



REGULATORY INTERPRETATION 1999-RI-05

Date: February 25, 1999

Subject: Affordable Housing Program Questions and Answers Part 2

Summary:

Attached are Questions and Answers (Q&A) on the amended Affordable Housing Program (AHP) regulation. This Q&A is a continuation of the AHP Q&A provided to the Federal Home Loan Banks (FHLBanks) in December 1997. The questions reflect additional issues raised since then in Federal Housing Finance Board (Finance Board) training sessions as well as in numerous telephone inquiries. This document represents an interpretation of the amended AHP regulation by Finance Board staff who will continue to use the Q&A format periodically to provide guidance on the regulation.

Attachment

This is a Finance Board regulatory interpretation within the meaning of the Procedures for Requests and Applications adopted by the Board of Directors of the Finance Board pursuant to Resolution Number 98-51, dated October 28, 1998. The regulatory guidance set forth herein may be relied upon subject to modification or rescission by action of the Board of Directors of the Finance Board.



QUESTIONS AND ANSWERS ON THE REVISED AFFORDABLE HOUSING PROGRAM: PART 2

This compilation of Questions and Answers Part 2 is a continuation of the *Questions and Answers* published by the Federal Housing Finance Board in the *Federal Register* on December 23, 1997 (62 Fed. Reg. 66977-980). The numbering is consecutive with that of the earlier Questions and Answers.

DEFINITIONS (Section 960.1)

- Q5. May an AHP-assisted owner-occupied unit be subject to an AHP retention period of longer than five years?**
- A5. No. Under the AHP regulation, the "retention period" for AHP-assisted owner-occupied units is five years from the closing on the sale of the unit to the purchaser. Repayment of a *pro rata* portion of the AHP subsidy is required if the unit is sold to an ineligible purchaser within the five-year period or the owner refinances the unit and removes the retention agreement. Once the five-year period has expired, the owner's obligation to repay any part of the AHP subsidy ends, and a retention agreement may not extend this obligation for a longer period. This does not preclude the unit from being subject to retention agreements for the benefit of other project funders that require longer retention periods for the use of their funds. (See Question 9 in section 960.13 "Agreements.") (960.1)
- Q6. May a Bank use the Mortgage Revenue Bond (MRB) median income standard to determine household income eligibility for projects approved prior to the effective date of the revised AHP regulation (January 1, 1998) but not yet fully funded?**
- A6. Yes. The MRB income standard may be applied to projects approved before January 1, 1998, that are not fully funded, under both the competitive application and homeownership set-aside programs, provided the MRB median income standard is specified in the Bank's current AHP Implementation Plan and will apply to all owner-occupied projects with undisbursed funds. (960.1, 960.3(b)(1)(i), 960.16)
- Q7. In establishing income limits based on the MRB median income standard, may a Bank use the statistics (raw numbers) published by the Internal Revenue Service (IRS) for each state instead of the lists of incomes provided by the states for their MRB programs?**
- A7. No. If a Bank chooses to use the applicable median family income under the MRB program as the standard for determining the "median income for the area" under the AHP, then the Bank must use figures for the applicable median family income for non-targeted areas published by a state agency or instrumentality, not raw figures published by the IRS. (960.1)

- Q8. May a Bank use the median income standard allowable under the Native American Housing Assistance and Self-Determination Act (NAHASDA) to determine household eligibility for owner-occupied housing in Indian areas?**
- A8. Yes. The median income for an Indian area under the NAHASDA is derived from county median income figures published annually by the Department of Housing and Urban Development (HUD). Therefore, the median income for an Indian area under the NAHASDA may be considered a "median income for the area, as published annually by HUD" under section 960.1 of the AHP regulation, and no separate Finance Board approval is necessary. The NAHASDA standard must be identified in the Bank's AHP Implementation Plan as a median income standard used by the Bank. (960.1, 960.3(b)(1)(i))
- Q9. Are there any AHP regulatory requirements regarding what items should be included or excluded in the calculation of a household's income when determining the household's eligibility for rental projects?**
- A9. The AHP regulation does not address this question. This determination is at the discretion of the Banks, although it is noted that the HUD criteria for inclusions and deductions from income are widely accepted standards in the industry and have been adopted by many government housing programs as well as private sponsors of rental projects. The Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) also both have established criteria for the calculation of a household's income that may be used in qualifying tenants for rental projects. The Bank should specify in its policies and procedures the items that are used or excluded in its calculation of household income eligibility. (960.1)

