

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL ELECTION COMMISSION

### 11 CFR Part 106

[Notice 2001–20]

#### Notice of Disposition Regarding Party Committee Transfers of NonFederal Funds for Payment of Allocable Expenses

AGENCY: Federal Election Commission.

ACTION: Notice of disposition.

**SUMMARY:** The Commission will not issue a statement of enforcement policy regarding party committee transfers of nonfederal funds for payment of allocable expenses. On November 7, 2001, the Commission requested comments on a Draft Statement of Policy. The Draft Statement indicated that in light of the suspension of fundraising activities by some party committees after the terrorist attacks of September 11, 2001, the Commission would consider exercising its prosecutorial discretion by not pursuing *prima facie* violations of the 60 day limit for party committee transfers of nonfederal funds to pay for the nonfederal share of allocable expenses. After receiving and considering public comments, the Commission declined to adopt a final Statement of Policy by a 3–3 vote.

DATES: November 29, 2001.

#### FOR FURTHER INFORMATION CONTACT:

Rosemary C. Smith, Assistant General Counsel, or Richard Ewell, Staff Attorney, 999 E Street, NW, Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

**SUPPLEMENTARY INFORMATION:** The Commission's regulations at 11 CFR 106.1 and 106.5 allow party committees to defray the costs of activities that relate to both federal and nonfederal elections by allocating the costs between their federal and nonfederal accounts, so long as they pay an amount equal to or greater than the federal portion of these expenses with funds that are permissible under the Federal Election Campaign Act, 2 U.S.C. § 431 *et seq.*

[“FECA” or “the Act”]. The Commission's regulations provide that party committees, after paying an allocable expense, have a 60 day “window” to transfer funds from a nonfederal account to cover the nonfederal portion of the allocable expense. See 11 CFR 106.5(g)(1)(i) and (ii); 11 CFR 106.5(g)(2)(ii)(B).

In many instances, party committees plan and execute allocable activities based, in part, on the expectation that they will subsequently receive nonfederal funds that can be transferred to their federal or allocation accounts before the expiration of the 60-day transfer window in section 106.5(g)(2)(ii)(B). In light of the fact that some party committees temporarily suspended their fundraising activities in the immediate aftermath of the September 11, 2001 terrorist attacks, these party committees may not have sufficient funds in their nonfederal accounts to make transfers to their federal accounts or allocation accounts within the required 60 day transfer window.

Consequently, the Commission sought and received public comment on a draft proposal to exercise its prosecutorial discretion by not pursuing *prima facie* violations of the 60 day time limit for a specified period of time. See 66 FR 56247 (Nov. 7, 2001). On November 29, 2001, the Commission declined to adopt a final statement of policy by a vote of 3–3. See Agenda Document Number 01–61. Because the motion did not receive an affirmative vote of four members of the Commission, the Commission is announcing that no further action on the proposed statement of policy will be taken at this time. See 2 U.S.C. 437c(c).

Dated: December 18, 2001.

David M. Mason,

Vice Chairman, Federal Election Commission.

[FR Doc. 01–31616 Filed 12–26–01; 8:45 am]

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## FEDERAL HOUSING FINANCE BOARD

### 12 CFR Part 951

[No. 2001–30]

RIN 3069–AB14

#### Affordable Housing Program Amendments

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

**SUMMARY:** The Federal Housing Finance Board (Finance Board) is proposing to amend its regulation governing the operation of the Affordable Housing Program (AHP) to improve the operation and effectiveness of the AHP. The proposed changes include: making the requirements for approval of post-completion project modifications the same as the current requirements for pre-completion project modifications; allowing the Federal Home Loan Banks (Banks) to define “homeless household” for purposes of scoring applications for AHP subsidy to finance housing for such households; allowing the Banks to award scoring points to projects using Federal government properties, regardless of the price at which they are conveyed, and for projects using non-government properties conveyed for an amount significantly below their fair market value; permitting the Banks to allow project sponsors or members to re-use recaptured direct subsidies or unused interest-rate subsidies from prepaid mortgage loans to assist another AHP-eligible household to purchase an owner-occupied unit; permitting a Bank to allocate up to the greater of \$3 million or 25 percent of its annual required AHP contribution for the subsequent year to the current year's AHP competitive application program; including the Federal Financial Institutions Examination Council as a source of area median income data that may be used to determine household income eligibility; removing the requirement that the amount of AHP subsidies offered by a Bank in each funding period must be comparable; removing the requirement that the Banks must determine the feasibility of projects before their applications may be scored; and allowing the Banks additional time after completion of a rental project to review the

documentation received from the project owner for project compliance.

