

agency records. 5 U.S.C. 552(a)(4)(i). On March 15, 1991 the Board published for comment in the **Federal Register** its proposed FOIA Fee Schedule. 56 FR 11114. No comments were received in response to that notice and the Board issued a final Fee Schedule on May 6, 1991.

Pursuant to 10 CFR 1703.107(b)(6) of the Board's regulations, the Board's General Manager will update the Fee Schedule once ever 12 months. Previous Fee Schedule updates were published in the **Federal Register** and went into effect, most recently, on June 1, 1997. 62 FR 30432, June 4, 1997.

Board Action

Accordingly, the Board issues the following schedule of updated fees for services performed in response to FOIA requests:

Defense Nuclear Facilities Safety Board Schedule of Fees for FOIA Services (Implementing 10 CFR § 1703.107(b)(6))

Search or Review Charge: \$52 per hour

Copy Charge (paper): \$.05 per page, if done in-house, or generally available commercial rate (approximately \$.10 per page)

Copy Charge (3.5" diskette): \$5.00 per diskette

Copy Charge (audio cassette): \$3.00 per cassette

Duplication of Video: \$25.00 for each individual videotape; \$16.50 for each additional individual videotape

Copy Charge for large documents (e.g., maps, diagrams): Actual commercial rates

Dated: May 31, 1998.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 98-13345 Filed 5-19-98; 8:45 am]

BILLING CODE 3670-01-M

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 960

[No. 98-18]

RIN 3069-AA73

Amendment of Affordable Housing Program Regulation

AGENCY: Federal Housing Finance Board.

ACTION: Interim final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulation governing the operation of the Affordable Housing Program (AHP

or Program) to make certain technical revisions to the regulation that would clarify Program requirements and improve the operation of the AHP.

EFFECTIVE DATE: The interim final rule shall be effective on June 19, 1998. The Finance Board will accept written comments on this interim final rule on or before July 20, 1998.

ADDRESSES: Mail comments to Elaine L. Baker, Secretary to the Board, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT:

Richard Tucker, Deputy Director, Compliance Assistance Division, Office of Policy, (202) 408-2848, or Sharon B. Like, Senior Attorney-Advisor, (202) 408-2930, or Roy S. Turner, Attorney-Advisor, (202) 408-2512, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 10(j)(1) of the Federal Home Loan Bank Act (Act) requires each Federal Home Loan Bank (Bank) to establish a Program to subsidize the interest rate on advances to members of the Federal Home Loan Bank System (Bank System) engaged in lending for long-term, low- and moderate-income, owner-occupied and affordable rental housing at subsidized interest rates. See 12 U.S.C. 1430(j)(1). The Finance Board is required to promulgate regulations governing the Program. See *id.* The Finance Board's existing regulation governing the operation of the Program is set forth in part 960 of the Finance Board's regulations (AHP regulation). See 12 CFR part 960.

On August 4, 1997, the Finance Board published a final rule adopting comprehensive revisions to the AHP regulation, which, among other changes, authorized the 12 Banks, rather than the Finance Board, to approve applications for AHP subsidies beginning January 1, 1998. See 62 FR 41812 (Aug. 4, 1997).

In the course of implementing the changes to the Program under the recent revisions to the AHP regulation, the Banks and Finance Board staff have identified a number of technical issues whose resolution would clarify Program requirements and improve the effectiveness of the Program. The Finance Board previously published a list of Questions and Answers prepared by Finance Board staff in order to provide guidance on some of these issues. See 62 FR 66977 (Dec. 23, 1997).

This interim final rule codifies portions of the Finance Board staff guidance contained in the Questions and Answers and addresses additional technical issues that have arisen in the course of implementing the 1997 revisions to the AHP regulation. Although the interim final rule will become effective 30 days after publication in the **Federal Register**, the Finance Board requests comment on all aspects of the rule during a 60-day comment period.