OPERATION OF PROGRAM AND ADOPTION OF AHP IMPLEMENTATION PLAN (Section 960.3)

- Q1. What kind of amendment to the Bank's AHP Implementation Plan requires notice to the Finance Board prior to distributing requests for applications for the next funding period in which the amendments will be effective?**
- A1. The Bank must notify the Finance Board of any material change in the Bank's policy for its AHP, including: changes to scoring guidelines (including District Priorities); median income standards; time limits on use of AHP subsidies and procedures for verifying compliance with AHP requirements; any additional District eligibility requirements, such as subsidy award limits and in-District location requirements; project feasibility guidelines; AHP funding period schedule; homeownership set-aside program requirements; and monitoring procedures. (960.3(b)(1), 960.3(b)(4))

MINIMUM ELIGIBILITY STANDARDS FOR AHP PROJECTS (Section 960.5)

- Q6. May AHP funds be used under the competitive AHP application program to pay homeownership counseling costs for projects approved prior to the effective date of the revised AHP regulation (January 1, 1998)?**
- A6. Yes, AHP funds may be used to pay such homeownership counseling costs under the competitive AHP application program, provided the counseling meets the conditions set forth in

the AHP regulation and the project continues to meet all other AHP regulatory requirements, such as the feasibility and need-for-subsidy requirements. If there was another funding source for counseling costs at the time of the AHP application, then the Bank must document that this source will no longer be funding the counseling costs and identify what other costs the source will be paying instead of counseling, if applicable. If there were no counseling costs included in the original sources-and-uses-of-funds statement, the sponsor should submit to the Bank a revised sources-and-uses-of-funds statement that adds the counseling costs as a use, and shows the changes in other uses of funds to enable the funding of the new counseling costs with AHP subsidy. If the payment of counseling fees requires an increase in the amount of the AHP award, then the Bank also should review the revised statement to ensure that there will be no change in the scoring of the AHP application. (960.5(b)(2), (b)(5))

Q7. May a Bank prohibit the use of AHP direct subsidies for interest rate buydowns?

A7. Yes. This is at the discretion of the Bank. (960.5(b), 960.3(a)(2))

Q8. May AHP funds be used to pay for fees per household charged by a project sponsor or housing authority to process documents in connection with loan closings?

A8. No. Such fees that pay for administrative costs of the project and its closing are attributable to the sponsor and, therefore, are not an eligible use of AHP subsidy. (960.5(b), 960.3(a)(2))

Q9. May AHP funds be used to pay for fees charged to households by a lender to process loan documentation?

A9. Yes. Such fees that represent a cost incurred as part of a lender's origination of the mortgage loan are a normal cost of financing and, therefore, are an eligible use of AHP subsidy. (960.5(b), 960.3(a)(2))

Q10. How may financial feasibility be determined for a shelter?

A10. Where a shelter depends upon charitable contributions rather than rents or other income, a Bank may obtain a history of the sponsor's fundraising that demonstrates its ability to raise funds, as well as the sponsor's commitment to make up any shortfall in the project's annual budget. The Bank may use this information to determine that the project is financially feasible, even if the project would not meet the Bank's feasibility guidelines. (960.5(b)(2))

**PROCEDURES FOR APPROVAL OF AHP APPLICATIONS FOR FUNDING
(Section 960.6)**

Q8. What qualifies as "donated goods and services" by a local government in assessing its support for a project under the "Community Involvement" scoring criterion?