**DATES:** The Finance Board will accept written comments on the proposed rule that are received on or before February 25, 2002.

**ADDRESSES:** Send written comments to: Elaine L. Baker, Secretary to the Board, at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, or to [BakerE@fhfb.gov](mailto:BakerE@fhfb.gov). Comments will be available for inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** Charles E. McLean, Deputy Director, (202) 408-2537, Melissa L. Allen, Program Analyst, (202) 408-2524, Office of Policy, Research and Analysis; or Sharon B. Like, Senior Attorney-Advisor, (202) 408-2930, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:**

**I. Statutory and Regulatory Background**

Section 10(j)(1) of the Federal Home Loan Bank Act (Bank Act) requires each Bank to establish a program to subsidize the interest rate on advances to members of the 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 AHP. *See* 12 U.S.C. 1430(j)(1), (9). The Finance Board's existing regulation governing the operation of the AHP, which made comprehensive revisions to the AHP, was adopted in August 1997 and became effective January 1, 1998. *See* 62 FR 41812 (Aug. 4, 1997) (*codified* at 12 CFR part 951).

Various amendments have been made to the AHP regulation since 1998 in order to clarify AHP requirements and improve the operation and effectiveness of the AHP. The Banks, project sponsors and Finance Board staff have, over the course of implementation of the AHP, identified additional amendments that it is believed would improve the operation and effectiveness of the AHP. The proposed amendments are discussed further below. The Finance Board welcomes written comments on all aspects of the proposed rule.

**II. Analysis of Proposed Rule**

*A. Definitions—Section 951.1*

**1. Removal of Definition of "Homeless Household"**

For the reasons discussed in section F. below, the proposed rule would remove the definition of "homeless

household" in § 951.1 of the AHP regulation, and allow each Bank to define the term for purposes of scoring applications for AHP subsidy to finance housing for homeless households under § 951.6(b)(4)(iv)(D).

**2. Inclusion of FFIEC in Definition of "Median Income for the Area"**

Under the AHP regulation, households are eligible for AHP subsidies if they have an income at or below the targeted income level, expressed as a percentage of median income for the area, specified in the AHP application. *See* 12 CFR 951.6(b)(4)(iv)(C). Section 951.1 of the AHP regulation defines "median income for the area" generally as one or more of the following, as determined by the Bank: (1) The median income for the area, as published annually by the Department of Housing and Urban Development (HUD); (2) the applicable median family income, as determined under 26 U.S.C. 143(f) and published by a state mortgage revenue bond program; (3) the median income for the area, as published by the U.S. Department of Agriculture; or (4) the median income for any definable geographic area, as published by a Federal, state or local government entity for purposes of that entity's housing programs, and approved by the Finance Board, at the request of a Bank, for use under the AHP. *See* 12 CFR 951.1.

The Federal Financial Institutions Examination Council (FFIEC) is a Federal government source that publishes updated median income data for areas, based on existing HUD median income data. Since the FFIEC median income data is derived from existing HUD data, which is a permissible source of area median income data for determining the income eligibility of households under the AHP regulation, the Finance Board believes that the Banks should also be able to use such FFIEC data for determining household income eligibility. This proposed change would be consistent with the Finance Board's recent amendment to the definition of "median income for the area" in its Community Investment Cash Advance (CICA) Programs Regulation to include FFIEC as a source of median income data that may be used to determine income eligibility for projects and households funded under CICA programs. *See* 66 FR 50293 (Oct. 3, 2001) (*codified* at 12 CFR 952.3).

Accordingly, the proposed rule would add new paragraphs (1)(ii) and (2)(ii) to the existing definition of "median income for the area" in § 951.1 to include FFIEC as a data source, and

would renumber the remaining paragraphs accordingly.

*B. Permitting Banks To Allocate AHP Funds From the Subsequent Year's Required Annual AHP Contribution to the Current Year's Competitive Application Program—Section 951.3(a)(2)*

The AHP regulation provides that in cases where the amount of AHP homeownership set-aside funds applied for by members in a given year exceeds the amount available for that year, a Bank may allocate up to the greater of \$3 million or 25 percent of its annual required AHP contribution for the subsequent year to the current year's homeownership set-aside programs. *See* 12 CFR 951.3(a)(1). The AHP regulation does not allow the Banks to make a similar allocation of AHP funds from the subsequent year's required annual AHP contribution to the current year's AHP competitive application program. *See* 12 CFR 951.3(a)(2).<sup>1</sup>

A number of Banks have indicated that there may be special circumstances in which it would be beneficial to have the flexibility to allocate a portion of the subsequent year's required AHP contribution to fund additional applications in the current year under the competitive application program. Such special circumstances could include natural or man-made disasters or other emergencies, or sudden changes in market conditions or demand caused by significant economic changes, that increase the need for affordable housing in the current year. Another circumstance might be a demand for additional AHP funds for use in conjunction with a special allocation of housing funds made by a Federal, state or local government agency in the current year.