II. Analysis of Interim Final Rule

A. Definitions—Section 960.1

1. Definition of "Affordable"

Under § 960.5(b)(1) of the current AHP regulation, in order for rental housing to be eligible to be financed by an AHP subsidy, at least 20 percent of the units must be occupied by and affordable for very low-income households. See 12 CFR 960.1, 960.5(b)(1). Section 960.1 of the current AHP regulation provides that "affordable" means that "the rent charged to a household for a unit that is committed to be affordable in an AHP application does not exceed 30 percent of the income of a household of the maximum income and size expected, under the commitment made in the AHP application, to occupy the unit (assuming occupancy of 1.5 persons per bedroom or 1.0 person per unit without a separate bedroom)." See *id.* § 960.1 This definition is intended to make clear that the 30 percent-of-income limitation on rent applies to all units in a project which, according to the commitments made in the AHP application, are to be reserved for occupancy by households with incomes at or below 80 percent of the median income for the area. However, subsequent to the adoption of the definition, questions have arisen as to which units in a rental project are subject to the 30 percent-of-income limitation. The revised definition of "affordable" is intended to clarify this issue. The interim final rule defines "affordable" to mean that "the rent charged for a unit which is to be reserved for occupancy by a household with an income at or below 80 percent of the median income for the area, does not exceed 30 percent of the income of a household of the maximum income and size expected, under the commitment made in the AHP application, to occupy the unit (assuming occupancy of 1.5 persons per bedroom or 1.0 person per unit without a separate bedroom)."

2. Definitions of "Low- or Moderate-Income Household" and "Very Low-Income Household" for Housing With Current Occupants

Under § 960.1 of the current AHP regulation, in the case of projects involving the purchase or rehabilitation of occupied rental housing, a household occupying such housing is deemed to be a "very low-income household" if, at the time the purchase or rehabilitation of the housing is completed, the household has an income at or below 50 percent of the median income for the area. *See id.* This provision may make it difficult for the sponsor of such a project to commit to reserve a specific proportion of units for very low-income households because of the uncertainty as to how many of the current occupants will qualify as very low-income households at some future date when the project purchase or rehabilitation is completed. Consequently, the interim final rule provides that current occupants will be deemed to be very low-income households if they have incomes at or below 50 percent of the median income for the area at the time the application for AHP subsidy is submitted to the Bank. The interim final rule makes a parallel change to the definition of "low- or moderate-income household" in § 960.1 of the current AHP regulation.

3. Definition of "Owner-Occupied Unit" as Including Two-to-Four Family Housing

Section 960.1 of the current AHP regulation defines "owner-occupied unit" as a unit in an "owner-occupied project," which is defined as a project involving the purchase, construction, or rehabilitation of owner-occupied housing, including condominiums and cooperative housing, by or for very low- or low- or moderate-income households. *See id.* § 960.1. The interim final clarifies that two-to-four family owner-occupied housing consisting of one owner-occupied unit and one or more rental units constitutes a single owner-occupied unit for purposes of the AHP. The income eligibility and affordability requirements of the AHP regulation do not apply to the rental units in two-to-four family housing.

4. Definition of "Rental Project" as Including Overnight Shelters for Homeless Households

Under § 960.1 of the current AHP regulation, a "rental project" is defined to include "transitional housing for homeless households." *See id.* The interim final rule clarifies that overnight shelters for homeless households also

are considered rental housing under the AHP.

B. Terms of Advisory Council Members—Section 960.4(d)

Section 960.4(d) of the current AHP regulation provides that a Bank's board of directors shall appoint Advisory Council members to serve for no more than three consecutive terms of three years each, and such terms shall be staggered to provide continuity in experience and service to the Advisory Council. *See id.* § 960.4(d). The interim final rule restates this requirement to make clear that, as intended by the current AHP regulation, an Advisory Council member's individual term must be three years. The interim final rule also adds language to clarify that an Advisory Council member appointed to fill a vacancy shall be appointed for the unexpired term of his or her predecessor in office and that appointments for the unexpired term of a predecessor shall not count toward the three-term limit.

C. Minimum Eligibility Standards For AHP Projects—Section 960.5

1. Fair Housing Compliance—§ 960.5(b)(9)

Section 960.5(b)(9) of the interim final rule clarifies the requirement in the current AHP regulation that projects, as proposed, must comply with applicable fair housing law requirements and demonstrate how the project will be affirmatively marketed in order to be eligible to receive AHP funds. *See id.* § 960.5(b)(9). The interim final rule is intended to clarify that compliance with any applicable fair housing laws includes compliance with applicable federal and state laws on housing accessibility for the disabled, as well as affirmative marketing requirements under the Fair Housing Act, as they relate to disabled persons.

There are a number of federal and state fair housing laws relating to persons with disabilities that may apply to AHP projects, depending upon: the type of housing or housing design (single-family, multifamily, homeless shelters, buildings with or without elevators, or mixed use buildings); whether the project involves acquisition, rehabilitation or new construction; and whether the project involves federal or state funds. Given the number of different laws governing fair housing and accessibility requirements for the disabled, it is recommended that the appropriate enforcing agencies be consulted for clarification on any specific issue relating to compliance.