A8. Examples of items that would qualify as donated goods and services by a local government include: property tax deferment or abatement; zoning changes or variances; infrastructure improvements; and fee waivers (such as waivers of building permit fees). Cash contributions to a project, such as CDBG or HOME funds, provided by a local government do not qualify as donations of "goods and services." Donations of property by a local government would not be considered donations of "goods and services" under the "Community Involvement" criterion, but

would be taken into account under the "use of donated government-owned or other properties" scoring criterion. (960.6(b)(4)(iv)(A) and (F)(10))

Q9. Does a project's ground lease of 50 years or more provided by a government at a rental fee of \$1 per year, qualify as "land donated or conveyed for a nominal price" for purposes of the scoring criterion for the "use of donated government-owned or other properties"?

A9. Yes. The lease of the land may be viewed as property "conveyed," and the \$1 annual rental fee for 50 years or more constitutes a "nominal price" under the scoring criterion. However, the Bank must determine whether there are any provisions in the ground lease that would affect the abilities of the Bank, member or sponsor to satisfy the requirements of the AHP regulation and the terms of the AHP application. If so, the Bank may need to reject the application or require execution of further assurances from the various parties, in order to ensure compliance with the AHP requirements, as well as provide any additional protections that the Bank deems necessary. (960.6(b)(4)(iv)(A))

Q10. Has the Finance Board defined the term "first-time homebuyer" for purposes of the District scoring priority?

A10. There is no regulatory or policy guidance from the Finance Board regarding the definition of "first-time homebuyer" for District priority scoring purposes. Thus, the Bank has the discretion to define this term in its AHP Implementation Plan. (960.6(b)(4)(iv)(F)(3), 960.3(b)(1)(vi))

Q11. What "special needs" groups are contemplated by the Finance Board in addition to those specifically named in the District scoring priority provision for "special needs"?

A11. In authorizing a District scoring priority for households with "special needs," the AHP regulation provides an illustrative list of the types of populations that the Finance Board considers to have special needs that may be addressed through the AHP. The Bank has the discretion to include other groups in this priority that the Bank deems to have special needs similar to the types listed. These groups must be identified in the Bank's AHP Implementation Plan. (960.6(b)(4)(iv)(F)(1), 960.3(b)(1)(vi))

Q12. May an AHP application receive scoring points for "member financial participation" if another member, rather than the member applicant itself, is providing qualifying financial assistance to the project?

A12. No. Points may only be awarded under this scoring criterion if the financial assistance is provided directly by the member that is applying for the AHP subsidy. (960.6(b)(4)(iv)(F)(4))

MODIFICATION OF AHP APPLICATIONS PRIOR TO PROJECT COMPLETION
(Section 960.7)

Q2. If a Bank approves the use of unused AHP subsidy to cover a prepayment fee charged by the Bank, can the amount of subsidy be increased to cover the entire fee if the amount of unused AHP subsidy is not sufficient to cover the entire fee?

A2. Yes, provided the project application meets the requirements of the AHP regulation for a modification involving an increase in AHP subsidy. (960.7)

PROCEDURES FOR FUNDING (Section 960.8)

- Q2. For projects approved prior to January 1, 1998 that committed in their AHP applications to target a specified number of units for households at specific income levels, and where the Bank scored such projects based on a weighted average of the targeting commitment, should subsequent disbursement of the AHP funds be based on compliance with the weighted average targeting of the units, or on a unit-by-unit basis as committed to in the AHP application?**
- A2. Under the revised AHP regulation, a Bank must determine on a unit-by-unit basis whether the units being funded meet the targeting commitment made in the AHP application. While the weighted average targeting is relevant for scoring purposes, it is not the targeting commitment made in the AHP application and, therefore, cannot serve as the targeting standard for measuring compliance upon disbursement of funds. (960.8(c)(2))
- Q3. Are homeownership set-aside programs involving the purchase of owner-occupied units subject to any monitoring or certification requirements other than those set forth in section 960.8(b)(2)?**
- A3. No. (960.8(b)(2))

MODIFICATION OF AHP APPLICATIONS AFTER PROJECT COMPLETION (Section 960.9)

