Ballots invalid under this subpart shall not be counted.

§ 1209.306 Referendum report.
Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1209.307 Confidential information.
The ballots and other information or reports that reveal, or tend to reveal, the identity or vote of any person covered under the Act shall be held confidential and shall not be disclosed.

Sharon Bomer Lauritsen,
Associate Deputy Administrator, Fruit and Vegetable Programs.

For the Nuclear Regulatory Commission.
Dated at Rockville, Maryland, this 16th day of December, 1997.

For the Nuclear Regulatory Commission.

For the Federal Housing Finance Board.

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the time the purchase or rehabilitation of the housing is completed?

A2. Yes.

Median Income for the Area:

Q3. How can median income standards published by the U.S. Department of Agriculture (USDA) be available for all projects in a Bank's District if USDA publishes median income standards only for rural areas?

A3. USDA income standards would be applicable only to the rural areas identified in the USDA standards. A Bank selecting this median income standard would have to select another income standard to be used in non-rural areas.

Sponsor:

Q4. Does the definition of “sponsor” include a not-for-profit organization that owns a for-profit entity that is the general partner in the partnership that owns an AHP-eligible rental project?

A4. Yes.

Advisory Councils (§ 960.4)

Terms (section 960.4(d)):

Q1. Is each Advisory Council member required to be appointed for a three-year term?

A1. Yes.

Q2. Do terms already served or which currently are being served by Advisory Council members who are in office on January 1, 1998, count toward the limit of three consecutive terms?

A2. No. Only terms that begin on or after January 1, 1998, the effective date of the revised AHP regulation, count toward the limit of three consecutive terms.

Minimum Eligibility Standards for AHP Projects (§ 960.5)

Experienced Counseling Organization (section 960.5(a)(2)(ii)):

Q1. What is a homeowner or homeowner counseling program provided by, or based on one provided by, an organization recognized as experienced in homeowner or homeowner counseling?

A1. A program such as one that is provided by a counseling organization approved by HUD or a state or local agency would qualify. Programs that are based on counseling guides such as those provided by the American Homeowners Education and Counseling Institute also would meet this requirement.

Homeownership Set-Aside Incentives (section 960.5(a)(6)):

Q2. What are financial or other incentives to a household that are required of a member that provides mortgage financing?

A2. A Bank may determine what it considers to be financial or other incentives. For example, financial incentives could include lower (or foregone) origination fees, other discounted fees, reduced interest rates, lower downpayment requirements, or reductions in other closing costs. Two examples of other non-financial incentives are using underwriting standards that are more flexible than the member's usual practice, and making loans with longer terms than the member usually makes.

Counseling Costs (§ 960.5(a)(7)):

Q3. Under what circumstances can counseling costs be paid by AHP subsidies?

A3. For the competitive application program, counseling costs may be paid with AHP subsidies if the costs are incurred in connection with counseling of homebuyers who actually purchase an AHP-assisted unit and the cost of the counseling has not been covered by another funding source, including the member.

For the homeownership set-aside program, counseling costs may be paid with AHP subsidies if the costs are incurred in connection with counseling of homebuyers who actually purchase an AHP-assisted unit; the cost of the counseling has not been covered by another funding source, including the member; and the AHP subsidies are used to pay only for the amount of such reasonable and customary costs that exceed the highest amount the member has spent annually on homeowner counseling costs within the preceding three years. A member may certify to the amount it spent, including in-house costs, over the preceding three years. If a member is not covering the cost of counseling and has not paid for counseling costs in the previous three years, AHP subsidies may be used to pay for reasonable and customary counseling costs incurred in connection with counseling of homebuyers who actually purchase an AHP-assisted unit.

Direct Subsidy Processing Fees (§ 960.5(b)(4)(iii)):

Q4. Does the prohibition on using AHP funds to pay for direct subsidy processing fees cover fees for costs incurred by a member in order to pass on the subsidy, such as legal and underwriting costs?

A4. Yes.

Member Subsidy Limits (§ 960.5(b)(10)):

Q5. A Bank may establish certain eligibility requirements for its AHP. May the limitation on the amount of AHP subsidy available per member be based on a percentage of a member’s assets or a percentage of the total available AHP funds?

A5. District eligibility requirements must apply equally to all members. A limitation based on a percentage of a member’s assets would result in larger members being eligible to compete for more AHP funds than smaller members; therefore, such a limitation would not be permitted. However, since limiting each member to no more than a certain percentage of total available AHP funds would apply equally to each member, such a limitation would be permitted.