2. District Eligibility Requirements—Section 960.5(b)(10)

Section 960.5(b)(10)(i) of the current AHP regulation authorizes a Bank, after consultation with its Advisory Council, to establish one or more of the following additional eligibility requirements for AHP applications: (1) A requirement that the amount of subsidy requested for the project does not exceed limits established by the Bank as to the maximum amount of AHP subsidy available per member each year; or per member, per project, or per project unit in a single funding period; (2) a requirement that the project is located in the Bank's District; or (3) a requirement that the member submitting the application has made use of a credit product offered by the Bank, other than AHP or Community Investment Program (CIP) credit products, within the previous 12 months. *See id.*

§ 960.5(b)(10)(i). Section 960.5(b)(10)(ii) further provides that District eligibility requirements must apply equally to all members. *See id.* § 960.5(b)(10)(ii).

Several of the Banks would like to have the option to make the use of a minimum amount of Bank credit products a prerequisite for applying for large amounts of AHP subsidy. Under § 960.5(b)(10)(i)(C) of the current AHP regulation, which authorizes the Banks to condition the availability of AHP subsidy upon a member's use of "a" credit product, this option is not now available. *See id.* § 960.5(b)(10)(i)(C). Further, these Banks have proposed that the required level of credit product usage be linked to a member's asset size. For example, a Bank proposes to allow all members to have access to up to \$50,000 of AHP subsidy per year, but require members wishing to apply for more than \$50,000 to have outstanding average daily balances of Bank credit products in an amount equal to at least 1.5 percent of the member's total assets. In support of this kind of requirement, the Banks have argued that because AHP subsidies are derived from a Bank's earnings, fairness requires that availability of subsidies be linked to the extent to which a member contributes to the Bank's earnings through the purchase of other Bank credit products. These Banks argue that a member's use of a single Bank credit product does not make a meaningful contribution to Bank earnings.

Accordingly, the interim final rule revises the language of § 960.5(b)(10)(i)(C) of the current AHP regulation to permit a Bank to establish a requirement that a member submitting an AHP application has made use of a minimum amount of a credit product

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

Section 960.5(b)(10)(ii) of the current AHP regulation provides that "District eligibility requirements must apply equally to all members." See *id.* § 960.5(b)(10)(ii). The interim final rule revises this language to clarify that "[a]ny limit on the amount of AHP subsidy available per member must result in equal amounts of AHP subsidy available to all members." This requirement is intended to ensure that such limits are not structured or applied in a discriminatory manner.

D. Procedure for Approval of Applications for Funding—Section 960.6

1. Instructions for the Competitive Scoring Process—Section 960.6(b)(4)(ii) and (iii)

The interim final rule adds specific references to the targeting and subsidy-per-unit scoring criteria to clarify the cross references in §§ 960.6(b)(4)(ii) and (iii) of the current AHP regulation. See *id.* §§ 960.6(b)(4)(ii), (iii).

2. Scoring Criterion on Use of Donated Government-Owned or Other Properties—Section 960.6(b)(4)(iv)(A)

Under § 960.6(b)(4)(iv)(A) of the current AHP regulation, an application may receive points if it involves the creation of housing using a significant proportion of units or land donated or conveyed for a nominal price by the federal government or any agency or instrumentality thereof, or by any other party. See *id.* § 960.6(b)(4)(iv)(A). Questions have arisen as to what should be considered a "nominal price." The interim final rule adds language to § 960.6(b)(4)(iv)(A) clarifying that a nominal price is a small, negligible amount, most often one dollar, and may be accompanied by modest expenses related to the conveyance of the property.

3. Targeting Score for Owner-Occupied Projects—Section 960.6(b)(4)(iv)(C)(2)

The first sentence of § 960.6(b)(4)(iv)(C)(2) of the current AHP regulation provides that applications for owner-occupied projects shall be awarded points based on the percentage of units in the project

to be provided to households with incomes at or below 80 percent of the median income for the area. See *id.* § 960.6(b)(4)(iv)(C)(2). The wording of this sentence creates the erroneous implication that an AHP owner-occupied project may contain one or more units for households with incomes above 80 percent of the median income for the area. Under the Act, AHP subsidies may be used only to finance owner-occupied housing for households with incomes at or below 80 percent of the median income for the area. See 12 U.S.C. 1430(j)(2)(A). Consequently, the interim final rule deletes the first sentence of § 960.6(b)(4)(iv)(C)(2) of the current AHP regulation. Applications for owner-occupied projects shall be awarded points based on a declining scale, with projects having the highest percentage of units targeted to households with the lowest percentage of median income for the area awarded the highest number of points.