- Q3. If there is a change in a project's scoring characteristics (such as failure to provide a service) that does not affect its financial characteristics, can that project be modified after completion?**
- A3. No. A project must be in financial distress, or at substantial risk of falling into financial distress, in order to qualify for a modification after completion. If not, it is deemed to be in noncompliance with its AHP commitments and recapture of AHP subsidy is required. The sponsor or owner has the option to attempt to cure the noncompliance within a reasonable period of time before recapture is required, or the parties may attempt to reach a settlement of the noncompliance issue if the Bank can show that such a settlement is reasonably justified. (960.9(a), (b), 960.12(b)(1), (c)(2))
- Q4. Can a sponsor convert a completed single-family rental project to an owner-occupied project under the modification provisions of the AHP regulation?**
- A4. Yes, provided the project meets the financial distress, best efforts, minimum eligibility and scoring requirements of the AHP regulation. The units sold after conversion would be subject to the AHP income-eligibility, retention and monitoring requirements applicable to owner-occupied projects. (960.9)

INITIAL MONITORING REQUIREMENTS (Section 960.10)

- Q3. Who from a member institution is eligible to execute the certifications to the Bank required under sections 960.10(b)(1) and (b)(2)?**
- A3. The certifications may be executed by any individual (such as an assistant vice president, loan officer or community reinvestment officer) at the member institution, who is authorized by the member's board of directors or delegation to do business with the Bank. (960.10(b)(1), (2))
- Q4. Do any of the monitoring requirements contained in section 960.10 apply to homeownership set-aside programs involving the purchase of owner-occupied units?**
- A4. No. Homeownership set-aside programs involving the purchase of owner-occupied units are subject only to the certification requirements contained in section 960.8(b)(2) of the AHP regulation. (960.8(b)(2), 960.10)
- Q5. May a Bank use a sampling method authorized for the competitive AHP application program under section 960.10(c)(1) in monitoring the certifications received under homeownership set-aside programs involving the purchase of owner-occupied units?**
- A5. No. As discussed in A4 above, homeownership set-aside programs involving the purchase of owner-occupied units are not subject to the monitoring requirements of section 960.10, which are applicable to the competitive AHP application program. Moreover, the sampling language in section 960.10(c)(1), by its terms, applies only to the back-up documentation supporting the certifications, not to the certifications themselves. In addition, under section 960.8(b)(2) governing homeownership set-aside programs, a Bank must review each certification in order to determine whether the household satisfies the eligibility requirements, prior to disbursing funds to a member for the closing on the sale of a unit to a household. (960.10(c)(1), 960.8(b)(2))
- Q6. May a Bank use a sampling method authorized for owner-occupied projects under section 960.10(c)(1) for the initial monitoring by the Bank of rental projects?**
- A6. No. A Bank must perform the required initial monitoring for rental projects on all such projects. Sampling during the initial monitoring period may only be used for the monitoring of owner-occupied projects. (960.10(c)(1), (2))
- Q7. What is the definition of "project owner" under this section?**
- A7. A project owner must have an ownership interest in the rental project. However, the project owner may designate an agent to perform the owner's responsibilities prescribed by this section. (960.10)
- Q8. Is a Bank required to review third-party income verifications at initial monitoring of approved AHP owner-occupied projects?**

A8. Yes, a Bank is required to review third-party income verifications, such as tax returns, W-2 forms or other similar documentation, for a sample of units and projects as part of the Bank's initial monitoring of owner-occupied projects. The Bank is not required to review these kinds of documents during its initial monitoring of rental projects, but must do so as part of its long-term monitoring of rental projects. (960.10(c)(1)(i), (c)(2), 960.11(a)(3)(iii)(B), (C))

Q9. What is the certification requirement for members when construction of all AHP-assisted owner-occupied units is not completed within one year after full disbursement of the AHP funds?

