirements of this part. The Banks shall audit the following Program elements: subsidy calculations, pricing, development, promotion, marketing, compliance, member project development, subsidy delivery, loan pricing (including mark-up, fees, and terms), community involvement, and oversight.

Monitoring of Program performance and compliance shall be by audits of applications and supporting documentation, loan-record analysis, specialized reporting, data gathering, site inspections, and such other techniques determined by the Board as necessary to detect and eliminate violations, fraud, mismanagement, and dissipation of Program assets.

(d) Miscalculations, errors, and violations of Program regulations identified by the Board or a Bank shall be corrected immediately. In cases where subsidies have been improperly received, the Bank shall recover the subsidy amount, with fees and interest, if appropriate, in accordance with § 960.8 of this part. Other violations of the Act, this part, or other laws and regulations shall be referred to the Board, the Bank, and other agencies of competent jurisdiction for criminal prosecution or civil recovery.

§ 960.8 Recapture.

(a) A member shall notify the Bank immediately upon receiving information that the proceeds of a subsidized advance or other subsidized assistance granted by the Bank to the member will not or are no longer being used for the purposes approved by the Bank and

the Board. The member shall not advance any additional subsidized funds. Furthermore, the amount of committed but unused subsidy or improperly used subsidy shall be recovered and made available by the Bank for future projects.

(b) In recapturing unused or improperly used subsidies, the Bank shall, at its discretion, take any or all of the following actions, without limitation on other remedies:

(1) Reprice the advance to the interest rate charged to members on non-subsidized advances of comparable type and maturity at the time of the original advance;

(2) Call the advance;

(3) Assess a prepayment fee; or

(4) Require the member to reimburse the Bank for the amount of the unused or improperly used subsidy on the advance or other assistance.

(c) To preclude potential windfall profits on the premature sale of rental housing where a Program subsidy has already been fully used to develop or rehabilitate the property, the member shall agree, in the event of such a sale, to:

(1) Provide the Bank with evidence that the sales contract includes a provision that the rental housing will continue to be used for the purpose originally intended; or

(2) Agree to reimburse the Bank an amount equal to the *pro rata* subsidy value considered to have been realized by the seller as profit, based upon the amount of the subsidy and the remaining term of the project as originally proposed.

§ 960.9 Maximum subsidy.

(a) A Bank shall not offer subsidized advances and other subsidized assistance to members in excess of that amount needed to reduce the monthly housing cost (excluding utilities) for targeted households in the targeted income group to 20 percent of the household's gross monthly income. In projects where other forms of federal, state, local, or private subsidized assistance are being used in conjunction with the AHP, the total amount of subsidy provided shall not exceed this amount.

(b) A member receiving a subsidized advance shall extend credit to qualified borrowers at an effective rate of interest discounted at least to the same extent as the subsidy granted to the member by the Bank.

§ 960.10 Annual contributions.

(a) Each Bank shall fund its Program in accordance with the following formula:

(1) On January 1 of 1990, 1991, 1992, and 1993, the greater of:

(i) 5 percent of the Bank's net income for the previous year (as defined in § 960.1(i) of this part); or

(ii) That Bank's *pro rata* share of an aggregate of \$50 million to be contributed in total by the Banks, such proration being made on the basis of the net income of the Banks for the previous year.

(2) On January 1, 1994, the greater of:

(i) 6 percent of the Bank's net income for the previous year; or

(ii) That Bank's *pro rata* share of an aggregate of \$75 million to be contributed in total by the Banks, such proration being made on the basis of the net income of the Banks for the previous year.

(3) On January 1, 1995 and each year thereafter, the greater of:

(i) 10 percent of the Bank's net income for the previous year; or

(ii) 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 income of the Banks for the previous year.

(b) Funding sources for subsidized advances and subsidies under the Program shall be at the discretion of each Bank.

§ 960.11 Temporary suspension of contributions.

(a) If making the contributions required by § 960.10 of this part will lead to the financial instability of a Bank, the Bank shall immediately notify the Board. The Bank may apply for a temporary suspension of Program contributions. The application for the temporary suspension shall be in writing and shall be accompanied by the Bank's preceding year's annual report, if available, and the Bank's most recent quarterly and monthly financial statements. In addition, the application shall state the period of time for which the Bank seeks a suspension and shall include a plan for returning the Bank to a financially stable position.