Procedure for Approval of AHP Applications for Funding (§ 960.6)

Scheduled Funding Periods (§ 960.6(b)(1)):

Q1. If a Bank schedules one funding period per year, but is unable to allocate its entire annual AHP contribution in that period, may the Bank hold a second funding period to allocate the remaining subsidies, even if the second funding period does not have a comparable amount of funds?

A1. Yes. The concept of allocating comparable amounts in each funding period is based on the premise that a Bank schedules more than one funding period a year. If a Bank plans one funding period and an insufficient number of qualifying applications are approved in that period, a Bank may hold a second funding period to allocate the unused subsidies and that period does not have to be comparable in amount to the first period.

Nominal Price (§ 960.6(b)(4)(iv)(A)):

Q2. Regarding the conveyance of government-owned or other properties for a “nominal” price, what is a “nominal” price?

A2. A small, negligible amount, most often one dollar, is a nominal price. Modest expenses related to the conveyance of the property may also be paid.

Not-for-profit Organization/ Government Entity Sponsor Scoring Criterion (§ 960.6(b)(4)(iv)(B)):

Q3. Does the definition of “sponsor” in § 960.1 apply to the not-for-profit organization/government entity sponsor scoring criterion such that a not-for-profit organization/government entity sponsor of a rental project must have an ownership interest in the project in order for the project to get any points under that criterion?

A3. Yes.

First District Priority (§ 960.6(b)(4)(iv)(F)):

Q4. If a Bank chooses more than one criterion for which an AHP application may receive points under the First District Priority scoring category, how are points to be allocated among those criteria?
A4. If a Bank permits applications to receive points for meeting more than one criterion under the First District Priority scoring category, the Bank must split the number of points for the First District Priority among those criteria. The sum of the points allocated to each of the criteria must equal the total number of points allocated to the First District Priority. Each application must be scored according to the extent to which it meets each of the criteria. An application cannot receive more than the total number of points allocated to a particular criterion if the application meets that criterion. If an application meets all the criteria under the First District Priority, the application cannot receive more than the total number of points allocated to the First District Priority.

Subsidy-Per-Unit (§ 960.6(b)(4)(iv)(H))

Q5. Is subsidy-per-unit based on AHP-targeted units only?

A5. Yes. The project is scored based on the extent to which the project proposes to use the least amount of AHP subsidy per AHP-targeted unit. AHP-targeted units are any units that will be purchased by, or reserved for occupancy by, and affordable for, households with incomes of 80 percent or less of area median income.

Funding Alternates (§ 960.6(b)(5)(ii))

Q6. If sufficient AHP funds are recovered or repaid from previously committed AHP awards, must they be used to fund projects approved as alternates in a previous funding period?

A6. No. Recovered and repaid AHP subsidies must be returned to a Bank’s AHP fund. A Bank may, but is not required to, fund alternate projects from recovered or repaid AHP funds.

Board of Directors Approval (§ 960.6(b)(5)(iii))

Q7. May responsibility to approve or disapprove AHP applications be delegated by the board of directors of a Bank to a committee of the board?

A7. Yes. Such delegation should be done on an annual basis.

Modification of AHP Applications Prior to Project Completion (§ 960.7)

Material Change (§ 960.7(a))

Q1. For purposes of modifications to AHP applications prior to project completion, what constitutes a change in a project that “materially” affects the facts under which the project’s application was originally scored and approved for AHP funding?

A1. A change that materially affects the facts under which an AHP application was originally scored and approved is any change that has the potential for rendering the project ineligible or for changing the score that the project received in the funding period in which it was originally scored, had the changed facts been operative at that time. Examples include changes in the level of income targeting or the number of targeted units in a project.

Procedures for Funding (§ 960.8)

Direct Subsidy Changes (§ 960.8(c)(3)(ii))

Q1. When a Bank has approved a direct subsidy for an interest rate or principal writeoff (i.e., is the Bank required to reduce the amount of the direct subsidy when interest rates decrease?)

A1. Yes. The Bank must reduce the amount of AHP subsidy when interest rates have decreased from the time of the approval of the AHP application to the time of funding. However, the Bank does have the discretion to process a project modification under § 960.7 to cover additional amounts of subsidy required due to increased project costs or the loss or reduction of other funding sources. The modification could be approved by the Bank’s staff, rather than the Bank’s board of directors, if the amount of AHP subsidy required does not exceed the amount of the originally approved subsidy.