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

Under § 960.6(b)(4)(iv)(D) of the current AHP regulation, an application may receive points if it involves "[t]he creation of transitional housing, excluding overnight shelters, for homeless households permitting a minimum of six months occupancy, or the creation of rental housing reserving at least 20 percent of the units for homeless households." *Id.* § 960.6(b)(4)(iv)(D). The interim final rule restates this provision in order to clarify the language. No substantive change is intended. The revised language omits the express exclusion of overnight shelters contained in the current language, because it is clear that overnight shelters do not come within the category of housing permitting a minimum of six months occupancy.

5. Scoring Criterion for Economic Diversity—Section 960.6(b)(4)(iv)(F)(8)

Under § 960.6(b)(4)(iv)(F)(8) of the current AHP regulation, applications for AHP subsidy may receive points for meeting the "Economic Diversity" scoring criterion if they involve the creation of housing that either: (1) is part of a strategy to end isolation of very low-income households by providing economic diversity through mixed-income housing in low- or moderate-income neighborhoods, or (2) provides very low- or low- or moderate-income households with housing opportunities in areas where the median household income exceeds 80 percent of the median income for the area. *Id.* § 960.6(b)(4)(iv)(F)(8).

One of the Banks has pointed out an ambiguity in the second alternative described above, which makes that alternative unworkable. Specifically, assuming the word "area" refers to the same area each time it appears in the following phrase, it will always be the case that a project provides "housing opportunities in areas where the median household income exceeds 80 percent of the median income for the area," because the median income for an area, by definition, always exceeds 80 percent of the median income for that area.

The general intent of the second alternative requirement in the "Economic Diversity" criterion is to promote housing opportunities for very low- and low- or moderate-income households in areas that are wealthier relative to the surrounding areas. Therefore, the interim final rule revises the second alternative to provide that applications may receive points for "Economic Diversity" if they involve the creation of housing that provides very low- or low- or moderate-income households with housing opportunities in neighborhoods or cities where the median income exceeds the median income for the larger area—such as the city, county, or Primary Metropolitan Statistical Area—in which the neighborhood or city is located.

6. Scoring Criterion for Community Involvement—Section 960.6(b)(4)(iv)(F)(10)

Under § 960.6(b)(4)(iv)(F)(10) of the current AHP regulation, an application for AHP subsidy may receive points for meeting the "Community Involvement" scoring criterion if it shows demonstrated support for the AHP project by local government, community organizations, or individuals, other than as project sponsors, through the commitment by such entities or individuals of donated goods and services, or volunteer labor. *Id.* § 960.6(b)(4)(iv)(F)(10). Several of the Banks have requested clarification of what constitutes a donated good or service from a local government. For example, local governments may provide support to housing projects in the form of property tax deferral or abatement, zoning changes or variances, infrastructure improvements, or fee waivers. Each of these forms of local government initiatives constitutes the kind of non-cash support for the project that merits scoring credit under the "Community Involvement" criterion. Therefore, the interim final rule specifies that these items and any similar types of non-cash support for a project by local government are to be

considered under the "Community Involvement" criterion.

E. Modifications of Applications—Sections 960.7 and 960.9

Sections 960.7 and 960.9 of the current AHP regulation govern modifications to approved AHP applications prior to and subsequent to project completion, respectively. *See id.* §§ 960.7, 960.9. Each of these sections provides that as a threshold requirement for the approval of a modification, it must be shown that "there is or will be a change in the project that materially affects the facts under which the application was originally scored and approved under the Bank's competitive application program * * * ." *See id.* §§ 960.7(a), 960.9. A number of the Banks have requested clarification of what constitutes a "material change" affecting the facts under which the application was originally scored and approved. Accordingly, the interim final rule revises §§ 960.7 and 960.9 of the current AHP regulation by replacing the "material change" requirement with language clarifying that a modification is triggered where there is or will be a change to a project that would change the score that the project application received in the funding period in which it was originally scored and approved, had the changed facts been operative at that time.

F. Use of Repaid Subsidies—Section 960.12(e)

Under §§ 960.12(a) and (b) of the current AHP regulation, which set forth the requirements for the recovery of AHP subsidy in cases of noncompliance with AHP requirements, interest on AHP subsidies must be recovered, where appropriate. *See id.* § 960.12(a), (b). Section 960.12(e) of the current AHP regulation provides that amounts repaid to a Bank as a result of noncompliance with AHP requirements shall be made available for other AHP-eligible projects. *See id.* § 960.12(e). The interim final rule clarifies that any recovered interest on such amounts also must be made available for other AHP-eligible projects.