A9. A member may certify to the Bank that the AHP subsidies have been used appropriately and the required retention mechanism is in place, either one year after disbursement of all AHP subsidies or within a reasonable time from the date all units in the project are completed, whichever is later. (960.10(b)(1)(ii), (c)(1))

Q10. At the time of the initial monitoring of an owner-occupied project, what kind of financial review is required to comply with the AHP regulatory requirements that the project's actual costs be in accordance with the Bank's feasibility guidelines, and that the subsidies are necessary for the project's financial feasibility?

A10. Financial reviews should contain the following steps: (1) validation of actual costs and cost comparison between cost estimates in the AHP application and the actual costs; (2) comparison of sources and uses of funds in the application and the final sources-and-uses-of-funds statement to determine that the AHP subsidy is still required; and (3) comparison of the sources-and-uses-of-funds statement with the Bank's established benchmarks for feasibility to determine the reasonableness of costs and the need for AHP subsidy. (960.10(c)(1)(ii))

Q11. During the period of construction or rehabilitation of an owner-occupied project, the project sponsor must report to the member semi-annually on whether reasonable progress is being made towards completion of the project. Is this semiannual report required for projects that have not yet received any AHP subsidy?

A11. Yes. Even when no AHP subsidy has been disbursed, the semi-annual report is required to assist the Bank in ensuring that projects that will not be able to draw down and use funds within the period of time established by the Bank are cancelled in accordance with section 960.8(c)(1). (960.10(a)(1)(i), 960.8(c)(1))

Q12. How may a Bank verify income eligibility for occupants of a shelter?

A12. Because income verification documentation is not readily available for shelter occupants, a Bank may review income information from intake forms collected by the shelter. (960.10(a)(2)(ii), (b)(2)(ii), (c)(2))

Q13. Is a certification from the homebuyer acceptable documentation to show satisfaction of a "first-time homebuyer" requirement adopted by a Bank as a District priority scoring criterion, or is other documentation required?

A13. The AHP regulation does not establish specific requirements for documentation that must be provided by homebuyers to the Bank to demonstrate satisfaction of the "first-time homebuyer" requirement. The particular documentation required will depend on the definition of "first-time

homebuyer" adopted by the Bank. The Bank has the discretion to determine what is appropriate documentation, including self-certification by the homebuyer if such certification provides adequate verification of satisfaction of its "first-time homebuyer" requirement. (960.10(c)(1)(ii), 960.6(b)(4)(iv)(F)(3))

LONG-TERM MONITORING REQUIREMENTS (Section 960.11)

Q2. Are rental projects that receive less than \$50,000 in AHP subsidies subject to the long-term AHP monitoring requirement that the member institution visually inspect the property every three years?

A2. Yes. For all rental projects receiving \$500,000 or less in AHP subsidy, the member must visually inspect the property at least once every three years and certify to the Bank that the project appears to be suitable for occupancy. (960.11(a)(3)(ii))

Q3. Are site monitoring visits of AHP projects required regardless of project size?

A3. For all AHP-assisted projects, the Bank must perform an on-site review of project documentation for a sample of the project's units at least once every two years for those projects that receive more than \$500,000 in AHP subsidy. This is not required for projects that receive \$500,000 or less in AHP subsidy, regardless of when they were approved. (960.11(a)(3)(iii)(B)(3))

Q4. What is the definition of "project owner" under this section?

A4. A project owner must have an ownership interest in the rental project. However, the project owner may designate an agent to perform the owner's responsibilities prescribed by this section. (960.11)

REMEDIAL ACTIONS FOR NONCOMPLIANCE (Section 960.12)

Q3. Where an AHP subsidy provided to a rental project is secured by a soft second mortgage, if a unit or project goes out of compliance with AHP requirements during the 15-year retention period, must the subsidy be recaptured on a *pro rata* basis, or must the full amount of subsidy be repaid?