Several Banks also have raised the issue that a change in national accounting standards, contained in Federal Accounting Standard (FAS) 133, could affect the timing of when a Bank recognizes some of its net earnings and thereby cause fluctuations in the Bank's required AHP contributions from year to year. Allowing the Banks to allocate AHP funds from the subsequent year's required AHP contribution to the current year under the competitive application program would give the Banks flexibility to mitigate some of these year-to-year fluctuations in

<sup>1</sup> Each Bank is required generally to contribute annually to its AHP 10 percent of its net earnings for the previous year. If the aggregate amount of such annual payments by all of the Banks is not at least \$100 million, each Bank must contribute to its AHP its pro rata share of \$100 million. *See* 12 U.S.C. 1430(j)(5).

required AHP contributions when the Bank's required AHP contribution under-represents the Bank's actual earnings because of accounting rules. The proposal also would give the Banks flexibility to mitigate the effects on the amount of the Bank's required AHP contribution in a year in which the Bank's actual earnings are otherwise lower than expected or desired.

The Finance Board believes that this proposal could be beneficial to the AHP. The Finance Board recognizes that allowing the allocation of AHP funds from the subsequent year's required AHP contribution to the current year may result in less AHP funds available for the subsequent year. However, the overall amount of AHP funds available would not decrease; a portion of the funds would simply be available in the current year rather than in the subsequent year. Moreover, there is no guarantee in any case that the amount of AHP funds available in a given year will be the same as the amount available in the previous year, given fluctuations in Bank net earnings from year to year.

Accordingly, the proposed rule would amend § 951.2(a)(2) to provide that a Bank, in its discretion, may allocate up to the greater of \$3 million or 25 percent of its annual required AHP contribution for the subsequent year to the current year's competitive application program. The limit of \$3 million or 25 percent is the same as the annual limit applicable to the homeownership set-aside programs. See 12 CFR 951.3(a)(1). As with the homeownership set-aside programs, the proposed rule would include a Consumer Price Index (CPI) adjustment provision for the maximum dollar limit under the competitive application program.

*C. Removal of Requirement That Banks Offer Comparable Amounts of Subsidies in Each Funding Period—Section 951.6(b)(1)*

The AHP regulation provides that the amount of AHP subsidies offered by a Bank in each funding period under the competitive application program shall be comparable. See 12 CFR 951.6(b)(1). A number of Banks have suggested that this requirement be removed, in order to give the Banks flexibility to offer different amounts of AHP funds in each funding period to coincide with the funding cycles of other key funding sources in the Bank's district, or with different demands based on market or housing construction cycles. The Finance Board agrees that it would be beneficial for the Banks to have greater flexibility to manage their AHP funding in this way.

Accordingly, the proposed rule would remove the requirement in § 951.6(b)(1) that the amount of AHP subsidies offered in each Bank's funding period must be comparable.

*D. Removal of Requirement That Banks Determine Compliance of AHP Applications With Eligibility Requirements Before Scoring Applications—Section 951.6(b)(4)(i)*

The AHP regulation provides that projects receiving AHP subsidies pursuant to a Bank's competitive application program must meet the eligibility requirements of the regulation. See 12 CFR 951.5(b). The AHP regulation further provides that a Bank shall score only those applications meeting the eligibility requirements of § 951.5(b). See 12 CFR 951.6(b)(4)(i). This means that a Bank must first determine whether each application received satisfies all of the regulatory eligibility requirements, including an assessment of each project's financial feasibility, before the Bank may score the application.

Some Banks maintain that, given the high volume of applications received, it is burdensome and time consuming to have to determine the eligibility, and in particular, the financial feasibility, of each application before the application may be scored, especially when many of the applications determined to be eligible end up scoring too low to be awarded AHP funds. These Banks suggest that it would be more efficient to be able to score the applications first, and then determine their eligibility starting with the highest scoring applications and continuing on down the list, until all of the AHP subsidy is committed. The Finance Board agrees that the Banks should have the discretion to determine which approach works best for that Bank. Section 951.5(b) would still require that AHP subsidy may only be awarded to projects meeting the regulatory eligibility requirements, including financial feasibility. See 12 CFR 951.5(b).