G. Agreements—Section 960.13

1. Retention Agreements for Owner-Occupied Units Constructed or Rehabilitated With AHP-Assisted Financing—Sections 960.13(c)(4) and (d)(1)

Section 960.13(c)(4) of the current AHP regulation sets forth the required elements for retention agreements for AHP-assisted owner-occupied units financed by a loan from the proceeds of a subsidized advance. *See id.*

§ 960.13(c)(4). Specifically, it requires such units to be subject to a deed restriction or other legally enforceable retention agreement or mechanism requiring that: (1) the Bank or its designee is to be given notice of any sale or refinancing of the unit occurring prior to the end of the retention period; and (2) in the case of a refinancing prior to the end of the retention period, the full amount of the interest rate subsidy received by the owner, based on the pro rata portion of the interest rate subsidy imputed to the subsidized advance during the period the owner occupied the unit prior to refinancing, shall be repaid to the Bank from any net gain realized upon the refinancing, unless the unit continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism for the remainder of the 5-year retention period. *See id.*

The retention agreement described in § 960.13(c)(4) is intended to be used in situations where a member uses the proceeds of a subsidized advance to provide permanent financing for the purchase of individual units. Because each permanent loan is funded by a subsidized advance, the permanent loan incorporates some level of interest rate subsidy that the household purchasing a unit benefits from during the term of the loan. Thus, there is a direct link between the subsidized advance and the permanent financing for the unit.

Section 960.13(c)(4) does not address the situation where a member uses a subsidized advance to finance a loan to a housing developer to build or rehabilitate owner-occupied units, which then are purchased by households with permanent financing from another source. In this situation, the purchaser essentially receives a pro rata portion of the interest rate subsidy in the construction or rehabilitation loan in the form of a lump-sum reduction in the purchase price resulting from the subsidized financing. The amount of the reduction in the purchase price can be determined by spreading the total value of the AHP subsidy across all the units financed by the construction or rehabilitation loan, and apportioning the subsidy on a pro rata basis based upon the relative prices of the units. In effect, the units are financed with AHP subsidy in a similar manner to units purchased by homebuyers who receive a direct subsidy in the form of downpayment assistance.

Under § 960.13(d)(1) of the current AHP regulation, where a purchaser uses a direct subsidy in the form of downpayment assistance to purchase a unit, the unit must be subject to a deed

restriction or other legally enforceable retention agreement or mechanism requiring that: (1) The Bank or its designee is to be given notice of any sale or refinancing of the unit occurring prior to the end of the retention period; (2) in the case of a sale prior to the end of the retention period, an amount equal to a pro rata share of the direct subsidy, reduced for every year the seller owned the unit, shall be repaid to the Bank from any net gain realized upon the sale of the unit after deduction for sales expenses, unless the purchaser is a low- or moderate-income household; and (3) in the case of a refinancing prior to the end of the retention period, an amount equal to a pro rata share of the direct subsidy, reduced for every year the occupying household has owned the unit, shall be repaid to the Bank from any net gain realized upon the refinancing, unless the unit continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism for the remainder of the retention period. *See id.* § 960.13(d)(1).

In sum, the AHP interest rate subsidy in a construction or rehabilitation loan can be viewed as the functional equivalent of a lump-sum reduction in the ultimate purchase prices of all the units financed by such loan. This is similar to the situation where units are purchased by homebuyers who receive a direct subsidy in the form of downpayment assistance. Therefore, the Finance Board proposes to add a new paragraph (c)(4)(ii) to § 960.13(c)(4) of the current AHP regulation requiring owner-occupied units financed by AHP-subsidized construction or rehabilitation loans to be subject to retention agreements similar to those required by § 960.13(d)(1) for owner-occupied units financed by a direct subsidy.

The interim final rule also revises the language of § 960.13(d)(1) to address situations parallel to those discussed above, but which involve an AHP direct subsidy. For example, in some situations, a housing developer may receive the proceeds of a direct subsidy to finance the construction or rehabilitation of owner-occupied units, which then are purchased by households with permanent financing from another source. As in the case where such units are constructed or rehabilitated with an AHP-subsidized loan, the purchasers of the units essentially receive a pro rata portion of the direct subsidy used to finance the construction or rehabilitation of the units, in the form of a lump-sum reduction in the units' purchase price. The interim final rule is intended to make clear that, although the purchasers

of the units do not directly receive the proceeds of the direct subsidy, the units must be subject to AHP retention/recapture mechanisms.