(b) In reviewing a Bank application for temporary suspension of contributions, the Board shall consider the following factors and financial data:

(1) The extent to which the Bank's quarterly or annual net income has decreased from the preceding quarter or year and whether such decline is projected to continue;

(2) The extent to which the Bank's paid-in membership capital has declined in any given quarter or year and whether such decline is projected to continue;

(3) The extent to which the Bank's level of advances has declined in any given quarter or year and whether such decline is projected to continue;

(4) Other financial conditions, which, in the opinion of the Bank's board of directors, have resulted, or are likely to result, in the financial instability of the Bank; and

(5) The financial data submitted by the Bank in support of its application.

(c) The Board shall disapprove an application for a temporary suspension if it determines that a Bank's financial instability is a result of:

(1) A change in the terms of advances (other than subsidized advances) not justified by market conditions;

(2) Inordinate operating and administrative expenses;

(3) Operation of the Bank in a manner contrary to accepted banking practices for the Banks;

(4) Mismanagement; or

(5) If for any other reason the temporary suspension is not warranted.

(d) Within thirty (30) days after receipt of a written application made pursuant to paragraph (a) of this section, the Board shall approve or disapprove such application in writing. The Board's decision shall be accompanied by specific findings and reasons for its action and shall state the time period for any temporary suspension. A copy of the decision shall be forwarded to the Congress as provided in paragraph (g) of this section and a copy forwarded to each Bank.

(e) During the term of a temporary suspension approved by the Board, the affected Bank shall provide to the Board such financial reports as the Board shall require to monitor the financial condition of such Bank. If, in the opinion of the Board, a Bank has returned to a position of financial stability prior to the conclusion of the temporary suspension period, the Board may, upon written notice to the Bank, terminate such temporary suspension.

(f) A Bank may apply for an extension of a temporary suspension when such Bank's board of directors determines that the Bank has not, or is not likely to, return to a position of financial stability at the conclusion of the temporary suspension. A request for an extension is to be in written form and shall be approved or disapproved by the Board within thirty (30) days of receipt. The Board's decision to approve or disapprove a request for an extension shall be accompanied by specific findings and reasons for its action and shall state the effective date and time period of any extension. A copy of such decision shall be forwarded to the Congress as provided in paragraph (g) of

this section and a copy forwarded to each Bank.

(g) The Board shall notify the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing and Urban Affairs of the Senate of any temporary suspension and any extension of a temporary suspension. A temporary suspension may not take effect until at least 60 days after the Board gives the notice of its action required by this section. An extension of a temporary suspension may not take effect until at least 30 days after the Board gives the notice of its action required by this section. Such suspension or extension shall become effective as determined by the Board, unless a joint resolution of Congress is enacted, prior to the Board's determined effective date, disapproving such suspension.

§ 960.12 Affordable Housing Reserve Fund.

(a) If a Bank fails to use or commit the amount it is required to contribute to the Program pursuant to § 960.10 of this part in a given year, ninety percent of the amount that has not been used or committed in that year shall be paid over to the Affordable Housing Reserve Fund established and administered by the Board. The ten percent of the unused or uncommitted amount retained by a Bank should be fully used or committed by that Bank during the following year and any remaining portion must be deposited in the Affordable Housing Reserve Fund. For purposes of this section, approval of applications sufficient to exhaust the amount a Bank is required to contribute pursuant to § 960.10 of this part shall constitute use or commitment of the funds.

(b) No later than January 15 of each year, each Bank shall provide to the Board a statement indicating the amount of funds from the prior year, if any, which will be paid over to the Affordable Housing Reserve Fund.

(c) No later than January 31 of each year, the Board will notify the Banks of the total amount of funds available in the Affordable Housing Reserve Fund.

(d) Upon receipt of an application from a member, a Bank may apply to the Board for use of the available Reserve Funds. Such application shall only be made after the Bank has used or committed all of its current annual allocation to the Program. Such application shall state the amount of funds desired, the purpose of the advance to be made with such funds, and the subsidy to be made on the advance or other subsidized assistance. The application shall be accompanied

by the written application of the member requesting a subsidy and shall be acted upon by the Board.

§ 960.13 Coordination.

The Board and the Banks shall coordinate activities under this part, to the maximum extent possible, with other federal, state, or local agencies and nonprofit organizations involved in affordable housing activities.

§ 960.14 Advisory councils.

(a) Each Bank shall appoint an Advisory Council of 7 to 15 persons, who reside in the Bank's District and are drawn from community and nonprofit organizations actively involved in providing or promoting low- and moderate-income housing in the District. The Advisory Council shall meet with representatives of the board of directors of the Bank at least quarterly to advise the Bank on very low-, low-, and moderate-income housing programs and needs in the District, and on the use of subsidized advances, direct subsidies, and other assistance for these purposes.