Accordingly, the proposed rule would amend § 951.6(b)(4)(i) by removing the requirement that the Bank score only those applications meeting the regulatory eligibility requirements.

*E. Permitting Banks to Award Scoring Points for Projects Using Properties Conveyed by the Federal Government Regardless of the Amount Charged for Conveyance, and for Projects Using Properties Conveyed by Non-Government Entities for an Amount Substantially Below Their Fair Market Value—Section 951.6(b)(4)(iv)(A)*

The AHP regulation includes, as one of nine criteria for scoring AHP applications, 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 12 CFR 951.6(b)(4)(iv)(A). A "nominal" price is defined in the regulation as 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. See 12 CFR 951.6(b)(4)(iv)(A). Scoring points, therefore, may not be awarded to projects using Federal government or non-government properties that were conveyed for more than a "nominal" price.

In a number of markets throughout the country, there are substantial quantities of foreclosed housing units owned by HUD and other Federal government agencies. Allowing the Banks to award scoring points for projects using units conveyed by the Federal government, regardless of the amounts charged for their conveyance, would be consistent with the Bank Act provisions encouraging the use of AHP funds in projects involving housing owned or held by the Federal government, and coordination of the AHP with other Federal or federally-subsidized affordable housing activities to the maximum extent possible. See 12 U.S.C. 1430(j)(3)(B), (j)(9)(G).

Accordingly, the proposed rule would amend § 951.6(b)(4)(iv)(A) to provide that a Bank may award scoring points to projects using a significant proportion of housing units conveyed by the Federal government or any agency or instrumentality thereof, regardless of the amount charged for such conveyance. The proposed rule would retain the current provision allowing the Banks to award scoring points for projects using land donated by the Federal government.

In addition, some Banks maintain that the definition of "nominal" in the regulation may be too restrictive in not recognizing the variety of ways in which properties are being conveyed by non-government entities to affordable housing project sponsors under different

local market conditions in each Bank district. For example, properties may be conveyed to project sponsors for a price of one dollar, for a price that is more than one dollar but significantly below the property's fair market value, or for payment of liens on the property such as back taxes, or the administrative costs of transferring the property, which may be more than one dollar but significantly below the property's fair market value. The Banks suggest that the regulation should explicitly allow scoring points to be awarded for properties conveyed from non-government entities under these circumstances, where the amounts paid for the properties are significantly below their fair market value. The Finance Board agrees that this proposal could be beneficial to the AHP, and that the Banks should have the discretion to define what is an amount significantly below the fair market value of the property, since these amounts may vary depending on local market conditions in each Bank district.

Accordingly, the proposed rule would amend § 951.6(b)(4)(iv)(A) by removing the "nominal price" requirement and adding language clarifying that a Bank may award scoring points for properties conveyed by a non-government entity at an amount that is significantly below their fair market value, as defined by the Bank in its AHP implementation plan. The proposed rule would retain the current provision allowing the Banks to award scoring points for projects using land donated by non-government entities.

*F. Removal of Definition of "Homeless Household" for Purposes of the Homeless Households Scoring Criterion—Section 951.6(b)(4)(iv)(D)*

The AHP regulation also includes as a scoring criterion the creation of housing for homeless households, as further described in the regulation. See 12 CFR 951.6(b)(4)(iv)(D). The term "homeless household" is defined in the regulation as a household made up of one or more individuals, other than individuals imprisoned or otherwise detained pursuant to state or federal law, who:

- (1) Lack a fixed, regular and adequate nighttime residence; or
- (2) Have a primary nighttime residence that is:
  - (i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

See 12 CFR 951.1.

A number of Banks have maintained that this definition of "homeless household" should include persons in certain additional situations who may be viewed as homeless, or at imminent risk of homelessness. For example, although the current definition covers victims of domestic violence living in organized shelters, it does not cover victims of domestic violence in rural areas where there are no organized shelters and the victims may have no alternative but to live in the homes of their abusers. Nor does the definition cover persons living in shared overcrowded housing in extremely cold climates where there is a shortage of organized shelters and it is impossible to survive living on the streets or in cars. Other situations may include children living in foster care who are about to reach the age of 18 and must leave the foster care system, and households facing imminent loss of their homes due to condemnation or eviction. The Finance Board agrees that the Banks should be able to award scoring points for projects serving these additional types of households. The Finance Board believes that the Banks should have the discretion to define what is a "homeless household," since the types of homeless households may vary depending on local conditions in each Bank district. Allowing the Banks to define what is a "homeless household" would be consistent with the discretionary authority the Banks already have under the scoring criteria in the AHP regulation to define and provide preferences for other targeted groups, such as special needs households or first-time homebuyers. See 12 CFR 951.6(b)(4)(iv)(F) (1), (3).