2. Termination of AHP Income-Eligibility and Affordability Restrictions After Foreclosure—Sections 960.13(c)(5)(iv) and (d)(2)(iv)

Under §§ 960.13(c)(5)(iv) and (d)(2)(iv) of the current AHP regulation, a retention agreement for an AHP rental project must incorporate a provision providing that the income-eligibility and affordability restrictions applicable to the project may terminate upon foreclosure or transfer in lieu of foreclosure. See id. §§ 960.13(c)(5)(iv), (d)(2)(iv). The purpose of this provision is to ensure that in cases where an AHP project goes into foreclosure, the AHP income-eligibility and affordability restrictions do not impede transfer of the project after foreclosure. As currently worded, §§ 960.13(c)(5)(iv) and (d)(2)(iv) could be read mistakenly to mean that upon the initiation of foreclosure, AHP income-eligibility and affordability restrictions automatically terminate. This is not the intended meaning of these provisions. Rather, the Finance Board intends that AHP income-eligibility and affordability restrictions incorporated in any lien on a project will be extinguished in the foreclosure process in connection with the repayment, if any, of AHP subsidy. Similarly, the Finance Board intends that any deed restriction on the project incorporating AHP income-eligibility and affordability requirements will be extinguished after foreclosure. Consequently, the interim final rule replaces the word "upon" in §§ 960.13(c)(5)(iv) and (d)(2)(iv) of the current AHP regulation with "after," so that the regulation provides for the termination of AHP income-eligibility and affordability restrictions after foreclosure.

In addition, the interim final rule deletes the reference to transfers in lieu of foreclosure, because transfers in lieu of foreclosure do not extinguish liens on the property transferred other than the lien of the transferee. Consequently, when an AHP project is transferred in lieu of foreclosure, the transferee must foreclose on the project to remove any remaining AHP lien and the income-eligibility and affordability restrictions incorporated in the lien. After such foreclosure, §§ 960.13(c)(5)(iv) and (d)(2)(iv) provide for the termination of the AHP income-eligibility and affordability restrictions. The interim final rule adds similar language to the provisions of the AHP regulation governing retention agreements for

AHP-assisted owner-occupied projects. See id. §§ 960.13(c)(4), (d)(1).

III. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this regulation, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply.

List of Subjects in 12 CFR Part 960

Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements. Accordingly, the Finance Board hereby amends title 12, chapter IX, part 960, Code of Federal Regulations, as follows.

PART 960—AFFORDABLE HOUSING PROGRAM

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

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

2. Amend § 960.1, by revising the definitions of "Affordable", "Low-or moderate-income household" paragraph (2)(ii), "Owner-occupied unit", "Rental project", and "Very low-income household" paragraph (2)(ii) to read as follows:

§ 960.1 Definitions.

Affordable means that the rent charged for a unit which is to be reserved for occupancy by a household with an income at or below 80 percent of the median income for the area, does not exceed 30 percent of the income of a household of the maximum income and size expected, under the commitment made in the AHP application, to occupy the unit (assuming occupancy of 1.5 persons per bedroom or 1.0 person per unit without a separate bedroom).

Low- or moderate-income household.

(2) (i) Housing with current occupants.

In the case of projects involving the purchase or rehabilitation of rental housing with current occupants, low- or moderate-income household means an occupying household with an income at or below 80 percent of the median income for the area at the time an application for AHP subsidy is submitted to the Bank.

Owner-occupied unit means a unit in an owner-occupied project. Housing with two to four dwelling units consisting of one owner-occupied unit and one or more rental units shall be considered a single owner-occupied unit.

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

Very low-income household.

(2) (ii) Housing with current occupants.

In the case of projects involving the purchase or rehabilitation of rental housing with current occupants, very low-income household means an occupying household with an income at or below 50 percent of the median income for the area at the time an application for AHP subsidy is submitted to the Bank.

3. Section 960.4 is amended by revising paragraph (d) to read as follows:

§ 960.4 Advisory Councils.

(d) Terms of Advisory Council members. Advisory Council members shall be appointed by the Bank's board of directors to serve for terms of three years, and such terms shall be staggered to provide continuity in experience and service to the Advisory Council. An Advisory Council member appointed to fill a vacancy shall be appointed for the unexpired term of his or her predecessor in office. No Advisory Council member may be appointed to serve for more than three consecutive terms. Appointments for the unexpired term of a predecessor shall not count toward the three-term limit.