Modification of AHP Applications After Project Completion (§ 960.9)

Material Change (§ 960.9)

Q1. For purposes of modifications to AHP applications after project completion, what constitutes a change in a project that “materially” affects the facts under which the project’s application was originally scored and approved for AHP funding?

A1. A change that materially affects the facts under which an AHP application was originally scored and approved is any change that has the potential for rendering the project ineligible or for changing the score that the project received in the funding period in which it was originally scored, had the changed facts been operative at that time. Examples include changes in the level of income targeting or the number of targeted units in a project.

Financial Distress (§ 960.9(a))

Q2. May a completed project qualify for a modification if it is at risk of falling into financial distress?

A2. Yes. A project must provide sufficient information for the Bank to determine that it either is in financial distress or is at substantial risk of falling into financial distress. This section is intended to provide flexibility to modify the commitments made in the approved AHP application if those modifications will help to avert the potential financial distress. However, if a completed project needs additional AHP funds, it must compete for those additional funds.

Initial Monitoring Requirements (§ 960.10)

Verification of Reasonable and Customary Costs (§§ 960.10(c)(1)(ii) and (c)(2)(ii))

Q1. What types of documentation may a Bank rely on in order to establish that a project’s actual costs were reasonable and customary in accordance with the Bank’s project feasibility guidelines?

A1. If a project is funded by other funding sources (such as Federal Low-Income Housing Tax Credits, FHA) that require a certification upon completion of construction or rehabilitation, the Bank may rely upon that certification to make its own determination whether the costs are reasonable and customary. If a cost certification is unavailable, the Bank shall review the final statement of sources and uses of funds to determine whether the costs were reasonable and customary.

Verification of Provision of Activities and Services (§ 960.10(c)(2)(ii))

Q2. Is a site visit necessary to confirm that the services and activities committed to in an AHP rental housing application have been provided?

A2. A site visit is not necessary if the Bank has a certification and sufficient documentation to provide the Bank with reasonable assurance that the services and activities have been provided.

Long-Term Monitoring (§ 960.11)

Reasonable Sampling Plan (§ 960.11(a)(3)(iii)(C))

Q1. What would be considered a reasonable sampling plan for the selection of projects to be monitored by a Bank each year?

A1. A Bank, working with its internal auditors, may develop a sampling methodology that is designed to assure that all projects are monitored according to the schedule established in § 960.11(a)(3)(iii) of the revised AHP regulation.

Remedial Action for Noncompliance (§ 960.12)

Reasonable Collection Efforts (§ 960.12(a)(2)(ii))

Q1. What are reasonable collection efforts in the recovery of AHP subsidy by a member from the project sponsor or owner?

A1. Reasonable collection efforts will depend on the facts and circumstances of a given situation, including, but not limited to, the expected cost of recovery of the AHP subsidy and the amount of subsidy to be recovered. Reasonable...
collection efforts may involve negotiation and pursuit of legal remedies against a project sponsor or owner, in addition to the enforcement of a member’s rights under a mortgage or other lien on the project.

Use of Recovered Interest for AHP-Eligible Projects (§ 960.12(c)(1)(i)):
Q2. If AHP subsidy and interest are recovered by a Bank from a member, does the interest, as well as the AHP subsidy, have to be made available for other AHP-eligible projects under § 960.12(e)?
A2. Yes.

Other Issues
Project Completion (§ § 960.1, 960.10 and 960.11):
Q1. When is “project completion” to be determined for monitoring purposes?
A1. The date on which a certificate of occupancy is issued is one way to determine project completion. In areas that do not require certificates of occupancy, a Bank should identify in its monitoring procedures alternative ways that it will use to determine that a project is completed.

Use of AHP Funds for Otherwise Eligible Costs (§ 960.5):
Q2. May a Bank prohibit the use of AHP funds for certain types of costs that are otherwise eligible under the statute and revised AHP regulation?
A2. No.

Retention and Monitoring Requirements Applicable to Projects Approved Prior to January 1, 1998 (§ § 960.1, 960.11, and 960.16):
Q3. What are the retention and monitoring periods for projects approved prior to January 1, 1998?
A3. The retention and monitoring periods for projects approved prior to January 1, 1998, are 5 years from project completion for owner-occupied housing and 15 years from project completion for rental housing.

William W. Ginsberg,
Managing Director.
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