A3. A Bank may forgive repayment of the AHP subsidy on a *pro rata* basis for the unit or project, as long as: (1) the mortgage requires that the forgiveness is contingent upon the project having been in compliance with the AHP requirements during the period for which repayment is forgiven; and (2) the mortgage requires full repayment of subsidy under the conditions set forth in the AHP regulation regarding the sale or refinancing of the project prior to the end of the retention period. Prior to a Bank requiring repayment of any subsidy, the project should be given the opportunity to cure the noncompliance within a reasonable period of time or eliminate the noncompliance through a modification of the terms of the AHP application. (960.12(a) – (c))

- Q4. In the case of foreclosure, may a member's prepayment fee on a subsidized advance be waived under section 960.12(a)(2)(ii) as an amount of AHP subsidy that the member cannot recover from the project sponsor or owner through reasonable collection efforts or, in the alternative, may any prepayment fee resulting from foreclosure be paid from AHP subsidy funds?**
- A4. No. Although a member is not required to repay any amounts of AHP subsidy that cannot be recovered from the project sponsor or owner through reasonable collection efforts, a prepayment fee is not an “amount of AHP subsidy” under the AHP regulation. AHP subsidy may only be used to pay a prepayment fee when the project will continue to comply with the AHP requirements for the duration of the original retention period. This would not be the case in a foreclosure. (960.12(a)(2)(i), (ii), 960.5(b)(4)(i))

AGREEMENTS (Section 960.13)

- Q1. Who may act as a Bank's designee for receiving notices of sales or refinancings of AHP-assisted projects occurring prior to the end of the retention period?**
- A1. A Bank's designee may be any entity that is capable of receiving the notice required by section 960.13 and communicating such notice to the Bank. (960.13(c)(4)(i), (5)(ii), 960.13(d)(1)(i), (2)(ii))
- Q2. Does the recapture provision required to be included in retention agreements for owner-occupied units by section 960.13(c)(4) apply to both sale and refinancing of such units funded by a subsidized advance?**
- A2. No, it only applies to refinancing of the units. When a subsidized advance is used by a member to make a long-term mortgage loan on the property, the loan incorporates some level of interest rate subsidy that the purchaser/owner benefits from during the term of the loan. When the owner repays the balance of the loan to the member upon sale of the unit, the owner no longer receives the benefit of the interest rate subsidy. Because no AHP subsidy is retained by the owner upon sale of the unit, no recapture of subsidy from the owner is required. (960.13(c)(4))
- Q3. Does the requirement for execution of agreements described in sections 960.13(a) and (b) apply to projects approved prior to January 1, 1998 and funded subsequently?**
- A3. Yes. The revised AHP regulation applies to prospective actions taken by parties that are affected by the requirements of the regulation. (960.13(a), (b))

- Q4. Do the retention and recapture provisions of this section apply to owner-occupied projects where AHP subsidy is used for minor rehabilitation costs totaling less than \$1,000?**
- A4. Yes. All projects with AHP subsidy are required to comply with section 960.13, regardless of the amount of subsidy. (960.13)
- Q5. Is a Bank required to charge a prepayment fee on a prepaid AHP subsidized advance, or does the Bank have the discretion to not charge prepayment fees on such advances?**
- A5. Under the Finance Board's regulation governing advances (12 CFR 935.8(b)(1)), the Banks are required to establish and charge prepayment fees pursuant to a specified formula, which sufficiently compensates the Bank for providing a prepayment option on an advance, and which acts to make the Bank financially indifferent to the borrower's decision to repay the advance prior to its maturity date. Prepayment fees are not required to be charged for certain short-term advances, advances funded by callable debt, and advances that are appropriately hedged. A Bank may waive the prepayment fee only if the prepayment will not result in an economic loss to the Bank. The AHP regulation permits the Bank to charge a prepayment fee on subsidized AHP advances only to the extent that the Bank suffers an economic loss from the prepayment. Thus, a Bank must charge a prepayment fee on a subsidized AHP advance if there is any economic loss to the Bank, and may not charge a prepayment fee if there is no economic loss. (960.13(c)(2))
- Q6. May a member include, in its loan agreement with the borrower, a provision requiring the borrower to pay any prepayment fee that the member must pay on a subsidized advance in the event of foreclosure?**
- A6. The AHP regulation requires the Bank to charge a member a prepayment fee on a prepaid AHP subsidized advance if the Bank suffers an economic loss from the prepayment, but the regulation does not preclude the member from passing through such prepayment fee to the borrower upon foreclosure. The AHP regulation does not address whether a loan agreement may include such a pass-through provision, which would be subject to any applicable state laws. (960.13(c)(2))
- Q7. When determining the *pro rata* share of a direct subsidy to be repaid upon sale or refinancing of an owner-occupied unit, may the direct subsidy amount be reduced on a monthly basis or must it be reduced on an annual basis?**
- A7. The direct subsidy amount may be reduced *pro rata* on a monthly basis. (960.13(d)(1)(ii), (iii))
- Q8. Is a subsequent income-eligible buyer of an owner-occupied unit sold to such buyer during the original retention period subject to the retention and recapture provisions for the remainder of such retention period?**
- A8. Yes. Therefore, if such subsequent buyer were to sell the unit during the retention period, he or she would be required to make a *pro rata* repayment of the direct subsidy received, unless the unit was sold to a low- or moderate-income household. (960.13(d)(1)(ii))