4. Section 960.5 is amended by revising paragraphs (b)(9), (b)(10)(i)(C), and (b)(10)(ii) to read as follows:

§ 960.5 Minimum eligibility standards for AHP projects.

(9) Fair housing. The project, as proposed, must comply with applicable federal and state laws on fair housing and housing accessibility, including, but not limited to, the Fair Housing Act, the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Architectural Barriers Act of 1969, and must demonstrate how the project will be affirmatively marketed.

(10) District eligibility requirements. (i) (C) A requirement that the member submitting the application has made use of a minimum amount of a credit

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

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

5. Section 960.6 is amended by revising the second sentence of paragraph (b)(4)(ii), the fourth sentence of paragraph (b)(4)(iii), and paragraphs (b)(4)(iv)(A), (b)(4)(iv)(C)(2), (b)(4)(iv)(D), (b)(4)(iv)(F)(8), and (b)(4)(iv)(F)(10) to read as follows:

§ 960.6 Procedure for approval of applications for funding.

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(b) * * *
(4) * * *

(ii) *Point allocations.* * * * The scoring criterion for targeting identified in paragraph (b)(4)(iv)(C) of this section shall be allocated at least 20 points.
* * *

(iii) *Satisfaction of scoring criteria.* * * * A Bank shall designate the targeting and subsidy-per-unit scoring criteria identified in paragraphs (b)(4)(iv)(C) and (H), respectively, of this section as variable-point criteria. * * *
(iv) * * *

(A) *Use of donated government-owned or other properties.* The creation of housing using a significant proportion of units or land donated or conveyed for a nominal price by the federal government or any agency or instrumentality thereof, or by any other party. For purposes of this paragraph, a nominal price is a small, negligible amount, most often one dollar, and may be accompanied by modest expenses related to the conveyance of the property for use by the project.
* * * * *

(C) * * *

(2) *Owner-occupied projects.* Applications for owner-occupied projects shall be awarded points based on a declining scale, with projects having the highest percentage of units targeted to households with the lowest percentage of median income for the area awarded the highest number of points.
* * * * *

(D) *Housing for homeless households.* The creation of rental housing reserving at least 20 percent of the units for homeless households, or the creation of

transitional housing for homeless households permitting a minimum of six months occupancy.

* * * * *

(F) * * *

(8) *Economic diversity.* The creation of housing that is part of a strategy to end isolation of very low-income households by providing economic diversity through mixed-income housing in low- or moderate-income neighborhoods, or providing very low- or low- or moderate-income households with housing opportunities in neighborhoods or cities where the median income exceeds the median income for the larger surrounding area—such as the city, county, or Primary Metropolitan Statistical Area—in which the neighborhood or city is located;
* * * * *

(10) *Community involvement.*

Demonstrated support for the project by local government, other than as a project sponsor, in the form of property tax deferment or abatement, zoning changes or variances, infrastructure improvements, fee waivers, or other similar forms of non-cash assistance, or demonstrated support for the project by community organizations or individuals, other than as project sponsors, through the commitment by such entities or individuals of donated goods and services, or volunteer labor;
* * * * *

6. Section 960.7 is amended by revising paragraph (a) to read as follows:

§ 960.7 Modifications of applications prior to project completion.

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

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

§ 960.9 Modifications of applications after project completion.

Modification procedure. If, after final disbursement of funds to a project from all funding sources, there is or will be a change in the project that would change the score that the project application received in the funding period in which it was originally scored and approved, had the changed facts

been operative at that time, a Bank, in its discretion, may approve in writing a modification to the terms of the approved application, provided that:
* * * * *

8. Section 960.12 is amended by revising paragraph (e) to read as follows:

§ 960.12 Remedial actions for noncompliance.

* * * * *

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

9. Section 960.13 is amended by revising paragraphs (c)(4), (c)(5)(iv), (d)(1), and (d)(2)(iv) to read as follows:

§ 960.13 Agreements.

* * * * *

(c) * * *

(4) *Retention agreements for owner-occupied units.* (i) *Units with AHP-assisted permanent financing.* The member shall ensure that an owner-occupied unit with permanent financing obtained from the proceeds of a subsidized advance is subject to a deed restriction or other legally enforceable retention agreement or mechanism requiring that:

(A) The Bank or its designee is to be given notice of any sale or refinancing of the unit occurring prior to the end of the retention period;

(B) In the case of a refinancing prior to the end of the retention period, the full amount of the interest rate subsidy received by the owner, based on the pro rata portion of the interest rate subsidy imputed to the subsidized advance during the period the owner occupied the unit prior to refinancing, shall be repaid to the Bank from any net gain realized upon the refinancing, unless the unit continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism described in this paragraph (c)(4)(i); and

(C) The obligation to repay AHP subsidy to the Bank shall terminate after any foreclosure.