(b) Advisory Councils shall be appointed by the Banks giving consideration to the size and diversity of the District, and the very low-, low-, and moderate-income housing needs of the District.

(c) The composition of the Advisory Council shall reflect the very low-, low-, and moderate-income housing activities and needs within the District, as well as the full range of community and nonprofit organizations' concerns. Local and state housing officials may serve as members of an Advisory Council, provided that such officials do not constitute an undue proportion of the membership.

(d) The nomination and selection process shall be as broad and as participatory as possible. Each Bank shall actively solicit nominations from community and nonprofit organizations, allowing sufficient lead time for responses.

(e) Council members shall be paid travel expenses by the Banks, including transportation and subsistence, for each day devoted to attending meetings.

(f) Council members shall serve terms of 2 years, but the terms shall be staggered to provide continuity in experience and service to the Advisory Council.

(g) Each Council shall designate a member or request that a member of the Bank's staff be designated to act as Secretary of the Advisory Council. The Secretary shall record and maintain minutes of the meetings of the Council. Minutes of each meeting shall contain,

among other things, a record of the persons present, a description of the matters discussed, and recommendations made. The person acting as Secretary at a meeting shall certify to the accuracy of the minutes of that meeting.

(h) Meetings of the Advisory Council shall be held at least once each quarter and may be held more frequently at the call of the Bank.

(i) By January 31 of each year each Bank shall submit to the Board for review and approval a detailed plan for the operation of its Advisory Council during the year. Such plan shall be subject to review by the Board. Plans shall contain such information as the Board may from time to time require and shall be updated by each Bank as necessary.

(j) By January 31 of each year, each Advisory Council shall submit to the Board its analysis of the low-income housing activity of the Bank by which it is appointed.

Dated: February 20, 1991.

By the Federal Housing Finance Board.

Daniel F. Evans,
Chairman.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-46; Special Conditions No. 25-ANM-38]

Special Conditions: Embraer Model CBA-123 Airplane; Lightning and High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued to Embraer for the Model CBA-123 airplane. This airplane is equipped with high-technology digital avionics systems which perform critical or essential functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards which the Administrator considers necessary to ensure that the critical and essential functions that these systems perform are maintained when the airplane is exposed to lightning and HIRF.

EFFECTIVE DATE: April 1, 1991.

FOR FURTHER INFORMATION CONTACT: Hank Jenkins, FAA, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055-4046; telephone (206) 227-2141.

SUPPLEMENTARY INFORMATION:

Background

On July 31, 1986, Embraer applied for a type certificate for their new Model CBA-123 airplane. The CBA-123 is a pressurized 19-passenger transport category airplane with a maximum takeoff gross weight of 18,739 pounds, maximum cruise speed of 272 knots, maximum operating altitude of 40,000 feet, and a range of approximately 800 miles fully loaded. It is powered by two Garrett TPF351-20 turboprop engines mounted on the aft fuselage in a pusher configuration. This airplane incorporates a number of novel or unusual design features, such as digital avionics including, but not necessarily limited to, an electronic flight instrument system (EFIS), attitude and heading reference system (AHRS), engine indication and crew alerting system (EICAS), and full authority digital engine control (FADEC), which are vulnerable to lightning and high-intensity radiated fields (HIRF) external to the airplane. In addition to these novel or unusual design features, the Model CBA-123 also incorporates other unrelated novel or unusual design features. Those features will be the subject of separate notices of proposed special conditions.

Type Certification Basis

Under the provisions of § 21.17 of the FAR, Embraer must show that the Model CBA-123 meets the applicable requirements of subchapter C in effect on the date of application for that certificate unless: (1) Otherwise specified by the Administrator; (2) compliance with later effective amendments is elected or required under § 21.17; or (3) special conditions are prescribed by the Administrator.

Based on the provisions of § 21.17(a)(1), the Model CBA-123 would be required to comply with part 25, as amended through Amendment 25-60; however, Embraer has elected to comply with part 25, as amended through Amendment 25-61, and is expected to comply with §§ 25.571(e)(2) and 25.905(d), as amended by Amendment 25-72. In addition, SFAR 27 and part 36, through the latest amendments in effect at the time of awarding the type certificate, must be met. These special conditions will form an additional part of the type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Model CBA-123 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2).

Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with the new technology avionics systems. There are two regulations that specifically pertain to lightning protection: one for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning would prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it would significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are issued for the Model CBA-123 which require that the new technology electrical and electronic systems, such as the electronic flight instrument system (EFIS), attitude and heading reference system (AHRS), engine indication and crew alerting system (EICAS), and full authority digital engine control (FADEC), be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.