- Q9. May an AHP-assisted owner-occupied property be subject to retention periods required by other funding sources that are longer than the five-year period prescribed for the AHP assistance?**
- A9. Yes. Section 960.13(d)(1) of the AHP regulation requires an owner-occupied unit financed by an AHP direct subsidy to be subject to a retention agreement under which the AHP subsidy received by the owner of the unit is forgiven on a *pro rata* basis over the duration of the retention period, *i.e.*, five years. This does not preclude the unit from being subject to retention agreements for the benefit of other project funders that require longer retention periods for the use of their funds. If a single agreement is executed for all funders of the project, then the agreement should separately specify that the owner's obligation to repay AHP subsidy ends after five years. (960.13(d)(1), 960.1, 960.16)

- Q10. May a Bank use model agreements that were prepared by a committee of counsels of the Banks?**

- A10. Yes. A Bank should nevertheless ensure that its own documents reflect any requirements that are particular to its own AHP as set forth in its current AHP Implementation Plan, as well as any applicable state or local law requirements.

- Q11. Do the retention requirements of section 960.13(d)(2) apply to a project sponsor that has no ownership interest in, but rather leases, the land underlying the project?**

- A11. Yes. If the sponsor will own the building(s) to be constructed on the underlying leased land, the sponsor should be considered to be the owner of the project for purposes of the AHP (*i.e.*, to have an "ownership interest in the project") and subject to the retention requirements of section 960.13(d)(2). However, the Bank should carefully review the ground lease to determine whether it contains provisions that would affect the abilities of the Bank, member or sponsor to meet the requirements of the AHP regulation and the AHP application and, if so, the Bank may need to require execution of further assurances from the various parties in order to ensure compliance with the AHP requirements. (960.13(b)(2)(ii), (d)(2), 960.1)

APPLICATION TO EXISTING AHP PROJECTS (Section 960.16)

- Q1. Are AHP projects with agreements and retention mechanisms executed prior to January 1, 1998 governed by the terms of those agreements, or do the provisions of the revised AHP regulation supersede those documents?**

- A1. AHP agreements and retention documents executed prior to January 1, 1998 are amended by operation of law to conform with any new applicable AHP regulatory requirements. To the extent that existing agreements and retention documents do not on their face reflect the requirements of the AHP regulation, they are deemed to incorporate such requirements and to bind the parties accordingly. A Bank does not need to execute new agreements with affected parties, but may do so if desired. (960.16, 960.13)

- Q2. If a project was approved prior to January 1, 1998 but the AHP retention and recapture agreements were not executed until on or after that date, must the agreements conform with the requirements of the revised AHP regulation?**
- A2. Yes. All AHP retention and recapture agreements for projects approved prior to January 1, 1998 that are executed on or after January 1, 1998 must conform with the requirements of the revised AHP regulation. (960.16, 960.13)