Accordingly, the proposed rule would remove the definition of "homeless household" in § 951.1 and amend § 951.6(b)(4)(iv)(D) to provide that, for purposes of scoring applications that reserve units for "homeless households," a "homeless household" shall have the meaning as defined by the Bank in its AHP implementation plan.

*G. Making The Requirements for Post-Completion Modifications The Same as the Current Requirements for Pre-Completion Modifications —Sections 951.7, 951.9*

The AHP regulation sets forth different requirements that must be satisfied in order for a Bank to approve, in its discretion, a modification to the terms of a project's application, depending on whether the modification would be made prior to or after the project's completion. The regulation provides that a Bank, in its discretion, may approve a modification request, including requests for additional AHP subsidy, made prior to project completion, provided that:

- (1) The project, incorporating any such changes, would meet the regulatory eligibility requirements;
- (2) The application, as reflective of such changes, continues to score high enough to have been approved in the funding period in which it was originally scored and approved by the Bank; and
- (3) There is good cause for the modification.

See 12 CFR 951.7.

A Bank, in its discretion, may approve modification requests, not including requests for additional AHP subsidy, made after project completion, provided that:

- (1) The project, incorporating any material changes, would meet the regulatory eligibility requirements;
- (2) the application, as reflective of such changes, continues to score high enough to have been approved in the funding period in which it was originally scored and approved by the Bank;
- (3) the project is in financial distress, or is at substantial risk of falling into such distress (financial distress requirement); and
- (4) the project sponsor or owner has made best efforts to avoid noncompliance with the terms of the application for subsidy and the requirements of the regulation.

See 12 CFR 951.9.

Because a Bank may not approve additional AHP subsidy for a post-completion modification of a project, projects seeking additional subsidy have to submit a new application for subsidy in a regular competitive application funding period and score highly enough to be approved in that funding period. Projects may be unable to score successfully in the new funding period because the scoring criteria and priorities in the new funding period may not be the same as those applicable in the funding period when the projects

were originally approved. Some Banks have argued that they should be able to approve modifications of completed projects for good cause even when the project is not faced with financial distress. A number of Banks also have indicated that the inability to provide additional subsidy to completed but troubled projects makes it difficult or impossible for the Banks to participate with other funding sources in workout arrangements to help such projects retain their affordable units or forestall financial distress. The projects may then fail to comply with their AHP regulatory requirements or application commitments, subjecting them to possible recapture of the AHP subsidy. See 12 CFR 951.12. The Finance Board believes that it would be beneficial for such projects if the Banks had more flexibility to participate in such workouts. Therefore, the proposed rule would allow the Banks, in their discretion, to approve increases in subsidy, would remove the financial distress requirement, and would otherwise make the post-completion modification requirements the same as those currently applicable to pre-completion modifications. The Finance Board will be requesting information from the Banks on how this new authority is being implemented.

A number of Banks and project sponsors also have suggested that the Finance Board consider removing the requirement in § 951.7(a)(2) that a project, as proposed to be modified, must continue to score high enough to have been approved in the funding period in which it was originally scored and approved by the Bank, in order to be approved for a modification. In some cases, the project may need to be modified because of changed market conditions, but the project, as modified, would not continue to score high enough to have been approved in its original funding period. Banks and project sponsors have argued that market conditions may change dramatically over many years, and that it is impractical to hold a project to the same scoring criteria that existed years earlier. While the Finance Board recognizes the points raised by this argument, the Finance Board remains concerned about the potential that modifications offer for an applicant to manipulate the scoring system by making overly optimistic commitments that it knows it cannot reasonably meet, in its AHP application, in order to score successfully, with the anticipation of getting a modification after approval to reduce those commitments. Moreover, the Finance Board has a waiver process

that would enable the Finance Board, upon a showing of good cause, to waive the re-scoring requirement for a modification, on a case-by-case basis. See 12 CFR 907.2. The proposed rule, therefore, would retain the current re-scoring requirement in § 951.7(a)(2).

In short, the proposed rule would remove § 951.9, and make the requirements of § 951.7 applicable to post-completion, as well as pre-completion, modification requests.