(ii) *Units constructed or rehabilitated with AHP-assisted financing.* The member shall ensure that an owner-occupied unit constructed or rehabilitated with a loan from the proceeds of a subsidized advance but which does not have permanent financing from the proceeds of a subsidized advance, is subject to a deed restriction or other legally enforceable retention agreement or mechanism requiring that:

(A) The Bank or its designee is to be given notice of any sale or refinancing of the unit occurring prior to the end of the retention period;

(B) In the case of a sale prior to the end of the retention period, an amount equal to the pro rata portion of the interest rate subsidy imputed to the subsidized advance that financed the construction or rehabilitation loan for the unit, reduced for every year the seller owned the unit, shall be repaid to the Bank from any net gain realized upon the sale of the unit after deduction for sales expenses, unless the purchaser is a low- or moderate-income household;

(C) In the case of a refinancing prior to the end of the retention period, an amount equal to the pro rata portion of the interest rate subsidy imputed to the subsidized advance that financed the construction or rehabilitation loan for the unit, reduced for every year the owner occupied the unit, shall be repaid to the Bank from any net gain realized upon the refinancing, unless the unit continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism described in this paragraph (c)(4)(ii); and

(D) The obligation to repay AHP subsidy to the Bank shall terminate after any foreclosure.

(5) * * *

(iv) The income-eligibility and affordability restrictions applicable to the project terminate after any foreclosure.

* * * * *

(d) *Special provisions where members obtain direct subsidies.* (1) *Retention agreements for owner-occupied units.* The member shall ensure that an owner-occupied unit that is purchased, constructed, or rehabilitated with the proceeds of a direct subsidy is subject to a deed restriction or other legally enforceable retention agreement or mechanism requiring that:

(i) The Bank or its designee is to be given notice of any sale or refinancing of the unit occurring prior to the end of the retention period;

(ii) In the case of a sale prior to the end of the retention period, an amount equal to a pro rata share of the direct subsidy that financed the purchase, construction, or rehabilitation of the unit, reduced for every year the seller owned the unit, shall be repaid to the Bank from any net gain realized upon the sale of the unit after deduction for sales expenses, unless the purchaser is a low- or moderate-income household;

(iii) In the case of a refinancing prior to the end of the retention period, an

amount equal to a pro rata share of the direct subsidy that financed the purchase, construction, or rehabilitation of the unit, reduced for every year the occupying household has owned the unit, shall be repaid to the Bank from any net gain realized upon the refinancing, unless the unit continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism described in this paragraph (d)(1); and

(iv) The obligation to repay AHP subsidy to the Bank shall terminate after any foreclosure.

(2) * * *

(iv) The income-eligibility and affordability restrictions applicable to the project terminate after any foreclosure.

* * * * *

Dated: April 22, 1998.

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

Bruce A. Morrison,
Chairman.

[FR Doc. 98-13428 Filed 5-19-98; 8:45 am]

BILLING CODE 6725-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-13-AD; Amendment 39-10535; AD 98-11-08]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A300, A310, and A300-600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300, A310, and A300-600 series airplanes, that requires replacement of the non-return valves located in the engine fuel feed lines on the outer fuel tank with new return valves; and, for certain airplanes, replacement of the inner tank booster pump canisters with modified canisters. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent sticking of non-return valves located in the fuel system, which could result in an internal fuel transfer from the center tank to the inner or outer tank. Such a transfer of fuel could lead to fuel spillage overboard

through the vent system, and consequent insufficient fuel for the airplane to reach its flight destination.

DATES: Effective June 24, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 24, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Norman B. Martenson, Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2110; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300, A310, and A300-600 series airplanes was published in the **Federal Register** on March 27, 1998 (63 FR 14849). That action proposed to require replacement of the non-return valves located in the engine fuel feed lines on the outer fuel tank with new return valves; and, for certain airplanes, replacement of the inner tank booster pump canisters with modified canisters.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 103 Model A300, A310, and A300-600 series airplanes of U.S. registry will be affected by this AD.

The FAA estimates that the required replacement of the non-return valves will take approximately 66 work hours