#### *H. Providing the Banks With an Additional 120 Days to Conduct the Initial Monitoring of Completed Rental Projects—Section 951.10(c)(2)*

The AHP regulation provides that within the first year after completion of a rental project, the project owner must:

(i) certify to the Bank that the services and activities committed to in the AHP application have been provided in connection with the project; and

(ii) provide a list of actual tenant rents and incomes to the Bank, and certify that the tenant rents and incomes are accurate and in compliance with the rent and income targeting commitments made in the AHP application, and that the project is habitable.

See 12 CFR 951.10(a)(2)(ii).

The regulation further provides that each Bank must take the steps necessary to determine that:

(i) within the first year after completion of a rental project, the services and activities committed to in the AHP application have been provided in connection with the project; and

(ii) the AHP subsidies were used for eligible purposes, the project's actual costs were reasonable and customary in accordance with the Bank's project feasibility guidelines, and the subsidies were necessary for the financial feasibility of the project, as currently structured.

See 12 CFR 951.10(c)(2).

A number of Banks have indicated that if a project owner does not provide its certifications and other documentation to the Bank until late in the first year after project completion, the Bank may not be able to complete its reviews of the documentation and make its determinations of compliance under § 951.10(c)(2) by the end of that year, as prescribed by the regulation. The suggestion has been made that the Banks be given some additional reasonable period of time after receipt of the project owners' documentation to conduct their own review and compliance determinations. This would be consistent with the approach taken in the regulation for Bank reviews of

owner-occupied certifications. See 12 CFR 951.10(c)(1).

The Finance Board believes that providing the Banks with an additional 120 days after receipt of the project owner documentation would be a reasonable amount of time to complete the compliance reviews. The Finance Board also believes that this requirement should apply not only to the services and activities review, but also to the review of eligible purposes, actual costs and feasibility required under existing § 951.10(c)(2)(ii).

Accordingly, the proposed rule would amend § 951.10(c)(2) to require each Bank to complete the compliance reviews required thereunder within 120 days after receiving the project owner documentation.

#### *I. Permitting the Banks to Allow Re-Use by Project Sponsors or Members of Recaptured Direct Subsidies or Unused Interest-Rate Subsidies From Prepaid Mortgage Loans For Owner-Occupied Projects—Sections 951.12(e), 951.13(c)(3)(iii)*

Prior to 1995, sponsors of owner-occupied projects were allowed to re-use recaptured AHP direct subsidies to provide the same kind of direct subsidy assistance to subsequent eligible households in accordance with the sponsor's approved application. A sponsor also could use the unused interest-rate subsidy of a prepaid mortgage loan funded with an AHP subsidized advance to subsidize the interest rate on another mortgage loan to an eligible household that replaced the prepaid mortgage loan in a pool of mortgage loans held by the member.

In 1995, the Finance Board discontinued authorization of these types of re-use of AHP funds in new projects, pending a comprehensive review and revision of the AHP regulation. The current regulation, which went into effect in 1998, continues to prohibit such re-use of AHP funds. Specifically, the AHP regulation provides generally that an owner-occupied unit that is purchased, constructed, or rehabilitated with the proceeds of an AHP direct subsidy must be subject to a deed restriction requiring that the homeowner repay directly to the Bank a pro rata share of the subsidy if the unit is sold to an ineligible household or refinanced prior to the end of the five-year retention period and is no longer subject to a deed restriction. See 12 CFR 951.13(d)(1). The Bank may use these recaptured AHP subsidies to fund project modifications, interest-rate increases in approved projects, homeownership set-aside applications, or an approved alternate project if

sufficient other funds are available. See 12 CFR 951.8(c)(4), 951.12(e), 951.14(a)(2). Where mortgage loans financed by an AHP subsidized advance are prepaid by the project to the member, the AHP regulation provides generally that the member must either repay the advance to the Bank and possibly be subject to a prepayment penalty, or maintain the advance outstanding subject to the Bank resetting the interest rate. See 12 CFR 951.13(c)(3).

A number of Banks and project sponsors have requested that the Finance Board allow owner-occupied project sponsors (or members in the case of AHP direct subsidies provided through the homeownership set-aside program) to re-use direct subsidies in the ways described above. The Banks and project sponsors maintain that allowing such re-use of direct subsidies can be an efficient use of AHP subsidies. The amounts recaptured or unused are generally quite small, the sponsor receives no additional subsidy from the Bank, and the re-used subsidy continues to assist AHP-eligible households in accordance with the original application commitments. Any household assisted through the re-use of recaptured or unused direct subsidy would be subject to a new five-year retention agreement. See 12 CFR 951.5(a)(5), 951.13(c)(4), 951.13(d)(1). Permitting such re-use of direct subsidies can help those sponsors whose projects are aimed at maintaining a core of homeowners in particular areas to promote neighborhood stabilization and revitalization in those areas.

For the reasons discussed above, the Finance Board believes that the Banks should have the authority to allow the re-use of recaptured or unused direct subsidy. Accordingly, the proposed rule would amend §§ 951.12(e) and 951.13(c)(3) to authorize each Bank, in its discretion, as provided in its AHP implementation plan, to allow project sponsors or members to re-use recaptured or unused direct subsidy, respectively, as further prescribed in the proposed rule. One concern that has been raised is that recaptured or unused direct subsidies might not be re-used quickly and could remain idle, when they otherwise could be made available by the Bank for project modifications or new AHP-eligible projects. The proposed rule would address this concern by requiring the Bank to specify in its AHP implementation plan a time limit by which such subsidy must be re-used by the sponsor. A second concern that has been raised is whether the sponsor could earn interest on the recaptured funds while they remain idle. This would not be possible under

the proposed rule, which would retain the current requirement that any recaptured or unused direct subsidy be returned directly to the Bank rather than being held by the project sponsors, pending subsequent disbursement by the Bank for re-use by the sponsor.

**III. Paperwork Reduction Act**

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

**IV. Regulatory Flexibility Act**

The proposed rule would apply only to the Banks, which do not come within the meaning of "small entities," as defined in the Regulatory Flexibility Act (RFA). See 5 U.S.C. 601(6). Thus, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that the proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 12 CFR Part 951**

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

Accordingly, the Finance Board hereby proposes to amend part 951, title 12, chapter IX, Code of Federal Regulations, as follows:

**PART 951—AFFORDABLE HOUSING PROGRAM**

1. The authority citation for part 951 continues to read as follows:

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

2. Amend § 951.1 by:

- a. Removing the definition of "Homeless household"; and
- b. In the definition of "Median income for the area", redesignating paragraphs (1)(ii) through (1)(iv) and paragraph (2)(ii) as paragraphs (1)(iii) through (1)(v) and paragraph (2)(iii), respectively; and adding new paragraphs (1)(ii) and (2)(ii).

The revisions read as follows:

**§ 951.1 Definitions.**

\* \* \* \* \*

*Median income for the area.*

(1) \* \* \*

(ii) The median income for the area obtained from the Federal Financial Institutions Examination Council;

\* \* \* \* \*

(2) \* \* \*

(ii) The median income for the area obtained from the Federal Financial Institutions Examination Council;

\* \* \* \* \*

3. Revise § 951.3(a)(2) to read as follows:

**§ 951.3 Operation of Program and adoption of AHP implementation plan.**

(a) \* \* \*

(2) *Competitive application program.*

That portion of a Bank's required annual AHP contribution that is not set aside to fund homeownership set-aside programs shall be provided to members through a competitive application program, pursuant to the requirements of this part. A Bank may allocate up to the greater of \$3 million or 25 percent of its annual required AHP contribution for the subsequent year to the current year's competitive application program. Beginning in 2002 and for subsequent years, the maximum dollar limit set forth in this paragraph shall be adjusted annually by the Finance Board to reflect any percentage increase in the preceding year's Consumer Price Index (CPI) for all urban consumers, as published by the Department of Labor. Each year, as soon as practicable after the publication of the previous year's CPI, the Finance Board shall publish notice by **Federal Register**, distribution of a memorandum, or otherwise, of the CPI-adjusted limit on the maximum competitive application dollar amount.

\* \* \* \* \*

4. Amend § 951.6 by:

- a. Removing the last sentence in paragraph (b)(1);
- b. Removing the first sentence in paragraph (b)(4)(i);
- c. Revising paragraph (b)(4)(iv)(A); and
- d. Revising paragraph (b)(4)(iv)(D).  
The revisions read as follows:

**§ 951.6 Procedure for approval of applications for funding.**

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(iv) \* \* \*

(A) *Use of donated or conveyed government-owned or other properties.*

The creation of housing using a significant proportion of:

(1) Land donated by the Federal government or any agency or instrumentality thereof, or any other party;

(2) Units conveyed by the Federal government or any agency or instrumentality thereof, regardless of the amount charged for such conveyance; or

(3) Units conveyed by any other party for an amount significantly below the fair market value of the property, as

defined by the Bank in its AHP implementation plan.

\* \* \* \* \*

(D) *Housing for homeless households.* The creation of rental housing, excluding overnight shelters, reserving at least 20 percent of the units for homeless households, the creation of transitional housing for homeless households permitting a minimum of six months occupancy, or the creation of permanent owner-occupied housing reserving at least 20 percent of the units for homeless households. For purposes of this paragraph, the term "homeless households" shall have the meaning as defined by the Bank in its AHP implementation plan.

\* \* \* \* \*

#### § 951.7 [Amended]

5. Amend § 951.7 by:

a. In the section heading, adding the words "or after" between the words "to" and "project"; and

b. In the introductory text of paragraph (a), adding the words "or after" between the words "to" and "final."

#### § 951.9 [Removed]

6. Remove § 951.9.

7. Revise § 951.10(c)(2) introductory text and paragraph (c)(2)(i) to read as follows:

#### § 951.10 Initial monitoring requirements.

\* \* \* \* \*

(c) \* \* \*

(2) *Rental projects.* Each Bank must take the steps necessary to determine that, within 120 days after receiving the documentation described in paragraph (a)(2)(ii) of this section:

(i) The services and activities committed to in the AHP application have been provided in connection with the project; and

\* \* \* \* \*

8. Amend § 951.12 by revising paragraph (e) to read as follows:

#### § 951.12 Remedial actions for noncompliance.

\* \* \* \* \*

(e) *Use of repaid subsidies*—(1) *Use of repaid AHP subsidies in other AHP-eligible projects.* Except as provided in paragraph (e)(2) of this section, amounts of AHP subsidy repaid to a Bank pursuant to this section, including any interest, shall be made available by the Bank for other AHP-eligible projects.

(2) *Re-use of repaid AHP subsidies in same project.* Where AHP direct subsidy has been provided by the project sponsor (or the member in the case of direct subsidy provided through the homeownership set-aside program) as

downpayment, closing cost, rehabilitation or interest rate buydown assistance to a household to purchase an owner-occupied unit pursuant to an approved AHP application, amounts of AHP subsidy repaid to the Bank, including any interest, may, if authorized, in the Bank's discretion, in its AHP implementation plan and within the period of time specified by the Bank in such plan, be made available by the project sponsor or member to another AHP-eligible household to purchase an owner-occupied unit in accordance with the terms of the approved AHP application.

\* \* \* \* \*

9. Amend § 951.13 by adding paragraph headings to paragraph (c)(3)(i) and (c)(3)(ii), and adding paragraph (c)(3)(iii) to read as follows:

#### § 951.13 Agreements.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(i) *Repayment of advance.* \* \* \*

(ii) *Maintain advance outstanding with reset interest rate.* \* \* \*

(iii) *Loan pool substitution.* If authorized, in the Bank's discretion, in its AHP implementation plan, continue to maintain the advance outstanding without the Bank resetting the interest rate, provided that:

(A) The loan, before its prepayment, was used by a household to purchase an owner-occupied unit pursuant to the project sponsor's approved AHP application;

(B) The loan was purchased by the member from the project sponsor and held by the member as part of a pool of loans financed by subsidized advances or direct subsidies and purchased from the project sponsor;

(C) Within the period of time specified by the Bank in its AHP implementation plan, the member makes the unused AHP subsidy resulting from the prepaid loan available to the project sponsor to reduce the interest rate on a new loan from the project sponsor to another AHP-eligible household to purchase an owner-occupied unit in accordance with the terms of the approved AHP application;

(D) Within the period of time specified by the Bank in its AHP implementation plan, the member purchases the new loan for inclusion in the loan pool; and

(E) After substitution of the new loan for the prepaid loan in the loan pool, the aggregate principal balance of the loan pool is the same as or higher than the

original principal balance of the loan pool.

\* \* \* \* \*

Dated: December 11, 2001.

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

J. Timothy O'Neill,  
Chairman.

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 98-ANE-61-AD]

RIN 2120-AA64

#### Airworthiness Directives; Pratt & Whitney (PW) PW2000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

**SUMMARY:** This action revises an earlier proposed airworthiness directive (AD), applicable to certain Pratt & Whitney (PW) PW2000 series turbofan engines, that would supersede an existing airworthiness directive (AD) by modifying the airworthiness limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements. This action revises the proposed rule by adding the low pressure compressor (LPC) hub assembly, high pressure turbine (HPT) 1st stage disk, and HPT 2nd stage hub to the additional inspection requirements. The regulatory section revises the manufacturer's Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA), and for air carrier operations revises the approved continuous airworthiness maintenance program. The actions specified by this proposed AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

**DATES:** Comments must be received by January 28, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-ANE-